

Free and non-committal translation

Trustee Contract for ensuring collection and disposal obligation under the Electrical and Electronic Equipment Act

between

.....

.....

.....

(hereinafter called the "**Manufacturer**"),

and

ZVEI Services GmbH

Stresemannallee 19

60596 Frankfurt am Main

(hereinafter called the "**Trustee**")

Preamble

(A) Manufacturers of electrical and electronic equipment that can also be used in private households, hereinafter called "**B2C equipment**", are placed under an obligation by Article 6 paragraph 3 in conjunction with Article 24 of the Electrical and Electronic Equipment Act to show proof to the competent authorities once a year that they hold at least one insolvency guarantee for financing the recovery and disposal of all the B2C equipment that they bring into circulation on or after 24 November 2005. The competent authority under Article 16 paragraph 1 of the Electrical and Electronic Equipment Act is the Federal Environmental Office. The Waste Electrical Equipment Register (EAR) Foundation, based in Fürth (and hereinafter called the "**EAR**"), according to a notice of award dated 6 July 2005, has taken on these responsibilities, amongst other things, under Article 16 paragraph 2 in conjunction with Article 6 paragraph 3 of the Electrical and Electronic Equipment Act. This Trustee Contract serves the purpose of fulfilling the manufacturers' obligation to show proof under Article 6 paragraph 3 of the Electrical and Electronic Equipment Act.

(B) The Trustee is a subsidiary company of the ZVEI, the Central Association for the Electrical and Electronic Industry, Stresemannallee 19, 60596 Frankfurt am Main, Germany (hereinafter called "**ZVEI**"). ZVEI has appointed the trustee to offer similar trustee contracts to all manufacturers of B2C equipment who agree to accept an obligation under the Electrical and Electronic Equipment Act in proportion to their share of the total quantity of electrical and electronic equipment brought into circulation for each type of product under the provisions of Article 14 paragraph 5 sentence 3 item 2 of the Electrical and Electronic Equipment Act (hereinafter called the "**attribution-financing manufacturers**").

(C) This Trustee Contract provides the manufacturer with the possibility of showing proof of the guarantee required by Article 6 paragraph 3 of the Electrical and Electronic Equipment Act by submitting a policy taken out with Great Lakes Reinsurance (UK) plc (hereinafter

Free and non-committal translation

called “**GLUK**”) under the terms of this Trustee Contract (hereinafter called the “**deposit insurance policy**”).

This having been said, the parties hereby agree on the following:

Clause 1 Trustee’s obligations in any guarantee case

1.1 The Trustee hereby accepts an obligation towards the manufacturer, and towards the competent authorities and the EAR by way of a contract to the benefit of a third party, as follows:

If a guarantee case occurs as defined in Clause 1.2 of this Trustee Contract to use the amounts accruing to him under the deposit insurance policies issued under Clause 3.3 of this Trustee Contract for meeting the operational and financial obligations of the manufacturer under the Electrical and Electronic Equipment Act for the B2C equipment that is the object of this Trustee Contract. These obligations include in particular those under Articles 10 *et seq.* of the Electrical and Electronic Equipment Act. The trustee shall follow the instruction of the competent authorities or the EAR in any guarantee case.

1.2 The guarantee case is defined in the EAR Book of Regulations and can be called up from [http://www.stiftung-](http://www.stiftung-ear.de/e43/e150/e698/e714/050723qa_ear_Fragen_und_Atworten_Garantie_ger.pdf)

[ear.de/e43/e150/e698/e714/050723qa_ear_Fragen_und_Atworten_Garantie_ger.pdf](http://www.stiftung-ear.de/e43/e150/e698/e714/050723qa_ear_Fragen_und_Atworten_Garantie_ger.pdf) . The guarantee case occurs after the last attribution-financing manufacturer of a given type of equipment no longer brings this equipment into circulation, whether through his own decision or on account of his insolvency, i.e. when his market share has fallen to zero. A change in the market share of any one individual manufacturer or of more than one manufacturer participating in a system for financing the disposal of waste equipment within the meaning of Article 6 paragraph 3 of the Electrical and Electronic Equipment Act shall not be deemed to give rise to the guarantee case.

Clause 2 Fees, guarantee period of validity

2.1 The manufacturer shall owe the Trustee the trustee fees defined in sub-clause 2.2 of this Trustee Contract.

2.2 The trustee fee shall be the amount stated for this purpose in the “Fees” Appendix plus the statutory Value Added Tax. The trustee fee shall be paid no later than when the parties enter into this contract. Trustee fees shall be paid into account no. [_____] at the [_____-] Bank, bank sort code [_____-], of Aon Credit International GmbH, Heidenkampsweg 58, 20097 Hamburg, Germany (hereinafter called “**Aon**”), as the collection agency for the trustee, net of all costs and charges.

Clause 3 Deposit insurance policies, total guarantee amount

3.1 The Manufacturer shall show proof, no later than at the point in time at which he enters into this Trustee Contract, of the guarantee required under Article 6 paragraph 3 of the

Free and non-committal translation

Electrical and Electronic Equipment Act by submitting deposit insurance policies under Clause 3.2 of this Trustee Contract.

3.2 Deposit insurance policies are electrical scrap recycling deposit insurance policies taken out by the Manufacturer with the GLUK in favour of the Trustee, and shall comply with the sample attached as an Appendix headed "GLUK policies". The manufacturer shall provide deposit insurance for each type of equipment in which GLUK takes on an obligation towards the Trustee to bear the cost of recovering and disposing of the B2C equipment of this kind in the event of a guarantee case and for the amount of this guarantee.

3.4 The guarantee amount for each type of equipment shall be calculated as follows (in euros):

(i) quantity (in metric tonnes) of the electrical and electronic equipment of each type that is to be brought into circulation during the validity period of the guarantee (hereinafter called the "**basic registration quantity**"), multiplied by

(ii) the expected rate of returns (% share of the equipment brought into circulation), multiplied by

(iii) the expected disposal costs (in euros per metric tonne) at the end of the expected average service life.

3.5 Any later change in the basis for this calculation, meaning in particular any deviations in the quantities actually brought onto the market from the basic registration quantity, may result in a retro-active stocking-up of the guarantee amounts (as described in the EAR Book of Regulations: http://www.stiftung-ear.de/e129/e145/regeln816/Garantiedaten_ger.pdf). In this case the manufacturer shall without delay take out supplementary deposit insurance and show proof to the Trustee that he has done so.

3.6 The Manufacturer shall be under an obligation, with regard to the equipment that he brings into circulation during the lifetime of this Trustee Contract, to opt for the calculation method defined in Article 14 paragraph 5 sentence 3 item 2 of the Electrical and Electronic Equipment Act.

Clause 4 Communications to the EAR

The Trustee shall send the EAR a copy of this Trustee Contract on request.

Clause 5 Legal liability

5.1 The Trustee shall be under no obligation to check the correct calculation of the guarantee amount, and shall bear no liability for any insurance gap attributable to any incorrect or incomplete reporting of the manufacturer's data or any inaccurate calculation by the competent authorities or the EAR.

5.2 The Trustee shall bear no liability towards the Manufacturer unless he has acted with intent or in gross neglect of his obligations, and then only up to the maximum amount of the amounts the Manufacturer has paid to the Trustee under this Trustee Contract. The

Free and non-committal translation

foregoing shall not affect the Trustee's liability towards the competent authorities or the EAR under sub-clause 1.1 of this Trustee Contract.

Clause 6 Duration of contract and period of guarantee validity

6.1 This Trustee contract shall come to an end, subject to Sentence 2 below and to any summary termination for a serious reason as defined in German law under the provisions of sub-clause 6.2 of this Trustee Contract, when one of the periods of time corresponding to the guarantee validity period (as shown in the GLUK "Electrical scrap recycling deposit insurance policy") after the end of the expected average service life of the type of equipment involved. If the guarantee case occurs during the lifetime of the contract, the parties shall remain bound by their mutual obligations under this Trustee Contract with regard to the B2C equipment to which the guarantee case related even after the contract has elapsed.

6.2 Notice of termination of this Trustee contract shall have no validity unless it is being served for a serious reason, is served in writing, and if it states the date of termination. If the Manufacturer serves notice of termination shall, moreover, have no validity unless and until:

(i) the Manufacturer shows proof to the competent authority or the EAR of a new guarantee in compliance with Article 6 paragraph 3 of the Electrical and Electronic Equipment Act covering the guarantee amounts;

(ii) the Manufacturer gives the name of a new trustee to the competent authority or the EAR; and

(iii) the competent authorities or the EAR give their agreement to the new guarantee and the new trustee by means of a written notification to the Manufacturer and to the (old) Trustee.

If the Manufacturer has served notice of termination for a serious reason and this notice has taken effect, the Trustee shall be released from all his obligations under this Trustee Contract. If the Trustee has served notice of termination for a serious reason, on the other hand, this shall not affect the parties' rights and duties with regard to the B2C equipment that the Manufacturer has brought into circulation under the terms of this Trustee Contract up to the point in time at which the notice of termination takes effect. Notice of termination shall also not affect the obligation to pay any trustee fee already due when the notice of termination took effect.

6.3 Should the Trustee be unable for any special reasons, meaning insolvency in particular, to meet his obligations under this Trustee Contract, the Manufacturer shall be under an obligation to give the name of a new trustee to the competent authorities or the EAR and to enter into a new trustee contract with this new trustee.

6.4 The Trustee and the Manufacturer shall inform the competent authorities or the EAR without delay and in advance of any change in the guarantee that either of them may be planning or expecting, or in the identity of the Trustee or the provision of a substitute guarantee.

Clause 7 Ban on assignment, pledging and attachment

No claims under this Trustee Contract shall be assigned, pledged or attached unless anything elsewhere in this Trustee Contract or in mandatory statutory regulations dictates otherwise.

Clause 8 Confidentiality

The Trustee shall be under an obligation to treat as confidential all information about the Manufacturer that reaches him under this Trustee Contract, particularly the data contained in the “guarantee amounts during the guarantee validity period” appendices. The Trustee shall in particular not disclose this information or these data to any other manufacturer. He shall also take every care to ensure that this information and these data are only disclosed to those of his employees or advisors who (i) need this information or these data in connection with the conclusion, execution or termination of this Trustee Contract, (ii) have been informed of this obligation of confidentiality, and (iii) are subject either to a professional obligation of silence with possible sanctions under criminal law or to an obligation of confidentiality towards the Trustee. This obligation of confidentiality shall not extend to the passing on of such information and data (i) to the competent authorities or the EAR, nor (ii) to obligations of disclosure under mandatory statutory regulations.

Clause 9 Concluding provisions

9.1 The parties shall notify the competent authorities or the EAR , over and above the obligation to report and refer defined in this Trustee Contract, about any incipient change that could ultimately affect the workability of this Trustee Contract.

9.2 The requirement for the written form laid down in Article 126 of the Code of Civil Law shall apply to all amendments and additions to this Trustee Contract. The same shall apply to any modification to or cancellation of the requirement for the written form.

9.3 This Trustee Contract shall be subject to German law. The place of jurisdiction shall be Frankfurt am Main, Germany.

9.4 The appendices entitled “Guarantee amounts during the guarantee validity period” shall form an essential component part of this Trustee Contract.

9.5 Should any provision of this Trustee Contract prove to be invalid or unworkable, this shall not affect the validity of the remainder of the Trustee Contract. In this case the invalid or unworkable provision shall be replaced by another one that comes as close as possible to it and is legally permissible. The same shall apply in all relevant respects if this Trustee Contract proves to contain a loophole.

_____, _____, _____
(Place and date) (Place and date)

Free and non-committal translation

(Manufacturer's signature) (Trustee's signature)

Sample