

PRODUCER BATTERY COMPLIANCE SCHEME

PRODUCER BATTERY COMPLIANCE SCHEME MEMBERSHIP TERMS

1 APPLICATION

- 1.1 These Battery Compliance Scheme Membership Terms ("**Terms**") are applicable to all Members of the Battery Compliance Scheme and are subject to and shall be read in conjunction with and as part of the Membership Terms applicable to the Battery Compliance 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 Battery Compliance 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 Battery Compliance Scheme; then
 - (b) (in relation to any Additional Services only)(where relevant) the relevant terms and conditions applicable to such Additional Services; then
 - (c) clause 2.4 of these Terms; then
 - (d) (in relation to the Battery Compliance Scheme MCEP only) (where relevant) the Battery Compliance Scheme MCEP; then
 - (e) (subject to clause 1.3(c)) these Terms; then
 - (f) the General Membership Terms; then
 - (g) 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:

"Additional Services" has the meanings set out in clause 4.2;

"Appropriate Authority" has the same meaning as in the Batteries Regulations;

"Batteries" means portable batteries as defined in the Batteries Regulations;

"Battery Compliance Scheme" means (as appropriate):

- (a) the proposed producer battery compliance scheme in relation to Batteries operated by Valpak that is or shall become the subject of an application for approval made under the Batteries Regulations; and/or
- (b) the producer battery compliance scheme in relation to Batteries operated by Valpak that has been approved under the Batteries Regulations;

"Battery Compliance Scheme MCEP" means the battery compliance scheme Members compliance and surplus evidence policy terms and conditions (a copy of which is available on request and/or at www.valpak.co.uk);

"Batteries Regulations" means the Waste Batteries and Accumulators Regulations 2009 or such other legislation that is transposed into UK law to implement the Directive;

"Data Form" means the data form Valpak may prescribe from time to time;

"Directive" means Directive 2006/66/EC of the European Parliament and Council on batteries and accumulators and waste batteries and accumulators;

"Evidence Note" has the same meaning as in the Batteries Regulations;

"first compliance period" has the same meaning as in the Batteries Regulations (namely the period from 1 January 2010 to 31 December 2010);

"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 Membership Fee and the Material Levy;

"Material Levy" has the meaning set out in clause 6.6;

"Member" means (except as otherwise expressly provided in clause 7.1) a Producer which has become a member of the Battery Compliance Scheme in accordance with clause 3.1; and **"Members"** shall be construed accordingly;

"Membership Fee" has the meaning set out in clause 6.3;

"Obligation Year" means a relevant compliance period (as set out in the Batteries Regulations) during which the Member's membership of the Battery Compliance Scheme subsists;

"Producer" has the same meaning as in the Batteries Regulations;

"Producer Responsibility Obligations" means (where the Battery Compliance Scheme has been approved under the Batteries Regulations) (in each Obligation Year or part of an Obligation Year) the following obligations on behalf of and in relation to a Producer who is a Member:

- (a) to apply to register the Producer with the Appropriate Authority or to notify the Appropriate Authority that the Producer has become a Member of the Battery Compliance Scheme in accordance with the Batteries Regulations;
- (b) to notify the Producer of any battery producer registration number issued by the Appropriate Authority to the Producer;
- (c) to finance (in accordance with the Batteries Regulations) the cost of collection, treatment and recycling of the share (calculated in accordance with the Batteries Regulations), of waste Batteries collected in the United Kingdom;
- (d) to provide evidence of the collection, treatment and recycling of waste Batteries in accordance with the Batteries Regulations;
- (e) (where relevant) to report to the Appropriate Authority in relation to the waste Batteries in accordance with the Batteries Regulations;

"Quarter" means one of Valpak's usual quarter periods of three months ending on 31 March, 30 June, 30 September and 31 December in each Obligation Year during the term of this Agreement.

- 2.3 References in these Terms to clauses are (unless otherwise expressly provided) references to clauses contained in these Terms.
- 2.4 (Notwithstanding any other provision of the Membership Terms applicable to the Producer Battery Compliance Scheme), where in accordance with the Batteries Regulations, a Member's membership of the Producer Battery Compliance Scheme is cancelled, any such cancellation shall not take effect until the expiry of the then current Obligation Year and the Membership Terms applicable to the Producer Battery Compliance Scheme shall be subject to and shall be construed so as to comply with such obligation under the Battery Regulations.
- 2.5 (Notwithstanding any other membership terms applicable to the Battery Compliance Scheme)(where and to the extent that Valpak (acting in the best interests of the Members of the Battery Compliance Scheme as a whole) believes that it is appropriate to do so) Valpak shall be entitled to require the Member to pay in full and in advance such proportion of the Levy (and any other sums due to Valpak in relation to the Battery Compliance Scheme) as Valpak may from time to time (acting reasonably) decide.
- 2.6 (Notwithstanding any other membership terms applicable to the Battery Compliance Scheme) the payments to be made by the Member to Valpak in accordance with clause 2.5 shall be paid in full without any deduction, withholding, counterclaim or set off within such timescales as Valpak may from time to time (acting reasonably) require.

3 MEMBERSHIP OF THE BATTERY COMPLIANCE SCHEME

- 3.1 (Except as otherwise expressly provided in clause 7.1) a Producer shall become a Member of the Battery Compliance Scheme when Valpak countersigns the Application Form applicable to such Producer in relation to the Battery Compliance Scheme. A Producer must apply to join the Battery Compliance Scheme for a minimum period of one Obligation Year or (in relation to a new Producer) for the remainder of the Obligation Year during which such Producer has commenced putting Batteries onto the market in the United Kingdom.

- 3.2 Valpak shall:
- (a) use reasonable endeavours to produce and promptly (in accordance with the relevant deadline for submission) submit a professional and thorough application for approval of the Battery Compliance Scheme which Valpak believes shall be granted under the Batteries Regulations;
 - (b) notify the Member in writing where Valpak has received a notification from the Appropriate Authority that Valpak's application for the approval of the Battery Compliance Scheme under the Batteries Regulations has been granted;
 - (c) notify the Member in writing should Valpak not have successfully appealed any decision of the Appropriate Authority to refuse to approve the Battery Compliance Scheme under the Batteries Regulations; and
 - (d) accurately notify and disseminate to the Member as soon as is practicable in writing, any information that Valpak in its reasonable opinion believes is important in relation to the Battery Compliance Scheme and/or the Member.
- 3.3 (Subject to clause 3.4) where the Battery Compliance Scheme has been approved under the Batteries Regulations Valpak shall (subject to and in accordance with these Terms) assume and discharge on behalf of and in relation to the Member:
- (a) the Producer Responsibility Obligations:
 - (i) in accordance with the relevant deadlines for submission set out in the Batteries Regulations (in relation to the obligation to apply to register the Member with the Appropriate Authority or to notify the Appropriate Authority that the Member has become a Member of the Battery Compliance Scheme (as appropriate) in accordance with the Batteries Regulations); and
 - (ii) with effect from registration of the Member with the Appropriate Authority under the Battery Compliance Scheme or notification to the Appropriate Authority that the Member has become a Member of the Battery Compliance Scheme (as appropriate)
- but only in relation to each Obligation Year or part of an Obligation Year during which the Member's membership of the Battery Compliance Scheme subsists.
- 3.4 (Subject to clause 8.3) where the Member's membership of the Battery Compliance Scheme terminates during an Obligation Year Valpak shall not be liable to either return or provide any applicable Evidence Notes to the Member.
- 3.5 Valpak reserves the right to refuse to register the Member with the Appropriate Authority or to refuse to notify the Appropriate Authority that the Member has become a Member of the Battery Compliance Scheme (as appropriate) in accordance with the Batteries Regulations where the Member does not for any reason:
- (a) provide any and/all information to Valpak in accordance with the Membership Terms applicable to the Battery Compliance Scheme and/or the Batteries Regulations or does not provide such information to the required standard; and/or

- (b) pay any and all sums due to Valpak in accordance with the Membership Terms applicable to the Battery Compliance Scheme.

3.6 For the avoidance of doubt the Member acknowledges and agrees that:

- (a) Valpak shall not (except as expressly provided otherwise in these Terms) be responsible under these Terms and/or the Batteries Regulations for or in relation to any:
 - (i) Batteries put on the market outside the United Kingdom; and/or
 - (ii) Industrial or Automotive Batteries (as defined in the Regulations);
- (b) the responsibilities of Valpak expressly provided in these Terms are only meant to assist the Member and are not a substitute for the Member complying with the Member's responsibilities under clause 3.6(c); and
- (c) the Member shall at all times be and remain responsible for complying with these Terms and the Batteries Regulations in relation to waste Batteries.

4 MEMBER'S OBLIGATIONS

- 4.1 The Member shall comply with the Batteries Regulations and all reasonable recommendations made by Valpak in relation to the Member's Producer Responsibility Obligations.
- 4.2 (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 Battery Compliance Scheme and/or to assist the Member in complying with its obligations and responsibilities under these Terms and/or the Batteries Regulations ("**Additional Services**")) the Member shall comply with the relevant terms and conditions applicable to such Additional Services.
- 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 to maintain good environmental practises.
- 4.4 The Member hereby irrevocably and unconditionally agrees to indemnify and keep indemnified Valpak from and against all demands, claims, liabilities, losses, damages, costs and expenses whatsoever (including all reasonable legal and other costs and expenses, together with value added and similar taxes thereon (if applicable) incurred by Valpak in enforcing Valpak's rights under this indemnity) and from and against all actions, suits and proceedings which may be commenced, taken or made against Valpak arising in relation to or in connection with any breach by the Member of clause 3.6(c). The provisions of this clause 4.4 shall continue in force notwithstanding termination of the Agreement howsoever caused.
- 4.5 The Member agrees that, whilst it is a Member, it shall not seek to fulfil its Producer Responsibility Obligations other than pursuant to its membership of the Battery Compliance Scheme such as by fulfilling those obligations itself, or by contracting with a third party, or by joining another compliance scheme registered under the Batteries Regulations or in any other way. For the avoidance of doubt nothing in this clause 4.5 shall prevent a Member fulfilling its battery producer obligations in relation to automotive

and industrial batteries (as defined in the Batteries Regulations) itself, or by contracting with a third party, or by joining another battery compliance scheme registered under the Batteries Regulations (that relates to automotive and/or industrial batteries) or in any other way.

4.6 The Member shall comply with the Battery Compliance Scheme MCEP.

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 including, but without limitation:

- (a) information required by Valpak to enable Valpak to comply with its obligations under these Terms;
- (b) information relating to the actual and estimated obligations of the Member under the Batteries Regulations and/or such obligations the Member would have had but for its membership of the Battery Compliance Scheme, 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;
- (c) Any information required by Valpak in connection with the implementation, operation and/or any alleged breach of the Battery Compliance Scheme MCEP.

5.2 (Notwithstanding the Member's obligations under clauses 5.1 and 5.3) the Member shall (commencing on the commencement of the first compliance period) submit a relevant Data Form in relation to each Quarter (completed to Valpak's reasonable satisfaction) to Valpak on or before the 15th of the month following the end of such Quarter.

5.3 Where a Member joins the Battery Compliance Scheme after 15 October in the year immediately preceding the relevant Obligation Year (for any year following the first compliance period) it shall submit the relevant Data Form (completed to Valpak's reasonable satisfaction) as soon as reasonably practicable and no later than 15 days from the date it became a Member or by the 1 December of the relevant Obligation Year (whichever is the earlier).

5.4 On receipt of any Data Form under clauses 5.2 and/or 5.3 Valpak shall 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 that (notwithstanding the fact that Valpak shall check the data in accordance with this clause 5.4) 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 by the Member in accordance with such requirements as Valpak may reasonably request.

5.5 The Member shall (unless otherwise agreed in writing with Valpak) ensure that the verification form (referred to in clause 5.4) is signed off by the Member in accordance with clause 5.4 and returned to Valpak:

- (a) (where the verification form relates to a Data Form submitted in accordance with clause 5.3) as soon as possible and in any event within 7 days from the date of receipt by the Member of the verification form; and
 - (b) (where the verification form relates to a Data Form submitted in accordance with clause 5.2) within 7 days from the date of receipt by the Member of the verification form or by the 26th of the month following the end of relevant Quarter (whichever is the earlier).
- 5.6 The Member shall inform Valpak immediately upon becoming aware of any change in the Member's obligations under the Batteries Regulations and/or any information provided by the Member to Valpak in connection with the Member's membership of the Battery Compliance Scheme.
- 5.7 (Without prejudice to any other rights or remedies Valpak may have) where and to the extent that the Member does not for any reason provide any information to Valpak in accordance with the Membership Terms applicable to the Battery Compliance Scheme or does not provide such information to the required standard of accuracy Valpak shall be entitled (but not obliged) to make a reasonable estimate of what such information would have been had it been provided as required and Valpak shall be entitled to invoice and the Member shall pay Valpak based on such estimated information.
- 5.8 The Member hereby irrevocably and unconditionally agrees to indemnify and keep indemnified Valpak from and against all demands, claims, liabilities, losses, damages, costs and expenses whatsoever (including all reasonable legal and other costs and expenses, together with value added and similar taxes thereon (if applicable) incurred by Valpak in enforcing Valpak's rights under this indemnity) and from and against all actions, suits and proceedings which may be commenced, taken or made against Valpak arising in relation to or in connection with Valpak having to estimate information in accordance with clause 5.7 (including but not limited to any consultancy costs and expenses incurred by Valpak to enable Valpak to make such an estimate). The provisions of this clause 5.8 shall continue in force notwithstanding termination of the Agreement howsoever caused.
- 5.9 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 Battery Compliance Scheme and in respect of its obligations under these Terms for a minimum of 4 years from the date on which such document, data and/or record is made and the Member shall make available such document, data and/or records to Valpak on demand.
- 5.10 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 5.9.
- 5.11 The Member shall provide Valpak with details (including telephone, fax number, website address and email) of a nominated individual for the service of notices and other communications, under and in connection with the Battery Compliance Scheme.
- 5.12 The provisions of this clause 5 shall continue in force notwithstanding the termination of the Agreement howsoever caused.

6 LEVY

- 6.1 The Member shall pay to Valpak the relevant Membership Fee in respect of each Obligation Year in which the Member is a Member.
- 6.2 The Member shall also pay to Valpak the Material Levy in respect of each Obligation Year in which the Member is a Member.
- 6.3 Valpak shall from time to time publish its fees for membership of the Battery Compliance Scheme ("**Membership Fee**") (a copy of which is available on request and/or at www.valpak.co.uk).
- 6.4 The Membership Fee payable by the Member in respect of each Obligation Year shall be:
- (a) the Membership Fee current at the date on which the Member becomes a Member of the Battery Compliance Scheme (in relation to the first year in which the Member is a Member of the Battery Compliance Scheme);
 - (b) the Membership Fee applicable for the relevant Obligation Year (in relation to the second and each subsequent year in which the Member is a Member of the Battery Compliance Scheme); and
 - (c) paid by the Member in full and in advance within 30 days from the date of invoice.
- 6.5 The Membership Fee and any sums payable under clause 6.1 shall (unless otherwise be agreed) be payable in full and in advance in the November of the year immediately preceding the Obligation Year (by way of example only, the fee and the sums payable under clause 6.1 in respect of the 2012 Obligation Year shall be payable in November 2011).
- 6.6 (Subject to clauses 6.7 and 6.8) the material levy shall in each Obligation Year be computed by reference to the following elements in relation to the Battery Compliance Scheme ("**Material Levy**"):
- (a) the cost to Valpak of fulfilling the Member's Producer Responsibility Obligation(s) in that Obligation Year;
 - (b) such costs and expenses incurred directly or indirectly by Valpak in operating the Battery Compliance Scheme in the interests of the Members of the Battery Compliance Scheme as a whole (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);
 - (c) the cost of any surplus Evidence Notes acquired by Valpak;
 - (d) 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 Battery Compliance Scheme in its Members' best interests.
- 6.7 In relation to the Material Levy the costs in respect of all Members Producer Responsibility Obligation(s) shall be allocated amongst Members in accordance with such principles as Valpak may from time to time (acting reasonably) decide.

- 6.8 For the avoidance of doubt in computing the Material Levy Valpak may estimate, allocate and apportion such costs and expenses as it shall consider reasonable and appropriate.
- 6.9 (Unless otherwise agreed in writing) the Material Levy payable for each Obligation Year shall be payable by the Member on a quarterly basis and shall be paid in the Quarter to which the payment relates. Valpak shall invoice an instalment of the Material Levy in January, April, July and October of an Obligation Year and the Member shall pay in full within 30 days from the date of the invoice. For example, the first payment in an Obligation Year shall be invoiced in January which shall relate to the first Quarter and the second invoice shall be issued in April which relates to the second Quarter. Each instalment shall be as to one-quarter of the then estimated Material Levy plus or minus any shortfall or surplus (as appropriate) in the total payments made during the previous Quarter(s) in the light of the then estimated Material Levy.
- 6.10 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 GROUP MEMBERSHIP

- 7.1 Where a Common Holding Company is not a Producer and/or does not have any producer responsibility obligations under the Batteries Regulations that Common Holding Company:
- (a) shall not be a Member of the Battery Compliance Scheme in its own right;
 - (b) may (notwithstanding clause 7.1(a)):
 - (i) sign the Application Form;
 - (ii) act as the Common Holding Company; and
 - (iii) be a Member of the Battery Compliance Scheme

for and on behalf of all other Group Companies which are part of the Group Membership subject to and in accordance with this clause 7.1 and the Group Membership provisions set out in the General Membership Terms;
 - (c) shall be responsible to Valpak for ensuring that each Group Company that is a Member of the Battery Compliance Scheme as part of the Group Membership complies with the Membership Terms applicable to the Battery Compliance Scheme;
 - (d) shall for the purposes of the Membership Terms applicable to the Battery Compliance Scheme be deemed to be a Member of the Battery Compliance Scheme subject to and on the basis of this clause 7.1;
 - (e) (without prejudice to the generality of clause 7.1(e)) shall for the purposes of clause 4 of the General Membership Terms be deemed to be a Member of the Battery Compliance Scheme; and
 - (f) shall for the purposes only of the articles of association of Valpak be deemed to have producer responsibility obligations under the Batteries Regulations.

8 EFFECTIVE DATE AND TERMINATION

8.1 (Without prejudice to any other terms of the Agreement) the Member's membership of the Battery Compliance Scheme may be terminated in the following circumstances:

- (a) by Valpak 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 clauses, 3.6(c) 4.1 and/or 4.4;
 - (ii) the Member does not comply with the relevant terms and conditions applicable to any Additional Services (where applicable in accordance with clause 4.2);
 - (iii) any failure by the Member to comply with the provisions of clause 5; and/or
 - (iv) the Member informs Valpak of any change in accordance with clause 5.6 where Valpak (acting reasonably) believes that such change adversely affects or is likely to adversely affect the interests of the Members of the Battery Compliance Scheme as a whole;
- (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 by notice in writing with immediate effect where Valpak does not (for whatever reason) submit any application for approval of the Battery Compliance Scheme under the Batteries Regulations by the relevant deadline for such application or where Valpak has not successfully appealed (for whatever reason) any decision of the Appropriate Authority to refuse to approve the Battery Compliance Scheme under the Batteries Regulations;
- (d) (where the Battery Compliance Scheme has been approved by the Appropriate Authority under the Batteries Regulations) by either party by notice in writing with immediate effect if the approval of the Battery Compliance Scheme is withdrawn for any reason under the Batteries Regulations; and/or
- (e) by Valpak giving not less than 90 days notice in writing to the Member prior to the expiry of the then current Obligation Year (such notice to take effect on the expiry of the then current Obligation Year).

8.2 (Without prejudice to any other terms of the Agreement) the Member's membership of the Battery Compliance Scheme may be terminated in the following circumstances:

- (a) by Valpak 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 4; and/or

- (ii) the Member does not comply with the terms of the Battery Compliance Scheme MCEP;
 - (b) by the Member giving not less than 30 days notice in writing to Valpak on or prior to 15 October in any Obligation Year (such notice to take effect on the expiry of the then current Obligation Year).
- 8.3 Where the approval of the Battery Compliance Scheme is withdrawn for any reason under the Batteries Regulations Valpak shall allocate Evidence Notes acquired by Valpak in complying with Valpak's obligations under the Batteries Regulations between the Members of the Battery Compliance Scheme in accordance with the Regulations.

9 DISPUTES

- (a) If a dispute arises between Valpak and a Member or between individual Members and the parties to the dispute are unable to settle such dispute relating to these Terms, including any question regarding their existence, validity or termination within 21 days of the dispute arising, the dispute shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration in force at the date of the referral and such rules are deemed to be incorporated by reference into these Terms.
- (b) Valpak and each Member agrees that:
 - (i) the number of arbitrators shall be one;
 - (ii) in default of the parties' agreement as to the arbitrator, the appointing authority shall be the London Court of International Arbitration;
 - (iii) the seat or legal place of the arbitration shall be London;
 - (iv) the language of the arbitration shall be English; and
 - (v) the governing law of the Terms shall be the substantive law of England and Wales.
- (c) The Arbitrator's decision shall be final and binding on the parties to the dispute and the parties to the dispute agree to be bound by and carry out the decision.