

## PRODUCER BATTERIES SCHEME MEMBERSHIP (TERMS & CONDITIONS)

Comply Direct Ltd has partnered with BatteryBack to meet the batteries compliance obligations of UK obligated batteries producers.

By completing the Comply Direct online batteries membership form the Member, as detailed herein, is accepting and will be bound by these terms and conditions. The terms and conditions may be updated.

It is within Comply Direct and BatteryBack's sole discretion to accept or deny a producer as a Member, confirmation of acceptance is upon the sending of an invoice for participation in the BatteryBack scheme to a potential Member by BatteryBack and upon all required fees having been paid and initial battery data having been supplied.

### 1. COMPLY DIRECT LTD AND BATTERYBACK

Comply Direct Ltd has partnered with BatteryBack to meet the batteries compliance obligations of obligated batteries producers. BatteryBack is a producer compliance scheme as defined in the Waste Batteries and Accumulators Regulations 2009. Comply Direct is not a registered batteries compliance scheme in the UK. BatteryBack is operated by Wastecare Compliance PLC (Company Registration Number: 06043169, Registered Address: Richmond House, Selby Road, Garforth, Leeds LS25 1NB Telephone Number: 0844 8005671). BatteryBack exists to enable producers of Batteries and Accumulators to meet their obligations under the Regulations. BatteryBack has no convictions as listed in Schedule 3 Part 1 (7) of the Regulations.

### 2. MEMBERSHIP

- 2.1 The relationship between BatteryBack and Members is a contractual one based on these Scheme Rules and the online batteries membership application form of Comply Direct Ltd. Membership of BatteryBack (via Comply Direct) is to be authorised ("signed") by an appropriate signatory of the Member (as defined in Regulation 11(3) and Regulation 5 of the Regulations). The applicant is not deemed to be a member for any given compliance year until the online application form has been completed accepting the terms and conditions and the annual membership and agency fees invoice have been paid in full.
- 2.2 Membership is open to all companies that place more than 1 tonne of portable batteries onto the UK market to which the Regulations apply. There is no minimum or maximum number of members.
- 2.3 Membership shall commence from the date the membership invoice has been paid in full, and shall continue for a minimum of one compliance period (or the remainder of the current compliance period if membership commenced part way through a compliance period). This shall continue until and unless terminated by any of the following means:
  - 2.3.1 By BatteryBack or Comply Direct notifying the Member in writing that termination shall be on a specified date, not earlier than the end of the current compliance period, following a breach by the Member of any of its obligations under this Agreement, if such a breach has not been remedied to the satisfaction of BatteryBack and Comply Direct within 30 days of such a breach being notified to the Member in writing.
  - 2.3.2 By BatteryBack or Comply Direct giving at least 30 days notice prior to the 15th October in any given compliance period, in writing to the member.
  - 2.3.3 By the Member giving 6 months notice prior to the compliance period end, in writing to BatteryBack or Comply Direct.

### 3. MEMBERSHIP FEES

- 3.1 Membership fees are in two parts, an annual membership subscription and the Environment Agency Fee. In addition, charges based on the amount of portable batteries placed onto the UK market by a member are made; these are separately identified on any invoices. Comply Direct shall give Members 30 days' notice in writing of any change in its fee structure. Fees are available in writing upon request.
- 3.2 Charges are based on the current Regulations and associated guidance and expected recycling rates for the compliance period. Charges may be subject to change if the Regulations, guidance or interpretation are amended or the cost of portable battery evidence changes significantly.
- 3.3 Membership fees are reviewed annually and are based on the costs of administering and maintaining the Battery Compliance Scheme, and, in order to reflect the potential obligation arising, on the size of the producer in terms of the amount of portable batteries placed on the market.
- 3.4 Payment of fees and charges:
  - 3.4.1 In the case of collection and treatment fees, these will be invoiced quarterly in advance by Comply Direct and are due to be paid in full within 30 days from the end of the month of invoice.
  - 3.4.2 In the case of Membership fees, these will be invoiced by Comply Direct upon joining the Battery Compliance Scheme for the first time and annually thereafter in the August prior to the commencement of the forthcoming compliance period.
  - 3.4.3 In the case of Environment Agency fees, these will be invoiced by Comply Direct upon joining the Battery Compliance Scheme for the first time and annually thereafter in the month of August. Comply Direct will pass the Environment Agency Fee and a portion of the Membership Fee to BatteryBack who will pass the Environment Agency Monitoring fee to the appropriate Agency authority.
- 3.5 The Member will pay all monies to Comply Direct due under this Agreement in full, without deduction.
- 3.6 Should any monies payable by the Member to Comply Direct be outstanding for more than 30 days, BatteryBack reserve the right to terminate this agreement as indicated in section 2.3.1 above. BatteryBack reserves the right to take legal action and the full enforcement procedures are detailed in Section 7.
- 3.7 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.

### 4. MEMBERSHIP RULES

- 4.1 Via Comply Direct the Member shall provide BatteryBack with the information required under Regulation 11 of the Regulations in connection with its membership of BatteryBack Battery Compliance Scheme (BCS). This information is supplied by the Member fully completing the Comply Direct application form and quarterly data forms. This information shall be stated to be accurate and signed by an appropriate person annually from the member as defined in Regulation 11(3), Regulation 5 and the Comply Direct online Membership Form.
- 4.2 Via Comply Direct, the Member shall notify BatteryBack forthwith, and in any case within 14 days, of any material changes in the information previously supplied. This information can be submitted via the online members area of the Comply Direct website.
- 4.3 The Member shall provide BatteryBack on request, with any other information relating to their membership of BatteryBack BCS and their obligations under the Regulations.
- 4.4 This information provided by the Member shall be, to the best of the Member's knowledge, true and accurate having regard to the nature of the request.
- 4.5 Comply Direct and BatteryBack shall keep copies of all documentation from Members as required under the terms of the Regulations

- 4.6 The Member agrees that BatteryBack shall be entitled to provide such information to the Environment Agency or any other such body to which BatteryBack would be obligated.
- 4.7 A producer may not be a member of more than one EA approved battery compliance scheme in respect of a compliance period unless the producer was a member of a scheme whose approval was withdrawn under Regulation 54 during that compliance period. For the avoidance of doubt, Comply Direct is not an EA approved battery compliance scheme. BatteryBack is an EA approved battery compliance scheme.
- 4.8 Members should submit to Comply Direct details of quarterly UK placed on market data by weight and category of portable battery by the 15th of the month following the end of the quarter to enable BatteryBack to comply with the requirements of the Regulations for submission of total UK placed on market data of battery scheme members. This should be done via the online member area of the Comply Direct website.
- 4.9 Members should keep records of all information submitted for a minimum of 4 years, as required by the Regulations.
- 4.10 Members must declare their battery producer registration number to any person to whom they intend to sell, sells or otherwise supplies batteries in the United Kingdom as required under Regulation 30 of the Regulations.
- 4.11 Members who wish to manage some or all of their obligations for collection, treatment and recycling of batteries should indicate upon membership application the amounts for which they will take responsibility and a prior agreement statement will need to be provided and signed by both the member and BatteryBack
- 4.12 All evidence notes obtained by members managing their own obligations should be forwarded to Comply Direct who will provide these to BatteryBack for onward transmission as required by the Regulations.

## 5. BATTERY RECYCLING SERVICES DISCLAIMER

- 5.0 Participation in the BatteryBack battery recycling service is voluntary and you agree that your participation in the scheme is on a voluntary basis and is at your sole option, discretion and risk. BatteryBack does not give any endorsement or make any warranties of any kind, whether express or implied, in relation to the BatteryBack battery recycling service and all warranties as to the quality of the service are excluded to the fullest extent permitted by law.

It is your responsibility to ensure that you comply with the instructions regarding the storage and recycling of batteries which are available on the BatteryBack website, or available on request. You agree that you will be responsible for any losses you or any third party may suffer due to a failure by you to comply with the instructions or otherwise in connection with the services. For the avoidance of doubt, we will not be responsible to you or any third party for any business loss (including loss of profits, revenue, contracts, anticipated savings, data, goodwill or wasted expenditure) or any indirect or consequential loss incurred or suffered by you arising directly or indirectly out of your use of the BatteryBack battery recycling services.

Nothing in this disclaimer shall exclude or limit BatteryBack's liability for death or personal injury resulting from BatteryBack's negligence or that of BatteryBack's servants, agents or employees or any liability for fraud or for any other liability that cannot be excluded or limited by law.

## 6. BATTERY RECYCLING CONTAINERS

- 6.0 Battery recycling containers provide by BatteryBack remain the property of BatteryBack. The containers supplied by BatteryBack are only to be used for the recycling of portable batteries as defined in the Regulations.

## 7. CONFIDENTIALITY

- 7.0 BatteryBack and Comply Direct will hold all documents and information received by BatteryBack in connection with the performance of the Agreement in strict confidence. Such documents and information will not be disclosed by BatteryBack or Comply Direct, its staff or agents to any third party without the permission of the Member unless a duty to disclose is imposed under statute or by Court order.
- 7.1 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.

## 8. OBLIGATIONS

- 8.1 Members:
- 8.1.1 The Member agrees that it will carry out its obligations under this Agreement in compliance with the requirements of the Regulations.
- 8.1.2 The Member agrees that it will allow BatteryBack access to premises and provide relevant information required to undertake a compliance audit from time to time. At least 14 days notice shall be provided to the Member of any such audit.
- 8.2 BatteryBack:
- 8.2.1 BatteryBack shall carry out its obligations under this Agreement in compliance with the Regulations, furthermore;
- 8.2.2 BatteryBack has the right to publish the names of the membership of BatteryBack in its annual report or other literature, unless expressly requested by the member to the contrary.

## 9. ENFORCEMENT PROCEDURES

- 9.0 In the event of a breach of member rules or obligations the following enforcement procedures may be invoked:

Telephone or e-mail contact will be made with the primary contact of the Member organisation stating exactly what the breach has been and the regulatory impact on the Member and the Scheme and asking for the breach to be addressed.

If after 28 days no satisfactory resolution of the breach has been achieved, a formal written request are issued to the Member stating exactly what the breach has been and the regulatory impact on the Member and the Scheme and asking for the breach to be addressed.

If the breach has not been addressed by the Member within 14 days of the issuing of the letter, a board member of BatteryBack Plc would, by registered letter, request a meeting with the Member who signed the Membership application form.

If there is no response to the letter, or a timely meeting is not agreed to, or a satisfactory resolution of the breach is not achieved following a meeting, BatteryBack reserves the right to take legal action and to inform the Environment Agency of the situation.

## 10. DISPUTE & ARBITRATION PROCEDURES

### Dispute Procedure

The following is the procedure to be followed in the event of dispute (other than a breach of rules or obligations) between members or between members and the operator of the BatteryBack scheme:

- 10.1 The party raising the dispute must set out in writing the characteristics or other circumstances (the 'statement of the dispute'), which lead to the dispute.

- 10.2 The party raising the dispute must send a copy of the statement of the dispute to the other party in the dispute and invite the other party to attend a meeting to discuss the matter.
- 10.3 The meeting must take place before any action is taken and both parties must take all reasonable steps to attend the meeting. In the case of a members' dispute, a representative of BatteryBack should attend the meeting. In the case of a dispute between the member and the scheme, either party can nominate another scheme member to attend the meeting.
- 10.4 The meeting must not take place unless –
- (a) the party raising the dispute has informed the other party to the dispute what the basis was for including in the statement under paragraph (8.1) the ground or grounds given in it, and
  - (b) the other party to the dispute has had a reasonable opportunity to consider his response to that information.
- 10.5 The meeting decisions should be minuted by the 'independent' meeting attendee.

#### **Arbitration Procedure**

- 10.6 If either party to the dispute is not satisfied by the outcome of the meeting, then the dispute shall be referred to arbitration.
- 10.7 In the event of a reference to arbitration, the parties to the dispute shall agree an arbitrator or if not agreed within 7 days an arbitrator shall be nominated at the request of either party by the Chartered Institute of Arbitrators.
- 10.8 The parties to the dispute agree that the decision of the arbitrator shall be final.
- 10.9 BatteryBack and the members agree that the costs of the arbitrator shall be paid as directed by the arbitrator. The arbitrator's decisions will be further subject to Late Payment Legislation.

### **11. EVIDENCE NOTE DISTRIBUTION**

- 11.0 In the event that the approval of BatteryBack's Battery Producer Compliance Scheme is withdrawn by the Environment Agency, previously collected Evidence Notes owned by BatteryBack will be allocated to each scheme member in proportion to the quantity of batteries placed on the market by the member, relative to the other members, in the compliance period up to the point of such withdrawal.

### **12. COMMUNICATIONS**

- 12.0 Important information concerning the scheme and its operation is disseminated to members via Comply Direct via e-mail to the nominated contact, unless the member prefers other forms of contact. All official notices will be sent for the attention of the Company Secretary at the registered office of the member. Information will also be disseminated via the Comply Direct website and via regular e-bulletin newsletters.

### **13. INDEMNITY**

- 13.1 The Member hereby agrees to indemnify Comply Direct and BatteryBack from and against all demands, claims, liabilities, losses, damages, costs and expenses whatsoever (including all legal and other costs and expenses) and from and against all actions and proceedings which may be commenced taken or made against Comply Direct or BatteryBack arising in relation to or in connection with:-
- 13.1.1 any material failure by the Member duly and punctually to provide any information which the Member is obliged to provide under the Conditions

- 13.1.2 any of the information provided by the Member under the Conditions being false, inaccurate, misleading or incomplete in any material respect
- 13.2 BatteryBack or Comply Direct shall not be liable to the Member by reason of any representation or any implied warranty condition, or other term, or under any duty at common law, or under the express terms of the Agreement for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever) and whether caused by the negligence of BatteryBack its employees or agents or otherwise) which arise directly or indirectly out of or in connection with the performance of the Agreement.

## 14. ANTI-CORRUPTION

- 14.1 Comply Direct is and will remain in compliance with the laws of United Kingdom applicable to the services it will perform under this Agreement.
- 14.2 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.
- 14.3 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.
- 14.4 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).

## 15. DEFINITIONS

"application form" – means the online application form completed via the Comply Direct website.

"appropriate person" has the meaning given in regulation 5;

"batteries evidence note" or "evidence note" means an evidence note issued by –

an approved battery treatment operator, as evidence of the acceptance of the tonnage of waste portable batteries specified in the note for treatment and recycling, or

an approved battery exporter, as evidence of the acceptance of the tonnage of waste portable batteries specified in the note for treatment and recycling outside the United Kingdom;

"battery" means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or consisting of one or more secondary battery cells (rechargeable; an accumulator);

"batteryback" – The battery compliance scheme operated by BatteryBack Plc.

"battery compliance scheme" or "scheme" means a battery compliance scheme that has been approved under regulation 49;

"battery producer registration number" means the registration number allocated to a producer by the appropriate authority under regulation 28 or by the Secretary of State under regulation 45;

"category of battery" or "battery" means any of the following types of batteries –

automotive batteries;

industrial batteries;

portable batteries;

"compliance period" means –

the year 2010 ("the first compliance period"); or

any year following the first compliance period;

“company registered in the United Kingdom” means a company registered in any part of the United Kingdom under – the Companies Act 2006;

- the provisions of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 that remain in force; and any former enactment relating to companies;
- but a company incorporated outside the United Kingdom which has registered particulars under those Acts is not registered in the United Kingdom for the purposes of these Regulations;

“environment agency” – The Environment Agency of England and Wales

“environment agency fee” – the annual producer charge shown in Regulation 55(2)(b)(ii).

“evidence note” – a note in relation to the treatment and recycling of waste portable batteries in a format approved by the Secretary of State.

“portable battery” means any battery which –

- is sealed,
- can be hand-carried by an average natural person without difficulty, and
- is neither an automotive battery nor an industrial battery, and
- weighs less than 4kg;

“producer” means any person in the United Kingdom that, irrespective of the selling technique used, including by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council on the protection of consumers in respect of distance contracts, places batteries, including those incorporated into appliances or vehicles, on the market for the first time in the United Kingdom on a professional basis;

“proposed scheme” means a proposed battery compliance scheme that is the subject of an application for approval made under regulation 47;

“quarter” or “quarter period” means a period –

- commencing on 1 January and ending on 31 March;
- commencing on 1 April and ending on 30 June;
- commencing on 1 July and ending on 30 September; or
- commencing on 1 October and ending on 31 December;

“regulations” – mean the Waste Batteries and Accumulators Regulations 2009, and any subsequent amendments.

“relevant compliance period” means a compliance period in respect of which a person has any obligation under regulation 7(2), 19(1), 35(2) or 36(2);

“scheme member” or “member” means, in relation to BatteryBack battery compliance scheme, a producer who is a member of that scheme;

“scheme operator” means the operator of a battery compliance scheme;

“writing” includes text that is –

- transmitted by electronic means,
- received in legible form, and
- capable of being used for subsequent reference; and

“year” means a calendar year commencing on 1 January