

## 1. PACKCARE

1.1 PackCare is a Producer Compliance Scheme as defined in the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended). It is operated by PackCare Ltd (Company Registration Number: 00538863; Registered Address: Richmond House, Selby Road, Garforth, Leeds, LS25 1NB); a wholly owned subsidiary of WasteCare Group Ltd (Company Registration Number: 03280384; Registered Office: Richmond House, Selby Road, Garforth, Leeds, LS25 1NB). PackCare Ltd exists to enable Producers of packaging to meet their Obligations under the Regulations.

## 2. MEMBERSHIP

2.1 The relationship between PackCare and the Member is a contractual one based on these Constitution Terms and Conditions and the Application Form (and associated documents) which are signed by the Member's authorised signatory and signed by PackCare. The applicant is not deemed to be a Member until the Application Form has been signed by the applicant and accepted by PackCare.

2.2 The Scheme is open to all entities that place packaging onto 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 December of the relevant compliance period. This shall continue on a rolling annual basis 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 at least 90 days' notice prior to the 31st December, in writing to the Member.

2.3.3 By the Member giving at least 90 days' notice prior to the 31st December, in writing to PackCare.

2.3.4 According to the Regulations, a Producer cannot now be regarded as being a Member of the Scheme unless they have provided the following:

i) Any information that the Scheme requests for the purposes of meeting its Obligations within a reasonable period of receiving such a request, or

ii) Any fee required for Membership of the Scheme for that Compliance Year, including Environment Agency (EA) fees, Membership fees, PRN/PERN costs and/or any audit/consultancy costs, where applicable.

2.4 If payment of Membership fees and/or or data is not received by the 15<sup>th</sup> March, the Member will not be registered by PackCare with the Environment Agency on time. The Member may then be investigated for registering late. Failure to abide by this clause will result in a late fee being charged on registering the Member with the Environment Agency.

## 3. MEMBERSHIP FEES

3.1 Membership fees are in two parts; an annual Membership fee and the annual Environment Agency Fees. In addition, charges based on the cost of discharging packaging waste obligations in respect of PRNs/PERNs are made. PRN/PERN charges are separately invoiced from the annual fees. PackCare will give Members at least 30 days' notice in writing of any change in its fee structure.

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

3.3 Charges made for discharging the Member's Obligations to recycle and recover packaging waste will be at a "per tonne" rate.

3.4 Payment of fees and charges:

3.4.1 In the case of 3.2 above, fees are invoiced on or around 31st January to the Member and on receipt of the completed, signed and accepted Application Form for a new Member. These fees 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 or around 30th June to the Member or on receipt of the completed, signed and accepted Data Submission Form for a new Member, unless otherwise stated. These fees 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 60 days, PackCare reserve the right to terminate this Agreement as indicated in item 2.3.1 above. PackCare reserve the right to take legal action and the full enforcement procedures are detailed in Section 7.

3.7 PackCare reserve the right to charge the Member for any additional costs of credit control, bank charges and interest charges (at 3% over Barclays Bank rate) relating to overdue Member payments and/or charges of any type.

## 4. MEMBERSHIP RULES

4.1 The Member shall provide PackCare with the information required under the Regulations in connection with its Membership of PackCare. This information is to be supplied by the Member completing the Application Form and the annual Data Submission Form. This information shall be "as accurate as reasonably possible" and signed by an "Approved Person" on behalf of the Member.

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 may be submitted by e-mail to [admin@packcare.co.uk](mailto:admin@packcare.co.uk) or by post to Richmond House, Selby Road, Garforth, Leeds, LS25 1NB.

4.3 The Member shall provide PackCare with any other information relating to the Member's Obligations under the Regulations and how this information was collated.

4.4 Any information provided by the Member shall be, to the best of the Member's knowledge, true and accurate and having regard to the nature of the request.

4.5 PackCare will keep copies of all documentation from Members as required by 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 obliged.

4.7 Members who wish to manage some or all of their Obligations for the 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 or exporter back to PackCare. These PRNs/PERNs will be discounted against the Member's Obligations. PackCare and the Member will agree the type and quantity of PRNs/PERNs to be supplied by the Member and the planned delivery dates. In the event that the intended PRNs/PERNs have not been obtained and supplied back to PackCare by the agreed delivery dates, then the Member agrees that PackCare will obtain these outstanding PRNs/PERNs and accepts the charges for these outstanding PRNs/PERNs from PackCare.

4.8 Members shall submit details of packaging handled in the year previous to the Compliance Year, by weight, by packaging material type and by activity carried out, to PackCare by the 15th March of the Compliance Year to enable PackCare to comply with the Regulations. This should be done using the annual Data Submission Form.

4.9 Members shall 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 from the Member 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 this 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). The audits shall occur approximately once every 4 years, or as directed by the Environment Agency.

6.2 PackCare:

6.2.1 PackCare shall carry out its Obligations under this Agreement in compliance with the requirements of the Regulations, furthermore;

6.2.2 PackCare has the right to publish the names of the Members of PackCare in its annual report, on its website, and in other appropriate PackCare documentation.

## 7. ENFORCEMENT PROCEDURES

In the event of a breach of Member Rules or Obligations, the following enforcement procedures may be 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 PackCare, and requiring the breach is 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 PackCare Ltd would, by registered letter, request a meeting with the appropriate person on behalf of the Member.
- 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 reserve 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 PackCare:

- 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 a Member and PackCare, 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 its 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 Member(s) 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 PackCare and its operation is disseminated to Members via e-mail to the nominated contact, unless the Member prefers other forms of contact. Information will also be disseminated via the WasteCare website and via regular e-mail newsletters. In addition, a dedicated Member Helpline is installed. Further information on communications can be obtained from PackCare.

## 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:-

10.1.1 any material failure by the Member duly and punctually to provide any information which the Member is obliged to provide under these Constitution Terms and Conditions.

10.1.2 any of the information provided by the Member under these Constitution Terms and 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.

## 11. DEFINITIONS

"Agreement" – References to "Agreement" in these Constitution Terms and Conditions shall mean the Agreement between the Member and PackCare constituted by completion of the Application Form and signed by both parties.

"Application Form" – The Application Form and any associated documents signed by the Member and accepted by PackCare.

"Approved Person" – as defined in the Regulations; a Director or Company Secretary where the Member is a Limited Company or Plc; by a Partner where the Member is a Partnership; and by an Owner where the Member is a Sole Trader.

"Compliance Year" – a standard calendar year; i.e. from 1st January to 31st December.

"Environment Agency" - The Environment Agency of England and Wales

"Environment Agency Fee" – the annual charges shown in Regulation 16 (as amended).

"Member" – Any entity with a requirement to comply with the Regulations, accepted by PackCare, and a party to this Agreement.

"PackCare" - The packaging Producer Compliance Scheme, operated by PackCare Ltd.

"PERN" – Packaging Export Recovery Note

"PRN" – Packaging Recovery Note

"Placed on the UK market" – packaging and/or packaging materials that the Member takes "Producer Responsibility" for in the UK.

"Producer" - any entity which is required to comply with the Regulations.

"Packaging Waste" – Waste packaging as defined by the Regulations

"Regulations" - The Producer Responsibility Obligations (Packaging Waste) Regulations 2007, including any subsequent amendments.

"Scheme" – means "PackCare".