

PackCare Scheme

Constitution

1. PackCare

PackCare is a producer compliance Scheme as defined in the Producer Responsibility (Packaging Waste) Obligations Regulations 2007 (as amended). It is operated by PackCare Ltd (Company Registration Number: 00538863, Registered Address: House, Gelderd Road, Leeds, LS12 6DL); a wholly owned subsidiary of SLI (Holdings) Ltd (Company Registration Number: 3280384; Registered Office: Richmond House, Garforth, Leeds, LS25 1NB). PackCare exists to enable producers of packaging to meet their obligations under the Regulations.

2. MEMBERSHIP

2.1 The relationship between PackCare and Members is a contractual one based on this Constitution and the membership application form (and attendant documents) which is authorised by an authorised signatory of the Member and signed by PackCare. The applicant is not deemed to be a member until the application form has been signed by both parties and payment received.

2.2 The Scheme is open to registered companies that place packaging on to the UK market and covers all sectors of the packaging supply chain to which the Regulations apply. There is no minimum number of members and a maximum of 6000 members will be accepted

2.3 Membership shall commence from the date of signature by PackCare of the Application Form, and shall continue until 31st March of the following year. This shall continue until and unless terminated by any of the following means:

2.3.1 By PackCare 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 PackCare within 30 days of such a breach being notified to the Member in writing.

2.3.2 By PackCare giving 60 days notice prior to the compliance period end, in writing to the member.

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3. MEMBERSHIP FEES

3.1 Membership fees are in two parts, an annual subscription and the Environment Agency Fee. In addition, charges based on the cost of discharging the packaging waste obligations and administration of the subsequent PRNs/PERNs are made; these are separately identified on any invoices. PackCare shall give Members 60 days notice in

writing of any change in its fee structure. Fees and charges are displayed on the PackCare website, and are available in writing on request.

3.2 Membership fees are reviewed annually and are based on the costs of administering and maintaining the Scheme.

3.3 Charges made for meeting the member's obligation to collect, recycle and recover packaging waste will be at cost plus a small PRN handling fee and will be published on the PackCare website on a quarterly basis.

3.4 Payment of fees and charges:

3.4.1 In the case of 3.2 above, fees are invoiced after the submission of member data and are due to be paid in full within 30 days of the date of the invoice.

3.4.2 In the case of 3.3 above, fees are invoiced on a quarterly basis and are due to be paid in full within 30 days of the date of the invoice.

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

3.6 Should any monies payable by the Member to PackCare be outstanding for more than 30 days, PackCare reserve the right to terminate this agreement as indicated in item 2.3.1 above. PackCare reserves the right to take legal action and the full enforcement procedures are detailed in Section 7.

4. MEMBERSHIP RULES

4.1 The Member shall provide PackCare with the information required under the Regulations in connection with its membership of PackCare compliance Scheme. This information is supplied by the Member fully completing the application form and annual data forms. This information shall be stated to be as accurate as reasonably possible and signed by a senior member of the producer company's management.

4.2 The Member shall notify PackCare forthwith, and in any case within 28 days, of any material changes in the information previously supplied. This information can be submitted, by e-mail to admin@PackCare.com or by post to the registered address.

4.3 The Member shall provide PackCare on request, with any other information relating to the producer responsibility obligation, and how this information was collected.

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 PackCare shall keep copies of all documentation from Members as required under the terms of the Regulations.

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

4.7 Members who wish to manage some or all of their obligations for recycling and recovery of packaging waste should notify PackCare of this intention on joining and ensure that any PRNs/PERNs generated are supplied by the reprocessor back to PackCare. These PRNs/PERNs will be discounted against the members obligations. In the event that the intended PRNs have not been obtained and supplied back to PackCare by the end of the compliance year (what date 31.12 or 31.01?), then the member agrees to cover the cost of purchase of the outstanding PRNs/PERNs on the open market.

4.8 Members should submit details of packaging handled in the previous year, by weight and packaging material type and activity carried out, to PackCare by the 28th of February, to enable PackCare to comply with the requirements of the Regulations for submission of the total recycling and recovery obligation of Scheme members. This should be done using the same form as used to submit data for the application.

4.9 Members should keep records of all information submitted to PackCare for a minimum of 4 years, as required by the Regulations

5. CONFIDENTIALITY

PackCare will hold all documents and information received by PackCare in connection with the performance of the Agreement in strict confidence. Such documents and information will not be disclosed by PackCare, 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 Members:

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

6.1.2 The Member agrees that it will allow PackCare access to premises and provide relevant information required to undertake a regular compliance audit (as required by the Regulations). At least 14 days notice shall be provided to the Member of any such audit. The audits will occur approximately every 5 years, or as directed by the Environment Agency, and will be charged to the member at cost.

6.2 PackCare:

6.2.1 PackCare shall carry out its obligations under the Agreement in compliance with the Regulations, furthermore;

6.2.2 PackCare has the right to publish the names of the membership of PackCare in its annual report or other literature, unless expressly requested by the member to the contrary. It should be noted that all scheme members are listed on the NPWD database which is publicly available.

7. ENFORCEMENT PROCEDURES

In the event of a breach of member rules or obligations the following enforcement procedure are invoked:

- a) Informal telephone or e-mail contact is made with the primary contact of the Member organisation in order to rectify the issue.
- b) 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.
- c) If the breach has not been addressed by the Member within 30 days of the issuing of the letter, a board member of PackCare plc 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, PackCare reserves the right to terminate the membership, to inform the Environment Agency of the situation and, if necessary, to take legal action.

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 the operator of the PackCare scheme:

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 members' dispute, a representative of PackCare should attend the meeting. In the case of a dispute between the member and the scheme, either party can nominate another party 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 (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.

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

8.9 PackCare 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.

9. COMMUNICATIONS

Important information concerning the scheme and its operation is disseminated to members via e-mail to the nominated contact by the Technical Director of PackCare PLC, unless the member prefers other forms of contact. Information will also be disseminated via the PackCare website and via regular e-mail newsletters. In addition a dedicated Member telephone Helpline is installed. Further information on communications can be seen in the Operational Plan.

10. INDEMNITY

10.1 The Member hereby agrees to indemnify PackCare 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 PackCare arising in relation to or in connection with:-

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

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

10.2 PackCare 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 PackCare its employees or agents or otherwise) which arise directly or indirectly out of or in connection with the performance of the Agreement.

12. DEFINITIONS

“Agreement” - References to “Agreement” in this Constitution shall mean the agreement between the Member organisation and PackCare constituted by completion of the application form signed by both parties.

“Application Form” - The application form and any attachments signed by the Member and PackCare plc.

“Packaging” – as defined in the Regulations

“Environment Agency” - The Environment Agency of England and Wales

“Environment Agency Fee” – the annual and initial charges shown in Regulation 16 (as amended).

“PERN” – Packaging Export Recovery Note (in all practical respects equivalent to a PRN)

“PRN” – Packaging Recovery Note

“Packaging Waste” – Waste Packaging as defined by the Regulations

“PackCare” - The packaging producer compliance Scheme operated by PackCare Ltd.

“Regulations” - The Producer Responsibility (Packaging Waste) Obligations Regulations 2007 and any subsequent amendments.