

# GENERAL TERMS AND CONDITIONS OF PURCHASE (GTP) of Kreisel Electric GmbH & Co KG

## 1. On the application of the General Terms and Conditions of Purchase and explanations of terms:

**1.1.** Kreisel Electric GmbH & Co KG (hereinafter known as "Kreisel" for short) concludes its contracts only under these General Terms and Conditions of Purchase (hereinafter referred to as "GTP" for short). These GTP apply to all legal transactions relating to the delivery of goods and the provision of services between Kreisel and the provider of (a) service(s) and/or the supplier.

**1.2.** Our contracting partner agrees that, if it uses T&Cs, only our terms and conditions (those of Kreisel) shall apply, even if the contracting partner's terms and conditions are not explicitly gainsaid. Should the contracting partner have a similar provision in its T&Cs or GTP, it here-by recognises and confirms by accepting the order that only these GTP/T&Cs of Kreisel shall apply. The T&Cs or forms of the other side are explicitly not recognised and shall not become components of the contract, regardless of whether Kreisel was aware of them or not, whether Kreisel gainsaid their application or not, and whether they contradict Kreisel's T&Cs or GTP or not. These Terms and Conditions also apply to order extensions and follow-up orders, and to future transactions with the supplier or the provider of a service, without the need for them to be sent over again each individual time.

**1.3.** The provider of services or the supplier is hereinafter referred to in these GTP as the "Supplier", regardless of what its role is in relation to Kreisel (e.g. in its role answering requests by Kreisel or preparing quotes, or in its role as a seller, service provider or contractor). The term 'delivery' includes both the legal transaction relating to the delivery of goods, and the contract relating to other services (ancillary services) including all consultancy or clarification meetings or assembly services, as well as the fulfilment of any legal transactions. The object of the delivery may therefore be a good, but may also - as described above - be ancillary services, consultancy or assembly services etc.

**1.4.** No verbal ancillary agreements to this contract have been made. Should deviations from these GTP occur, they shall only be valid if this was agreed explicitly in writing between the parties (that is, Kreisel and the Supplier).

## 2. Validity of a contract (formation of the legal transaction) and possible amendment of its content:

**2.1.** The contract is formed as soon as Kreisel's assent to a quote from the Supplier is received (acceptance, order confirmation) or, in the case of an order by Kreisel, the Supplier's consent is received. Assent may consist in the Supplier starting to carry out the legal transaction.

**2.2.** Should the Supplier carry out amendments or deviations in the course of accepting an order by Kreisel, these shall not count as valid unless the Supplier explicitly draws attention to them in bold, highlighted text. These suggested amendments or supplements to the legal transaction shall

therefore only be valid if Kreisel has agreed to them in writing. Kreisel merely accepting the delivery does not constitute valid assent.

**2.3.** When the Supplier issues a quote and Kreisel carries out deviations in the course of confirming the order, the deviation from the quote counts as approved if the Supplier does not object to it within ten days of receiving it, but at the latest when carrying out the delivery.

**2.4.** Until the Supplier has completely fulfilled its obligations, Kreisel is entitled to demand amendments at any time, including amendments to the goods or services. This is only not possible if it is completely unreasonable for the Supplier and would inappropriately fail to take account of the associated consequences relating to delivery and expenses for the Supplier.

## 3. Provisions regarding protection (protection requirements and information):

**3.1.** The Supplier must, of course, comply with all national and international security regulations, as well as public law and environmental regulations in the version current as of the delivery date (e.g. the Battery Directive 2006/66/EG including amendments and the Eco-Design Directive 2009/125/EC. In particular, bans and restrictions on substances, such as those arising from the RoHS Directive 2011/65/EU and the REACH Regulation (EC) No. 1907/2006 Annex XVII, Annex XIV, must be complied with, whereby the resulting obligations must also be fulfilled. Likewise the Packaging Directive 94/62/EC. Among other things, relevant certificates, test reports and evidence relating to the REACH Regulation, Article 33 "Information obligation regarding worrying, hazardous substances, registration and reporting of substances in products" must be delivered to Kreisel free of charge. If the goods are electronic devices in the sense of RoHS Regulations 2011/65 EU and WEEE 2012/19/EU, these must correspond to the requirements contained within them. The Supplier is obliged to provide Kreisel with all useful and necessary information regarding the goods to be delivered or service to be provided, such that Kreisel is able to fulfil any public law requirements for the protection of consumers, employees or the environment. Such information includes particularly, but not only, instructions with regard to packaging, storage, transport and use, and of course waste disposal. Should Kreisel incur damages because such information is not passed on, the Supplier must indemnify Kreisel and hold it harmless.

**3.2.** The Supplier also undertakes to take on the obligation to collect and handle electrical and electronic devices, regardless of whether Kreisel is the last user or not. The Supplier shall thus fulfil the manufacturer's obligation. If national or state-level waste management laws entail disposal obligations, the Supplier shall bear these obligations. If Kreisel fulfils or takes on the Supplier's associated obligations - regardless of whether it is legally obliged to do so or not - the Supplier must reimburse Kreisel

for all associated expenses, indemnify it and hold it harmless.

#### 4. Quotes, orders or cost estimates

**4.1.** Quotes or requests by Kreisel to conclude a contract (a legal transaction) shall only count as a binding order if they are made in writing, describe the good or service exactly and express the fact that Kreisel wishes to be bound by them. Even in such cases, Kreisel shall be entitled to withdraw without charge until the legal transaction is established.

**4.2.** Unless otherwise agreed, quotes and cost estimates provided to Kreisel shall be binding and free of charge. The Supplier shall always bear the costs associated with preparing, writing and sending the quote. Kreisel is not obliged either to retain or return the quote or the attached documents.

#### 4.3. The Supplier's obligations:

The Supplier must carefully check all the information contained in Kreisel's order, especially technical conditions and requirements, other descriptions, explicit specifications and data relating to technical feasibility and expediency, and must warn Kreisel immediately if it is defective, incomplete, unclear, objectively unfeasible, or contrary to Kreisel's legitimate expectations that the delivery be fulfilled. The Supplier must also explicitly warn Kreisel if legal obligations could be breached.

#### 5. Content of the delivery or service:

**5.1.** The content of the delivery or service is only contractually compliant

- if it was manufactured/carried out according to the agreed specification and
- if it is suitable for the purposes for which the content of the delivery or service is normally used and
- if it is suitable for the specific purpose which the Supplier was explicitly or otherwise informed of and
- if it corresponds to the legitimate expectations of Kreisel and its customers relating to the protection of body, life, health and property according to the latest generally accessible rules of technology and science, and
- if it corresponds to the provisions of public law (above all national laws, ordinances and international public law provisions) on the protection of consumers, employees or the environment and
- if it is free of third-party rights and claims based on commercial or other intellectual property.

**5.2.** If the content of the delivery according to the contract is a machine, the Supplier undertakes to ensure that Kreisel is supplied with replacement parts for these machines or parts intended for use as exchange parts for a period of at least ten years after termination of the content of the delivery or service, but at the earliest after execution of the delivery or service. The Supplier also undertakes to ensure that any replacement or exchange parts do not cost more than the standard price.

**5.3.** The content of the delivery or service must naturally only correspond to the requirement of compliance with the latest state of technology if this agrees with Kreisel's company standards and other applicable technical standards, and it also corresponds to the unified regulations within the European Community for the protection of employees, third parties and the environment. If national or international public law provisions for the protection of consumers,

employees or the environment contain the obligation to label, manufacture and hand over declarations of conformity, declarations of compliance, operating and assembly instructions etc., the preparation and handover to Kreisel of these items is part of the Supplier's obligation to deliver or provide the service. Even if no such legal obligation applies, the Supplier must – if this is necessary for the intended use of the goods – prepare and hand over a description, operating instructions and where applicable assembly instructions. The Supplier must also always give free information relating to the operating and assembly instructions at Kreisel's request.

#### 6. Terms and conditions of delivery

##### 6.1. Delivery dates:

The delivery times, dates and deadlines given in the order are binding. The delivery must, unless otherwise agreed, be carried out in a timely manner to the destination agreed between the parties or specified in these GTP. Partial deliveries are only possible if Kreisel explicitly agrees to them. The Supplier alone shall bear any additional costs for any accelerated transport which may be necessary in order to comply with the delivery period or deadline. The parties' rights and obligations pertaining to delivery (shipment), handover and assumption of risk shall depend on Incoterms 2010. If Kreisel bears the transport costs, the Supplier is obliged to choose the postage and packing option which is most economical for Kreisel, unless Kreisel exercises its right to prescribe shipping method and transport costs.

**6.2.** If Kreisel imposes requirements relating to shipment, packaging or mode of transport, or transport itself, the Supplier must strictly comply with these requirements. Packaging must always be chosen such that goods are transported securely. If the Supplier must be reimbursed for packing costs, it shall only have a claim to reimbursement of its own costs. The Supplier must provide Kreisel with evidence as to its precise costs.

**6.3.** According to the Incoterms clauses agreed between the parties, risk shall be transferred from the Supplier to Kreisel. If, however, formal acceptance takes place, risk shall not be transferred before this formal acceptance.

**6.4.** All deliveries must be accompanied by a delivery note showing the exact delivery item, all order data and the gross and net weights and, where applicable, information on compliance with export licence regulations (such as export control commodity number). Documents on right of preference, movement certificate and declaration of origin, must be attached. The Supplier must always subject deliveries from outside the EU to export customs clearance and attach a customs invoice to the transport papers, regardless of the agreed delivery clauses according to the Incoterms 2010. Delivery papers for deliveries within the Community must always include the data required by Kreisel for the production of labour statistics. If Kreisel carries out a subsequent delivery of the goods, the Supplier must provide Kreisel with appropriate support for import customs clearance. If the aforementioned accompanying documents are missing or incomplete, Kreisel shall be entitled to refuse to accept the delivery. Within the framework of quality assurance, the Supplier is obliged to inspect the goods for contractual compliance, product safety and compliance with environmental standards. On delivery, Kreisel is only obliged to check the goods for identity, quantity delivered and any external transport damage which can be clearly seen on the

packaging. The Supplier explicitly waives all inspection and reporting obligations prescribed by applicable law. The obligation to inspect defective goods deliveries according to Section 377 UGB (Austrian Corporate Code) is explicitly waived. Kreisel has at least six weeks to report any defects which it does detect.

**6.5.** Kreisel is not obliged to accept deliveries before they are due. If Kreisel decides to accept a delivery anyway, the contractually agreed delivery date shall be decisive for the start of payment and guarantee periods, as well as the handover of risk. The Supplier is in default if the delivery is not completed to the agreed destination, within the agreed or set delivery period or by the agreed or set delivery date. In checking whether proper performance has occurred, reference shall be made to the date of the transfer of risk, or if formal acceptance has been prescribed to the date of the formal acceptance. In the event of default on delivery, Kreisel is entitled regardless of fault to demand a contractual penalty of 1.5% of the price for each calendar day or partial calendar day, with the total contractual penalty limited to the value of the delivery item.

#### **6.6. Default on delivery:**

If the Supplier is in default on its service, Kreisel has the right to withdraw from the contract without setting a grace period and to demand from the Supplier the expenses or additional costs for replacement delivery by another supplier. The Supplier is also obliged to compensate Kreisel for all losses incurred as a result of the delayed delivery (including lost profit). Should Kreisel not make use of a right of withdrawal, the Supplier is obliged to pay a flat contractual penalty of 1.5% of the agreed fee (net amount) if the delay is its fault. Kreisel has the right to deduct this flat contractual penalty from the Supplier's invoice. Kreisel's right to demand an additional contractual penalty from the Supplier does not affect Kreisel's right to demand additional default damages including its own expenses in the event of default.

#### **7. Prices and payment terms and invoicing:**

**7.1.** All prices are to be understood with the pricing term "DDP Kreisel's head office" or "DDP named destination". The prices therefore also include the costs of packaging, loading, transport and transportation taxes, duties as well as import and export charges. The prices include - unless otherwise agreed - the taking back and proper recovery and disposal of electrical and electronic devices and packaging. The prices agreed in the contract count as fixed prices. Price increases by the Supplier are excluded.

**7.2.** Invoices must be made in duplicate, invoice copies must be labelled as duplicates. The invoices must contain all order and delivery data, VAT number and, where necessary, also the ARA licence number. If ancillary services besides delivery of the goods (e.g. assembly, consultancy services) are also provided and remunerated, or if the price also includes the costs of transport, these should be shown separately on the invoice. If ancillary services require separate confirmation (time reports, confirmations of work etc.), they must be added to the invoice. All associated costs (duties, packaging, transport, insurance) must in any case be shown separately in the Supplier's quote and shall be borne by the Supplier unless otherwise agreed, with the exception of statutory VAT. Price increases to the object of delivery, including an increase in additional delivery costs, require Kreisel's prior written consent. No price increase is permitted without Kreisel's consent.

Invoices which fail to conform to the content or formal requirements described above, or to legal requirements, especially tax and customs law, count as improperly made out, and therefore do not cause the payment to fall due.

**7.3.** Unless explicitly otherwise agreed, the price shall fall due within 90 days of receipt of the invoice, provided that the Supplier has provided Kreisel with the goods or documents which entitle it to the payment. An invoice shall only ever fall due when all delivery notes, with Kreisel's confirmation and evidence as to materials and time attached, have been issued to Kreisel. Kreisel has the right to deduct a discount of 3% from the total amount of the invoice if it pays the invoice within 30 days. If partial invoices are issued, Kreisel is likewise entitled to a 3% discount if it pays within 30 days. Payments shall always be considered timely if the order is made in the form of an instruction to the credit institute on the last day of the payment period. Offsetting of Kreisel's own open claims against the Supplier also counts as payment. The Supplier shall bear any costs and fees associated with cashless payment, with the exception of those imposed by the client's bank.

**7.4.** Invoices shall only fall due when the delivery has been properly completed and Kreisel has had the opportunity to inspect the goods, the invoice is auditable and the invoice and its attachments correspond to the conditions above. Where the Supplier is obliged to provide certain documents (e.g. accompanying documents, declarations of conformity, operating instructions, assembly instructions etc.), the payment term shall not begin before all these documents have been handed over.

**7.5.** Kreisel is entitled to a retention of at least 10% of the invoice amount as security against the contractual compliance of the goods or services. If the goods or services (or small parts thereof) are not contractually compliant, the whole invoice amount shall only fall payable when the issue has been fully resolved.

**7.6.** Kreisel is also entitled to pay off its payment obligations by offsetting them against the claims held against the Supplier by companies in which Kreisel has at least a 50% stake.

#### **8. Guarantee, quality assurance measures:**

**8.1.** Unless these GTP rule otherwise, the legal provisions on material and legal defects shall apply. Deviations from the agreed (product) specifications are important breaches of contract, unless the defect caused by the deviations rectifies itself within a short period of time, or can be rectified by Kreisel itself without significant effort or expense. The Supplier guarantees that the goods or services are contractually compliant. The goods or services are only contractually compliant if they correspond to the provisions contained in (5) of these GTP. If the goods or services or parts thereof are described by Kreisel, or Kreisel provides information for a particular way of manufacturing, these shall not be binding for the Supplier if they tend to contradict the requirements of (5).

**8.2.** The guarantee period is 24 months, unless otherwise agreed explicitly in writing. It begins on handover of the product or transfer of risk. If formal acceptance is prescribed, it begins on formal acceptance. If the goods or services are delivered - changed or unchanged - to Kreisel customers and the Supplier is aware of this, the guarantee period shall begin when the Kreisel customer accepts the goods or services. If a defect cannot be identified by proper

inspection on the appointed dates, the guarantee period shall not begin before the defect is identified. If a defect is rectified by supplementary performance or exchange, the guarantee period shall begin again on completion of the rectification process or exchange and shall then last 24 months.

**8.3.** The Supplier must ensure that the goods are free of third-party rights and claims based on commercial or other intellectual property which the Supplier was aware of or must have been aware of when concluding the contract. This notwithstanding, the Supplier must always ensure that the goods or services are free from third-party rights arising from intellectual property within the European Union, the United States and Canada. If this provision is breached, the Supplier shall be obliged to pay compensation to Kreisel, and must indemnify Kreisel and hold it harmless.

**8.4.** In contrast to the statutory provisions in Austria, it is hereby explicitly agreed that if a defect arises within 12 months of the start of the guarantee period, it shall be assumed that this defect was already present on handover of the goods, unless the Supplier can prove otherwise.

Otherwise than in the statutory provisions, Kreisel has the right to choose how the defect should be rectified. Kreisel may also make a claim for change in the event of small defects. If the Supplier does not start to rectify the defect immediately after being asked to, otherwise enters default on rectification of the defect or fails in its first attempt to rectify the defect, Kreisel may in urgent cases, and especially in order to avoid greater damage or avert risks, rectify the defect itself or have it rectified by a third party, charging the resulting costs to the Supplier. The Supplier must also bear costs arising in connection with rectifying the defect, especially the costs of transport, installation and removal and administration, as well as other costs arising in connection with rectifying the defect. Further statutory claims or other contractual compensation claims outside the scope of the guarantee remain unaffected. The Supplier must rectify the defect at the delivery destination if Kreisel so wishes, even if the delivery is made directly to a Kreisel customer as agreed.

**8.5.** The Supplier must set up a quality assurance system corresponding in dimensions and quality to ISO 9001. The purpose of the setting up and maintenance of the quality assurance system is to guarantee the agreed quality of the goods or services and product safety, to ensure compliance with public law provisions on the protection of employees, third parties and the environment and to ensure that any defects can be traced after the fact. If the Supplier procures pre-deliveries from third parties, it shall guarantee the quality of such pre-deliveries either using its own means, especially by an equivalent quality assurance system at the pre-supplier's site, or by contractually incorporating the pre-supplier into the quality assurance system. Kreisel is entitled to check that the quality assurance system has been set up and maintained. This right also includes authorisation to carry out regular audits at the Supplier site. Records of manufacture and manufacturing control must be retained for 15 years from the first delivery and must be handed over to Kreisel whenever it requests them. The Supplier must inform Kreisel in a timely manner (within 14 days) of any changes in the identity of important subcontractors, any changes to raw materials, production processes or production location and any change to compliance verification procedures. Such changes shall require Kreisel's written consent if formal or functional compatibility of the goods or individual com-

ponents thereof can no longer be guaranteed for Kreisel or its customers, if usability is adversely affected, if the agreed properties or those required for the intended or generally required use are no longer guaranteed, or if the goods cease to be backwards compatible.

**8.6.** The guarantee period for delivery objects which cannot be used while the defect is being inspected and/or rectified shall be extended by the duration of the business interruption.

Other claims on the part of Kreisel due to breaches of contract or breach of other obligations shall in any case remain unaffected.

## **9 Liability, compensation, product liability/release and liability insurance cover:**

**9.1.** The Supplier shall be liable to Kreisel for illegal conduct, and especially contractually non-compliant and culpable conduct, without limitation for compensation of the direct or indirect damage caused, including lost profit. Fault on the part of a subcontractor or pre-supplier shall be assigned to the Supplier as if it were its own fault. Should applicable law prescribe liability even without fault, especially for defective products or dangerous conduct, the Supplier shall be liable to Kreisel according to these provisions even if it is not itself at fault. This agreement or the imposition of a contractual penalty shall not prevent Kreisel from asserting additional damages.

**9.2.** Compensation claims shall be equivalent to Kreisel's recourse claims if an action is brought against Kreisel by third parties in connection with the Supplier's goods or services. The requirements for and scope of the recourse claims depend on applicable law. The Supplier shall be liable to Kreisel without limitation if an action based on recourse claims is brought against the latter by contracting parties or other third parties in connection with the delivery or the delivery object. In such cases, the Supplier must indemnify Kreisel and hold it harmless. If the Supplier breaches a legal safety obligation in engineering, manufacture or representation of the goods, or due to inadequate controls (especially due to breach of or failure to observe its quality assurance obligations), the Supplier shall be liable to Kreisel for compensation. If the Supplier recognises, or would have recognised had it shown due care, that the goods or services or Kreisel's resulting end products are or become defective and this results in a risk to body, life, health, property or the environment, the Supplier is obliged to recall the offending goods or services. The Supplier must bear the resulting expenses if it is to blame for the recall. Measures taken by Kreisel in the course of the product recall represent an expense according to the previous provisions and must be reimbursed by the Supplier.

**9.3.** If an action is brought against Kreisel in relation to product liability, the Supplier is obliged to release Kreisel from such third-party claims and to indemnify it and hold it harmless, if and insofar as the damage was caused by a defect on the part of the Supplier or in the delivered objects.

The Supplier is therefore obliged within the above scope to reimburse Kreisel for all costs and expenses, including the costs of any legal prosecution or recall action. The Supplier shall, where possible and reasonable, inform Kreisel of the content and scope of the recall measures to be carried out, and give it opportunity to take a position. The Supplier undertakes to maintain and provide evidence of product liability and recall cost insurance for the delivery object with an



appropriate insured amount per personal/material damage event. Otherwise, the statutory provisions shall apply.

## 10. Execution of work:

Persons commissioned by the Supplier to carry out work to fulfil the contract on Kreisel's premises, or on those of the third party appointed by Kreisel, must observe the provisions of the relevant Kreisel work regulations or those of the appointed third party. Should the Supplier's employees fail to observe safety regulations or the legal provisions of employee protection legislation, the Working Hours Act (Arbeitszeitgesetz) etc., resulting in Kreisel being prosecuted by an authority, the Supplier undertakes to bear all penalties and costs (including those of legal representation), and to indemnify Kreisel and hold it harmless.

## 11. Retention of title and provision:

Kreisel accepts a 'simple retention of title', as required by the Supplier. Kreisel is, however, entitled to resell the delivery object in the ordinary course of business, without recognising an expanded or extended retention of title or other forms of retention of title.

The Supplier is obliged to immediately disclose any third-party rights to the delivery object or parts thereof to Kreisel. This also applies to any assignment of receivables.

All documents, findings and documentation, drawings, sketches, moulds, tooling and devices handed over by Kreisel for fulfilment of the order remain the property of Kreisel, unless otherwise explicitly agreed.

## 12. Intellectual property, rights to intellectual property and other documents:

**12.1.** Other documents transferred by Kreisel to the Supplier for the execution of the delivery or services (such as drawings, plans, specifications, standard sheets, models etc.) remain the property of Kreisel and may only be used to fulfil the delivery or services.

Such documents are confidential and may not be disclosed to third parties or used for purposes other than the fulfilment of the delivery or services without Kreisel's written permission.

The transmitted documents must be returned to Kreisel at the latest when the delivery or services have been completed. Copies must be destroyed, and data deleted.

The Supplier also provides explicit assurance that if the Supplier's existing intellectual property is required or at least expedient for the use of the goods or services, Kreisel is irrevocably able to use it and is entitled to use this intellectual property with the goods or services free of charge and without limitation. This right also entails that Kreisel is entitled to transfer this right of use to third parties or grant sublicenses to it if this is necessary in order to place the goods or services (changed or unchanged) on the market, keep them on sale, use them, maintain them or improve them.

## 12.2. Software:

If programs belong to the scope of delivery, the Supplier shall grant Kreisel an unlimited and free right of use. If the goods or services contain or consist in software, the standard software shall be handed over to Kreisel for proper use; this also includes use in any system environment and transfer of the right of use. Kreisel is also entitled to make copies of the

standard software for security purposes, and copying of the standard software for regular data backups is also included in proper use. The application documentation (especially the user and operator handbook) must be included in the delivery even if this is not specially agreed.

## 12.3. Special/individual software:

If the goods or services consist in special or customised software (that is, software which is specially developed for Kreisel's needs), the Supplier must grant Kreisel an exclusive, unlimited and non-transferable right of use and hand over to Kreisel the source and object program code, in both human-readable and machine-readable forms.

## 12.4. Tooling and packaging:

Kreisel or the third person appointed by Kreisel shall retain ownership of tooling provided to the Supplier.

**12.5.** Tooling or other implementation aids or templates, moulds etc., manufactured where possible at Kreisel's expense for the execution of the delivery or services, shall be transferred into Kreisel's ownership on payment. The Supplier must also appropriately label the aforementioned items as the property of Kreisel, and only use them to provide the delivery or services. The Supplier must also maintain these toolings and keep them in good condition, replacing them as required. The Supplier shall bear the risk of accidental loss of toolings by the Supplier. Any disruptions affecting the toolings must be reported to Kreisel immediately. In the event of cessation of delivery or other service disruptions, application for or opening of insolvency proceedings concerning the Supplier's assets, the insolvency of the Supplier or termination of the Supplier order by Kreisel, Kreisel has the right to demand the toolings, without the Supplier having a right of disposal or retention of any kind. The Supplier is not entitled to relocating the toolings without Kreisel's prior written consent. When the delivery or provision of services is completed, or at the latest when the contractual relationship comes to an end, the Supplier must hand over all toolings, implementation aids, templates and moulds owned by Kreisel to Kreisel, unless Kreisel explicitly waives this in writing. Kreisel is also entitled to demand the immediate return of the toolings etc. if the Supplier breaches the contract in carrying out the delivery or providing the services. The supplier has no right of retention concerning the aforementioned items, regardless of legal reason and whether it is legitimate.

The Supplier is obliged to insure the toolings belonging to Kreisel or the appointed third party, and hereby assigns all compensation claims arising from this insurance policy to Kreisel. Kreisel hereby accepts the assignment.

## 13. Replacement parts:

The Supplier is obliged to deliver the delivery object or, if this is no longer feasible without economically indefensible expense, appropriate substitutes, to Kreisel for 15 years after the end of the relevant delivery relationship.

## 14. Confidentiality

The Supplier undertakes to treat all information shared by Kreisel or affiliated companies in the course of the business relationship as confidential, not to disclose it to third parties and to ensure that third parties do not gain access to it, if and insofar as this information

a) is not and has not become publicly accessible and

- b) has not been shared with the recipient by an authorised third party not obliged to maintain confidentiality and
- c) cannot be shown to have been known to the contract in partner before the date of receipt.

If the Supplier realises that a third party has gained access to confidential information or confidential documents have been lost or destroyed, it shall inform Kreisel of this immediately.

The Supplier undertakes, unless otherwise agreed in a separate contract, not to utilise the information it receives from Kreisel for its own purposes outside those agreed between the contracting parties without explicit written permission.

The confidentiality obligation extends to all relevant employees and agents, regardless of the nature and legal status of their employment. The Supplier undertakes to inform the aforementioned persons of the confidentiality obligation and to correspondingly oblige them to maintain confidentiality. It shall make every effort to keep the circle of data subjects as small as possible in the interests of preserving confidentiality.

The obligation to preserve confidentiality and limit use applies during the business relationship with Kreisel and for a period of 10 (in words: ten) years thereafter.

All documents, findings and documentation edited or prepared in the course of this order is/are the property of Kreisel and must be handed over to Kreisel immediately after completion of the order.

#### **15. Advertising:**

The use of requests, orders and order confirmations from Kreisel and the associated correspondence for advertising purposes is not permitted.

The Supplier may only advertise its business connection to Kreisel with the latter's explicit written consent.

#### **16. Applicable law and place of jurisdiction:**

The Supplier and Kreisel shall attempt to resolve problems which arise in the course of completing the order through amicable negotiation. Should the parties not succeed in amicably resolving their differences of opinion within 30

days of the request to commence negotiations, the contracting parties are free to take legal action.

The legal relationships between the Supplier and Kreisel are subject to material Austrian property law, to the exclusion of conflict of laws and to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

The competent court for all disputes between the contracting parties, especially in connection with this contract, its legal validity, invalidity or consequences, as well as all extracontractual and tortious claims in connection with it is the competent court at the head office of Kreisel GmbH & Co KG. This is therefore Freistadt District Court or Linz Regional Court. Kreisel also has the right, however, to bring an action at the contracting partner's general place of jurisdiction.

The contractual relationship between the parties is subject to Austrian law.

#### **17. General provisions**

If the Supplier ceases payments or insolvency proceedings or other judicial or extrajudicial composition proceedings are applied for concerning its assets, Kreisel is entitled to withdraw from the unfulfilled part of the contract. Kreisel is entitled to offset a payable claim which it or an affiliated company holds against the Supplier or a company affiliated with the Supplier, against a claim held by the Supplier.

Should one of the above provisions or another provision made within the framework of the business relationship be or turn out to be invalid, this shall not affect the validity of the remaining provisions. The contracting parties are obliged to replace the invalid provision with another provision approaching its economic intent as closely as possible.

The place of performance is the delivery destination specified for the delivery object in the order, in case of doubt the client's head office, namely: Kreisel Electric GmbH & Co KG in 4261 Rainbach; Kreiselstraße 1, Austria.

The Terms and Conditions of Purchase have been made up in German and English. In case of differences between these versions, the German version shall take precedence over the English.

The English version is for information purposes only.