

PRODUCER WEEE SCHEME
PRODUCER WEEE SCHEME MEMBERSHIP TERMS

1 APPLICATION

- 1.1 These Producer WEEE Scheme Membership Terms ("**Terms**") are applicable to all Members of the Producer WEEE Scheme and are 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) 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 Producer WEEE 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, unless agreed otherwise in writing, apply:
- (a) the Application Form applicable to the Member's membership of the Producer WEEE Scheme; then
 - (b) clause 2.4 of these Terms; then
 - (c) the Producer WEEE Scheme MCEP (where applicable); then
 - (d) (subject to clause 1.3(b)) 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:

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

"**B2B**" means and/or relates to EEE that was or is intended for use by users other than private households and/or WEEE from users other than private households (as appropriate);

"**B2B Member**" means a Member whose membership of the Producer WEEE Scheme relates to EEE that was or is intended for use by users other than private households and WEEE from users other than private households under the Regulations; and "**B2B Members**" shall be construed accordingly;

"**B2B Producer Responsibility Obligations**" means (in relation to each Obligation Year or part of an Obligation year) the following obligations on behalf of and in relation to a B2B Member:

- (a) 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 Producer WEEE Scheme (as appropriate) in accordance with the Regulations;
- (b) to notify the Member of any EEE producer registration number issued by the Appropriate Authority to the Member; and
- (c) to manage the reporting of the Member's own Declaration of Compliance to the Appropriate Authority

where and to the extent this related to EEE that was or is intended for use by users other than private households that was put on the market in the United Kingdom and/or WEEE from users other than private households that has arisen in the United Kingdom (as appropriate);

"**B2C**" means and/or relates to EEE that was or is intended for use by private households and/or WEEE from private households and/or from commercial, industrial, institutional and any other source which, because of such source's nature and quantity, is similar to that from private households (as appropriate);

"**B2C Member**" means a Member whose membership of the Producer WEEE Scheme relates to EEE that was or is intended for use by private households and WEEE from private households under the Regulations; and "**B2C Members**" shall be construed accordingly;

"**B2C Producer Responsibility Obligations**" means (in relation to each Obligation Year or part of an Obligation Year) the following obligations on behalf and in relation to a B2C Member:

- (a) 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 Producer WEEE Scheme (as appropriate) in accordance with the Regulations;
- (b) to notify the Member of any EEE producer registration number issued by the Appropriate Authority to the Member;
- (c) to finance (in accordance with the Regulations) the costs of the collection, treatment, recovery and environmentally sound disposal of WEEE from private households:
 - (i) that is deposited at a designated collection facility; or
 - (ii) returned by a distributor under regulation 32 of the Regulations but is not deposited at a designated collection facility of the amount of the relevant WEEE (as determined in accordance with the Regulations) for which such Member is responsible for (or would be responsible for but its membership of the Producer WEEE Scheme) under the Regulations ("**Relevant WEEE**");
- (d) to provide evidence of collection, treatment, recovery and environmentally sound disposal of the Relevant WEEE in accordance with the Regulations; and
- (e) (where relevant) to report the appropriate Authority in relation to the Relevant WEEE in accordance with the Regulations

where and to the extent this relates to EEE that was or is intended for use by private households that was put on the market in the United Kingdom and/or WEEE from private households that has arisen in the United Kingdom (as appropriate);

"**Declaration of Compliance**" means a declaration of compliance provided by the Member to Valpak in accordance with clause 4.5;

"**Directive**" has the same meaning as in the Regulations;

"**disposal**" has the same meaning as in the Regulations;

"**EEE**" has the same meaning as in the Regulations;

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

"**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);

"**Losses**" means any and 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);

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

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

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

"**Producer Responsibility Obligations**" means (where the Producer WEEE Scheme has been approved under the Regulations):

- (a) (in relation to a Member that is a B2B Member) the B2B Producer Responsibility Obligations; and/or
- (b) (in relation to a Member that is a B2C Member) the B2C Producer Responsibility Obligations (for the avoidance of doubt where the Member is a B2B Member and a B2C Member Valpak shall only apply to register the Member under a single registration with the Appropriate Authority and shall not apply to register the Member separately as both a B2B Member and as a B2C Member);

"**Producer WEEE Scheme**" means the Producer WEEE compliance scheme operated by Valpak or a Group Company of Valpak that has been approved under the Regulations;

"**Producer WEEE Scheme MCEP**" means the Producer WEEE 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);

"**recovery**" has the same meaning as in the Regulations; and "**recovered**" shall be construed accordingly;

"**recycling**" has the same meaning as in the Regulations; and "**recycled**" shall be construed accordingly;

"**Regulations**" means the Waste Electrical and Electronic Equipment Regulations 2006 in force in the United Kingdom or such other legislation that is transposed into UK law to implement the Directive;

"**reuse**" has the same meaning as in the Regulations;

"**treatment**" has the same meaning as in the Regulations; and "**treated**" shall be construed accordingly;

"**WEEE**" has the same meaning as in the Regulations; and

"**WEEE from private households**" has the same meaning as in the Regulations.

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

2.4 The parties acknowledge and agree that the Regulations provide that where the Member's membership of the Producer WEEE Scheme is terminated any such termination shall not take effect until the expiry of the then current Obligation Year, except where the Member goes into liquidation or receivership or enters administration whereby the Producer WEEE Scheme ceases to have obligations due to regulations 28(1) or 29(1) of the Regulations, in which case termination shall occur on the date given in the notice of termination. Accordingly, notwithstanding any other provision of the Membership Terms applicable to the Producer WEEE Scheme, the parties agree that the Membership Terms applicable to the Producer WEEE Scheme shall be subject to and shall be construed so as to comply with this obligation under the Regulations.

3 MEMBERSHIP OF THE PRODUCER WEEE SCHEME

3.1 The Member shall, where required by Valpak, comply with the relevant Producer WEEE Scheme MCEP.

3.2 (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 3.2(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 Evidence Notes.

3.3 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 Producer WEEE Scheme (as appropriate) in accordance with the Regulations where that Member does not for any reason:

- (a) provide any and/or all information to Valpak in accordance with the Membership Terms applicable to the Producer WEEE Scheme or does not provide such information to the required standard of accuracy; and/or
- (b) pay any and/or all sums due to Valpak in accordance with the Membership Terms applicable to the Producer WEEE Scheme.

4 B2B MEMBER'S OBLIGATIONS

4.1 (In addition to all of the other Terms applicable to the Member) in each Obligation Year in which the Member is a B2B Member the terms of this clause 4 shall also apply in relation to the Member's membership of the Producer WEEE Scheme as a B2B Member (but not otherwise).

4.2 The Member acknowledges and agrees that the Member shall at all times be and remain responsible for the collection, treatment, recovery and environmentally sound disposal of WEEE from users other than private households and for financing the costs of the collection, treatment, recovery and environmentally sound disposal of WEEE from users other than private households and the Member shall have its own arrangements in place for dealing with such WEEE and such arrangements shall be carried out by the Member in a way that is consistent with the obligations placed on an operator of a scheme under the Regulations.

4.3 The Member hereby irrevocably and unconditionally agrees to indemnify and keep indemnified Valpak from and against all Losses and 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 4.1. The provisions of this clause 4.3 shall continue in force notwithstanding termination of the Agreement howsoever caused.

4.4 (Without prejudice to any other rights or remedies Valpak may have) where and to the extent that the Member is in breach of its obligations under clause 4.2 or Valpak acting reasonably believes that the Member may be in breach of its obligations under clause 4.2 Valpak shall be entitled (but not obliged) on behalf of the Member to fulfil the Member's obligations under clause 4.2 in whole or in part.

4.5 (Notwithstanding the Member's obligations under clause 6 and subject to clauses 4.6 and 4.7) the Member shall be responsible for providing to Valpak a Declaration of Compliance in relation to each Obligation Year no later than the date notified by Valpak to the Member for such purpose from time to time.

4.6 The Declaration of Compliance shall:

- (a) be in writing and signed by the Member by an approved person (as defined in the Regulations) in accordance with such

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- requirements as Valpak may reasonably request;
- (b) include such other information as may be required by the Regulations and/or by Valpak acting reasonably; and
- (c) be used by Valpak to provide a declaration of compliance to the Appropriate Authority on behalf of the Member and must therefore be such as to enable Valpak to comply with its obligations under the Regulations.

4.7 The Member shall be and remain responsible for ensuring that the Declaration of Compliance is as accurate as reasonably possible.

4.8 The provisions of this clause 4 shall continue in force notwithstanding the termination of the Agreement howsoever caused.

5 B2C MEMBER'S OBLIGATIONS

(In addition to all of the other Terms applicable to the Member) in each Obligation Year in which the Member is a B2C Member the terms of this clause 5 shall also apply in relation to the Member's membership of the Producer WEEE Scheme as a B2C Member (but not otherwise).

6 PROVISION OF INFORMATION

6.1 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) where a Member joins the Producer WEEE Scheme for the first time it shall provide Valpak with an estimate of the WEEE that it is likely to place on the market during the first Obligation Year in which it is to be a Member; and
- (b) where a Member joins the Producer WEEE Scheme part way through an Obligation Year it must, in addition to the information referred to at (a) above, provide Valpak with details of the actual amount of WEEE placed on the market in each of the previous Quarters of the then current Obligation Year.

6.2 Where a Member joins the Producer WEEE Scheme after the 15th November in the year immediately preceding the relevant Obligation Year it shall submit the relevant Data Form (completed to Valpak's reasonable satisfaction) as soon as reasonably practicable.

6.3 Where the Member is a B2C Member (notwithstanding the Member's obligations under clauses 6.1 and 6.2) the Member shall 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.

6.4 Where the Member is a B2B Member (notwithstanding the Member's obligations under clauses 6.1 and 6.2) the Members shall submit a relevant Data Form which shall incorporate the Declaration of Compliance in accordance with clause 4.5 above annually in relation to each Obligation Year on or before the 15th January following the end of the relevant Obligation.

6.5 On receipt of any Data Form under clauses 6.2, 6.3 and/or 6.4 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. 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 6.5) the Member shall remain responsible for ensuring that the data is as accurate as reasonably possible and complies with all Legislation (including appropriate agency and/or governmental authority guidance). The Member shall then arrange for this verification form and/or Declaration of Compliance to be signed by the Member by an approved person (as defined in the Regulations) in accordance with such requirements as Valpak may reasonably request.

6.6 The Member shall (unless otherwise agreed in writing with Valpak) ensure that the verification form (referred to in clause 6.5) is signed by the Member in accordance with clause 6.5 and returned to Valpak:

- (a) (where the verification form relates to a Data Form submitted in accordance with clause 6.2) as soon as possible and in any event within 7 days from the date of receipt by the Member of the verification form;
- (b) (where the verification form relates to a Data Form submitted in accordance with clause 6.3) 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); and
- (c) (where the verification form relates to a Data Form submitted in accordance with clause 6.4) within 7 days from the date of receipt by the Member of the verification form or by the 26th January following the end of the relevant Obligation Year (whichever is the earlier).

6.7 The Member shall inform Valpak immediately upon becoming aware of any change in the Member's obligations under the Regulations and/or any information provided by the Member to Valpak in connection with the Member's membership of the Producer WEEE Scheme.

6.8 (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 Producer WEEE 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.

6.9 The provisions of this clause 6 shall continue in force notwithstanding the termination of the Agreement howsoever caused.

7 GROUP MEMBERSHIP

7.1 Where a Common Holding Company is not a Producer and/or does not have any obligations under the Regulations that Common Holding Company:

- (a) shall not be a Member of the Producer WEEE 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 Producer WEEE 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 Producer WEEE Scheme as part of the Group Membership complies with the Membership Terms applicable to the Producer WEEE Scheme;

(d) shall for the purposes of the Membership Terms applicable to the Producer WEEE Scheme be deemed to be a Member of the Producer WEEE Scheme subject to and on the basis of this clause 7.1; and

(e) (without prejudice to the generality of clause 7.1(d)) shall for the purposes of clause 3 of the General Membership Terms be deemed to be a Member of the Producer WEEE Scheme.

8 TERMINATION

8.1 (Without prejudice to any other terms of the Agreement) Valpak may by notice in writing terminate the Member's membership of the Producer WEEE Scheme as a whole and/or as a B2B Member and/or as a B2C Member (as appropriate in the following circumstances, such termination to take effect at the end of the then current Obligation Year:

- (a) pursuant to clause 2.4;
- (b) the Member fails to comply with the provisions of clauses 3, 4 and/or 5;
- (c) the Member fails to comply with the provisions of clause 6; and/or
- (d) if the Member informs Valpak of any change in accordance with clause 6.7 and Valpak (acting reasonably) believes that such change adversely affects or is likely to adversely affect the interests of the Members of the Producer WEEE Scheme as a whole; and/or
- (e) where the Member ceases to be a Producer (for whatever reason).

8.2 Valpak may by giving not less than 60 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) terminate the Member's membership of the Scheme for any reason.

8.3 The Member may by giving notice in writing to Valpak no later than 15th July in the then current Obligation Year, such notice to take effect at the end of the then current Obligation Year terminate its membership of the Scheme.

8.4 Where the approval of the Producer WEEE Scheme is withdrawn for any reason under the Regulations Valpak shall allocate Evidence Notes acquired by Valpak in complying with Valpak's obligations under the Regulations between the Members of the Producer WEEE Scheme in accordance with the following principles:

- (a) Evidence Notes obtained from a Member under the Producer WEEE Scheme MCEP for offset against that Member's Producer Responsibility Obligations shall be allocated to that Member; and then
- (b) all other remaining Evidence Notes shall be allocated to each Member who has paid all sums due to Valpak from such Member in accordance with the Membership Terms applicable to the Producer WEEE Scheme in proportion to such sums paid by that Member.

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