

# PRODUCER WEEE SCHEME

## MEMBERS COMPLIANCE AND SURPLUS EVIDENCE POLICY

### 1 APPLICATION

- 1.1 This Producer WEEE Scheme Members compliance and surplus evidence policy ("**MCEP**") is applicable to all B2C Members of the Producer WEEE Scheme in the relevant Obligation Year and is subject to and shall be read in conjunction with and as part of the Membership Terms applicable to the Producer WEEE Scheme (including but not limited to the General Membership Terms and the Producer WEEE Scheme Membership Terms) copies of which are available on request and/or at [www.valpak.co.uk](http://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 this MCEP) continue to comply with its obligations under all of the other Membership Terms applicable to the Member's membership of the Producer WEEE Scheme (including but not limited to the General Membership Terms and the Producer WEEE Scheme Membership Terms (as appropriate)).

### 2 DEFINITIONS AND INTERPRETATION

- 2.1 In this MCEP words and expressions defined in the General Membership Terms and/or the Producer WEEE Scheme Membership Terms shall (where the context so permits) have the meanings set out in the General Membership Terms and/or the Producer WEEE Scheme Membership Terms (as appropriate) unless differently defined below for the specific purposes of this MCEP.
- 2.2 In this MCEP words and expressions defined in any clause of this MCEP 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:

**"Criteria"** means the criteria, obligations and deadlines set out in Annex 1;

**"Maximum Tonnage"** means (subject to clause 12.1(b)) (in relation to each Member and each Obligation Year) the maximum number of Evidence Notes which Valpak is permitted under the Regulations to offset against the Producer Responsibility Obligations relating to such Member;

**"Pre-Qualifying Evidence Note"** means (subject to clause 12.1(a)) any Evidence Note obtained, generated or issued by a Member (whether itself, via a third party or otherwise) from the treatment, recovery and/or recycling (as appropriate) of WEEE from private households received by or on behalf of the Member in the course of that Member's normal business activities;

**"Pre-Qualifying Tonnage"** means (in relation to each Obligation Year) the total tonnage of Pre-Qualifying Evidence Notes (broken down by WEEE category) notified by the Member to Valpak in accordance with clause 4.2 or 4.3 (as appropriate)(as may be amended from time to time in accordance with this MCEP);

**"Qualifying Evidence Note"** means (in relation to each Obligation Year) any Pre-Qualifying Evidence Note that has been accepted by Valpak as offset in accordance with clause 5.5 (as may be amended from time to time in accordance with this MCEP);

**"Qualifying Tonnage"** means (in relation to each Obligation Year) the total tonnage of Qualifying Evidence Notes (broken down by WEEE category) accepted by Valpak as offset in accordance with clause 5.5 (as may be amended from time to time in accordance with this MCEP);

**"Quarterly Tonnage"** means (in relation to each Quarter) the quarterly tonnage notified by the Member to Valpak under clause 8.2;

**"Revised Statement"** means any revised Statement issued in accordance with clause 4.3; and

**"Statement"** means (subject to clause 12.1(c)) a statement of the Member's estimated tonnage of all of its Pre-Qualifying Evidence Notes (broken down by Quarter and by WEEE category) which that Member expects to obtain in the relevant Obligation Year (in such form as Valpak may from time to time reasonably specify (the current version of which is available on request and/or at [www.valpak.co.uk](http://www.valpak.co.uk))).

2.3 References in this MCEP to clauses are (unless otherwise expressly provided) references to clauses contained in this MCEP.

### **3 MEMBER'S OBLIGATIONS**

3.1 (Unless otherwise agreed) the Member shall (in the following order of priority) use all reasonable endeavours (acting in good faith) to:

(a) prioritise and maximise the reuse of whole appliances comprising WEEE from private households received by or on behalf of the Member in the course of that Member's normal business activities; and then

(b) (where and to the extent that the Member has not been able to prioritise and maximise the reuse of whole appliances in accordance with clause 3.1(a)) convert as much of the WEEE from private households received by or on behalf of the Member in the course of that Member's normal business activities as possible into Pre-Qualifying Evidence Notes.

### **4 PRE-QUALIFYING EVIDENCE NOTES**

4.1 (Subject to clause 5.7) this MCEP shall apply to all Pre-Qualifying Evidence Notes.

4.2 The Member shall complete and return to Valpak a signed Statement (unless otherwise agreed in writing):

(a) (where the Member becomes a Member of the Producer WEEE Scheme on or after the commencement of the first compliance period of the current Obligation Year within 28 days of that Member becoming a Member of the Producer WEEE Scheme) setting out the Member's estimated tonnage of all of its Pre-Qualifying Evidence Notes for the then current Obligation Year;

- (b) (on or before 15 January Obligation Year) setting out the Member's estimated tonnage of all of its Pre-Qualifying Evidence Notes for the current Obligation Year; and

If the Member fails to provide a Statement in accordance with this clause 4.2 above, the Member acknowledges and agrees that, to the extent it is permitted under the Regulations, Valpak shall be entitled, at its discretion, to decline to accept or sell any of the Member's evidence delivered to Valpak or refuse to offset such evidence against the Producer Responsibility Obligations relating to such Member.

- 4.3 (Without prejudice to clause 4.2 where and to the extent that the Member's estimated tonnage of all of its Pre-Qualifying Evidence Notes for an Obligation Year has increased or decreased (for whatever reason)(during the relevant Obligation Year) the Member shall revise:

- (a) the Statement issued in accordance with clause 4.2 (in relation to the relevant Obligation Year); and
- (b) any revised Statement (if any) previously issued in accordance with this clause 4.3 (in relation to the relevant Obligation Year)

and shall immediately upon becoming aware of any such change return to Valpak such revised Statement setting out the Member's latest estimated tonnage of all of its Pre-Qualifying Evidence Notes for the relevant Obligation Year.

- 4.4 The Member shall comply with the terms set out on the Statement. The Member shall use all reasonable endeavours to ensure the accuracy of any Statement and Revised Statement (including but not limited to the estimated tonnage of Pre-Qualifying Evidence Notes) issued by the Member to Valpak in accordance with clauses 4.2 and 4.3 (as appropriate).

- 4.5 The Member shall conform to all reasonable requirements of Valpak and provide Valpak with such information, assistance, co-operation and evidence as Valpak may reasonably request from time to time in relation to this MCEP including but not limited to:

- (a) information about the approved authorised treatment facilities and/or approved exporters (as appropriate) the Member intends to use in relation to each Pre-Qualifying Evidence Note (and the Member shall notify Valpak as soon as possible and in any event within 28 days of any changes and/or anticipated changes to such approved authorised treatment facilities and/or approved exporters (as appropriate));
- (b) in order to determine whether an Evidence Note obtained, generated or issued by the Member is a Pre-Qualifying Evidence Note; and/or
- (c) in order to determine whether an Evidence Note complies with this MCEP and the Regulations.

- 4.6 Any dispute between the Member and Valpak as to whether an Evidence Note is a Pre-Qualifying Evidence Note and/or complies with this MCEP and/or the Regulations shall be determined solely by Valpak acting reasonably.

## **5 QUALIFYING EVIDENCE NOTES**

- 5.1 Valpak shall have the right of first refusal in relation to all of the Member's Pre-Qualifying Evidence Notes subject to and in accordance with the terms of this MCEP.
- 5.2 (Subject to and in accordance with clauses 5.3 and 5.4) Valpak shall (at Valpak's option) be entitled but not obliged (in whole or in part) to:
- (a) offset all or any Pre-Qualifying Evidence Notes (up to the Maximum Tonnage) against the Producer Responsibility Obligations relating to such Member under the Regulations; and/or
  - (b) offer to purchase all or any Pre-Qualifying Evidence Notes (in excess of the Maximum Tonnage)(for the avoidance of doubt any reference to purchase in this clause 5 may involve either a positive or a negative purchase price so that Valpak could either pay for or receive a revenue from such Pre-Qualifying Evidence Notes).
- 5.3 Within 30 days of receipt by Valpak of any Statement issued under clause 4.2 and/or any Revised Statement issued under clause 4.3 Valpak shall (in Valpak's absolute discretion) notify the Member where and to the extent that Valpak wishes to exercise its rights under clause 5.2.
- 5.4 Where any Revised Statement is issued in relation to any Obligation Year:
- (a) such Revised Statement shall replace and supersede all previous Statements and Revised Statements (as appropriate)(in relation to such Obligation Year);
  - (b) where Valpak makes any notification under clause 5.3 in relation to such Revised Statement such notification shall replace and supersede all previous notifications by Valpak under clause 5.3 (in relation to such Obligation Year); and
  - (c) where Valpak does not make any notification under clause 5.3 in relation to such Revised Statement the then most current notification made by Valpak under clause 5.3 (if any) in relation to such replaced and superseded previous Statement and Revised Statements (as appropriate) shall continue to apply.
- 5.5 (Subject to clause 5.4) where and to the extent that Valpak chooses in accordance with clause 5.3 to offset under clause 5.2(a) such Pre-Qualifying Evidence Notes shall become Qualifying Evidence Notes and the Member shall deliver (free of charge to Valpak) and Valpak shall offset such Qualifying Evidence Notes subject to and in accordance with the terms of this MCEP.
- 5.6 (Subject to clause 5.4) where and to the extent that Valpak chooses in accordance with clause 5.3 to offer to purchase under clause 5.2(b) and the Member chooses to accept such offer to purchase the Member shall sell and Valpak shall purchase such Pre-Qualifying Evidence Notes on such terms as may be agreed between the Member and Valpak from time to time.
- 5.7 In relation to any Pre-Qualifying Evidence Notes where and to the extent that:
- (a) (subject to clause 5.4(c)) Valpak does not notify the Member in accordance with clause 5.3; and/or
  - (b) agreement can not be reached to purchase under clause 5.6 within a reasonable time

the Member shall be entitled to deal with such Pre-Qualifying Evidence Notes in any way it chooses and this MCEP shall no longer apply to such Pre-Qualifying Evidence Notes.

- 5.8 For the avoidance of doubt no provision of this MCEP shall apply where and to the extent that this would retrospectively adversely affect any previous dealings by the Member with Pre-Qualifying Evidence Notes in accordance with clause 5.7.
- 5.9 The Member acknowledges and agrees that all Evidence Notes supplied by the Member to Valpak under this MCEP (whether by means of offset and/or purchase) shall:
- (a) be properly and correctly completed in a form acceptable as evidence of compliance to the Appropriate Authority and to the reasonable satisfaction of Valpak;
  - (b) be issued by an approved authorised treatment facility, an approved exporter and/or any other party entitled to issue Evidence Notes under the Regulations (as appropriate) meeting (where appropriate) any recycling or treatment targets required under the Regulations and any statutory guidance issued from time to time. Such Evidence Note shall be in a form required under the Regulations and any statutory guidance issued from time to time ;
  - (c) be issued in good faith and represent WEEE from private households that has been treated, recovered and/or recycled in compliance with the requirements of the Regulations and all relevant legislative requirements and guidance (whether statutory or otherwise) that may be applicable;
  - (d) (where appropriate) meet any recycling or treatment targets required under the Regulations and any statutory guidance issued from time to time;
  - (e) be valid for the relevant Obligation Year in accordance with the Regulations; and
  - (f) be subject to and in accordance with the terms set out in this MCEP.

## **6 OFFSET**

- 6.1 The Member acknowledges and agrees that Valpak is only entitled to offset Qualifying Evidence Notes against the Producer Responsibility Obligations relating to such Member under the Regulations where and to the extent such is permitted under the Regulations and that where (for whatever reason) Valpak is not entitled to offset under the Regulations Valpak shall no longer be obliged to offset under clause 5.5.

## **7 MAXIMUM TONNAGE**

- 7.1 Where the Maximum Tonnage for any Obligation Year has increased or decreased (for whatever reason) Valpak shall be entitled (but not obliged) (in its discretion) by written notice to the Member to increase or decrease the Qualifying Tonnage (acting reasonably).

## **8 DELIVERY OF QUALIFYING EVIDENCE NOTES**

- 8.1 The Member shall comply with the Criteria.

- 8.2 (Subject to and in accordance with clause 8.3) the Member shall confirm to Valpak by notice in writing the Quarterly Tonnage that the Member shall deliver to Valpak in each Quarter in accordance with the confirmation deadlines set out in column 5 of the Criteria.
- 8.3 The Quarterly Tonnage notified by the Member under clause 8.2 shall (in relation to each Quarter) be calculated by reference to the proportion of the Qualifying Tonnage which then applies for that Quarter in accordance with the maximum and minimum percentages of the total Qualifying Tonnage set out in column 4 of the Criteria provided always that the Member shall ensure that in calculating such Qualifying Tonnage and Quarterly Tonnage it shall deliver to Valpak in each Obligation Year not more than and not less than 100% of the total Qualifying Tonnage for such Obligation Year.
- 8.4 The Member shall deliver in each Quarter the Quarterly Tonnage notified to Valpak by the Member under clause 8.2 in accordance with the delivery deadlines set out in column 6 of the Criteria.
- 8.5 The Member shall deliver to Valpak all Qualifying Evidence Notes with an appropriate covering email (a copy of which is available on request and/or at [www.valpak.co.uk](http://www.valpak.co.uk)) on line via the Settlement Centre website ([www.weee-sc.org.uk](http://www.weee-sc.org.uk)) or such other national system that replaces the Settlement Centre and that is designated from time to time by the relevant environment agency to manage the process of delivery, collecting and accepting Qualifying Evidence Notes.
- 8.6 (Without prejudice to any other rights or remedies Valpak may have) Valpak shall be entitled to close off each Quarter on a Quarter by Quarter basis in accordance with clause 8.7 or 9.3 (as appropriate) and Valpak shall accordingly be entitled to adjust (in its discretion)(acting reasonably) any Quarterly Tonnage, associated Qualifying Evidence Notes and/or the total Qualifying Tonnage (in relation to the Obligation Year as a whole).
- 8.7 Where the Member has in relation to any Quarter delivered Qualifying Evidence Notes over and above the relevant Quarterly Tonnage Valpak may (in its absolute discretion) accept such Qualifying Evidence Notes and offset them against the Quarterly Tonnage for the following Quarter(s) (as appropriate).
- 8.8 Time shall be of the essence for all deliveries by the Member under this MCEP.

## **9 FAILURE TO DELIVER**

- 9.1 For the avoidance of doubt Valpak shall be entitled but not obliged (in its absolute discretion) (without prejudice to any other rights or remedies Valpak may have) to reject any and/or all Evidence Notes not delivered in accordance with and/or which do not conform with the terms of this MCEP.
- 9.2 The Member shall at all times keep Valpak fully informed as to any possible failure, delay or default on the part of the Member including but not limited to notifying Valpak in writing immediately the Member becomes aware (and (in any event) no later than 15 days prior to the relevant delivery deadline) where and to the extent that the Member either shall or may be unable to deliver the Quarterly Tonnage in accordance with clause 8.4.
- 9.3 (Without prejudice to any other rights or remedies Valpak may have) where the Member has in relation to any Quarter failed (in whole or in part) to deliver the relevant Quarterly Tonnage to Valpak in accordance with this MCEP Valpak may (in its absolute discretion):

- (a) invoice the Member for Evidence Notes representing such shortfall on an indemnity basis being such a sum as is equal to the additional costs, charges and expenses incurred by Valpak in securing additional Evidence Notes to fulfil such shortfall (for the avoidance of doubt nothing in the Agreement shall however oblige Valpak to purchase any Evidence Notes to fulfil such shortfall);
- (b) adjust the relevant Quarterly Tonnage, associated Qualifying Evidence Notes and/or total Qualifying Tonnage (in relation to the Obligation Year as a whole and/or to which such Quarter relates) to take account of such shortfall; and/or
- (c) terminate this MCEP and/or the Member's membership of the Producer WEEE Scheme by notice in writing to the Member with immediate effect.

## **10 EFFECT ON LEVY**

- 10.1 The calculation of the estimated Levy payable by the Member and revisions of the estimated Levy made pursuant to the Membership Terms applicable to the Producer WEEE Scheme and the recalculation of the Levy following the end of each Obligation Year pursuant to the Membership Terms applicable to the Producer WEEE Scheme shall take into account the Qualifying Evidence Notes which the Member has delivered to Valpak subject to and in accordance with this MCEP.

## **11 INDEMNITY**

- 11.1 The Member shall fully indemnify and keep fully indemnified Valpak against any and all actions, costs, claims, demands, damages, expenses (including legal fees), liabilities, losses and proceedings suffered or incurred by Valpak arising from a breach by the Member of this MCEP.
- 11.2 The provisions of this clause 11 shall continue in force notwithstanding the termination of this MCEP howsoever caused.

## **12 GROUP MEMBERSHIP**

- 12.1 In relation to a Member who is the Common Holding Company of a Group Membership of the Producer WEEE Scheme the provisions of this clause 12 shall apply (notwithstanding any other provision of this MCEP) and in relation to such Member;
- (a) a Pre-Qualifying Evidence Notes shall be deemed to also include any Evidence Note obtained, generated or issued by each and every Group Company (which is part of such Group Membership)(whether itself, via a third party or otherwise) from the treatment, recovery and/or recycling (as appropriate) of WEEE from private households received by or on behalf of that Group Company in the course of that Group Company's normal business activities;
  - (b) the Maximum Tonnage shall be deemed to be (in each Obligation Year) the maximum number of Evidence Notes which Valpak is permitted under the Regulations to offset against the Producer Responsibility Obligations of all Group Companies which are part of the Group Membership as a whole; and
  - (c) the Statement shall include a statement of the estimated tonnage of all Pre-Qualifying Evidence Notes (broken down by Quarter and by WEEE category) which that Member expects all Group Companies which are part of the Group Membership to obtain, generate and/or issue in the relevant Obligation Year.

- 12.2 The Member who is the Common Holding Company of the relevant Group Membership shall:
- (a) (where the Member is a Producer) be responsible for complying with this MCEP on its own behalf and for and on behalf of each and every Group Company (which is part of such Group Membership);
  - (b) (where the Member is not a Producer and/or does not have any producer responsibility obligations under the Regulations) be responsible for complying with this MCEP for and on behalf of each and every other Group Company (which is part of such Group Membership); and
  - (c) serve on and report to Valpak all documents and other information to be served on and to be reported to Valpak pursuant to this:
    - (i) MCEP (where relevant in accordance with clause 12.2(a) on its own behalf; and
    - (ii) for and on behalf of each and every other Group Company (which is part of such Group Membership).
- 12.3 Valpak shall have the right of first refusal in relation to all Pre-Qualifying Evidence Notes from each and every Group Company (which is part of the relevant Group Membership) subject to and in accordance with the terms of this MCEP.
- 12.4 For the avoidance of doubt Valpak shall:
- (a) be entitled to offset any Pre-Qualifying Evidence Note from any Group Company (which is part of the relevant Group Membership) against the Producer Responsibility Obligations of any and all Group Companies (which are part of the relevant Group Membership) as a whole; and
  - (b) not be obliged to offset the specific Pre-Qualifying Evidence Notes from any Group Company against the Producer Responsibility Obligations of that individual Group Company.

### **13 TERMINATION**

- 13.1 (Without prejudice to any other rights or remedies Valpak may have) Valpak may terminate this MCEP by notice in writing to the Member with immediate effect if the Member fails to comply with the terms and conditions of this MCEP.
- 13.2 (Without prejudice to any other rights or remedies Valpak may have) Valpak may terminate this MCEP by notice in writing to the Member with immediate effect where the Member's membership of the Producer WEEE Scheme terminates or expires (for whatever reason).
- 13.3 Where this MCEP terminates (for whatever reason except where the approval of the Producer WEEE Scheme is withdrawn for any reason under the Regulations) Valpak shall not be liable to return any Evidence Note delivered to Valpak by the Member in accordance with this MCEP.

**ANNEX 1**

<b>(1) Quarter</b>	<b>(2) Quarter commencing</b>	<b>(3) Quarter ending</b>	<b>(4) (Unless otherwise agreed) Minimum/Maximum Percentage of the total qualifying Tonnage to be delivered in each Quarter</b>	<b>(5) Deadline by which Member must confirm to Valpak Quarterly Tonnage to be delivered in relation to each Quarter</b>	<b>(6) Deadline for delivering Quarterly Tonnage to Valpak in relation to each Quarter</b>
Q1	1 January	31 March	Not less than 15%  Not more than 30%	20 April	10 May
Q2	1 April	30 June	Not less than 15%  Not more than 30%	20 July	10 August
Q3	1 July	30 September	Not less than 15%  Not more than 30%	20 October	10 November
Q4	1 October	31 December	Not less than 15%  Not more than 30%	20 January (of following year)	20 January