

Heraeus HPM-FM Remelting Terms and Conditions (03/2020)

1. Scope of Application and Formation of a Contract

- 1.1 These Terms and Conditions, together with the quotation provided by Heraeus, govern the remelting by Heraeus Deutschland GmbH & Co. KG ("Heraeus") of precious metal-containing material returned by the customer ("Customer Return Material") as well as the further disposition of the precious metals (collectively, "Customer Return Transaction"). Remelting in this sense is the smelting metallurgical treatment (remelting with or without chlorination, but no chemical processing) of Customer Return Material with the aim of converting contaminated materials, excess precious metal content or used products into a usable form.
- 1.2 These Terms and Conditions are final and binding upon the parties. Any additional terms and conditions which deviate from these Terms and Conditions or from the law are hereby rejected and shall not apply, except with the express prior written consent of Heraeus.
- 1.3 Offers of Heraeus are without engagement, unless specifically agreed otherwise. This applies in particular to the time of availability of precious metals. Contracts will be formed only upon the issuance of written order confirmations or performance by Heraeus.
- 1.4 The rescission of a contract (cancellation) by the customer is in any case subject to the prior written consent of Heraeus.

2. Information provided by the Customer

- 2.1 The customer is obligated to provide its declarations and information on the Customer Return Material to Heraeus fully and completely and, especially in view of a possible contamination of this Customer Return Material, with particular care.
- 2.2 If Heraeus discovers that the Customer Return Material is inconsistent with the declarations and information provided by the customer, Heraeus must inform the customer thereof only if Heraeus refuses to perform the Remelting based on these inconsistencies.
- 2.3 Heraeus hereby reserves the right to charge additional expenses to the customer in the event that during the Remelting, as a result of an incorrect or incomplete declaration provided by the customer, the life and limb of the employees or the equipment of Heraeus or of any subcontractors are endangered or damaged, a substantial process disruption or additional damage, efforts or costs arise to Heraeus.

3. Import of Customer Return Material into the EU

In case the Customer Return Material has to be imported into the EU, Heraeus and the customer shall make a binding decision before the importation as to whether the Customer Return Material will be (i) cleared through the customs and physically returned outside the EU by Heraeus or a third party after Remelting, or (ii) purchased by Heraeus. The dispositions pursuant to Section 11 of these Terms and Conditions will be limited by the choice made according to the preceding paragraph.

4. Purchase of Customer Return Material

- 4.1 The customer may deliver the Customer Return Material to Heraeus only after Heraeus' receipt of the information requested in the quotation and, in particular, the completed Questionnaire for the Remelting of Metallic Customer Return Material ("Questionnaire"), and after

the customer's receipt of the Return Material Authorization ("RMA"). The delivery note, the packing list and the Return Material Authorization must be enclosed with the delivery.

- 4.2 If, contrary to the provisions of Section 4.1, Heraeus has not yet received essential information required for the Remelting (such as the Questionnaire) at the time of the customer's delivery of the Customer Return Material, the time of the actual receipt of the required information by Heraeus will be deemed to be the time of receipt of the Customer Return Material. The same applies if the customer has not yet received the RMA or if the RMA is not enclosed with the delivery of the Customer Return Material. Heraeus may delay the final settlement if a delivery is incomplete in accordance with the provisions of this Section 4.2. Heraeus may, at the expense and risk of the customer, (i) store the Customer Return Material already delivered, or (ii) return it to the customer.
- 4.3 During an incoming inspection of the Customer Return Material, Heraeus will only determine the type and number of containers as well as the net incoming weight (weight on delivery exclusive of packaging) by weighing and record the net incoming weight so determined in writing. If this weight differs more than slightly from the weight set forth in the RMA, the customer will be notified. If the customer does not object to the net incoming weight notified by Heraeus within three (3) working days, the net incoming weight notified by Heraeus will be deemed accepted by the customer. During the incoming inspection, Heraeus is not obligated to open the containers or to check the delivered material above and beyond the weight for consistency with the shipping documents provided by the customer.
- 4.4 Unless otherwise agreed, the customer shall deliver the Customer Return Material "DAP Hanau" (Incoterms 2020).

5. Process Description, Removal of Materials, Settlement Weight, Heraeus Materials

- 5.1 If necessary, Heraeus will pretreat, homogenize and remelt the Customer Return Material, and take a sample (collectively, the "Process"). The Process is carried out in accordance with the processes and procedures customarily performed by Heraeus and is binding upon the customer.
- 5.2 The net incoming weight of the Customer Return Material less (a) the grinding loss during the sample preparation, and (b) other losses in the Process, e.g. due to the extraction of (non-)precious materials or drying, results in the settlement weight relevant for the final settlement ("Settlement Weight").
- 5.3 Heraeus is entitled to execute orders for the Remelting of Customer Return Material which is stamped by Heraeus and has a net incoming weight of up to 350 g ("Heraeus Material") without separate Process. In such case, the final settlement pursuant to Section 7 hereof will be carried out immediately, and the net incoming weight constitutes the Settlement Weight.

6. No Guarantee of Success

Heraeus will perform its services for the customer with due and reasonable diligence, following the processes and procedures customarily applied by Heraeus to the Remelting of precious metal-containing material. Heraeus does not guarantee any specific outcome or

assume any responsibility beyond performing its services to this standard. In particular, Heraeus does not and cannot guarantee the successful pretreatment, homogenization, sampling or remelting of the Customer Return Material.

7. Precious Metal Credit

- 7.1 After completion of the Process, Heraeus will refund to the customer only the precious metals that have been agreed between the parties ("Covered Precious Metals").
- 7.2 Heraeus will determine the settlement basis based on the sample and its long-term experience. In the case of Heraeus Material, the sampling by Heraeus may be dispensed with.
- 7.3 The precious metal credit will be determined for each Covered Precious Metal in the respective agreed unit of weight as follows:
Precious Metal Credit =
Settlement basis in $\frac{\%}{100}$ x return rate in $\frac{\%}{100}$ x Settlement Weight
- 7.4 If a minimum deduction is agreed with the customer in the offer, this minimum deduction will be deducted from the Precious Metal Credit.

8. Title to the Customer Return Material

- 8.1 Until completion of the final settlement pursuant to Section 10, the customer will retain title to the Customer Return Material, unless otherwise stipulated in this Section 8. Title to all materials contained in the Customer Return Material will pass to Heraeus upon completion of the final settlement.
- 8.2 The customer's title to materials that are removed or lost in the Process pursuant to Section 5 above (losses) will pass to Heraeus at the time of such loss/removal.
- 8.3 If Heraeus, at its sole discretion, carries out an early final settlement prior to the availability of the precious metals, title to all materials contained in the Customer Return Material will pass to Heraeus at the time of the early final settlement.
- 8.4 In case the Customer Return Material is purchased by Heraeus, Heraeus shall become the owner of the Customer Return Material upon passing of the risk according to the Incoterms clause agreed between the parties. In the event that Heraeus provides, at Heraeus' sole discretion, a (full or partial) advance payment, Heraeus shall become the owner of the Customer Return Material upon such (full or partial) payment.

9. Precious Metal Weight Accounts

- 9.1 In commercial transactions involving precious metals, Heraeus maintains weight accounts. The precious metal weight accounts maintained for each precious metal are kept as current accounts, on which the claims from purchases and sales, services, in particular Remelting services, and other additions and disposals (e.g., precious metal transfers, materials provided) are entered according to type and quantity.
- 9.2 Every positive balance in a precious metal weight account creates a claim to precious metal in the corresponding amount in accordance with Section 11.
- 9.3 Heraeus regularly issues balance confirmations and precious metal weight account statements, by which the parties' mutual claims for the delivery of precious metals which have accrued during the specified time period will be offset and replaced by a claim to the balance in the account. Any objections against a balance confirmation or a weight account statement for incorrectness or incompleteness must be raised by the customer within six (6) weeks of the customer's receipt of such balance

confirmation or weight account statement. The absence of a timely objection will be deemed to constitute approval by the customer of the applicable balance confirmation or statement of account. Heraeus will specifically inform the customer of this consequence when issuing a balance confirmation or weight account statement. The customer may demand a correction of the balance confirmation or the weight account statement also after the elapse of the aforementioned time period; always provided, however, that in such case the burden of proof for the unlawful debiting of the customer's weight account or the non-issuance of a credit that is due to the customer will rest on the customer.

10. Final Settlement / Performance of Customer Return Transaction

- 10.1 The crediting of the Covered Precious Metals on the customer's precious metal weight account ("Final Settlement") will be carried out within five (5) working days after completion of the Remelting.
- 10.2 In the event that during Remelting an Operation Disruption (as defined below) or a Force Majeure Event (as defined in Section 13) occurs, the precious metal availability will be automatically extended for a period of time that is equivalent to the period of the Operation Disruption resp. Force Majeure Event. The following events shall be considered an Operation Disruption: (i) annual physical inventory, (ii) plant maintenance, (iii) inability or significant impediment or delay to obtain raw materials (or other materials, sundry chemicals or utilities necessary for the Process), equipment, fuel or transportation, (iv) inability or significant impediment to use machinery, facilities or IT systems which are required for the Process, (v) any delay of the Process caused by the customer or customer's representative.
- 10.3 It is the understanding of the parties that the Remelting will be deemed performed by Heraeus upon completion of the final settlement as follows:
 - 10.3.1 In case of a purchase of Customer Return Material, the Customer Return Transaction shall be deemed completed upon payment of the purchase price (cf. Section 8.4).
 - 10.3.2 In all other cases, the Customer Return Transaction shall be deemed completed once Heraeus has credited the Precious Metal Credit to the customer's precious metal weight account maintained at Heraeus.

11. Further Disposition of Credited Precious Metals

- 11.1 With regard to the precious metals credited to its weight account, the following options are available to the customer subject to consultation with Heraeus:
 - 11.1.1 Sale of the precious metals to Heraeus at the purchase price offered by Heraeus.
 - 11.1.2 Return of the precious metals as part of products which are purchased by the customer from Heraeus.
 - 11.1.3 Physical Delivery of precious metals in the quality customary of Heraeus. The provision of the precious metal to be returned may take up to ten (10) working days after the availability and call-off of the relevant precious metal.
 - 11.1.4 Retention of the credit on the customer's precious metal weight account at Heraeus in Hanau.
 - 11.1.5 Transfer of the precious metals to other accounts with the consent of Heraeus. Heraeus will inform the customer prior to such transfer of the costs

which may arise to the customer as a result thereof.

11.2 Any disposition pursuant to Section 11.1 with regard to the type, quality or composition of the material in deviation from the type, quality or composition available at Heraeus after Remelting may generate further costs to be borne by the customer. Any such further costs will be separately agreed between the parties.

11.3 Heraeus may, at any time and without stating reasons, cancel precious metal weight accounts of the customer upon ten (10) working days' notice, and physically return the precious metals to the customer in accordance with Section 11.1.3 in order to balance the customer's weight accounts.

12. Provision of Securities for the Benefit of Heraeus; Right of Setoff

12.1 Heraeus shall be obligated to return precious metals to the customer or to carry out instructions of the customer regarding the credit items or balances in the customer's precious metal weight account only if and to the extent that the aggregate value of these precious metals exceeds the sum total of all claims arising to Heraeus from the business relationship with the customer.

12.2 Heraeus and the customer agree that Heraeus shall be granted a lien on the Customer Return Material, the Covered Precious Metals recovered therefrom, and the credit items and balances in favor of the customer in the customer's precious metal weight account, as security for all claims arising to Heraeus from the business relationship with the customer. The foregoing lien shall be created as soon as the Customer Return Material has been delivered to Heraeus, the precious metals are available, or the credit items or balances in favor of the customer have been generated in the customer's precious metal weight account.

12.3 In the event of the customer's delay in performance, an extraordinary termination of any Remelting contract by Heraeus, or in the event that the customer files for insolvency or that insolvency proceedings are instituted against the customer's assets, Heraeus shall be entitled to privately sell the seized precious metals at the then valid market price. If the proceeds of such private sale exceed Heraeus' claims against the customer, the exceeding amount will be paid out to the customer. Prior to any such sale, Heraeus will notify the customer of the impending sale of the seized precious metals, stating the claim due to which such sale is intended. Heraeus will promptly inform the customer about the effected sale of the seized precious metals and of the sales proceeds thereby achieved.

12.4 Heraeus may, at any time, set-off its own claims (whether for money or the delivery of precious metals) against claims of the customer or its affiliated companies (whether for money or the delivery of precious metals).

12.5 If the claim of Heraeus or the counterclaim are for the delivery or the transfer of precious metals, the value of the precious metals will be determined as follows:

12.5.1 Gold: based on the P.M. price per troy ounce published by the London Bullion Market Association ("LBMA") in Euro on www.lbma.org.uk (LBMA Gold Price),

12.5.2 Silver: based on the price per troy ounce published by the LBMA in Euro on www.lbma.org.uk (LBMA Silver Price),

12.5.3 Platinum and palladium: based on the P.M. price per troy ounce published in Euro on

www.lppm.com (LBMA Platinum/Palladium Price),

12.5.4 Iridium, rhodium and ruthenium: based on the base price for London published at 15:00 CET in US Dollar by Johnson Matthey Plc,

in each case on the day of dispatch of the declaration of set-off.

12.6 If the claim or the counterclaim are for the payment of money in different currencies or if the fixing is conducted in a currency other than Euro, these currencies shall be converted into Euro at the Euro foreign exchange reference rate determined by the European Central Bank on the day of dispatch of the declaration of set-off.

12.7 The right of setoff also permits the setoff of claims of companies that are affiliates of Heraeus against claims of companies that are affiliates of the customer.

13. Force Majeure

13.1 If any performance by either party under these Terms and Conditions is prevented, restricted or interfered with by reason of any cause not within the reasonable control of the respective party (herein together "Force Majeure Event"), the party so affected shall be excused from its performance obligation and the precious metal availability shall be suspended to the extent and for the duration of such prevention, restriction or interference, and shall not be liable for any costs or damages. In case of a Force Majeure Event, Heraeus shall be entitled, but not obligated, to entrust a third party with the performance of its contractual obligations.

13.2 By way of example only, but without limitation, the following shall be considered as Force Majeure Events: Acts of God, acts or omissions of any governmental rules, regulations or orders of any governmental authority or any officer (e.g. lack of notification), department, agency or instrumentality thereof, flood, storm, earthquake, fire, war, explosion, riot, insurrection, accidents, acts of the public enemy, sabotage, invasion, quarantine restrictions, strikes, lockouts or differences with workmen, embargoes and any Operation Disruption if caused by an event outside of the reasonable control of the respective party. A Force Majeure Event affecting Heraeus shall also be deemed to exist where Heraeus' sub-suppliers are affected by any of these Force Majeure Events.

13.3 The affected party shall notify the other party as to the nature and probable duration of the Force Majeure Event.

13.4 Each party will exercise reasonable commercial efforts to resolve any Force Majeure Event as promptly as practicable, provided, however, that neither party shall be obligated to settle a labor dispute against its own best judgment, and provided that Heraeus shall not be obligated to (i) purchase or otherwise obtain precious metals from third parties to effect final settlement or (ii) to pay the purchase price to the customer.

14. Representations of the Customer

The customer represents and warrants

14.1.1 that it is the owner of the Customer Return Material offered by it or that it has the full right of disposal over this Customer Return Material, and that the Customer Return Material is free from any third-party claims or liens; and

14.1.2 that it will carry out all orders or sales transactions in its own name and for its own account and that it will not act as undisclosed agent for third parties

in connection with any transaction between the customer and Heraeus; and

14.1.3 that the Customer Return Material offered by it does not contain any conflict minerals as defined in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and is not related to money laundering, terrorism financing or any other illegal activity; and

14.1.4 that the information and data provided by it in the Questionnaire and, if requested by Heraeus, in the Code of Conduct for Heraeus Precious Metal Suppliers, are correct and complete.

15. Extraordinary Termination Rights of Heraeus

15.1 Heraeus may terminate any Customer Return Transaction for cause with immediate effect if

15.1.1 Heraeus determines based on the incoming inspection, the Questionnaire, or the analysis of the sample taken, that a successful performance of the Process on the Customer Return Material using the methods and procedures customarily applied by Heraeus is unlikely or not possible, or that a different form of refinement other than Remelting is required; or

15.1.2 it is revealed that the declarations and information regarding the Customer Return Material provided by the Customer are incorrect or incomplete and the missing or incorrect information was a substantial factor for Heraeus' decision to accept the Customer Return Material; or

15.1.3 Heraeus concludes that the Remelting is economically unviable (i.e., the Remelting costs are higher than the value of the precious metals expected to be recovered); or

15.1.4 the Remelting order cannot be executed as scheduled in accordance with Regulation (EC) No. 1013/2006; or

15.1.5 the Customer Return Material is not delivered in accordance with applicable law; or

15.1.6 a representation made by the customer pursuant to Section 14 is found to be incorrect or incomplete in any material aspect or the customer fails to make a representation within a reasonable grace period.

15.2 Further extraordinary rights of termination of Heraeus shall remain unaffected by the preceding provision.

15.3 In the event of an extraordinary termination for cause by Heraeus, Heraeus may return the Customer Return Material, in the condition in which it is at the time of such termination, to the customer at the customer's cost and risk and charge the customer for the costs incurred by Heraeus until the extraordinary termination.

15.4 The customer is not entitled to assert any claims for compensation or damages against Heraeus due to the extraordinary termination and/or the return of the Customer Return Material.

16. Liability

16.1 Each party shall be liable to the other party for

16.1.1 damages resulting from injuries to life, limb or health that were intentionally or negligently caused by itself or its legal representatives, agents or employees to the other party;

16.1.2 damages to property (with the exception of the Customer Return Material) resulting from intentional or negligent acts caused by itself or its

legal representatives, agents or employees to the other party.

16.2 With regard to the Customer Return Material, the following applies:

Upon passing of the risk in accordance with the Incoterms clause agreed between the parties, Heraeus will be liable for loss of or damage to the Customer Return Material for an amount up to, but not exceeding, the value of the precious metal. However, in case that the Customer Return Material has been delivered to Heraeus without Heraeus' written consent or with incorrect or incomplete documentation, Heraeus will be liable only in the case of gross negligence or willful intent.

16.3 The Customer is and will remain liable for all damages which are attributable to the hazardous nature of the Customer Return Material until completion of the Process by Heraeus.

16.4 Heraeus will under no circumstances be liable to the customer for any indirect, special, consequential, or punitive loss or damages ("*Vermögens-(folge)schäden*") suffered by the customer including, without limitation, loss of profit ("*entgangener Gewinn*") and commercial opportunities, disappointed expectations, costs or expenses incurred, loss of goodwill and other reputational damages.

16.5 If Heraeus entrusts subcontractors with the Remelting of the Customer Return Material, Heraeus will only be liable for the proper selection of an appropriate subcontractor as well as for grossly negligent or intentional violations of duty on the part of the subcontractor. Any liability of Heraeus for the selection of subcontractors is excluded if the customer has proposed or demanded a particular subcontractor.

17. Applicable Law and Jurisdiction

17.1 These Terms and Conditions and any contract between Heraeus and the customer shall be governed by, and construed in accordance with, the law of Germany, without giving effect to its conflict of law provisions and without giving effect to the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

17.2 The place of performance for the services of Heraeus is the Heraeus site where the services are carried out; the place of performance for the payments by the customer is the registered place of business of Heraeus.

17.3 The place of jurisdiction for both parties is the registered place of business of Heraeus. However, Heraeus shall be entitled to recourse in any court having jurisdiction as to the respective legal action under the laws of Germany or under the laws of the country in which customer has its registered place of business.

18. Severability, Written Form

18.1 If any provision of these Terms and Conditions be or become invalid or unenforceable, the remaining provisions of these Terms and Conditions shall remain unaffected and continue in full force and effect.

18.2 The parties agree on the requirement of written form, and no waiver or modification of this written form requirement shall be valid or binding unless executed in writing.