

Terms and Conditions

Background

- A. The Producer confirms that it is a producer of Portable Batteries and places one (1) tonne or less of Portable Batteries on the market in the United Kingdom during a Year. The Producer therefore falls within the definition of “small producer” as defined by the Battery Regulations.
- B. The Producer agrees and acknowledges that as a Small Producer it has no obligations under the Battery Regulations to join an authorised battery compliance scheme but does have certain obligations placed on it under the Battery Regulations.
- C. Valpak offers a service to Small Producers as detailed in these Terms.

1. Interpretation

In these Terms the following words and expressions shall (where the context permits) have the following meanings:

- “Appropriate Authority” means the appropriate agency as defined in the Battery Regulations;
- ‘Battery Regulations’ means the Waste Batteries and Accumulators Regulations 2009;
- “Charge” means any charge or fee payable by a Small Producer under the Battery Regulations from time to time;
- “Compliance Period” means a compliance period as defined in the Battery Regulations;
- “Fee” means a Valpak registration fee plus, any Environment Agency Fee;
- ‘Information’ means any information detailed in the Battery Regulations that the Producer must submit to the Secretary of State and/or the Appropriate Authority from time to time;
- “Large Producer” means a producer of Portable Batteries as defined in the Battery Regulations that is not a Small Producer;
- ‘Portable Batteries’ means portable batteries as defined in the Battery Regulations;
- ‘Relevant Compliance Period’ has the meaning given to the same in the Battery Regulations;
- ‘Services’ means the services set out in clause 4 that Valpak will provide to the Producer in accordance with these Terms;
- “Small Producer” means a small producer as defined in the Battery Regulations;
- ‘Terms’ means these terms and conditions;
- ‘Timescale’ means the relevant timescale detailed in the Battery Regulations;
- “Year” means a calendar year commencing on 1st January.

2. Administration

It shall be noted that clause headings are for ease of reference only and shall not be taken into account in construing these Terms. References to any statute or statutory provision shall include:

- any subordinate legislation made under it;
- any provision which it has modified or re-enacted (whether with or without modification); and
- any provision which subsequently supersedes it or re-enacts it (whether with or without modification), whether made before or after the date of this Agreement).

3. Terms

These Terms set out the terms on which Valpak will provide the Services to the Producer and the Producer hereby agrees to be bound by these Terms.

4. Services

4.1 In consideration of and subject to the Producer complying with its obligations under these Terms, Valpak will, where requested, provide the following services to the Producer:

- where appropriate, on behalf of the Producer, apply to register it with the Appropriate Authority;

- on behalf of the Producer, report the Producer’s Information to the Appropriate Authority in 2009 and each Compliance Period (as appropriate) and pay any relevant Charges;
- on receipt, notify the Producer of the Appropriate Authority’s confirmation that the Producer’s registration has been granted; and
- where appropriate, on behalf of the Producer, notify the Appropriate Authority of any change of circumstance required in accordance with the Battery Regulations.

4.2 Valpak will provide the Services with reasonable care and skill using appropriately qualified and experienced personnel selected by Valpak.

5. Producer Obligations

5.1 The Producer shall, where appropriate, on or before signature of these Terms pay to Valpak the Fee, and shall pay the Fee annually on receipt of Valpak’s invoice for each subsequent Year that these Terms remain in force.

5.2 The Producer acknowledges and agrees that the Fee is subject to variation every Year at the discretion of Valpak. Valpak shall notify the Producer of any changes to the Fee by prominently posting notice of the change on its website at www.valpak.co.uk at least 90 days prior to the end of the Year preceding the Year to which the varied Fee will apply. If the Producer does not wish to pay an increased annual charge for the forthcoming Year the Producer may give notice to terminate this Agreement in accordance with clause 7.1(c).

5.3 Subject to the provision of the Services by Valpak, the Producer shall at all times whilst these Terms are in force, comply with all relevant obligations placed on it as a Small Producer under the Battery Regulations.

5.4 The Producer shall provide to Valpak in line with any Timescale, or other timescale required by Valpak all Information and any relevant Charge necessary to enable Valpak to provide the Services in line with any relevant Timescale.

5.5 The Producer shall also supply to Valpak any additional information Valpak reasonably requests and requires to enable Valpak to provide the Services.

5.6 The Producer shall immediately on request from Valpak reimburse all amounts that Valpak may have paid to the Appropriate Authority on behalf of the Producer in accordance with the Battery Regulations which the Producer has not already paid to Valpak under clause 5.4 above.

5.7 The Producer shall immediately notify Valpak as soon as it reasonably believes that it is or may no longer be a Small Producer either as a result of no longer placing Portable Batteries on the market in the United Kingdom or where it is likely to place more than 1 tonne of Portable Batteries on the market in the United Kingdom in a Year.

5.8 The Producer acknowledges and agrees that it has responsibility for ensuring that all Information and other data it provides to Valpak under these Terms is:

- accurate; and
- provided in line with any Timescales or otherwise required by Valpak to ensure that it provides the Services in line with any Timescales. The Producer also acknowledges and agrees that Valpak has no liability to the Producer in respect of any inaccurate data that is provided to the Appropriate Authority.

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6. The Producer

6.1 The Producer agrees and acknowledges that if it places more than 1 tonne of Portable Batteries on the market in the United Kingdom in any Year it shall be solely responsible for complying with the obligations placed on a Large Producer of Portable Batteries by the Battery Regulations. The Producer further agrees and acknowledges that Valpak shall have no obligation to monitor the data and Information that the Producer provides to Valpak in accordance with these Terms to determine whether the Producer remains a Small Producer or whether the Producer is a Large Producer.

6.2 The Producer agrees that Valpak shall have no obligations to the Producer in respect of the Producer complying with its obligations as a Large Producer unless or until the Producer joins Valpak's authorised portable battery compliance scheme.

6.3 Nothing in these Terms shall obligate either the Producer to join Valpak's portable battery compliance scheme, or Valpak to accept the Producer as a member of Valpak's portable battery compliance scheme.

6.4 Unless the Producer notifies Valpak in writing to the contrary, the Producer agrees that Valpak may use the Producer's information to send the Producer marketing information about other Valpak products and services that Valpak believes may be of interest to the Producer.

7. Commencement date and duration

7.1 These Terms will come into force on signature of these Terms by both parties and will remain in force until either party terminates these Terms in the following circumstances:

- a) by Valpak by notice in writing to the Producer to take immediate effect or at such time as may be specified in such notice on any failure by the Producer to comply with the provisions of clauses 5 and 6;
- b) by Valpak by notice in writing with immediate effect where the Producer ceases to be a Small Producer (for whatever reason); and
- c) by either party giving not less than 90 days notice in writing to the other party prior to the expiry of the then current Year (such notice to take effect on the expiry of the then current Year).

8. Limitation of liability

The Producer acknowledges and agrees that, except for Valpak's liability for fraudulent misrepresentation or death or personal injury caused by Valpak's negligence (which shall be unlimited), Valpak shall not be liable to the Producer in connection with the provision of the Services and these Terms have been agreed on this basis. This provision will survive termination or expiry of these Terms.

9. General

9.1 These Terms constitute the entire agreement between Valpak and the Producer relating to the Services and supersedes all prior written or oral agreements.

9.2 Nothing in these Terms will constitute Valpak and the Producer as being partners, joint venturers, co-owners or agents of the other or empower either party to act for, bind or otherwise assume any obligation on behalf of the other and neither Valpak nor the Partner will hold itself out as having authority to do so.

9.3 A person who is not a party to these Terms has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Contract.

liable to the other for any delay or non-performance of any of the obligations in these Terms where this is due to any cause beyond the reasonable control of the party concerned. These Terms will be governed by and construed in accordance with the laws of England and both the Producer and Valpak submit to the exclusive jurisdiction of the English Courts.

9.4 Neither of the parties will be in breach of these Terms or otherwise