

## PRODUCER WEEE SCHEME

### MEMBERS COMPLIANCE AND SURPLUS EVIDENCE POLICY (UNDER 100 TONNES)

#### 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 who reasonably believe that they will deliver under 100 (one hundred) tonnes of Qualifying Tonnage (as defined below) 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;

"**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 5.3 (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 5.3 (as may be amended from time to time in accordance with this MCEP);

**"Quarterly Tonnage"** means (in relation to each Quarter) the tonnage of Qualifying Evidence Notes (broken down by WEEE category) accepted by Valpak in the relevant Quarter as offset in accordance with clause 5.2 (as may be amended from time to time in accordance with this MCEP).

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.

3.2 The Member agrees and acknowledges that it is responsible for the delivery of all Qualifying Tonnage to Valpak in accordance with the terms of this MCEP and shall be responsible for compliance with all other obligations placed on the Member under this MCEP.

3.3 The Member acknowledges that the terms of this MCEP shall only commence when:

(a) Valpak has received a copy of this MCEP signed on behalf of the Member; and

(b) Valpak notifies the Member that the Member's request to participate in this MCEP has been accepted.

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

4.1 (Subject to clause 5.5) this MCEP shall apply to all Pre-Qualifying Evidence Notes.

4.2 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) at the Member's sole discretion, details of the Member's estimated tonnage of all of its Pre-Qualifying Evidence Notes for the then current Obligation Year, which shall be provided within any reasonable time period stipulated by Valpak;

(b) information about the approved authorised treatment facilities and/or approved exporters (as appropriate) the Member has used in relation to each Pre-Qualifying Evidence Note;

- (c) in order to determine whether an Evidence Note obtained, generated or issued by the Member is a Pre-Qualifying Evidence Note;
  - (d) in order to determine whether an Evidence Note complies with this MCEP and the Regulations.
- 4.3 The Member shall notify Valpak in writing as soon as reasonably possible after the Member becomes aware that it may deliver more than 100 (one hundred) tonnes of Qualifying Tonnage in the current Obligation Year.
- 4.4 The Member agrees and acknowledges that when the Member notifies Valpak in accordance with clause 4.3 above, Valpak may, at its discretion, require and the Member shall provide a written statement setting out the Member's estimated tonnage of all of its Pre –Qualifying Evidence Notes (broken down by WEEE category) which the Member expects to obtain in the relevant Obligation Year in accordance with any requirements that Valpak may notify to the Member and the Terms of this MCEP shall be varied accordingly. The Member further agrees that in any subsequent Obligation Year that it reasonably believes it will deliver more than 100 (one hundred) tonnes of Qualifying Tonnage, that it will comply with the Valpak Producer WEEE scheme Members Compliance and Surplus Evidence Policy that is available on request or at [www.valpak.co.uk](http://www.valpak.co.uk).
- 4.5 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 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 Where and to the extent that Valpak chooses in accordance with clause 5.2 (a) to offset, such Pre-Qualifying Evidence Notes shall become Qualifying Evidence Notes and Valpak shall offset such Qualifying Evidence Notes subject to and in accordance with the terms of this MCEP.
- 5.4 Where and to the extent that Valpak chooses 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.

- 5.5 In relation to any Pre-Qualifying Evidence Notes where and to the extent that agreement can not be reached to purchase under clause 5.4 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.
- 5.6 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 5.5.
- 5.7 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 Notes 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 issue 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 5.3.

## **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 The Member shall deliver in each Quarter the Quarterly Tonnage it has obtained in the relevant Quarter to Valpak in accordance with the delivery deadlines set out in column 4 of the Criteria, in relation to the Quarter ending set out in column 3 of the Criteria.
- 8.3 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.
- 8.4 (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.
- 8.5 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 8.2.

## **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; and
  - (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.
- 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) Deadline for delivering Quarterly Tonnage to Valpak in relation to each Quarter</b>
Q1	1 January	31 March	20 April
Q2	1 April	30 June	20 July
Q3	1 July	30 September	20 October
Q4	1 October	31 December	20 January in the following year



**PRODUCER WEEE SCHEME**

**MEMBERS COMPLIANCE AND SURPLUS EVIDENCE POLICY (UNDER 100 TONNES) –  
TERMS AND CONDITIONS**

**IN WITNESS OF THE ABOVE** the parties have signed these terms and conditions on the [ ]  
day of [ ] 20[ ]

SIGNED by

For and on behalf of the [Member]

In the presence of:

**WITNESS:**

NAME:

OCCUPATION:

ADDRESS:

SIGNED by

For and on behalf of the **VALPAK LIMITED**

In the presence of:

**WITNESS:**

NAME:

OCCUPATION:

ADDRESS: