



PACKAGING WASTE SCHEME

PACKAGING WASTE SCHEME MEMBERSHIP TERMS

1 APPLICATION

- 1.1 These Packaging Waste Scheme Membership Terms ("**Terms**") are applicable to all Members of the Packaging Waste Scheme and are subject to and shall be read in conjunction with and as part of the Membership Terms applicable to the Packaging Waste Scheme (including but not limited to the General Membership Terms) copies of which are available on request and/or at www.valpak.co.uk.
- 1.2 (Except as otherwise expressly provided) the Member acknowledges and agrees that it shall (in addition to its obligations under these Terms) continue to comply with its obligations under all of the other Membership Terms applicable to the Member's membership of the Packaging Waste Scheme (including but not limited to the General Membership Terms).
- 1.3 If there is any conflict between these Terms and any other terms of the Agreement the following order of precedence shall apply:
- (a) the Application Form applicable to the Member's membership of the Packaging Waste Scheme; then
 - (b) (in relation to any Additional Services only)(where relevant) the relevant terms and conditions applicable to such Additional Services; then
 - (c) (in relation to the Packaging Waste Scheme MCEP only)(where relevant) the Packaging Waste Scheme MCEP; then
 - (d) these Terms; then
 - (e) the General Membership Terms; then
 - (f) any other terms forming part of the Agreement that are not referred to above.

2 DEFINITIONS AND INTERPRETATION

- 2.1 In these Terms words and expressions defined in the General Membership Terms shall (where the context so permits) have the meanings set out in the General Membership Terms unless differently defined below for the specific purposes of these Terms.
- 2.2 In these Terms words and expressions defined in any clause shall (where the context so permits) have the meanings set out in such clause and the following words and expressions shall (where the context so permits) have the following meanings:

"Act" means Environment Act 1995 and the equivalent legislation in Northern Ireland;

"**Agency**" means the Environment Agency, SEPA, or the EHS as the case may be;

"**Consumer Information Obligations**" means the obligations placed upon Producers of the category of Seller by the Regulations to provide information to consumers on recycling and recovery of Packaging Waste;

"**Directive**" means the European Parliament and Council Directive 94/62/EC dated 20 December 1994 on Packaging and Packaging Waste;

"**EHS**" means the Environment and Heritage Service in Northern Ireland, including any successor body to such agency;

"**England and Wales Regulations**" means the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 in force in England and Wales;

"**Environment Agency**" means the Environment Agency in England and Wales, including any successor body to such agency;

"**General Membership Terms**" means the general membership terms and conditions applicable to all Members (a copy of which is available on request and/or at www.valpak.co.uk);

"**Levy**" means the levies, charges and payments to be made by a Member pursuant to clause 6.1;

"**Material Specific Recycling Obligation**" means an obligation to recover an amount of Packaging Waste of a specified material pursuant to the Regulations;

"**Member**" means a Producer which has become a member of the Packaging Waste Scheme in accordance with clause 3.1; and "**Members**" shall be construed accordingly;

"**Northern Ireland Regulations**" means the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2006 and any other legislation in force in Northern Ireland relating to packaging waste;

"**Operating Costs**" means costs and expenses incurred directly or indirectly by Valpak in operating the Packaging Waste Scheme in the interests of the Members of the Packaging Waste Scheme as a whole;

"**Obligation Year**" means each period of twelve months (beginning on 1st January) during which the Member has Producer Responsibility Obligations;

"**Packaging Waste**" has the same meaning as in the Regulations;

"**Packaging Waste Scheme**" means the packaging waste compliance scheme approved and registered under the Regulations and operated by Valpak;

"**Packaging Waste Scheme MCEP**" means the Packaging Waste Scheme Members compliance evidence policy terms and conditions (a copy of which is available on request and/or at www.valpak.co.uk);

"**PRN**" means a Packaging Waste recovery note or Packaging Waste export recovery note issued by an accredited reprocessor or an accredited exporter (as appropriate) in

each case identifying Packaging Waste materials which have been received for recovery or recycling or export for recovery or recycling and in the form required to comply with the relevant statutory guidance issued from time to time;

"Producer" and **"Producer Responsibility Obligations"** have the same meanings as in the Regulations;

"Recycling Obligation" means an obligation to recycle an amount of Packaging Waste pursuant to the Regulations;

"Recovery Obligation" means an obligation to recover an amount of Packaging Waste pursuant to the Regulations;

"Regulations" means the England and Wales Regulations, the Scottish Regulations and the Northern Ireland Regulations;

"Scottish Regulations" means the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 in force in Scotland;

"Seller" has the same meaning as in the Regulations;

"SEPA" means the Scottish Environmental Protection Agency, including any successor body to such agency; and

"Weighting Figures" means the current multipliers to be determined by Valpak and published by Valpak to the Members of the Packaging Waste Scheme through its website from time to time.

2.3 References in these Terms to clauses are (unless otherwise expressly provided) references to clauses contained in these Terms.

2.4 References in these Terms to a "net" Material Specific Recycling Obligation, Recycling Obligation and/or Recovery Obligation or to "net" Material Specific Recycling Obligations, Recycling Obligations and/or Recovery Obligations shall be references to the relevant obligation or obligations after having taken into account PRNs that have been offset against such obligation or obligations under the Packaging Waste Scheme MCEP (where applicable).

3 MEMBERSHIP OF THE PACKAGING WASTE SCHEME

3.1 A Producer shall become a Member of the Packaging Waste Scheme when Valpak countersigns the Application Form applicable to such Producer in relation to the Packaging Waste Scheme.

3.2 (Subject to clause 3.3) Valpak shall assume the Member's Consumer Information Obligations pursuant to the Regulations in relation to each Obligation Year throughout which the Member is a Member of the Packaging Waste Scheme.

3.3 Where the Member's membership of the Packaging Waste Scheme terminates during an Obligation Year Valpak shall not be liable to either return or provide any PRNs to the Member and the Member shall further be liable to pay to Valpak on request the costs of any identifiable forward commitments which Valpak has made prior to such termination in

respect of the Member's Customer Information Obligations for the remainder of the Obligation Year.

4 MEMBER'S OBLIGATIONS

- 4.1 The Member shall comply with the Regulations.
- 4.2 The Member agrees that, whilst it is a Member of the Packaging Waste Scheme, it shall not seek to fulfil its Producer Responsibility Obligations under the Regulations other than pursuant to its membership of the Packaging Waste Scheme such as by fulfilling those obligations itself, or by contracting with a third party, or by joining another compliance scheme registered under the Regulations or in any other way.
- 4.3 The Member shall use its reasonable endeavours in relation to the operation of its own business, insofar as it is both reasonably practicable and economically appropriate:
- (a) to adopt a waste disposal policy the aim of which is to separate the Member's own Packaging Waste by material and to arrange for such Packaging Waste to be collected for reuse or recycling; and
 - (b) to specify and use recycled, reused or otherwise conserved packaging materials and, on request, to supply Valpak with such evidence of examining the economic viability of specifying and using recycled, reused or otherwise conserved packaging materials.
- 4.4 The Member shall comply with the Packaging Waste Scheme MCEP.
- 4.5 (Where and to the extent that the Member has requested and Valpak has agreed to provide any additional services to the Member as part of the Member's membership of the Packaging Waste Scheme ("**Additional Services**")) the Member shall comply with the relevant terms and conditions applicable to such Additional Services.

5 PROVISION OF INFORMATION

- 5.1 The Member shall provide Valpak, within the time limits specified by Valpak, such information in such form and to the standard of accuracy as may be requested from time to time by Valpak in connection with the Member's membership of the Packaging Waste Scheme including, but without limitation:
- (a) information relating to the Member's actual and estimated Recovery Obligations and Recycling Obligations, including, but without limitation, data verifying the information provided to Valpak and a description of how the Member or Group Companies have collected and collated the information; and
 - (b) (if the Member has PRNs that are subject to the Packaging Waste Scheme MCEP) information required by Valpak in connection with the implementation, operation or any alleged breach of the Packaging Waste Scheme MCEP.
- 5.2 (Notwithstanding the Member's obligations under clause 5.1 and subject to clause 5.3) the Member shall submit the relevant Data Form (completed to Valpak's reasonable satisfaction) to Valpak by the 28th February of each Obligation Year.

- 5.3 Where a Member joins the Packaging Waste Scheme after the 1st February it shall submit its Data Form for that Obligation Year (completed to Valpak's reasonable satisfaction) as soon as reasonably practicable and no later than 20 days from the date it joined the Packaging Waste Scheme or the 1st December whichever is the sooner.
- 5.4 On receipt of any Data Form under clauses 5.2 or 5.3 Valpak will use reasonable endeavours to check the data to help to ensure that it is deemed to be as accurate as reasonably possible and then send out a verification form to the Member. For the avoidance of doubt the Member acknowledges and agrees (notwithstanding the fact that Valpak shall check the data in accordance with this clause 5.4) that the Member shall remain responsible for ensuring that the data is as accurate as reasonably possible. The Member shall then arrange for this verification form to be signed off:
- (a) by a director or senior responsible officer of the Member (where appropriate in relation to the Environment Agency and EHS); and
 - (b) in accordance with such other requirements as Valpak may reasonably request.

The Member shall (unless otherwise agreed in writing with Valpak) ensure that the verification form is signed off by the Member in accordance with this clause 5.4 and returned to Valpak within 7 days from the date of receipt by the Member of the verification form or 31 March in each Obligation Year (whichever is the earlier).

- 5.5 The Member shall inform Valpak immediately upon becoming aware of any change in the Member's Recycling Obligations, Recovery Obligations, (if the Member has PRNs that are subject to the Packaging Waste Scheme MCEP) the Pre-Qualifying Tonnage (as defined in and in accordance with Packaging Waste Scheme MCEP) and/or any information provided by the Member to Valpak in connection with the Member's membership of the Packaging Waste Scheme.
- 5.6 The Member shall maintain and store in either electronic or written form within the United Kingdom all documents, data and/or appropriate records it holds, obtains or creates in respect of its membership of the Packaging Waste Scheme and in respect of its obligations under these Terms for a minimum of 4 years from the date of such document, data and/or record and the Member shall make available such document, data and/or record to Valpak on demand.
- 5.7 Valpak may from time to time on reasonable notice in its absolute discretion alter the requirements for the format or period of storage as set out in clause 5.6.
- 5.8 The Member shall provide Valpak with details (including telephone, fax number and email) of a nominated individual for the service of notices and other communications, under and in connection with the Packaging Waste Scheme.
- 5.9 The provisions of this clause 5 shall continue in force notwithstanding termination of the Agreement howsoever caused.

6 LEVY

- 6.1 The Member shall pay to Valpak either the Variable Levy in accordance with clause 6.2 or the Fixed Levy in accordance with clause 6.5 (where appropriate) in respect of each Obligation Year in which it is a Member of the Packaging Waste Scheme.

6.2 (Subject to clauses 6.3 and 6.4) the variable levy shall in each Obligation Year be computed by reference to the following elements in relation to the Packaging Waste Scheme ("**Variable Levy**"):

- (a) the cost to Valpak of fulfilling the Packaging Waste Scheme Member's net Material Specific Recycling Obligation, net Recycling Obligation and net Recovery Obligation in that Obligation Year;
- (b) a fixed annual amount, being the same for each Member of the Packaging Waste Scheme, as published by Valpak to Members of the Packaging Waste Scheme as a whole on or before 1 October in the preceding Obligation Year;
- (c) an amount for each Member of the Packaging Waste Scheme in respect of Operating Costs as notified by Valpak to such Member and as calculated by Valpak by reference but not limited to the other charges payable by the Member pursuant to this clause 6.2; the net tonnage obligation of the Member in the particular Obligation Year; the Qualifying Tonnage to be provided by the Member to Valpak pursuant to the Packaging Waste Scheme MCEP; and the relevant Weighting Figure (such sum shall be calculated on a fair basis and with a view to ensuring, so far as reasonably possible, that Valpak in total makes neither a profit nor a loss);
- (d) the cost of any surplus PRNs acquired by Valpak;
- (e) a sum equivalent to the amount required under the Regulations to be paid by Valpak in each Obligation Year to the Agency in respect of the Member's membership of the Packaging Waste Scheme;
- (f) such a sum by way of contribution to reserves, contingencies and investments as either Valpak shall have identified in its budget or is proved to be necessary in operating the Packaging Waste Scheme in its Members' best interests;
- (g) such sum as is deemed necessary to promote the recovery and recycling of packaging waste through Valpak's recycle-more website;
- (h) such sum as is deemed necessary to promote the recovery and recycling of packaging waste through the licensing or sub-licensing of relevant intellectual property rights; and
- (i) a sum equivalent to the amount required to defray any losses arising as a result of the operation of clause 6.5.

6.3 In relation to the Variable Levy the costs of recycling and recovery in respect of all of the Packaging Waste Scheme Members' net Material Specific Recycling Obligations, net Recycling Obligations and net Recovery Obligations shall be allocated amongst the Members of the Packaging Waste Scheme in accordance with such principles as Valpak may from time to time (acting reasonably) decide.

6.4 For the avoidance of doubt in computing the Variable Levy Valpak may estimate, allocate and apportion such costs and expenses as it shall consider reasonable and appropriate and shall take into account in calculating the Variable Levy any surplus received by Valpak as a result of the operation of clause 6.5.

- 6.5 Notwithstanding the provisions of clause 6.2, in Valpak's sole discretion, it may, from time to time, subject to availability, give Members of the Packaging Waste Scheme the opportunity to pay a fixed amount per tonne of Recycling Obligation in any particular material, and a separate fixed amount per tonne of Recovery Obligation in respect of that Obligation Year and an amount attributable to the Member's share of the Operating Costs ("**Fixed Levy**"), and the following provisions shall apply:
- (a) a Member that pays the Fixed Levy in full and within the time limits specified in the Membership Terms applicable to the Packaging Waste Scheme shall not be required to pay the Variable Levy.
 - (b) the amount of the Fixed Levy shall be calculated by Valpak in its sole discretion but with regard to its obligation to act in the best interests of the Members of the Packaging Waste Scheme as a whole, and with reference to such principles as Valpak may from time to time (acting reasonably) decide.
- 6.6 Valpak's rights under this clause 6 shall be in addition to the right to claim interest on late payment set out in the General Membership Terms.

7 EFFECTIVE DATE AND TERMINATION

- 7.1 (Without prejudice to any other terms of the Agreement) the Member's membership of the Packaging Waste Scheme may be terminated in the following circumstances:
- (a) by Valpak (in its absolute discretion) by notice in writing to the Member to take effect either forthwith or at such time as may be specified in such notice on or after the occurrence of any of the following events:
 - (i) any failure by the Member to comply with the provisions of clause 5.2 by the 30th March of that Obligation Year;
 - (ii) any failure by the Member to comply with the provisions of clause 5.3 and/or 5.4;
 - (iii) the Member informs Valpak of any change in accordance with clause 5.5 where Valpak (acting reasonably) believes that such change adversely affects or is likely to adversely affect the interests of the Members of the Packaging Waste Scheme as a whole;
 - (iv) the Member does not comply with the terms of the Packaging Waste Scheme MCEP; and/or
 - (v) the Member does not comply with the relevant terms and conditions applicable to any Additional Services (where applicable in accordance with clause 4.5);
 - (b) by Valpak by notice in writing with immediate effect where the Member ceases to be a Producer (for whatever reason);
 - (c) by either party forthwith by notice in writing to the other if Valpak shall at any time cease to be registered (for whatever reason) as a compliance scheme for the purposes of the Regulations;

- (d) by Valpak by not less than 60 days' notice in writing to the Member to take effect on the expiry of the then current Obligation Year; and/or
- (e) by the Member by not less than 90 days notice in writing to Valpak.