

## Conditions for the registration of Small Producers via NPWD under The UK WEEE Regulations 2019

### 1. DEFINITIONS

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

In these Conditions, the following definitions apply:

“Appropriate person” – Under the WEEE Regulations (18 (2)), an ‘appropriate person’ is defined as;

For companies registered in the UK, a formally appointed director or the company secretary

For partnerships, a partner

For sole traders, the individual

For a business which is not registered in the UK, the person who has control or management of the business

“B2B” – means EEE that was or intended for use by users other than private households. Has the same meaning as in the Regulations.

“B2C” – means WEEE which comes from private households and from commercial, industrial, institutional and other sources which, because of its nature and quantity, is similar to that from private households. Has the same meaning as in the Regulations.

“AATF” – means an approved authorised treatment facility;

“ATF” – means an authorised treatment facility;

“Authorised Treatment Facility” – means any facility operated by an establishment or undertaking carrying out treatment and which is licensed or otherwise permitted under or by virtue of any legislation made in the United Kingdom, or in any part of the United Kingdom, which implements Article 8 of the Directive;

“Agency” – means the relevant environment Agency in England, Wales, Scotland and Northern Ireland;

“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 WEEE data form, application form and agreement and payment of the annual fee;

“Code of Practice” – means the code of practice issued by the Secretary of State under regulation

“Commencement Date”- has the meaning set out in clause 2.2;

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

“Compliance Period” – means (a) the first compliance period; or (b) any year following the first compliance period;

“Comply Direct” – the Operator whose address is based at The Old Saw Mill, The Water Park, Broughton Hall, Skipton, North Yorkshire BD23 3AE;

“Conditions” – these terms and conditions as amended from time to time;

“Contract”- the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions;

“Customer”- the person or firm who receives Services from the Supplier;

“Designated Collection Facility” – means any establishment or undertaking carrying out collection operations and which is approved by the Secretary of State under regulation 70;

“Display equipment” means –

(a) personal computer screens that fall within category 3 of Schedule 1 of the Regulations, and

(b) television sets that fall within category 4 of Schedule 1 of the Regulations;

“EEE” – means electrical and electronic equipment;

“EEE Producer Registration Number” – means the registration number issued to a producer by the appropriate authority under regulation 26;

“Electrical and Electronic Equipment” – means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields falling under the categories set out in Schedule 1 to the Regulations and designed for use with a voltage rating not exceeding 1,000 volts for alternating current and 1,500 volts for direct current;

“Environment Agency” - means the body established under section 1(1) of the Environment Act 1995(10);

“Fees” – any fee or other charge or levy under the Conditions as set out in clause 9.1;

“First Compliance Period” – means the period commencing on 1 July 2007 and ending with 31 December 2007;

“In writing” – In ‘writing’ means that an ‘appropriate person’ puts pen to paper with a hard copy signature.

“Large producer” - an EEE producer placing over 5 tonnes of EEE on the market per year;

“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 1 till December 31 of each year except for the First Compliance Period;

“Obligations” – means the proposed recovery and recycling obligations as 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;

“Placing on the Market” - means the first making available of a product on the market within the territory of a Member State on a professional basis;

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

“Producer” – means any natural or legal person who, irrespective of the selling technique used, including by means of distance communication in accordance with Directive 97/7/EC(18) as amended by Directive 2002/65/EC(e) on the protection of consumers in respect of distance contracts—

- (a) is established in a Member State and manufactures EEE manufactures under his own name or trademark, or has EEE designed or manufactured and markets it under his own name or trademark within the territory of that Member State;
- (b) is established in a Member State and resells within the territory of that Member State, under his own name or trademark, equipment produced by other suppliers, a reseller not being regarded as the “producer” if the brand of the producer appears on the equipment, as provided for in sub-paragraph
- (c) is established in a Member State and places on the market of that Member State, on a professional basis, EEE from a third country or from another Member State; or
- (d) sells EEE by means of distance communication directly to private households or to users other than private households in a Member State, and is established in another Member State or in a third country;

“Recovery” – means any of the applicable operations provided for in Annex IIB to Directive 2008/98/EC, and “Recover”, “recovered” and “recovery operation” shall be construed accordingly;

“Recycling” – means the reprocessing in a production process of the waste materials for the original purpose or for other purposes, but excluding energy recovery which means the use of combustible waste as a means of generating energy through direct incineration with or without other waste but with recovery of the heat, and “recycled” and “recycling operation” shall be construed accordingly;

“Reuse” – means any operation by which WEEE or components thereof are used for the same purpose for which they were conceived, including the continued use of the equipment or components thereof which are returned to collection points, distributors, recyclers or manufacturers, and “reused” shall be construed accordingly;

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

“Regulations” – The Waste Electrical and Electronic Equipment Regulations 2013 or any other UK regulations whose purpose is the implementation of the Directive 2012/19/EU of the European Parliament and the Council on waste electrical and electronic equipment;

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

“Services” - the services supplied by the Supplier to the Customer as set out within these Conditions and as set out in clause 11;

“Small producer” - means a person falling within the definition of Producer given above and who places less than 5 tonnes of EEE onto the market in a compliance period;

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

“Supplier” - Comply Direct, registered in England and Wales with company number 05695937 of registered address Chandler House, 7 Ferry Road Office Park, Riversway, Preston, Lancashire. PR2 2YH;

“Turnover” – the turnover of the Member originating in the United Kingdom covering the latest accounting period ending (last audited accounts) before the commencement of the Agreement

“Waste Electrical and Electronic Equipment” – means electrical or electronic equipment which is waste within the meaning of Article 3 of Directive 2008/98/EC, including all components, subassemblies and consumables which are part of the product at the time of discarding;

“WEEE” – means Waste Electrical and Electronic Equipment;

“WEEE from private households” – means WEEE which comes from private households and from commercial, industrial, institutional and other sources which, because of its nature and quantity, is similar to that from private households. Has the same meaning as in the Regulations.

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“WEEE from non households” – means EEE that was or intended for use by users other than private households. Has the same meaning as in the Regulations.

## 2. BASIS OF CONTRACT

- 2.1 A Purchase Order, Email, Fax or Letter from the Customer stating a requirement for the Supplier to register a company as a Small Producer with the Environment Agency for a given compliance year constitutes an offer by the Customer to receive the Services in accordance with these Conditions.
- 2.2 The offer set out in clause 2.1, shall only be deemed to be accepted when the Supplier issues a written acknowledgement by return email, at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 The Contract constitutes the entire agreement between the parties and supersedes any previous arrangement, understanding or agreement between the Customer and the Supplier relating to the provision of the Services. The Customer acknowledges that it has not relied on any statement, promise, warranty or representation (whether made negligently or innocently) made or given by or on behalf of the Supplier which is not expressly set out in the Contract. The Customer agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in the Contract.
- 2.4 Any descriptive matter or advertising issued by the Supplier, and any descriptions contained in the Supplier’s advertising or marketing material, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force; unless expressly set out in the Services.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 3. SUPPLY OF SERVICES

- 3.1 Subject to clauses 7 and 8.1; the Supplier shall from the Commencement Date supply the Services to the Customer in accordance with the Conditions.
- 3.2 The Supplier shall use reasonable endeavors to meet any performance dates provided by the Supplier from time to time; provided always any such dates shall be estimates only and time shall not be of the essence for performance of the Services or any part thereof by the Supplier.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## 4. CUSTOMER’S OBLIGATIONS

- 4.1 The Customer shall:
  - 4.1.1 ensure that any information, data or documents provided by the Customer to the Supplier, from time to time, are complete, up to date and accurate;
  - 4.1.2 co-operate with the Supplier in all matters relating to the Services;
  - 4.1.3 on demand provide the Supplier with such information, data or documents as the Supplier may require from time to time in order to supply the Services;
  - 4.1.4 provide such assistance as the Supplier may reasonably require from time to time in relation to the Services;
  - 4.1.5 immediately inform the Supplier if there is any change in the Customer’s circumstances and/or business, which may affect the provision of the Services;
  - 4.1.6 comply with the provisions of the Data Protection Act 1998, the Bribery Act 2010 and any other applicable legislation.
- 4.2 If the Supplier’s performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer in connection with, or related to, the Services or failure by the Customer to perform any relevant obligation (Customer Default):
  - 4.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier’s performance of any of its obligations;

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- 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in these Conditions; and
- 4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 4.3 The Customer warrants and represents that all information, data and documents provided by it to the Supplier from time to time are complete, up to date and accurate.

## 5. CONFIDENTIALITY

- 5.1 The Supplier will hold all confidential documents and confidential information received from the Customer such as any business, technical, sales data, product, pricing or other confidential information received in connection with the performance of the Agreement in strict confidence;
- 5.2 Such documents and information will not be disclosed by the Supplier to any third party except as required in the performance of the Services and 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;
- 5.3 This clause 5 shall survive termination of the Contract, provided that the obligations in clause 5.1 shall not apply in the event that any such information becomes publically known.
- 5.4 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.

## 6. LIMITATION OF LIABILITY

- 6.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
  - 6.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 6.1.2 fraud or fraudulent misrepresentation;
  - 6.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
  - 6.1.4 any other liability which it is illegal or unlawful for the Supplier to limit or exclude liability for.
- 6.2 Without prejudice to clause:
  - 6.2.1 the Supplier shall not under any circumstances whatsoever, be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
    - 6.2.2 loss of profit;
    - 6.2.3 loss of goodwill;
    - 6.2.4 loss of business;
    - 6.2.5 loss of anticipated saving;
    - 6.2.6 special, indirect, punitive or consequential damage; suffered by the Customer arising under or in connection with the Contract.
- 6.3 Without prejudice to clauses 6.1 and 6.2, the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the aggregate commission received by the Supplier from a utility provider in connection with the Services provided to the Customer.
- 6.4 Except as set out in these Conditions, all warranties, Conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.5 This clause 6 shall survive termination of the Contract (for whatever reason).

## 7. TERMINATION

- 7.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 7.1.1 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within

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- the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 7.1.2 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - 7.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 7.1.4 the other party is the subject of a bankruptcy petition or order;
  - 7.1.5 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - 7.1.6 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 7.2 The Supplier may promptly terminate the provision of the Services at any time by providing written notice to the Customer.

## 8. GENERAL

- 8.1 Force majeure:
- 8.1.1 for the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of any current or potential utility provider (whether engaged by the Customer, Supplier or not);
  - 8.1.2 the Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event;
  - 8.1.3 if the Force Majeure Event prevents the Supplier from providing any of the Services for more than 30 days, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 8.2 Assignment and subcontracting:
- 8.2.1 the Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent;
  - 8.2.2 the Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 8.3 Waiver:
- 8.3.1 a waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy;
  - 8.3.2 unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 8.4 Severance:
- 8.4.1 if a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected;
  - 8.4.2 if any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 8.5 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 8.6 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 8.7 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms

- and Conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.
- 8.8 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

## 9. FEES

- 9.1 Fees to be paid also include the latest Agency Fee payable to the appropriate Environment Agency per Small Producer for registration for each Compliance Period as set out in the regulations and any other Fees charged by the Agency in respect of the members' late registration or resubmission of data. The Customer shall pay the Supplier on payment terms of 30 days from the end of month of invoice.
- 9.2 The Supplier's fees for the provision of this Service per compliance period are communicated upon registration and customers will be kept informed of any fee increases. The Customer shall pay the Supplier on payment terms of 30 days from the end of month of invoice.
- 9.3 Fees should be paid to ensure registration regulatory deadlines are met.
- 9.4 If sums payable by the customer to the supplier are late on multiple occasions and a debt recovery service is instructed by the supplier, the customer will be liable for the additional fees incurred. The supplier will make reasonable attempts to resolve outstanding payments directly and will only consider debt recovery if the customer is unresponsive.

## 10. NOTICES

- 10.1 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.
- 10.2 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.

## 11. SERVICES

- 11.1 The Supplier shall provide an administration Service for Small Producers to register them with the appropriate authority (Agency) via the National Packaging Waste Database (NPWD) for a given compliance year. This Service is being provided given there is no requirement for a Small Producer to be a member of a compliance scheme for the year in which a Producer meets the definition of a Small Producer.
- 11.2 The deadline for the provision of this Service by the Supplier is the 31st January of for the 2014 compliance year and then as per latest version of The UK WEEE regulations each year after.
- 11.3 The Customer is required to provide the Supplier of this Service data as described in Regulation 18(1)d by no later than the 21 January of that year and of every subsequent year for which they register as a Small Producer.
- 11.4 This Service provision and these Conditions do not constitute membership of the Comply Direct WEEE Compliance Scheme and it will remain the legal duty of the Small Producer to meet the requirements for Small Producer registration and reporting.
- 11.5 The Supplier as part of the provision of this Service in addition to registering the Customer with the Agency for a given compliance year will also provide the Customer with legislative updates throughout the year of registration and also provide an online portal for data submission by the Customer to the Supplier.
- 11.6 Small Producers supplying non household EEE must ensure they meet the financial obligations set out in the UK WEEE Regulations 2013 for the collection and treatment of WEEE and may choose to fulfil those obligations through services provided by a WEEE Compliance Scheme such as Comply Direct.
- 11.7 A Small Producer must join a PCS such as Comply Direct within 28 days of placing more than 5 tonnes of EEE on the market in any compliance period.

## 12. GOVERNING LAW

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- 12.1 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.

### 13. ANTI-CORRUPTION

- 13.1 Comply Direct is and will remain in compliance with the laws of United Kingdom applicable to the services it will perform under this Agreement.
- 13.2 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.
- 13.3 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.
- 13.4 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).