

## PRODUCER PACKAGING SCHEME MEMBERSHIP (TERMS & 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; SEPA, or the EHS as the case may be;

“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” – a Director of the business as listed on Companies House; for a partnership, a partner. For sole traders, the individual.

“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 Old Saw Mill, Broughton Hall, Skipton, North Yorkshire BD23 3AE; “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;

“Force Majeure” any event beyond the reasonable control of Comply Direct and shall include but shall not be limited to acts of God or war or terrorism, fire, floods, earthquakes, storms, defaults by suppliers, strikes, lock out, industrial disturbances, riots, civil commotion or unrest, interference by civil or military authorities and compliance with the acts, regulations or orders of any local, governmental or other regulatory insofar as these have been implemented or modified since the date of the agreement;

“Green Dot Trade Marks” – Trade Marks as set under ‘Terms and Conditions for the use of Green Dot’

“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

“MCEP” – means the packaging waste scheme Member compliance evidence policy and relates to scheme members bringing PRNs to the scheme generated by their own waste streams

“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;

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“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 1 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 28 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;

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- 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.
- 4.9 Comply Direct Ltd have been granted a licence to sub-licence the use of the Green Dot Trade Marks to its scheme members. By agreeing to these terms the Member agrees to the Terms & Conditions for the use of Green Dot (a copy of which is available [HERE](#)).

## 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.

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- 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 price levy charged for PRNs and the margin retained by Comply Direct on invoiced PRNs directly relates to how successful Comply Direct have been with their procurement strategy from year-to-year. The Scheme will invoice its Members in advance for the four quarterly periods of the year. It may sometimes be necessary for a reconciliation adjustment at the end of the compliance year.
- 7.4 If a Member is a late registration or completes a resubmission after the registration deadline, they will not automatically qualify for Comply Direct's standard variable PRN rates and may be subject to a market rate at the point of registration or the resubmission or the average rate required in order to satisfy compliance.
- 7.5 If sums payable by the member to the operator are late on multiple occasions and a debt recovery service is instructed by the operator, the member will be liable for the additional fees incurred. The operator will make reasonable attempts to resolve outstanding payments directly and will only consider debt recovery if the member is unresponsive.
- 7.6 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.
- 7.7 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.
- 7.8 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.
- 7.9 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.
- 7.10 All sums payable under this Agreement are exclusive of any value-added tax and any sales or similar taxes.
- 7.11 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 is able to deliver those PRNs to the Scheme under an MCEP Agreement. The agreement is to be in place by the 15<sup>th</sup> April for the relevant year, it will outline the material specific tonnage, method of delivery and any 3<sup>rd</sup> party reprocessor/exporter responsible for transferring the PRNs to Comply Direct.
- 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 Member acquires PRNs surplus to their own aggregate obligations, the operator of the Scheme may agree to purchase PRNs from the Member. Under such agreement, the Operator 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.
- 8.5 All MCEP agreements are made at Comply Direct's discretion and there is no guarantee of acceptance. MCEP agreements are the only route through which a company can supply their own PRN's to Comply Direct.

## 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.
- 9.3 Comply Direct adhere to all requirements of The Data Protection Act 1998 and The General Data Protection Regulations. Comply Direct publish a member privacy notice which details what personal data Comply Direct hold and process, and individual rights in relation to this. This notice is available on the Comply Direct website.

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## 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. OBLIGATION OF THE MEMBER

- 11.1 The Member shall by no later than the 28 February of each compliance year have completed and submitted their annual packaging handled data to the Operator in the required data tables format as per the Regulations and then by no later than 31 March have also provided the resulting Packaging Data Verification Form signed by an Approved Person via a document upload within the Operator online systems.
- 11.2 All new Member registrations (which covers the payment of appropriate fees including Agency late registration fees, completed and submitted a relevant Membership Form for the compliance period concerned, completed the Packaging Data Form and also provided the resulting Packaging Data Verification Form signed by an Approved Person via a document upload within the Operator online systems) that occur after the 15 April in each compliance year must be received as fully complete by the Operator no later than the 15 December within each compliance period.
- 11.3 All existing Member data resubmissions (which covers the payment of appropriate fees including Agency resubmission fees, completed the resubmission of the Packaging Data Form and also provided the resulting Packaging Data Verification Form signed by an Approved Person via a document upload within the Operator online systems) that occur after the 15 April in each compliance year must be received by the Operator no later than the 15 December within each compliance period.
- 11.4 All information provided by the Member to Operator in the Application Form and Annual Data Form must be signed by an Approved Person.
- 11.5 Where a Member becomes aware of or reasonably ought to have become aware of any changes to or inaccuracies or omissions in the information previously provided to Operator in accordance with these Terms and Conditions (including but not limited to changes in information contained or referred to in its last data submission, ownership type, places of Business and contact details and any other changes which may render the information previously provided to the Operator as being false, misleading, inaccurate or incomplete then the Member shall immediately notify the Operator of such changes so as to enable Comply Direct to comply with its obligations under the Regulations to notify the Agency of any changes within 28 days.

## 12. INDEMNITY

- 12.1 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.

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## 13. TERMINATION

- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.4 The Member may terminate its Membership by giving no less than 90 days notice in writing to the Operator of the Scheme prior to the end of the Obligation Year.
- 13.5 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.
- 13.6 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.

## 14. FORCE MAJEURE

- 14.1 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.

## 15. GENERAL DECLARATIONS

- 15.1 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.
- 15.2 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.
- 15.3 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.

Upon application for membership of the Scheme, the membership of a Producer is only secured at the point of the Scheme having received all due monies relating to annual membership and registration fees for the compliance year relating to the application and the Scheme having also receiving all required packaging handled data from Producer in the Scheme required format. Members of the Scheme that have not submitted registration details, packaging data handled and payment of fees by the 15th April of the compliance year are not a legal member of the Scheme for compliance purposes but still have contractual obligations as a Member.

## 16. NOTICES

- 16.1 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.

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16.2 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.

## 17. WAIVER

17.1 No payment accepted by either party and no neglect, failure, delay or indulgence on the part of either party in exercising any right in connection with or enforcing this Agreement or any term of clause of the Agreement shall operate as a waiver of that party's rights, powers or privileges.

## 18. GOVERNING LAW

18.1 The agreement 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 Agreement.

## 19. SEVERANCE

19.1 If any provision of the Agreement is held to be invalid or unenforceable in whole or in part under any enactment or rule of law such term or provision (or part) shall to that extent be deemed not to form part of the Agreement but the validity and enforceability of the remainder of the Agreement shall not be affected.

## 20. ANTI-CORRUPTION

20.1 Comply Direct is and will remain in compliance with the laws of United Kingdom applicable to the services it will perform under this Agreement.

20.2 Comply Direct will not, and nor will any of its officers, employees, shareholders, representatives or agents, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of these terms and conditions which

- (i) would violate any anti-corruption laws or regulations applicable to Comply Direct
- (ii) is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept,
- (iii) is made to or for a Public Official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business or
- (iv) which a reasonable person would otherwise consider to be unethical, illegal or improper.

20.3 For the purposes of this Agreement, "Public Official" includes, without limitation, any person holding or acting on behalf of a person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a state owned or public enterprise, a public international organisation, any federal or regional government department or agency, any political party, any candidate for political office or a relative or associate of any such person. 20.4 To the best of its knowledge and belief, Comply Direct

- (i) has not at any time been found by a court in any jurisdiction to have engaged in any Corrupt Act (or similar conduct),
- (ii) has not at any time admitted to having engaged in any Corrupt Act (or similar conduct), or
- (iii) has not at any time been investigated or been suspected in any jurisdiction of having engaged in any Corrupt Act (or similar conduct).

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