

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, unless agreed otherwise in writing, apply:
- (a) the Application Form applicable to the Member's membership of the Battery Compliance Scheme; then
 - (b) clause 2.4 of these Terms; then
 - (c) the Battery Compliance Scheme MCEP (where applicable); then
 - (d) (subject to clause 1.3(a)) 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;

"Batteries" means portable batteries as defined in the Regulations and associated guidance issued by the Appropriate Authority from time to time;

"Battery Compliance Scheme" means the producer battery compliance scheme in relation to Batteries operated by Valpak or a Group Company of Valpak that has been approved under the 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);

"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 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);

"Member" means (except as otherwise expressly provided in clause 5.1) a Producer which has become a member of the Battery Compliance 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 Battery Compliance Scheme subsists;

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

"Producer Responsibility Obligations" means (where the Battery Compliance Scheme has been approved under the 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 or to notify the Appropriate Authority that the Producer has become a Member of the Battery Compliance Scheme in accordance with the Regulations;
- (b) to notify the Producer of any battery producer registration number issues by the Appropriate Authority to the Producer;

- (c) to finance (in accordance with the Regulations) the cost of collection, treatment and recycling of the share (calculated in accordance with the 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 Regulations; and
- (e) (where relevant) to report to the Appropriate Authority in relation to the waste Batteries in accordance with the Regulations; and

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

- 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 Regulations, a Member's membership of the Producer Battery Compliance Scheme is terminated, any such termination 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.

3 MEMBERSHIP OF THE BATTERY COMPLIANCE SCHEME

- 3.1 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 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 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.

- 3.2 Valpak reserves the right to terminate the Member's membership of the Battery and Compliance Scheme with immediate effect at any time where pursuant to clause 3.1 Valpak has exercised its rights and has not registered a Member with the Appropriate Authority.

- 3.3 The Member shall, where required by Valpak, comply with the Battery Compliance Scheme MCEP.

4 PROVISION OF INFORMATION

- 4.1 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 Battery Compliance Scheme for the first time prior to the commencement an Obligation Year, then it shall provide Valpak with details of the actual amount of Batteries it placed on the market in the 2 years immediately preceding such Obligation Year together with an estimate of Batteries 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 Batteries Compliance Scheme part way through an Obligation Year it must provide Valpak with details of the actual amount of Batteries placed on the market in each of the previous 2 Obligation Years together with an estimate of Batteries that it is likely to place on the market during the then current Obligation Year.

- 4.2 Notwithstanding the Member's obligations under clause 4.1, the Member shall submit to Valpak a relevant Data Form in relation to each Quarter (completed to Valpak's reasonable satisfaction) as soon as reasonable practicable following any request by Valpak to do so.

- 4.3 On receipt of any Data Form under clause 4.2 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 4.3) 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 to be signed by the Member in accordance with such requirements as Valpak may reasonably request.

- 4.4 The Member shall (unless otherwise agreed in writing with Valpak) ensure that the verification form (referred to in clause 4.3) is signed by the Member by an approved person (as defined in the Regulations) in accordance with clause 4.3 and returned to Valpak 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).

- 4.5 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 Battery Compliance Scheme. If the Member does not provide Valpak with an updated signed verification form reflecting these changes in accordance with clause 4.3 by 15 January in the calendar year immediately following relevant Obligation Year Valpak shall be under no obligation to accept these changes and may proceed on the basis of the last signed verification form received by it from the Member (pursuant to clause 4.3) prior to this date.

- 4.6 (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.

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

5 GROUP MEMBERSHIP

- 5.1 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 Battery Compliance Scheme in its own right;
- (b) may (notwithstanding clause 5.1(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 5.1 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 5.1; and

- (e) (without prejudice to the generality of clause 5.1(c)) shall for the purposes of clause 4 of the General Membership Terms be deemed to be a Member of the Battery Compliance Scheme.

6 TERMINATION

- 6.1 (Without prejudice to any other terms of the Agreement) Valpak may by notice in writing terminate the Member's membership of the Battery Compliance Scheme 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 clause 4;
- (c) if the Member informs Valpak of any change in accordance with clause 4.5 and 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;
- (d) where the Member ceases to be a Producer (for whatever reason); and/or
- (e) if the Member does not comply with the terms of the Battery Compliance Scheme MCEP.

- 6.2 Valpak shall also be entitled to terminate the Member's membership of the Battery Compliance Scheme in accordance with clause 3.2.

- 6.3 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.

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- 6.4 The Member may by giving notice in writing to Valpak no later than 15 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.
- 6.5 Where the approval of the Battery Compliance 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 Battery Compliance Scheme in accordance with the Regulations.

7 DISPUTES

- 7.1 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.

7.2 Valpak and each Member agrees that:

- (a) the number of arbitrators shall be one;

- (b) in default of the parties' agreement as to the arbitrator, the appointing authority shall be the London Court of International Arbitration;
- (c) the seat or legal place of the arbitration shall be London;
- (d) the language of the arbitration shall be English; and
- (e) the governing law of the Terms shall be the substantive law of England and Wales.

7.3 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.

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