



Co2 Compliance

Packaging Compliance Scheme

Terms & Conditions

Between

Co2Compliance Ltd

&

The Member

**Definitions:**

In these Terms & Conditions ("the Conditions")

**"Adverse Market Conditions"**

Market conditions out with the control of the Scheme Operator where it becomes uneconomic to buy material or PRNs in relation to the Member's recovery and recycling obligations.

**"Agreement"**

The agreement entered into between the Member and Co2 Compliance or Scheme Operator pursuant to Clause 1.1 and subject to these Conditions

**"Agency"**

SEPA

**"Application Form"**

is the provision by the Member of a completed Producer Registration, Member Application packaging data form, application form, and acceptance of the Schemes terms and conditions.

**"Co2 Compliance" or "Scheme Operator"**

Co2 Compliance Ltd whose registered office is at 71 Princes Street, Ardrossan, North Ayrshire, KA23 8DG.

**"Compliance Year"**

1<sup>st</sup> January through to 31<sup>st</sup> December

**"Consumer Information Obligations"**

the consumer information obligations which are placed on a seller under and in terms of the Regulations

**'Directive'**

Council Directive 94/62/EC dated 20<sup>th</sup> December 1994 on Packaging Waste

**"Fee"**

any fee or other charge or levy payable under these Conditions

**"Initial Period"**

In relation to a Three Year Member, the first period of three Compliance Years.

<b>“Member”</b>	A producer (as defined in the Regulations) who is a member of the Scheme pursuant to Clause 1.1 of these Conditions.
<b>‘Members Own Waste’</b>	When a member brings its own waste in the form of PRN’s in to offset its own obligations
<b>“PRNs”</b>	Packaging Waste Recovery Notes or Packaging Export Waste Recovery Notes provided by reprocessors in respect of packaging waste received for recovery or recycling
<b>“Preceding Year”</b>	the calendar year immediately preceding the Compliance Year
<b>“Producer Responsibility Obligations”</b>	the producer responsibility obligations specified in Regulation 4 of the Regulations
<b>“Recovery and Recycling Obligations”</b>	a producer's recovery and recycling obligations (as referred to in the Regulations) included in the Producer Responsibility Obligations
<b>“Regulations”</b>	The Producer Responsibility Obligations (Packaging Waste) Regulations 2007, as may be amended from time to time
<b>“The Scheme”</b>	the Packaging Waste Compliance Scheme (as approved and registered under the Regulations) operated by Co2Compliance Ltd or its successors or assignees from time to time

## **1. Membership of the Scheme**

- 1.1. The producer will become a Member of the Scheme where, having submitted a signed Application Form (which shall incorporate and be subject to these Conditions) to Co2 Compliance Limited, it receives written confirmation that it has been accepted as a Member.
- 1.2. The Member shall comply with its obligations under, and adhere to the requirements of, these Conditions.
- 1.3. The Member will comply with any requirements imposed on it by the Regulations.
- 1.4. Whilst a Member of the Scheme, the Member
  - (a) acknowledges that it is exempt from complying with its producer responsibility obligations (to the extent that they are to be performed under the Scheme and to avoid doubt including the purchase of PRN's); and
  - (b) will not join or become a member of any other scheme under the Regulations."
- 1.5. The Agreement will automatically renew on an annual basis.
- 1.6. Where the Member terminates this Agreement during a compliance period
  - 1.6.1. The Scheme Operator will not be liable to return PRN's already purchased
  - 1.6.2. Where the Scheme Operator has made forward commitments on behalf of the Member, the Scheme Operator reserves the right charge the Member for this commitment.

## **2. The Schemes Obligations**

- 2.1. The Scheme Operator will use its reasonable endeavours:-
  - 2.1.1. to meet the Member's Recovery and Recycling Obligations under the Regulations; and
  - 2.1.2. To undertake (where appropriate) the Member's Consumer Information Obligations.
- 2.2. The obligations contained in 2.1.1 are conditional on the Member meeting its obligations under these Conditions and the Regulations, and there being no Adverse Market Conditions.
- 2.3. On receipt of the Application form, the Scheme Operator will take reasonable steps to check the data is as accurate as reasonably possible.
- 2.4. Should the Scheme lose its Approval (which, for the avoidance of doubt, will not include any suspension notice issued against it), the Scheme Operator's and Member's obligations under 2.1 will be cancelled with immediate effect.

## **3. Members Obligations**

- 3.1. The Member shall annually submit a completed Application Form prior to the 20<sup>th</sup> of February each year.
  - 3.1.1. Where a Member registers and joins the Scheme following the 1<sup>st</sup> of February, the Member shall submit their data as soon as is reasonably practical or within 15 working days of joining the Scheme.

- 3.1.2. Where the Member has NOT submitted a completed Application Form the Scheme Operator will notify the Member and give 20 days notice prior to cancelling this Agreement.
- 3.1.3. The Member shall ensure the Application Form is signed by a director or authorised signatory of the Member in advance of submitting it to the Scheme Operator.
- 3.1.4. The Member agrees to provide accurate details of any change to information previously provided to the Scheme Operator within 30 days of the change occurring.
- 3.1.5. The Member commits to providing supporting information on which the Application Form has been based within 5 days of the Scheme Operator or the Agency requesting this information.
- 3.1.6. The Member shall ensure that it retains all information submitted to the Scheme Operator for a period of 5 years.
- 3.2. Where practical and economic do so the Member should make reasonable steps to implement a Waste Management Policy which looks to separate their Own Waste Packaging and arrange for the collection and recycling of this material.
- 3.3. Where practical and where it makes economic sense to do so, the Member should make reasonable steps to minimise the amount of packaging material used and or specify recycled packaging, and or specify materials where proven reprocessing and recycling techniques exist.

#### **4. Group Membership**

- 4.1. The Scheme Operator will accept Group Membership (being membership of two or more companies within the same corporate group) under the terms of this Agreement where:
  - 4.1.1. The Member making the application on behalf of the Group is fully authorised to enter into an Agreement on behalf of all registered members of the Group.
  - 4.1.2. The Member notifies the Scheme Operator of the full details of each company within the Group to be covered by the Scheme and the Member warrants the accuracy of the information provided by or in relation to each member of the Group.
  - 4.1.3. The Member notifies the Scheme Operator of any changes to the Group within 30 days of the change taking place.
  - 4.1.4. The Member accepts, and is authorised to accept, the Conditions for and on behalf of each subsidiary of the Group and undertakes to notify each subsidiary of and ensure their compliance with this Agreement.

#### **5. Membership Fees**

- 5.1. Membership fees will be invoiced quarterly in advance. For the avoidance of doubt, invoices will be issued on the 1<sup>st</sup> of January, 1<sup>st</sup> April, 1<sup>st</sup> July and 1<sup>st</sup> October of each compliance period. Included in the Membership fee is:

- 5.1.1. The updated Agency Fee (as amended from time to time) and where appropriate the Agency Fee for late registration (as amended from time to time) and or any resubmission fee where data has been returned.
  - 5.1.2. A one off joining fee (subject to turnover banding) and an annual registration fee (subject to turnover banding), at the Scheme Operator's rates prevailing at that time. Both joining fee and annual registration will be invoiced to the Member in advance of the Member joining the Scheme or annual registration, and should be paid within 30 days of date of issue.
- 5.2. A quarterly PRN charge, which will be invoiced quarterly in advance at the beginning of each of the 4 quarters (for the avoidance of doubt invoices will be issued on the 1<sup>st</sup> January, 1<sup>st</sup> April, 1<sup>st</sup> July and 1<sup>st</sup> October) of each compliance period. Member's payment should be made within 30 days from date of invoice.
- 5.3. Where the Scheme Operator deems it necessary or due to Adverse Market Conditions, the Scheme Operator may require to issue a 5<sup>th</sup> Quarter invoice to make up any difference between what has been invoiced to the Member in the 4 quarters and what has been paid by the Scheme Operator to acquire PRN's to offset the Member's Recycling and Recovery Obligations.
- 5.4. All fees are non refundable.
- 5.5. Where fees, in whole or in part, remain unpaid a daily interest charge will be placed on any outstanding balance at 1%. The Member shall pay off any outstanding balance immediately.
- 5.6. The Scheme Operator reserves the right to exclude or suspend the Member from the Scheme with immediate effect.

## **6. Members Own Waste / PRN's**

- 6.1.1. Where a Member enters into an Agreement with the Scheme Operator to deliver PRN's (derived from their own waste) the Scheme Operator will reduce the PRN fee by the equivalent volume delivered to the Scheme Operator.
  - 6.1.2. The Scheme Operator may request information from time to time showing a full audit trail that the PRN's have been generated from Waste generated by the Member's own Operations.
  - 6.1.3. The Scheme Operator will not accept PRN's from a Member who has purchased them on the open market. PRN's must be generated from the Member's Own Waste.
- 6.2. The Agreement between the Member and the Scheme Operator will detail the amount of PRN's to be delivered on a quarterly basis. The Scheme Operator will require the Member to finalise this data no later than 1<sup>st</sup> of September of the specific compliance period.
- 6.3. If the Member becomes aware of any change to the committed Own Waste volumes the member will notify the scheme immediately.
- 6.4. The Scheme Operator reserves the right to terminate this Agreement if the Member defaults on committed PRN's

## **7. Term**

**7.1.** The term of this Agreement is 1 Years and will automatically renew for 1 years on the anniversary of the Agreement unless otherwise agreed in writing by the parties.

## **8. Termination**

**8.1.** The Scheme Operator may terminate this Agreement with the Member with immediate effect:

**8.1.1.** Subject to clause 3, if the Member fails to deliver complete and/or timely and/or accurate data with the agreed timescales as outlined by the Scheme

**8.1.2.** If the Member is found to be in material breach of its obligations under this Agreement.

**8.1.3.** If the Scheme ceases to be registered under the Regulations.

**8.1.4.** If the Member fails to pay any monies due to the Scheme Operator. The Scheme operator will give the Member 5 days notice in writing and should the Member fail to make payment following this notice period, the Scheme Operator will exclude the Member from the Scheme immediately.

**8.2.** Following a minimum period of one compliance year, the Member may terminate this Agreement by giving no less than 90 days notice in writing to the Scheme Operator. For the avoidance of doubt written notice is required by 90 days prior to beginning of the following compliance year, e.g. compliance year begins 1<sup>st</sup> January 2012 each year, notice would be required by 1<sup>st</sup> October 2011.

## **9. Confidentiality**

**9.1.** All confidential information of the Member (being information which is marked as confidential and has the necessary quality of confidence) is received by the Scheme Operator in the strictest of confidence. This information will not be disclosed without the prior consent of the Member to any third party, other than pursuant to the Regulations or a court order, or to give effect to or for the purposes of this Agreement.

## **10. Indemnity**

**10.1.** The Member agrees to indemnify the Scheme Operator on demand from and against all demands, claims, liabilities, losses, damages, costs or expenses (including all legal and other costs and expenses) and from and against all actions and proceedings which may be taken against the Scheme Operator, arising from or attributable to any act (or failure to act) or default of the Member (including, but not limited to, any failure by the Member to provide any information which the Member is obliged to provide or if the information is deemed by the Scheme Operator or the Agency to be false, misleading or incomplete).

## **11. Governing Law**

**11.1.** This Agreement shall be governed by and construed in all respects in accordance with Scots Law and the parties agree to submit to an exclusive jurisdiction of the Scottish Courts as regards any claim or matter arising in relation to this Agreement.