

# Membership terms and conditions

## 1 Definitions

Of the Scheme known as Comply Direct operated by Comply Direct Ltd.

In these Conditions the following words and expressions, unless the context otherwise dictates, shall have the following meanings:-

“**Agency**” – means the Environment Agency in England and Wales;

“**Agreement**” – references to “Agreement” in these Membership Terms & Conditions shall mean the agreement between the Member organisation and Comply Direct Ltd’s constituted by completion of the application form signed by both parties;

“**Application**” – is the provision by the member of a completed packaging data form, application form, signed Agreement and payment of the annual fee;

“**Approved person**” – as defined in the Companies Act 1985;

“**Compliance Charges**” – means the apportioned contribution of the Member to the costs incurred by the Operator of satisfying the Obligations of the Scheme;

“**Comply Direct**” – the operator whose address is based at The Water Mill, The Water Mill Park, Broughton Hall, Skipton, North Yorkshire BD23 3AG;

“**Conditions**” – means these terms and conditions;

“**Consumer Information Obligations**” or “**CIOs**” – means the obligations placed upon Producers of the category Seller by the Regulations to provide information to consumers on recycling and recovery of Packaging Waste;

“**Fees**” – any fee or other charge or levy payable under the Conditions;

“**Group Company**” – any company which forms part of a Group Membership as indicated on the application form;

“**Group Membership**” – membership of Comply Direct by the Member and for and on behalf of another company or companies, each being a subsidiary of the Member (Holding Company) as shown on the Application form;

“**Group Turnover**” – the aggregate turnover of all Group Companies originating in the United Kingdom covering the latest accounting period ending before the commencement of the Agreement;

“**Holding Company**” – as defined in the Companies Act 1985;

“**Material Levy**” – means the levies, charges and payments to be made by a Member

“**Member**” – means a Member of the Scheme;

“**Membership Period**” – means the period of time in which a Member is a Member of the Scheme and runs from January 1st till December 31st of each year;

“**Obligations**” – means the recovery and recycling obligations specified in the Regulations;

“**Obligation Year**” – means the calendar year from January 1 till December 31 during which the Members have an obligation to comply with the Regulations;

“**Operator**” – means Comply Direct or assignees from time to time;

“**Preceding Year**” – the calendar year immediately preceding the Scheme Year;

“**PRN**” – means a packaging waste recovery note or packaging export recovery note (PERN) as set out in the regulations;

“**Producer Responsibility Obligations**” – the Producer Responsibility Obligations as set out in the Regulations;

“**Recovery and Recycling Obligations**” – the recovery and recycling obligations included in the Regulations;

“**Registration Fee**” – means the fee payable by the Member on or before the commencement of the Membership Period

“**Regulations**” – means the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 and any subsequent amendments thereto whichever is applicable to the Member;

“Scheme” – means the Comply Direct Compliance Scheme as registered with the agency;

“Scheme Year” – a calendar year beginning on 1st January;

“Subsidiary” – as defined in the Companies Act 1985;

“Turnover” – the turnover of the Member originating in the United Kingdom covering the latest accounting period ending before the commencement of the Agreement.

## 2 Introduction

- 2.1 This Agreement constitutes a contract between the Operator and the Member and shall be binding upon both parties for the duration of the Membership Period.
- 2.2 This Agreement shall be deemed to have commenced upon receipt by the Operator of the Comply Direct Registration Form completed and signed by either the Member or the Member’s authorised representative.
- 2.3 This Agreement shall remain binding upon both parties until the Member ceases to be a Member of the Scheme.
- 2.4 This Agreement is intended to ensure that the Member complies fully with the Regulations and that the Operator is able to operate the Scheme as required by the Regulations and any statutory guidance pertaining to the Regulations.

## 3 Interpretation

- 3.1 Any reference to an enactment is a reference to it as already amended and includes a reference to any repealed enactment which it may re-enact with or without amendment and to any future re-enactment and/or amendment of it whether taking effect before or after the date of this Agreement.
- 3.2 Words and expressions used herein importing the singular number shall include the plural number and vice versa; and importing one gender shall include any other.
- 3.3 Any reference to a clause shall be a reference to a clause of these Conditions.

## 4 Membership

- 4.1 Upon application for membership of the Scheme, the Member warrants and represents to the Operator that it will observe and perform the obligations imposed on the Member under these Conditions.
- 4.2 Upon application for membership of the Scheme, the Member warrants and represents to the Operator that it will provide to the Operator such information regarding organisational details and packaging usage as may be required by the Operator for the purposes of the proper operation of the Scheme in accordance with the Regulations and the Conditions in such format and within such time limits as the Operator shall reasonably stipulate from time to time.
- 4.3 Upon application for membership of the Scheme, the Member warrants and represents to the Operator that all information submitted on the Registration Form is true, complete and as accurate as reasonably possible.
- 4.4 Upon application for Membership of the Scheme, the Member warrants and represents to the Operator that it has with its application for Membership of the Scheme disclosed full details where applicable of all other members of a group to which the Member may belong.
- 4.5 The Member agrees that it will notify the Operator of any change in any information previously provided to the Operator within 30 days of such change occurring.
- 4.6 The member agrees that it will supply at or after the commencement of the Membership Period, if required by the Operator, any information required by the Operator for the proper Operation of the Scheme or if required by request of an Agency, Government Officer or other such person with statutory powers to request such information.
- 4.7 The Member agrees that it will not whilst a Member of the Scheme:-
  - 4.7.1 be a member of any other compliance scheme under the Regulations;
  - 4.7.2 register or continue registration as a producer under the Regulations otherwise than through the Scheme seek to comply with the Producer Responsibility Obligations (including the Recovery and Recycling Obligations) otherwise than through the Scheme.
- 4.8 The Member hereby authorises the Operator to publish or disclose all information provided by the Member for such purposes as the Operator thinks fit in connection with the Scheme and the Member hereby acknowledges and agrees that any advice provided to it by the Operator pursuant to the Scheme is for the Member’s use only and the Operator will not be responsible to any other person except the Member in respect thereof.

## 5 Membership Renewal

- 5.1 Agreement will automatically renew on expiry of the Membership Period to a new Membership Period to which these Conditions shall apply.

## 6 Group Membership

- 6.1 An Application for Group Membership may be made by a company forming part of a group of companies each of which is either a Holding Company or a subsidiary of the company making the application, on behalf of itself and one or more of those other companies ("group companies" or the "group").
- 6.2 The company making the application will be the Member of the Scheme for all purposes connected with these Conditions and the Scheme generally to represent the group companies to the Operator and to enter into the agreement with the Operator on its and their behalf.
- 6.3 The Member shall confirm its authority to enter into the agreement for itself and on behalf of each other Group Company. The Common holding Company shall sign and complete the Application Form.
- 6.4 Details (including name, address, type of business and registered company number) of all the companies forming part of the Group Membership shall be provided to the Operator in a format specified by the Operator.
- 6.5 The Member shall confirm the accuracy of the details of itself and each other Group Company.
- 6.6 The Member shall inform the Operator immediately in writing if any group company ceases to be a member of that group and that company shall be deemed to have ceased to form part of the Group Membership from the date the notification is received by the Operator.
- 6.7 The Member shall inform the Operator immediately in writing if it proposes to add one or more companies to the Group Membership giving details of its name, address, business and the types and volumes of packaging handled and the Operator shall at its option accept the additional companies either immediately upon receipt of the notification or with effect from the next renewal date.
- 6.8 When any company leaves or joins the Group Membership the Member shall comply with the Operator's reasonable requirements to supply revised calculations of the Group's obligations under the Regulations in the format and within the time limit prescribed by the Operator.
- 6.9 The Member shall be jointly and severally liable under these Terms and Conditions with each other Group Company each of whom shall itself be severally liable under these Terms and Conditions.

## 7 Fees

- 7.1 The member shall be liable for a Fee in respect of each scheme year or part thereof which shall comprise a Membership Fee which is a flat rate annual Fee payable upon joining the scheme, and then on an annual basis in respect of each calendar year. The Fee will be published on the website of Comply Direct.
- 7.2 The Fees will also include the latest Agency Fees including the registration Fee payable to the Agency as set out in the regulations any other Fees charged by the Agency in respect of the members' late registration or resubmission of data.
- 7.3 The Fees will also include a quarterly PRN charge in respect of the cost of providing evidence of the Scheme's compliance with the Regulations on behalf of the member. The Scheme will invoice its Members in advance for the four quarterly periods of the year.
- 7.4 If any sum payable by the Member to the operator remains unpaid more than 30 days after the date of application in the case of the Membership Fee or Agency fee or after the date of invoice in the case of any material levy, the Member shall pay interest on that sum at the rate decided upon by the Operator of the scheme and such interest is to be calculated on a daily basis from the date on which such sum became due.
- 7.5 No payments made by a Member on behalf of any group company that leaves the Scheme in the course of any Membership year will be refunded.
- 7.6 The compliance Member will, where application for Membership of the Scheme is after the commencement of the Obligation year, be invoiced for compliance charges for all previous quarters of the relevant obligation year.
- 7.7 All invoices issued to the Member shall be paid within 30 days and by direct debit of the issue of an invoice in respect thereof by the Operator.
- 7.8 All sums payable under this Agreement are exclusive of any value added tax and any sales or similar taxes.
- 7.9 Fees are paid as a deposit and are non-refundable.

## **8 Members' Own Packaging Waste**

- 8.1 Any Member that acquires PRNs through the processing of its own waste as part of its normal business activities must deliver those PRNs to the Scheme.
- 8.2 The operator will give the member credit in terms of volume and any value attached to those PRNs against the Member's aggregate obligations brought to the scheme.
- 8.3 If the Operator of the Scheme agrees to purchase PRNs from the Member then the Operator of the Scheme shall pay to the Member within 30 days of receipt of a valid invoice an amount per PRN supplied which is equal to the average price paid by the Operator of the Scheme for a relevant PRN.
- 8.4 The average price shall be calculated by dividing the total cost of the relevant PRNs secured by the Operator of the Scheme in the relevant quarter by the number of relevant PRNs secured by the Operator of the Scheme in the relevant quarter.

## **9 Confidentiality**

- 9.1 Comply Direct will hold all documents and information received in connection with the performance of the Agreement in strict confidence.
- 9.2 Such documents and information will not be disclosed by Comply Direct to any third party except under the data requirements of the Regulations, without the permission of the Member unless a duty to disclose is imposed under statute or by court order.

## **10 Obligations of the Operator**

- 10.1 Subject in the case of each Member, to that Member complying with the Conditions, and whilst the Scheme remains registered for the purposes of the Regulations, the Operator will use its reasonable endeavours to perform its obligations in accordance with the Regulations for the purposes of satisfying the Obligations of each Member for the duration of the Member's Membership Period including the Member's Consumer Information Obligations.
- 10.2 For the avoidance of doubt the Member hereby agrees that the Compliance Charges shall be final and binding upon the Member.
- 10.3 The obligations contained in Clause 10.1 shall be conditional upon the Member complying with these Conditions.
- 10.4 The obligations contained in Clause 10.1 shall cease upon the cancellation of the Scheme under the Regulations.

## **11 Indemnity**

- 11.1 The Member hereby agrees to indemnify and keep indemnified the Operator of the Scheme from and against all demands, claims, liabilities, losses, damages, (for loss of profit or otherwise) costs and expenses (including all legal and other costs and expenses) whatsoever in connection with any failure by the Member to comply with the Conditions, the Regulations, and in connection with the provision by the Member to the Operator of any false, inaccurate, misleading, late or incomplete information or information failing to the standard of accuracy required by the Agency.

## **12 Termination**

- 12.1 The Operator may terminate the Member's Membership by notice in writing with immediate effect in the event of any material breach by the Member of any of its obligations under the Conditions.
- 12.2 The Operator may terminate the Member's Membership by notice if the member fails to pay any sum properly due in accordance with these terms and conditions by giving not less than 60 days' notice in writing to the Member.
- 12.3 The Operator may terminate the Member's Membership by notice in writing with immediate effect in the event of the member (or in the case of Group Membership any company within that Group Membership) becomes insolvent or applies for, consents to or suffers the appointment of a liquidator, receiver or administrative receiver.
- 12.4 The Member may terminate its Membership by giving not less than 90 days notice in writing to the Operator of the Scheme.
- 12.5 The Member shall notify the Operator of the Scheme if the Member shall after termination of Membership become a member of another Scheme registered under the Regulations during the remainder of the Scheme Year in which termination of Membership took effect.
- 12.6 The termination of Membership for whatever cause shall not affect any provision of the Conditions which is expressed to survive or operate in the event of such termination and shall not prejudice or affect the right of either party against the other

in respect of any breach of the Conditions or any monies payable by one party to the other in relation to any period prior to termination and in particular without limitation shall not affect the entitlement of the Scheme to any PRN's made available to it in accordance with the Conditions prior to termination.

### **13 Force Majeure**

- 13.1 Neither the Operator nor the Member shall be liable each to the other for any delay, hindrance in the performance of or failure to perform its obligations under these Conditions (other than the Member's obligation to make any payment) provided that the failure, delay or hindrance arises directly or indirectly from circumstances beyond its reasonable control and arising without fault or error on the part of either party and as such circumstances are usually recognised as events of force majeure, and provided also that the affected party immediately notifies the other of the reason for the default or delay and makes all reasonable efforts to overcome it.

### **14 General Declarations**

- 14.1 All sums payable under the Conditions by the Member are stated to be exclusive of VAT or any similar impost or levy which the Member shall be obliged to pay in addition to all such sums.
- 14.2 The Member shall not be entitled to assign or transfer any of its rights or obligations under the Conditions without the prior consent of the Operator.
- 14.3 The Operator may at any time amend any provision of the Conditions and any such amendment shall become binding upon the Member and the Operator immediately in the case of the amendment being required in order to comply with the Regulations and/or any other legislation or regulations or 30 days after the Operator has published or otherwise notified the Member of such amendment.

### **15 Notices**

- 15.1 Any notice given or made under these Conditions shall be in writing and may be delivered to the relevant party or sent by post to the address of that party as shall have last been notified in writing by that party to the other party.
- 15.2 Each notice or communication shall be deemed to have been given or made and delivered if by a letter 48 hours after posting or if by delivery when left at the relevant address.

### **16 Governing Law**

- 16.1 The Conditions shall be governed by and construed in all respects in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising in relation to the Conditions.