

Kreisel Electric GmbH & Co KG general terms and conditions sale of goods

1. DEFINITIONS & INTERPRETATIONS

1.1 In these Terms the following words shall have the following meanings:

1.1.1 "The Company" means the limited liability company Kreisel Electric GmbH whose registered office is at Promenade 25, 4240 Freistadt, Austria;

1.1.2 "Contract" means i) these Terms, ii) the Quotation and iii) the order acknowledgment relating to the agreement between the Company and the Customer. Should the terms of the Quotation deviate from the terms of the order acknowledgment, the terms of the order acknowledgment prevail over the terms of the Quotation;

1.1.3 "Customer" means the person, firm or corporate entity who has acquired Goods as hereinafter described on agreed terms and conditions from the Company;

1.1.4 "Goods" means and shall include any and all goods, machinery, tools or equipment supplied by the Company to the Customer;

1.1.5 "Quotation" means the specification sheet to which these Terms are attached and in which the Goods is specified; and

1.1.6 "Terms": the present Terms (of sale of Goods) which apply to the Contract;

1.2 Reference to the singular shall include the plural, the masculine shall include the feminine, the whole shall include the part, the personal shall include the corporate and in all cases vice versa, as if they were set out separately and traversed seriatim.

2. BASIS OF SALE

2.1 Any orders sent to the Company by the Customer shall be accepted entirely at the discretion of the Company, and, if accepted will only be accepted on these Terms which shall govern the Contract to the exclusion of any other Terms subject to which any order purported to be sent or confirmed by the Customer and by means only of the Company's standard order acknowledgement form and in the absence of any documents acceptance is deemed to have been on delivery in accordance with Clause 6.

2.2 No addition, alteration or substitution of these Terms will bind the Company or form any part of any Contract unless they are expressly accepted in writing by a person authorised to sign on the Company's behalf.

2.3 The Customer shall at its own expense supply the Company with all necessary data or other information relating to the Contract, within sufficient time to enable the Company to provide the Goods in accordance with the Contract. The Customer shall ensure the accuracy of all such information provided.

2.4 The Company's employees or agents are not authorised to make any representation with regard to the subject matter of the Contract. In entering into the Contract the Customer acknowledges that if it relies on any representation, advice or recommendation given by the Company, its employees or agents to the Customer, its employees or agents as to the use of the Goods it does so entirely at the Customer's own risk.

3. OPERATING INSTRUCTIONS

3.1 The Goods is to be used only for its designated function within the limits of design and all information as detailed in the operating instructions supplied.

3.2 The Customer agrees that it will not without the written consent of the Company:

3.2.1 effect any modification, make any alterations or additions, or fit any equipment or other accessories to the Goods;

3.2.2 remove or interfere with any identification marks fixed to the Goods nor attempt or purport to do so nor permit the same;

3.2.3 deface the paintwork or exterior of the Goods nor add or erect any painting, sign writing, lettering or advertising to or on the Goods.

4. SPECIFICATION

4.1 The Customer shall be responsible to the Company for ensuring the accuracy of the Contract and to report possible inaccuracies.

4.2 The eventual quantity, quality, description of, and any specification for the Goods shall be as expressly set out in the Contract.

4.3 As work to improve the quality and performance of the Goods and the economics of manufacture is continuously in progress, the Company reserves the right to alter the Goods without notice. This alteration does

not create any right for the Customer to claim damages or replacement based on non-conformity, unless the Goods does not function properly anymore and the Customer has given the Company notice of such default.

5. PRICE AND PAYMENT

5.1 The price for the Goods shall be the Company's price as set out in the Quotation together with any and all documentation relating to the Contract. All prices quoted are valid for fourteen (14) days from the date of the Quotation only or until earlier acceptance by the Customer, after which they may be altered by the Company without giving notice to the Customer.

5.2 The Company reserves the right by giving notice in writing to the Customer at any time before delivery to increase the price of the Goods to reflect any increase in cost to the Company which is beyond the control of the Company (such as, without limitation, any foreign exchange fluctuations, currency regulation, alteration of duties, significant increase in the cost of labour, cost of freight, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or which is due to any failure by the Customer to give the Company adequate information or instructions.

5.3 Unless otherwise agreed in writing all prices are given by the Company on an ex-works basis, and where the Company agrees to deliver the Goods otherwise than at the Company's premises the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.

5.4 The price is exclusive of any applicable Value Added Tax and any other tax or duty, which the Customer shall pay to the Company in addition at the applicable rate from time to time.

5.5 The Company shall use its reasonable endeavours to comply with any specific invoicing requirements of a Customer, but failure to comply shall not invalidate the invoice rendered. Any such requests must be communicated to the Company by the Customer before the Goods is despatched.

5.6 The price for the Goods to be paid by the Customer to the Company shall be paid in the currency as has been specified by the Company on its invoice.

5.7 The Customer shall pay the price for the Goods within ten (10) days of the date of the Company's invoice or within such credit Terms as are agreed between the Company and the Customer in writing and the Company shall be entitled to recover the price notwithstanding that delivery may not have taken place and notwithstanding that property in the Goods has not passed to the Customer.

5.8 The Company shall be entitled to invoice the Customer for the price of the Goods at any time after formation of the Contract or following delivery of the Goods unless the Customer wrongfully fails to take delivery of the Goods in which event the Company shall be entitled to invoice the Customer for the full amount at any time after the Company has notified the Customer that the Goods is ready for collection or (as the case may be) the Company has tendered delivery of the Goods. The Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part

5.9 All possible payments due under the Contract shall be made to the Company at its address stated in the Contract or at such other address as the Company may from time to time communicate to the Customer. Any payments sent by post shall be so sent at the risk of the Customer.

5.10 Time shall be of the essence in respect of the payment of all sums due hereunder and the Customer shall be deemed to have repudiated this Contract if any payments shall remain unpaid for more than fourteen (14) days after becoming overdue.

5.11 If the Customer fails to make any payment within fourteen (14) days after the payment is overdue, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

5.11.1 cancel the Contract and suspend any further deliveries to the Customer;

5.11.2 appropriate any payment made by the Customer to such Goods supplied under any Contracts made between the Customer and the Company as the Company may think fit notwithstanding any purported appropriation by the Customer; and

5.11.3 claim interest and/or compensation for reasonable debt recovery costs.

5.12 The Customer acknowledges that the quantities set forth in the Contract may affect the price of the Goods and that if the Customer makes changes in the quantities proposed in the Contract the price of the Goods may be adjusted to meet the Company's price applicable to the changed quantities.

6. DELIVERY

6.1 Delivery of the Goods shall be made by the Company handing over the Goods to the Customer from the Company's premises, or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that other place or when the Company has notified the Customer that the Goods is ready for collection.

6.2 The Company will prepare a delivery and acceptance form for each item of Goods which will specify the details of the Goods. At the time of delivery or collection of the Goods the said form will be signed by the Customer or by a person authorised on its behalf, which signature shall constitute the Customer's acceptance of the Goods.

6.3 The Company will use reasonable endeavours to have each item of Goods available for delivery or collection on the date requested by the Customer. However, time for delivery shall not be of the essence/shall not constitute a final deadline of the Contract: the Company shall only then be considered to be in default if thirty (30) days have past since the notification of a default in writing from the Customer to the Company and if the Company has failed to fulfil its obligations under the Contract within these thirty days.

6.4 Where the Goods is to be delivered in instalments, and if the Company fails to deliver any one or more of the instalments, the Customer shall not be entitled to suspend his obligations under the Contract, unless suspension is deemed reasonable, bearing the nature of the Goods in mind (for instance when the Goods loses its functionality in case an instalment has not yet been delivered).

6.5 If the Customer fails to take delivery of the Goods or fails to give the Company adequate instructions for delivery then without prejudice to any other right or remedy available to the Company, the Company may:

6.5.1 store the Goods until actual delivery and charge the Customer for reasonable costs (including insurance) for storage; or

6.5.2 sell the Goods at the best price readily obtainable and after deducting all reasonable storage and selling expenses charge the Customer for any shortfall below the Contract price.

6.6 All containers and other articles enclosing or supporting the Goods (postal packaging always excepted) shall remain the Company's property and shall be returned to the Company, at the risk and expense of the Customer, in their original state and condition within such time as the Company may consider reasonable, failing which the Customer shall be liable to the Company for their re-instatement value. The Company may at its option pre-charge the Customer the whole or part of the value of such articles and refund such sum or any appropriate part thereof on their return as aforesaid.

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Customer upon delivery.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer, until the Company has received payment in full for the price of the Goods.

7.3 Until such time as property in the Goods passes to the Customer:

7.3.1 the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property. The Customer shall undertake for the Company's interest in the Goods to be endorsed on the insurance policy if so requested and should any insurance claim for the Goods be made, the Company is to be immediately notified and the Customer shall not settle any claim without the written permission of the Company. The Customer will appoint the Company as its agent and authorise the insurance company to pay any settlement of claims on the Goods direct to the Company;

7.3.2 the Customer shall be entitled to resell or use the Goods to third parties, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds. The claim of the Customer on a third party, concerning the

purchase price of the Goods of which the Company has remained the owner;

7.3.3 the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods is stored and repossess the Goods; and

7.3.4 the Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remains the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

8. WARRANTY AND TITLE

8.1 The Company warrants that except in relation to intellectual property rights of third parties it has good title to the Goods and, subject to these Terms and conditions will transfer such title as it may have in the Goods to the Customer.

8.2 The Company warrants that (subject to the conditions set out below) the Goods will correspond with the agreed specification at the time of delivery and will be free from defects in material and workmanship for a period of twenty four (24) months from the date of delivery.

8.3 In respect of parts and materials not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any warranty or guarantee which is given by the manufacturer to the Company.

8.4 Subject as expressly provided in these Terms, and all warranties, conditions or other Terms applied by statute or common law are excluded to the fullest extent permitted by law.

9. LIABILITY

9.1. Visible defects in the Goods, based on the nonconformity of the Goods with the specification (whether or not the delivery of the Goods has been rejected by Customer) need to be reported to the Company within three (3) days after delivery, failing which the Company will not be liable for any defect and/or non-conformity of the Goods. The Customer will in that case be obligated to pay the price as specified in the Contract.

9.2. Non-visible defects in the Goods, based on the nonconformity of the Goods with the specification (whether or not the delivery of the Plan has been rejected by Customer) need to be reported to the Company immediately after the Customer has been made aware of it (or should have been aware), failing which the Company will not be liable for any defect and/or non-conformity of the Goods. The Customer will in that case be obligated to pay the price as specified in the Contract.

9.3. Notwithstanding liability resulting from gross negligence, the Company is not liable for:

9.3.1. in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;

9.3.2. in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or written), misuse or alteration or repair of the Goods without the Company's approval;

9.3.3. any damages (included but not limited to any losses, costs, or other entitlements to reimbursements) resulting from circumstances that can be imputed to the Customer;

9.3.4. any damages (included but not limited to any losses, costs, or other entitlements to reimbursements) resulting from the usage of the Goods for purposes it was not designed;

9.3.5. any damages, in case the price of the Goods has not been paid in full to the Company.

9.4. The Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special, consequential loss or damage (whether for loss of profit, goodwill or turnover or otherwise), costs, expenses, revenue, anticipated savings or other claims for compensation whatsoever (whether caused by gross negligence of the Company, its employees, agents or otherwise) which arise out of or in connection with the supply of the Goods or their use by the Customer.

9.5. In case of delay or non-performance under the Contract by the Company, the Company shall only then be considered to be in default if thirty (30) days have passed since the notification of a default in writing from the Customer to the Company and if the Company has failed to fulfil its obligations under the Contract within these thirty days, except in case this default is caused wholly or partly by reason of an act of God, delay in

transportation, labour disputes, fire, flood, war, accident, government action, inability to obtain adequate labour, materials, manufacturing facilities, or energy or any other cause beyond the Company's control or that of its servants or agents, and if the delay or failure has continued for a period of three months then either party may terminate the Contract without prejudice to any rights which may have accrued prior to such termination.

9.6. Where any valid claim in respect of the Goods (which is based on any defect in the quality or condition of the Goods or its failure to meet the agreed specification) is notified to the Company in accordance with these terms, the Company shall be entitled to repair or replace the Goods (or the part) in question free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods but Customer shall have no further liability to the Company.

9.7. Should any delay or non-performance of the obligations under the Contract continue for a period over three months, either party is entitled to terminate the Contract, without prejudice of any of their rights existing at the moment of termination.

9.8. The total liability of the Company under or in connection with the Contract shall in any case not exceed the total price payable by the Customer under the Contract in respect of the or one hundred and thousand Euro (EUR 100,000.00) (whichever is the lower) save as otherwise expressly provided in these Terms. The Company will only then be liable to the Customer if thirty (30) days have passed since the notification of a default in writing from the Customer to the Company and if the Company has failed to fulfil its obligations under the Contract within these thirty (30) days.

9.9. If the Goods need to be disposed of the Customer shall ensure that the Goods are disposed of safely and according to all relevant laws. The Goods shall be disposed of at the Customer's expense and the Customer shall indemnify the Company from and against any claims, damages or expenses arising from the Customer's failure to dispose of the Goods pursuant to this clause 9.9.

10. INTELLECTUAL PROPERTY AND INDEMNITY

10.1. The Company is not aware of any actual or alleged infringements of intellectual property rights of third parties which relate to the Goods other than those (if any) which the Company has disclosed to the Customer prior to the acceptance of the Customer's order.

10.2. The Company shall have no liability to the Customer (save as set out below) in the event that the Goods infringes any intellectual property rights of a third party (including without limitation by reason of its possession, sale or use, whether alone or in association or in combination with any other Goods) of which the Company is not aware. The Company gives no warranty that the Goods will not infringe as aforesaid and all conditions, warranties or stipulations whatsoever relating to such infringement or alleged infringement, whether express or implied by statute, common law or otherwise are hereby excluded.

10.3. If any claim is made against the Customer that the Goods infringe or their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, while the Company is aware such rights, then unless the claim arises from the use of any drawing, design or specification supplied by the Customer, the Company shall indemnify the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer not exceeding one hundred thousand Euro (EUR 100,000) in connection with the claim, or paid or agreed to be paid by the Customer in settlement of the claim, provided that:-

10.3.1. the Customer notifies the Company as soon as reasonably possible in writing of any action actual or threatened against it;

10.3.2. the Company is given full control of any proceedings or negotiations in connection with any such claim;

10.3.3. the Customer gives the Company all reasonable assistance for the purposes of any such proceedings or negotiations and makes no admission of liability;

10.3.4. except pursuant to a final award, the Customer does not pay or accept any such claim, or compromise any such proceedings and makes no admission of liability without the consent of the Company (which shall not be unreasonably withheld);

10.3.5. the Customer does nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the

Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);

10.3.6. the Company shall be entitled to the benefit of, and the Customer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Customer which are payable to, or agreed with the consent of, the Customer (which consent shall not be unreasonably withheld) by any other party in respect of any such claim; and

10.3.7. without prejudice to any duty of the Customer at common law, the Company shall be entitled to require the Customer to take such steps as the Company may reasonably require to mitigate or reduce any loss, damages, costs or expenses for which the Company is liable to indemnify the Customer under this Clause.

10.4. The foregoing provisions shall not apply to any infringement caused by the use of the Goods in a manner or for a purpose which shall have been prohibited by the Company nor to any infringement which is due to the use of the Goods in association or in combination with any other product.

10.5. The Customer warrants that any drawing, design, instruction or specification given to the Company by or on its behalf shall not infringe any intellectual property rights of any third party.

10.6. If any claim is made against the Company based upon the fact that the Goods infringes or its use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, while the Goods has been produced by the Company in accordance with instructions, drawings, design or specification supplied by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company.

11. CONFIDENTIALITY

11.1. Both the Company and the Customer shall keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information between them relating to the Goods.

11.2. All copyright, design right, know-how or other intellectual property rights created by or used by the Company in relation to the Contract shall remain vested and belong absolutely to the Company. The Customer shall have a licence to use the same only for the purpose of using the Goods. Any drawings, designs and/or proposals submitted by the Company for approval shall remain the property of the Company and shall be treated by the Customer as strictly confidential and shall not be divulged to third parties without the Company's prior written consent.

12. EXPORT

12.1. Where the Goods is supplied for export from Austria, the provisions of this Clause shall (subject to any special Terms agreed in writing between the Customer and the Company) apply notwithstanding any other provisions of these Terms.

12.2. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

13. CANCELLATION AND TERMINATION

13.1. The Customer shall not without the prior written consent of the Company be entitled to cancel the Contract and if the Customer purports to do so it shall indemnify the Company for all losses, costs and expenses incurred by the Company in relation to the Contract.

13.2. If the Customer shall fail to pay any sum payable under this Contract (or under any other agreement between the Company, any subsidiary of the Company, any holding company of the Company, or any subsidiary and the Customer) within fourteen (14) days of its becoming due (whether demanded or not) or shall commit a breach of the other Terms and conditions (whether expressed or implied) of this Contract or of the Terms and conditions of any such agreement (as aforesaid) shall do or allow to be done any act or thing which in the opinion of the Company may jeopardise the Company's rights in the Goods or any part thereof, then in each and every such case the Customer shall be deemed to have repudiated this Contract and the Company may thereupon or at any time within three (3) months thereafter by notice in writing to the Customer for all purposes forthwith terminate the Contract.

13.3. In any event, at any given moment, the Company is entitled to cancel the Contract if any of the following events shall occur:

13.3.1. if any distress execution or other legal process shall be levied on or against the Goods thereof or against any premises where the same may be or against any of the Customer's goods or other property or the Customer

shall permit any judgement against it to remain unsatisfied for seven (7) days; or

13.3.2. if the Customer shall then turn to any liquidation and shall call any meeting of the creditors or shall have a receiver or receiver manager or any of its undertaking assets appointed or shall suffer the appointment of the presentation of a petition for the appointment of an administrator, or shall be deemed to be unable to pay its debts;

13.3.3. any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 13.3.1 or 13.3.2, then in each and every such case the sale constituted by this Contract shall without notice terminate and no payments subsequently accepted by the Company without knowledge of such termination shall in any way prejudice or affect the operation of this Clause.

13.4. The Customer shall upon any termination under this Clause 13 pay to the Company:

13.4.1. all sums accrued due and unpaid at the date of termination;

13.4.2. the cost of all repairs required as at the date of termination (other than those for which the Company has assumed responsibility under Clause 9.6 above); and

13.4.3. any other sums which are or become due to the Company or to which the Company is entitled by way of damages.

13.5. The termination of the Contract shall not affect any rights of the Company or liabilities of the Customer subsisting at the date of termination. If the Goods has been delivered in whole or in part but not paid for the price of the Goods shall become immediately due and payable.

13.6. A breach of Contract by the Company shall entitle the Customer to terminate the Contract fully or partially, only if the Company is in default: the Company shall only then be considered to be in default if thirty (30) days have passed since the notification of a default in writing from the Customer to the Company and if the Company has failed to fulfil its obligations under the Contract within these thirty days.

14. RETURNED GOODS

14.1. Goods can only be returned, after prior written approval of the Company.

14.2. Returned Goods must be of current manufacture and in the original packaging, unused, undamaged and in saleable condition.

14.3. Return Goods must be securely packed to reach the Company without damage.

14.4. Any cost incurred by the Company to put the returned Goods in a saleable condition will be charged to the Customer.

14.5. A twenty five percent (25%) restocking fee will apply to all returned Goods and the Customer's account will be credited for the cost of the Goods, minus shipping charges and the restocking fee.

14.6. Any costs incurred due to the Customer's failure to follow the Company's instructions shall be borne by the Customer.

14.7. The Customer shall indemnify the Company from and against any claims, damages or expenses arising from the loss of the Goods returned without following the contents of this clause 14.

15. GENERAL CONDITIONS

15.1. Any notice required or permitted to be given by either party to the other under these Terms shall be given in writing and addressed to the other party at its registered office, principal place of business or at such other address that may be notified to the other party from time to time.

15.2. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver and any subsequent breach of the same or any other provision.

15.3. The Company is a member of a group of companies and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group.

15.4. The Company shall be entitled to subcontract the whole or any part of its obligations under the Contract to any third party which it may in its absolute discretion determine but any subcontract shall not relieve the Company of its obligations hereunder.

15.5. If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provisions in question shall not be affected.

15.6. From this Contract applicability of the Vienna Sales Convention (CISG) (11 April 1980) is excluded.

15.7. The Contract shall be governed by and construed in accordance with Austrian law. All disputes arising in connection with this Contract, or further agreements or contracts resulting thereof, shall be submitted to the competent court in Linz, Austria.