



TERMS AND CONDITIONS

These are the terms and conditions relating to the Scheme known as "Recycle 1st" operated by Greenstar Environmental Limited.

1 Interpretation

1.1 In these Conditions unless the context requires otherwise the following words and expressions shall have the following meanings:-

"Adverse Market Conditions" means conditions of the market for PRNs of any type in which the Operator considers (on reasonable grounds) it to be uneconomic or impractical to acquire such PRNs in connection with the performance of any Recovery and Recycling Obligations of the Scheme which have yet to be performed at such time;

"Agency" means the Environment Agency of England and Wales, the Scottish Environment Protection Agency or the Environment and Heritage Service of Northern Ireland, as appropriate, and any successor bodies from time to time;

"Agreement" means the agreement between the Member and the Operator relating to the subject matter of these Conditions;

"Charges" means the charges payable by the Member to the Operator under the Agreement, including Registration Fees, Compliance Charges and Other Charges (where appropriate) all as more particularly described in the Schedule of Charges;

"Compliance Charges" means the charges so described in the Schedule of Charges, being charges payable by the Member to the Operator to cover the cost incurred by the Operator in acquiring PRNs to satisfy the Member's Recovery and Recycling Obligations plus the Operator's reasonable margin on such cost;

"Conditions" means these terms and conditions;

"Group" means a company together with its holding company (if any), subsidiary companies (if any) and other subsidiary companies of its holding company (if any) and for such purposes "holding company" and "subsidiary" shall have the meanings ascribed to them in sections 736 and 736A of the Companies Act 1985;

"Group Members" shall have the meaning ascribed to such term in clause 5.1;

"Member" means the member of the Scheme referred to in the Agreement;

"Obligation Year" means a calendar year from January 1 to December 31;

"Operator" means Greenstar Environmental Limited (a company registered in England and Wales with company number 3446693) whose registered office is at Third Floor, The Gatehouse, Gatehouse Way, Aylesbury HP19 8DB;

"Other Charges" means the charges so described in the Schedule of Charges and payable in the circumstances and amounts set out in such Schedule of Charges;

"PRN" means a "Packaging Recovery Note" or "Packaging Export Waste Recovery Note" (both as defined in the Regulations) or other similar evidence required by the Agency in order to demonstrate compliance with the Recovery and Recycling Obligations;

"quarter" means a period of three months commencing on 1st January, 1st April, 1st July or 1st September, and "quarterly" shall be construed accordingly;

"Recovery and Recycling Obligations" means the recovery and recycling obligations specified in the Regulations;

"Registration Fees" means the charges so described in the Schedule of Charges, being Scheme registration fees payable annually by the Member to the Operator comprising fees payable to the Agency in respect of the Member under the Regulations and the Operator's own registration fees;

"Registration and Data Form" means a registration and data form for the Scheme in the form supplied by the Operator from time to time to be completed and submitted to the

Operator by the Member for each Obligation Year (or part thereof) during the currency of the Agreement detailing the Member's registration and / or renewal details and data relating to the Member's Recovery and Recycling Obligations;

"Regulations" means the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 in force in England and Wales and the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 in force in Scotland and the Producer Responsibility Obligations (Northern Ireland) Order 1998 and any amendments or additions thereto or re-enactments thereof from time to time, as applicable to the Member;

"Schedule of Charges" means the list and descriptions of Charges payable by the Member under the terms of the Agreement as issued and varied by the Operator from time to time in accordance with these Conditions;

"Scheme" means the "Recycle 1st" compliance scheme operated by the Operator; and

"writing" or **"written"** includes facsimile transmissions but excludes emails except as expressly stated otherwise in these Conditions.

1.2 In these Conditions unless the context requires otherwise:-

1.2.1 the singular includes the plural and vice versa and reference to any gender shall include any other gender;

1.2.2 any reference to any statute, regulation or byelaw shall include a reference to any modification or re-enactment thereof;

1.2.3 any reference to a clause shall be a reference to a clause of these Conditions;

1.2.4 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 Agreement

2.1 The Agreement comprises:-

2.1.1 all relevant Registration and Data Forms;

2.1.2 the Schedule of Charges;

2.1.3 these Conditions; and

2.1.4 any amendments or additions to any of such documents agreed in writing between the Operator and the Member.

2.2 If there is any inconsistency between the terms of any two or more of such documents, they shall take order of priority in reverse of the order in which they are listed in clause 2.1.

2.3 The Agreement shall be deemed to have commenced upon receipt by the Operator of the Registration Fees and the Registration and Data Form properly completed by and signed on behalf of the Member.

3 Obligations of the Operator

3.1 Subject to clause 3.2, during the currency of the Agreement and whilst the Scheme remains registered for the purposes of the Regulations the Operator will use reasonable endeavours to perform:-

3.1.1 the Member's Recovery and Recycling Obligations; and

3.1.2 any other operations of the Scheme as required by the Regulations in each case using such skill and expertise as may reasonably be expected from an operator of a scheme registered under the Regulations.

3.2 The obligations in clause 3.1 shall be conditional upon the Member complying in all material respects with the terms of the Agreement and upon there existing no Adverse Market Conditions.

4 Obligations of the Member

4.1 The Member shall:-

- 4.1.1 provide to the Operator such information as the Operator may reasonably require for the purposes of the proper operation of the Scheme in accordance with these Conditions and the Regulations in such format, on such media and at such times as the Operator (acting reasonably) shall request from time to time;
- 4.1.2 ensure (and the Member warrants) that all information submitted by the Member to the Operator on any Registration and Data Form or otherwise in connection with the Agreement is accurate, complete and not misleading;
- 4.1.3 notify the Operator of any change to any information previously provided to the Operator in connection with the Agreement within 28 days of such change occurring.
- 4.2 The Member agrees that neither it nor any Group Member shall whilst it remains a Member of the Scheme:-
- 4.2.1 be a member of any other scheme under the Regulations;
- 4.2.2 register or continue registration as a producer under the Regulations otherwise than through the Scheme;
- 4.2.3 seek to comply with its Recovery and Recycling Obligations otherwise than through the Scheme.
- 4.3 The Member (for itself and on behalf of each Group Member) hereby authorises the Operator to disclose any information provided by the Member in connection with the Agreement to the Agency and any other person with statutory or regulatory power to request such information.
- 5 Group Membership**
- 5.1 If any one or more other companies in the Member's Group are subject to Recovery and Recycling Obligations the Member may include these as additional group members ("**Group Members**") of the Scheme under the Member's registration.
- 5.2 The Member shall disclose (and warrants that it has disclosed) on the relevant Registration and Data Form full details of each Group Member and warrants the accuracy of such details as at the date on which it was supplied.
- 5.3 The Member warrants and represents to the Operator that it has the authority to apply for membership of the Scheme on behalf of each Group Member and that it entered into the Agreement both for itself and as agent for each Group Member such that each Group Member shall be bound, on a joint and several basis, to observe and perform the terms of the Agreement as if it was the named Member therein.
- 5.4 The Member shall procure that each other Group Member shall observe and perform the terms of the Agreement as if it was the named Member therein and the Member shall be liable to the Operator for any breach of the Agreement by any Group Member.
- 5.5 The Member shall pay Charges in respect of itself and each other relevant Group Member in accordance with clause 7 and the Schedule of Charges.
- 5.6 Any Group Member which ceases for any reason to be a member of the Member's Group shall forthwith upon such cessation cease to be a member of the Scheme.
- 5.7 If after submission by the Member of the Registration and Data Form in any Obligation Year the Member wishes to add another member of its Group to its Scheme registration as a new Group Member, the Operator may (but shall not be obliged to) accept such new Group Member subject to receipt of all relevant information and payment by the Member of appropriate Charges.
- 6 Supply of PRNs by the Member**
- 6.1 Without prejudice to the Operator's right to charge Compliance Charges in respect of the Member's Packaging and Recovery Obligations, the Operator may from time to time and at its entire discretion (but shall not be obliged to) permit the Member itself to supply PRNs to the Scheme to be applied towards the discharge of its Packaging and Recovery Obligations.
- 6.2 For the avoidance of doubt (and without prejudice to the Operator's right to refuse to accept PRNs from the Member for any reason whatsoever):-
- 6.2.1 the Operator will not accept from the Member any number or type of PRNs in respect of which the Member is not obligated under the Regulations in the relevant Obligation Year;
- 6.2.2 the Operator will not accept any PRNs from the Member where the Operator has already discharged (through physical supply or forward contract) the Member's Packaging and Recovery Obligations or part thereof against which the Member aims to supply its PRNs;
- 6.2.3 the Operator will not accept any PRNs from the Member unless the Member is able to supply the PRNs to the Scheme immediately or is such a timescale as is acceptable to the Operator in writing to the Member;
- 6.2.4 the Operator will not accept any PRNs from the Member that are supplied in connection with any ongoing contract or agreement the Member may have with its own supplier(s).
- 6.3 If the Operator agrees to accept any PRNs referred to in clause 6.1:-
- 6.3.1 the Member shall supply all PRNs (and warrants and represents to the Operator that all PRNs are supplied) with full title guarantee and clear of any charge, lien or other encumbrance of any kind;
- 6.3.2 subject to the Operator's acceptance of the PRNs referred to in 6.3.1, the number of PRNs to be sourced by the Scheme and charged for through Compliance Charges shall be reduced accordingly.
- 7 Charges and Payment**
- 7.1 The Member shall pay Charges to the Operator in respect of each Obligation Year (or part thereof) of this Agreement which shall comprise:-
- 7.1.1 Registration Fees;
- 7.1.2 Compliance Charges; and
- 7.1.3 Other Charges (where appropriate).
- 7.2 Registration Fees shall be payable upon submission of the Member's Registration and Data Form and thereafter in relation to successive Obligation Years within 30 days of the date of the Operator's invoice.
- 7.3 Subject to clause 7.5, the Member shall pay the Compliance Charges for each Obligation Year in quarterly instalments in accordance with clause 7.4 and the Schedule of Charges.
- 7.4 Unless otherwise agreed in writing by the Operator:-
- 7.4.1 the Operator will send a first quarter invoice during the first quarter and such invoice will represent 25% of the Operator's reasonable estimate at such time of the total Compliance Charges likely to be payable by the Member in respect of the entire relevant Obligation Year;
- 7.4.2 the Operator will send a second quarter invoice either during or up to 30 days prior to the start of the second quarter and such invoice will represent 50% of the Operator's reasonable estimate at such time of the total Compliance Charges likely to be payable by the Member in respect of the entire relevant Obligation Year less all Compliance Charges previously invoiced in respect of such year;
- 7.4.3 the Operator will send a third quarter invoice either during or up to 30 days prior to the start of the third quarter and such invoice will represent 75% of the Operator's reasonable estimate at such time of the total Compliance Charges likely to be payable by the Member in respect of the entire relevant Obligation Year less all Compliance Charges previously invoiced in respect of such year;
- 7.4.4 the Operator will send a fourth quarter invoice either during or up to 30 days after the end of the fourth quarter and subject to 7.4.5 below such invoice will represent up to 100% of the total Compliance Charges payable by the Member in respect of the entire relevant Obligation Year less all Compliance Charges previously invoiced in respect of such year.
- 7.4.5 in the event that the Operator incurs charges referred to in 7.4.4 after the fourth quarter invoice has been sent, the Operator reserves the right to send an amending fourth quarter invoice or credit either, in the case where the Member ceases to be a Member of the Scheme in the following Obligation Year, separately up to 30 days following the end of the fourth quarter, or in the case

- where the Member remains a Member of the Scheme in the following Obligation Year, as an entry on the first quarter invoice of the following Obligation Year.
- 7.5 Except to the extent required otherwise by the Regulations (including schedule 9 thereof), if the Member joins the Scheme part way through an Obligation Year it shall immediately be liable for (and the Operator shall send it an invoice for) all Compliance Charges which the Operator would previously have invoiced (in accordance with clause 7.4) if the Member had been a member of the Scheme since the start of such Obligation Year.
- 7.6 For the avoidance of doubt, the Compliance Charges payable in respect of the first three quarters of any Obligation Year are paid as a deposit on account of the total Compliance Charges payable for such Obligation Year.
- 7.7 Any applicable Other Charges will be invoiced at any time during or after the occurrence of the circumstances in relation to which such Other Charges are payable (as referred to in the Schedule of Charges).
- 7.8 All Charges are non-refundable (except to the extent set out in clause 11.6.4) and shall be paid free of any deduction for set off or counterclaim.
- 7.9 Each invoice for Charges is payable by the Member within 30 days after its date.
- 7.10 All Charges (which shall be paid by the Member in pounds sterling) are inclusive of all applicable taxes and duties except any applicable VAT which the Member shall be obliged to pay in addition subject only to receipt of a valid VAT invoice.
- 7.11 Time of payment shall be of the essence of the Agreement and any sum due and payable by the Member which has not been paid by its due date shall carry interest at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until the date of actual payment.
- 8 Limitation of Liability**
- 8.1 The following provisions set out the Operator's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Member in respect of:
- 8.1.1 any breach of its contractual obligations arising under the Agreement or any collateral contract; and
- 8.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement or any collateral contract
AND THE MEMBER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 8.
- 8.2 Any act or omission on the part of the Operator or its employees agents or sub-contractors falling within Clause 8.1 above shall for the purposes of this Clause 8 be known as an 'Event of Default'.
- 8.3 The Operator's liability to the Member for:
- 8.3.1 death or injury or liability therefore resulting from the Operator's own or its employees', agents' or sub-the Operators' negligence;
- 8.3.2 all liability incurred by the Company as a result of any breach by the Operator of its obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- 8.3.3 all damage or liability incurred by the Member as a result of any fraud committed by the Operator; or
- 8.3.4 any other liability which cannot be excluded or limited by law shall not be limited.
- 8.4 Subject to the provisions of Clause 8.3 above the Operator's entire aggregate liability in respect of all Events of Default shall in no circumstances exceed £1,000,000.
- 8.5 Subject to Clause 8.3 above the Operator shall not be liable to the Member in respect of any Event of Default for:-
- 8.5.1 any type of special, indirect or consequential loss (even if such loss was reasonably foreseeable or if the Operator had been advised of the possibility of the Member incurring the same); and/or
- 8.5.2 loss of profit; and/or
- 8.5.3 loss of anticipated savings; and/or
- 8.5.4 loss of business and/or goods; and/or
- 8.5.5 loss of revenue; and/or
- 8.5.6 loss of contract; and/or
- 8.5.7 loss of goodwill; and/or
- 8.5.8 loss of use; and/or
- 8.5.9 any loss relating to the procurement by the Member of any substitute goods or services.
- 8.6 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.
- 8.7 The Member hereby agrees to allow the Operator not less than 30 days in which to remedy any Event of Default hereunder.
- 8.8 Nothing in this Clause 8 shall confer any right or remedy upon the Member to which it would not otherwise be entitled.
- 9 Indemnity**
- 9.1 The Member hereby agrees to indemnify the Operator from and against all demands, claims, liabilities, losses, damages, costs and expenses whatsoever (including all legal costs and expenses) and from and against all actions and proceedings which may be commenced, taken or made against the Operator arising in connection with:-
- 9.1.1 any failure by any Member punctually to provide any information which the Member is obliged to provide under the Agreement;
- 9.1.2 any information provided by the Member under the Agreement being false, inaccurate, misleading or incomplete; and
- 9.1.3 any failure by the Member to comply with any of its obligations under clause 6.3.1, if applicable.
- 10 Changes to Terms**
- 10.1 The Operator may at any time amend, modify or add to any provision of the Agreement if required by or as a consequence of any statute, directive of the European Union, byelaw, regulation, order or guidance from the Agency or its successor or any other relevant governmental or regulatory body and any such amendment, modification or addition shall become binding upon the Member (and any applicable Group Members) and the Operator 30 days after the Operator has published or otherwise notified the Member of such amendment, modification or addition in writing (and for such purpose notice given by email shall be valid).
- 10.2 The Operator may amend, modify or add to any provision of the Agreement upon providing the Member not less than 60 days' notice in writing (and for such purpose notice given by email shall be valid) to expire on the last day of an Obligation Year.
- 10.3 The Operator may amend, modify or add to the Charges specified in the Schedule of Charges at any time upon providing the Member not less than 60 days' notice in writing (and for such purpose notice given by email shall be valid).
- 10.4 Save as provided in this clause 10 no amendment may be made to these Conditions or to any other part of the Agreement except in writing signed by both parties.
- 11 Term and Termination**
- 11.1 The Agreement and the Member's membership of the Scheme shall continue unless and until terminated in accordance with this clause 11.
- 11.2 The Operator may terminate the Agreement by written notice to the Member to take effect either forthwith or at such time as may be specified in such notice in the event that the Member:
- 11.2.1 fails to pay when due any sum properly due under the Agreement;
- 11.2.2 for any reason fails in any way to comply with any of its obligations under clauses 4.1 and 4.2;

- 11.2.3 fails in any way to comply with any of its obligations under clause 6.3.1.
- 11.3 Either party may terminate the Agreement by written notice to the other to take effect either forthwith or at such time as may be specified in such notice in the event that such other:
- 11.3.1 materially breaches any of its obligations (other than the obligations of the Member referred to in clause 11.2 above) under the Agreement and if such breach is capable of remedy fails to remedy such breach to the reasonable satisfaction of the terminating party within 30 days (or such shorter reasonable period as the terminating party may specify in the circumstances) after receipt of notice of the breach from the terminating party; or
- 11.3.2 makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up (except for the purposes of a bona fide reconstruction or amalgamation), is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or bankruptcy or any similar process or event, whether in the United Kingdom or otherwise.
- 11.4 The Member shall be entitled to terminate this Agreement by giving not less than 60 days' written notice to the Operator to expire on the last day of a quarter.
- 11.5 The Agreement and the Member's membership of the Scheme shall terminate automatically in the event that the Scheme ceases to be registered as a scheme under the Regulations.
- 11.6 Termination of the Agreement howsoever arising shall:-
- 11.6.1 have the effect of terminating immediately the membership of the Scheme of the Member and all members of its Group which are registered under the same registration;
- 11.6.2 not affect any provision of the Conditions which is by its nature intended to survive and operate beyond such termination including, for the avoidance of doubt, clauses 9 and 12.6;
- 11.6.3 not prejudice or affect the rights of either party against the other in respect of any antecedent breach of the Agreement or any monies payable from one party to the other in respect of any period prior to such termination;
- 11.6.4 not, except where termination is by the Member pursuant to clause 11.3 (in which case the Member shall be entitled to a pro rata refund of any Compliance Charges paid in respect of any part of the relevant Obligation Year which remains unexpired as at the termination date), entitle the Member to any refund or forgiveness of any sums paid or payable by the Member pursuant to the Agreement;
- 11.6.5 not affect the entitlement of the Operator to any PRNs supplied to it by the Member in accordance with the Agreement prior to termination.
- 12 General**
- 12.1 The Member shall not be entitled to assign or transfer any of its rights or obligations under the Agreement without the prior consent of the Operator.
- 12.2 No failure or delay by either party in exercising any right, power or privilege under the Agreement shall operate as a waiver of such right, power or privilege nor shall any single or partial exercise by either party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.
- 12.3 If any provision of this Agreement is found by a court of competent jurisdiction to be void or unenforceable, that void or unenforceable part shall be deemed severed and deleted and the remainder of this Agreement shall, to the fullest extent possible, remain in full force and effect.
- 12.4 Without prejudice to clause 12.3, if any provision of the Agreement is found by any court of competent jurisdiction to be void or unenforceable the parties shall negotiate in good faith to replace such unenforceable provision with a valid provision which, as far as possible, has the same legal and commercial effect as that which it replaces.
- 12.5 Save as expressly provided, nothing in the Agreement shall confer any right upon any person who is not a party to it, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 12.6 Each party may disclose and use information provided to it by the other under or in connection with the Agreement solely for the purpose of and to the extent necessary to comply with its obligations under the Agreement and shall otherwise maintain the other's information in confidence and will not disclose it to any third party without the other's prior written consent. The provisions of this clause 12.6 shall not apply to any information which:
- 12.6.1 was in the public domain at the time of disclosure;
- 12.6.2 has entered the public domain following its disclosure under the Agreement through no fault of the party to whom it was disclosed;
- 12.6.3 was obtained by the recipient lawfully and properly from a third party without any obligation of confidentiality; or
- 12.6.4 is permitted to be disclosed by the Operator under clause 4.3; or
- 12.6.5 is required to be disclosed by a court of competent jurisdiction but then only to the extent and for the purpose of the required disclosure.
- 12.7 All information disclosed under the Agreement shall remain the property of the party disclosing it.
- 12.8 The Agreement contains all the terms agreed by the parties relating to its subject matter and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the Agreement except as set out in the Agreement. Each party acknowledges and accepts that, in entering into the Agreement, it has not relied upon any representation, undertaking or promise except as set out therein.
- 13 Notices**
- 13.1 Any notice given or made under these Conditions shall be in writing and may be delivered to the relevant party or sent by first class post or sent by facsimile to the address or facsimile number of that party specified in the Agreement or such other address or facsimile number in the United Kingdom as may be notified under the Agreement by that party from time to time.
- 13.2 Each notice or communication shall be deemed to have been given or made and delivered:-
- 13.2.1 if by first class post, 48 hours after posting;
- 13.2.2 if by delivery when left at the relevant address (unless delivered at any time on a day which is not a working day in which case such notice shall be deemed to have been given at 9.00 a.m. on the next working day); or
- 13.2.3 if by facsimile at the time of transmission (unless transmitted after 5.30 pm UK time on a working day or at any time on a day which is not a working day in which case such notice shall be deemed to have been given at 9.00 a.m. on the next working day).
- 14 Jurisdiction**
- The Conditions shall be governed by and construed in all respects in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising in relation to the Conditions.