

Wastecare Battery Producer Compliance Scheme

Terms and Conditions

Updated 11/10/2023

1. Wastecare Compliance

1.1 Wastecare Compliance operates a Battery Producer Compliance Scheme as defined in the Waste Batteries and Accumulators Regulations 2009. Scheme approval reference BCS2010864/E.

1.2 Wastecare Compliance is a wholly owned subsidiary of Wastecare Group Limited, Company Registration Number: 03280384; Registered Office: Argent House, Tyler Close, Normanton, United Kingdom, WF6 1RL.

1.3 Wastecare Compliance exists to enable producers of Batteries and Accumulators to meet their obligations under the Waste Batteries and Accumulators Regulations. Wastecare Compliance is operated by Wastecare Compliance Plc who has no convictions as listed in Schedule 3 Part 1 (7) of the Regulations.

2. Membership

2.1 The relationship between Wastecare Compliance and the Member is a contractual one based on this Agreement and the Membership application form which is 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 until the application form has been approved and accepted by Wastecare Compliance.

2.2 The Scheme 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. Wastecare Compliance may also register small producers (less than 1 tonne of batteries per annum placed on the UK market) at Wastecare Compliance's discretion.

2.3 Membership shall be effective as of the date of the signature by the parties of the Agreement 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). Membership shall continue for successive compliance periods unless terminated by any of the following means:

2.3.1 By the Member giving notice, in writing, by 31st of August, to Wastecare Compliance to leave Wastecare Compliance for the next compliance period. Note that a producer can only be a Member of one Scheme in any compliance period.

2.3.2 By Wastecare Compliance notifying the Member in writing that termination shall be on a specified date, 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 Wastecare Compliance within 30 days of such a breach being notified to the Member in writing.

2.3.3 By Wastecare Compliance giving notice prior to the 15th September in any given compliance period, in writing to the Member.

3. Membership Fees

3.1 Membership fees are in three parts which are separately identified on any invoices:

- a) Environment Agency registration fees;
- b) Scheme Membership fees;
- c) Obligation fees.

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 Scheme membership fees 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 quantity of portable batteries placed on the market.

3.4 Payment of fees and charges:

3.4.1 In the case of Environment Agency registration fees, these will be invoiced upon joining the Battery Compliance Scheme for the first time and annually thereafter prior to the compliance period of membership. Fees are due to be paid in full within 30 days of the date of the invoice.

3.4.2 In the case of Scheme membership fees, these will be invoiced upon joining the Battery Compliance Scheme for the first time and annually thereafter prior to the compliance period of membership. Fees are due to be paid in full within 30 days of the date of the invoice.

3.4.3 In the case of Obligation fees, these will be invoiced on a quarterly basis using the Member actual placed on the market data reported in 2022, 2023 and the 2024 placed on the market data reported by the Member quarterly to Wastecare Compliance (as defined in clause 4.8). These are due to be paid in full within 30 days of the date of the invoice.

3.4.4 In the case of Obligation fees invoiced quarterly, these will be invoiced in four (4) instalments invoiced by 29th of February of the current period of membership for the first instalment, by 31st of May of the current period of membership for the second instalment, by 31st of August of the current period of membership for the third instalment and by 30th of November of the current period of membership for the fourth instalment.

3.4.5 Where the Member has a small obligation, Wastecare Compliance reserves the right to charge all of the charges referred to in 3.4.1 to 3.4.3 in one invoice prior to the compliance period of membership.

3.4.6 When all the relevant data has been submitted at the compliance year end a reconciliation will take place between the estimated and actual obligation data. An additional invoice or credit note may be issued within 1 year of the compliance year end and the Member has the right to request a copy of this reconciliation.

3.4.7 Wastecare Compliance shall give Members 30 days' notice in writing of any change in its fee structure.

3.4.8 The Member will pay all monies due under this Agreement in full, without deduction.

3.4.9 Should any monies payable by the Member to Wastecare Compliance be outstanding for more than 30 days and if the Member has not paid the outstanding amount within 5 days following receipt by the Member of a written notice of default from Wastecare Compliance in this respect, Wastecare Compliance reserves the right to terminate this Agreement. In such case, Wastecare Compliance reserves the right to take legal action and the full enforcement procedures are detailed in Section 7.

3.4.10 Wastecare Compliance reserves the right to charge the Member for any additional costs of credit control, bank charges and interest charges under the Late Payment of Commercial Debts (Interest) Act 1998 relating to overdue Members payments of any type.

4. Membership Rules

4.1 The Member shall provide Wastecare Compliance with the information required under Regulation 11 of the Regulations in connection with its Membership of the Wastecare Compliance Battery Compliance Scheme. This information is supplied by the Member fully completing the application form and quarterly data submissions. This information shall be stated to be accurate and signed by an appropriate person from the Member as defined in Regulation 11(3), Regulation 5 and the Wastecare Compliance Member Application Form.

4.2 The Member shall notify Wastecare Compliance forthwith, and in any case within 14 days of any material changes in the information previously supplied. This information can be submitted, by e-mail to complianceservices@wastecare.co.uk or by post to the registered address.

4.3 The Member shall provide Wastecare Compliance on request, with any other information relating to their Membership of Wastecare Compliance 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 All data provided to Wastecare Compliance shall be verified, by a Director of the Scheme Member company or by a Partner where the Scheme Member is a Partnership, as being as accurate as reasonably possible.

4.6 Wastecare Compliance shall keep copies of all documentation from Members as required under the terms of the Regulations.

4.7 The Member agrees that Wastecare Compliance shall be entitled to provide such information to the Environment Agency or any other such body to which Wastecare Compliance would be obligated.

4.8 A producer may not be a Member of more than one 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.

4.9 The Member should submit quarterly placed on the market data by weight and category of portable batteries placed onto the UK market by the 15th of the month following the end of the quarter. This enables Wastecare Compliance to comply with the requirements of the Regulations for uploading the data for battery Scheme Members. Data should be submitted utilising the web-based data portal or Wastecare Compliance data forms.

4.10 Wastecare Compliance reserves the right to surcharge the Member if data is submitted after the 15th deadline or resubmitted.

4.11 The Member should keep records of all information submitted to Wastecare Compliance for a minimum of 4 years, as required by the Regulations.

4.12 The Member 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.

4.13 The Member may manage their obligation with prior Agreement from Wastecare Compliance so that Wastecare Compliance can ensure that it generates the correct amount of evidence to fulfil the obligation of its Members.

4.14 Should the Member wish to manage some or all their obligations for collection, treatment and recycling of batteries the Member should indicate the amounts for which they will take responsibility.

4.15 All portable battery evidence notes obtained from a third party by the Member should be forwarded to Wastecare Compliance on a quarterly basis by the 15th of the month following the end of the quarter.

4.16 The Member must inform Wastecare Compliance of any anticipated significant variations in their placed on the market data. Failure to inform Wastecare Compliance of such changes may results in additional costs for battery evidence for the Member.

5. Confidentiality

5.1 Wastecare Compliance will hold all documents and information received by Wastecare Compliance in connection with the performance of this Agreement in strict confidence. Such documents and information will not be disclosed by Wastecare Compliance, 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.

6. Obligations

6.1 Member:

6.1.1 The Member agrees that it will carry out its obligations under this Agreement in compliance with the requirements of the Regulations.

6.1.2 The Member agrees that it will allow Wastecare Compliance access to premises and provide relevant information required to undertake a compliance audit from time to time., provided that Wastecare Compliance informed the Member of the date of the audit at least 30 days beforehand.

6.2 Wastecare Compliance:

6.2.1 Wastecare Compliance will register the Member as a Producer with the Environment Agency.

6.2.2 Wastecare Compliance shall comply with any and all applicable legislation and legal requirements and shall carry out its obligations under this Agreement in compliance with the Regulations.

6.2.3 Wastecare Compliance has the right to publish the names of membership of Wastecare Compliance in its annual report or other literature, unless expressly requested by the Member to the contrary in writing.

7. Enforcement Procedures

7.1 In the event of a breach of Membership rules or obligations the following enforcement procedures may be invoked:

a) Telephone or e-mail contact will be made with the primary contact of 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.

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

c) If the breach has not been addressed by the Member within 14 days of the issuing of the letter, a Board Member of Wastecare Compliance would, by registered letter, request a meeting with the Member who signed the Membership application form.

d) 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, Wastecare Compliance reserves the right to take legal action and to inform the Environment Agency of the situation.

8. 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 Wastecare Compliance:

8.1 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.

8.2 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.

8.3 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 dispute between the parties, a representative of Wastecare Compliance 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.

8.4 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.

8.5 The meeting decisions should be minuted by the 'independent' meeting attendee.

Arbitration Procedure

8.6 If either party to the dispute is not satisfied by the outcome of the meeting, then the dispute shall be referred to arbitration.

8.7 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 in England.

8.8 The parties to the dispute agree that the decision of the arbitrator shall be final.

8.9 Wastecare Compliance and the Member 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.

9. Evidence Note Distribution

9.1 In the event that the approval of Wastecare Compliance's Battery Producer Compliance Scheme is withdrawn by the Environment Agency, previously collected Evidence Notes owned by Wastecare Compliance 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.

10. Communications

10.1 Important information concerning the Scheme and its operation is disseminated to Members 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 Wastecare Compliance website and via regular e-mail newsletters. In addition, a dedicated Member telephone helpline is available.

11. Indemnity and Liability

11.1 The Member hereby agrees to indemnify Wastecare Compliance from and against all demands, claims, liabilities, losses, damages, costs and expenses whatsoever (including all reasonable legal direct costs) and from and against all actions and proceedings which may be commenced, taken or made against Wastecare Compliance arising in relation to:

11.1.1 any material failure by the Member duly and punctually to provide any information which the Member is obliged to provide under this Agreement or

11.1.2 any of the information provided by the Member under this Agreement being false, inaccurate, misleading or incomplete in any material respect.

11.2 Wastecare Compliance hereby agrees to indemnify the Member from and against all demands, claims, liabilities, losses, damages, costs and expenses whatsoever (including all reasonable legal direct costs) and from and against all actions and proceedings which may be commenced taken

or made against the Member arising in relation to any failure by Wastecare Compliance of its obligation in clauses 6.2.1 and 6.2.2 of this Agreement.

11.3 Wastecare Compliance and the Member shall not be liable 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 its employees or agents or otherwise) which arise directly or indirectly out of or in connection with the performance of this Agreement.

12. Term and Termination

12.1 **Term.** The Agreement shall be effective as of the date of the signature by the parties of the Agreement and shall remain in full force subject to clause 2.3.

12.2 **Termination for cause.** Either party may terminate the Agreement with immediate effect, by giving written notice, in the event that the other party is in material breach of the Agreement:

12.2.1 where the breach is incapable of remedy;

12.2.2 where the breach is capable of remedy, but the other party has failed to remedy the breach after having followed the full enforcement procedures in clause 7 or if such other party refuses to follow or partake in (all or part of) these enforcement procedures;

12.2.3 the other party has been affected by a force majeure event for a continuous period of 2 months (or longer).

12.3 **Termination for insolvency.** Either party may terminate the Agreement with immediate effect, by giving written notice, in the event that the other party

12.3.1 has ceased to exist or has been dissolved or an attachment in execution is made on all or an important part of its assets; or

12.3.2 has been declared bankrupt or a petition for bankruptcy has been filed or is expected to be filed, or its business has been discontinued.

12.4 **Additional termination grounds.** The Member may terminate the Agreement with immediate effect, by giving written notice, in the event that:

12.4.1 The Member, at the end of a compliance period placed less than 1 tonne of portable batteries on the UK market; or

12.4.2 without prejudice to its other rights and remedies under this Agreement, Wastecare Compliance may terminate the Agreement in the event of late payment in accordance with clause 3.4.9.

12.5 A party's right of termination under this clause 12 shall be in addition and without prejudice to, and shall not constitute a waiver of, any other right or remedy such party may have by law or under the Agreement.

12.6 In case of termination of the Agreement,

12.6.1 Wastecare Compliance shall without prejudice to clause 5 'Confidentiality', promptly return to the Member all documents and information it received from the Member; and

12.6.2 Wastecare Compliance shall at the request of the Member cooperate in good faith with the Member to arrange for the transitioning by the Member to another battery compliance Scheme and provide the Member with the assistance required to guarantee the continuity of all the Member's obligations under the Regulations provided that the Member shall meet the reasonable costs of such assistance at the current rates of Wastecare Compliance in force at such time.

12.6.3 The Member shall be entitled to *pro rata* repayment of any fees or charges paid in advance by the Member to Wastecare Compliance in the context of the Agreement (including without limitation membership fees), unless the Agreement is lawfully terminated by Wastecare Compliance including on the basis of clauses 12.2.1, 12.2.2 or 12.3 or otherwise.

13. Miscellaneous

13.1 **Severability.** If (part of) a provision of the Agreement is or becomes invalid or unenforceable, it shall be deemed deleted but the remainder of the Agreement shall continue to be effective to the extent that, in view of the Agreement's substance and purpose, such remainder is not inextricably related to and therefore inseverable from the invalid or unenforceable (part of the) provision. The affected (part of such) provision shall be deemed automatically replaced by such valid and enforceable provision(s) which come(s) closest to the original intention of the parties. Nothing in this Agreement shall limit or exclude the liability of either party for fraud.

13.2 **Entire Agreement and variation.** The terms and conditions as set out in this Agreement document together with the Membership application form, contain the entire Agreement of the parties regarding the subject matter hereof and supersede all prior Agreements, understandings or conditions (whether oral or written) regarding such subject matter. Save as provided otherwise in the Agreement, the Agreement may not be changed except by a written instrument signed by both parties. Each party acknowledges that in entering into the Agreement, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall

have no claim for innocent or negligent misrepresentation based on any statement in the Agreement.

13.3 Applicable law. The Agreement shall be governed by and construed in accordance with the laws of England.

13.4 Amicable settlement – jurisdiction and choice of law. The parties shall endeavour to resolve any dispute arising out of or in connection with the Agreement, including disputes with respect to the validity thereof, in an amicable manner and shall seek to resolve any dispute in good faith.

In the event of any dispute between the parties arising out of or in connection with the Agreement or its subject matter, which could not be settled in an amicable manner, shall be finally settled by arbitration in accordance with clause 8. The arbitration shall be conducted in the English language and the place of arbitration shall be London, England, or an alternative location if mutually agreed in writing by the parties. This Agreement shall be subject to English law.

13.5 Assignment. Neither party may assign the Agreement without the prior written consent of the other party such consent not to be unreasonably withheld or delayed.

13.6 Force Majeure. Neither party shall be liable for non-performance or delay in performance caused by a force majeure event. Any occurrence of a force majeure event shall be reported promptly to the other party. If an event of force majeure occurs, the Agreement will be suspended for a period equal to the period during which the force majeure event exist. If a party been affected by a force majeure event for a continuous period of 2 months (or longer), either party may terminate the Agreement in accordance with clause 12.2.3.

13.7 Independence. Nothing in the Agreement shall be deemed to create a partnership, joint venture or agency relationship between the parties, or to authorize either party to create or undertake any liabilities or obligations on behalf of or in the name of the other party, unless if agreed otherwise in this Agreement.

13.8 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.9 Third Party Rights. Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

13.10 Notices. Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be addressed to that party at its registered office or such

other address as that party may have specified to the other party in writing and shall be delivered personally, or sent by pre-paid first-class post or other next working day delivery service or pre-paid air mail, or by commercial courier, or by email. A notice shall be deemed to have been received:

- a) if delivered personally, when left at the relevant address;
- b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
- c) if sent by pre-paid air mail, at 9.00am on the fifth day after posting;
- d) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
- e) if sent by email, one Business Day after transmission.

The provisions of this clause 13.10 shall not apply to the service of any proceedings or other documents in any legal action.

Schedule 1 – Definitions

Affiliate means any entity that directly or indirectly controls, is controlled by, or is under the common control with a party to the Agreement.

Agreement means the contractual relationship between the parties on the basis of the terms and provisions set out in this document and the Membership application form (cf. clause 2.1) In the event of any conflict between the Membership application form and the terms and conditions of this Agreement set out in this document, the terms and conditions of this Agreement shall prevail.

Application form means the application form and any attachments signed by the Member and Wastecare Compliance.

Appropriate person has the meaning set out in the Regulations.

Battery evidence note, portable battery evidence or evidence note mean 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).

Battery compliance Scheme or Scheme means a battery compliance Scheme that has been approved under regulation 49.

Battery obligation means the annual volume of portable battery evidence as calculated in accordance with regulation 8.

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

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.

Compliance period means a calendar year commencing on 1st January and ending on 31st December.

Environment Agency means The Environment Agency of England.

Environment Agency fee means the annual producer charge shown in Regulation 55(2)(b)(ii).

Evidence fee means the cost of procuring battery evidence notes needed to meet a producer obligation.

Evidence note means a note in relation to the treatment and recycling of waste portable batteries in a format approved by the Secretary of State.

Force majeure event means any event beyond the reasonable control of a party, including an act of God, war, riot, public disorder, civil commotion, economic sanctions, governmental decisions or interventions, fire, flood, explosion, pandemic, epidemic, terrorism, labour dispute, strike or lock-out or other forms of industrial action.

Membership means membership of the Wastecare Compliance Battery Compliance Scheme in accordance with this Agreement.

Obligation fee means the obligation of a large producer of portable batteries to finance the net costs arising from the collection, treatment and recycling of its share, calculated in accordance with regulation 8, of all waste portable batteries collected in the United Kingdom.

Portable battery means any battery which is sealed, can be hand-carried by an average natural person without difficulty (i.e. <4Kg), and is neither an automotive battery nor an industrial battery.

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.

Quarter or **quarter period** means a period:

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

Regulations means the Waste Batteries and Accumulators Regulations 2009, including any subordinate legislation made under them or any amendments.

Relevant compliance period means a compliance period in respect of which a Member has any obligation under regulation 7(2), 19(1), 35(2) or 36(2).

Scheme Member or **Member** means, in relation to Wastecare Compliance battery compliance Scheme, a producer who is a Member of that Scheme.

Scheme operator means the operator of a battery producer compliance Scheme.

Term means the term of the Agreement as set forth in clause 12.1.

Wastecare Compliance means, as the context shall require, means the battery compliance Scheme operated by Wastecare Compliance Plc.

Writing means text that is transmitted by electronic means, received in legible form, and capable of being used for subsequent reference.

Year means the period of 12 months dating from the 1st January to the 31st December.