

# **REPAK LTD**

## **APPROVED BODY SCHEME RULES**

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## REPAK MEMBERSHIP SCHEME RULES

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following words and expressions have the following meanings:

“**Approved Body**” has the meaning ascribed to that term in the Regulations;

“**Back Fees**” means the fees payable (in addition to any Fees) to REPAK by any major producer as a pre-condition to acceptance for Membership, as a contribution towards the costs of meeting industry’s recovery and recycling targets for the period of time from and including 1997 until the point at which the relevant party is accepted as a Member, which fees may be specified by REPAK from time to time;

“**Fees**” means all fees due to REPAK from each Member, determined in accordance with rule 5, but excluding Back Fees;

“**Green Dot Licence Agreement**” means an agreement made between a Member and REPAK in such form as REPAK may determine (from time to time), pursuant to which REPAK licences the Member to use the “Green Dot” mark (as defined therein);

“**Major Producer**” has the meaning ascribed to that term in the Regulations;

“**Member**” means a person or entity who has had an application for membership accepted by REPAK, unless or until such membership is revoked, resigned or surrendered in accordance with these Rules;

“**Minister**” means the Minister for the Environment and Local Government, and any successors of such Minister;

“**Packaging**”, “**Packaging Destined for Re-use**” and “**Packaging Material**” each have the meaning ascribed in the Regulations;

“**Producer**” means, for the purpose of these Rules, any person which is not a Major Producer;

“**Register**” means the register maintained by REPAK pursuant to rule 7.1;

“**Regulations**” means the Waste Management (Packaging) Regulations, 2003 [S.I. No. 61/2003], as amended or replaced from time to time;

“**REPAK**” means REPAK Ltd, a private limited company which is an Approved Body under the Regulations;

“**Reporting Period**” means a period during the operation of the Scheme:

- (a) commencing on 1 January and ending on 30 June in any Year; or
- (b) commencing on 1 July and ending on 31 December in any Year;

“**Rules**” means the Rules for participation in the Scheme, as set out in this document;

“**Rules Undertaking Form**” means a form prepared by REPAK to be signed by all applicants for Membership documenting the applicant’s commitment to abide by these Rules upon being accepted by REPAK as a Member;

“**Scheme**” means the REPAK Approved Body Scheme submitted by REPAK to the Minister and approved by the Minister on 10 June 1997, including all amendments subsequently made to that Scheme;

“**Subsidiary Undertaking**” shall have the meaning ascribed to it in article 4 of the European Communities (Companies: Group Accounts) Regulations, 1992;

“**Territory**” means the Republic of Ireland; and

“**Year**” means a calendar year, commencing on 1 January.

- 1.2 If any part of these Rules conflicts or is inconsistent with the Regulations, the Regulations shall prevail.
- 1.3 Headings, sub-headings and the table of contents are for ease of reference only and should not be taken into consideration in any interpretation of these Rules.
- 1.4 For the purpose of these Rules, “person” includes any individual, partnership, firm, trust, body corporate, Subsidiary Undertaking, unincorporated body of persons or association.

## 2. **OBJECTIVES AND FUNCTIONS OF REPAK**

### 2.1 **REPAK Objectives**

The objectives of REPAK are:

- (a) to administer the Scheme as approved by the Minister in accordance with the Regulations, and these Rules; and
- (b) to facilitate businesses and industry in the Territory in meeting their obligations under the Waste Management Acts, 1996 and 2001 (and any amendments thereto) and the Regulations,

and as otherwise specified in the Memorandum of Association of REPAK.

### 2.2 **REPAK Functions**

REPAK shall:

- (a) develop and agree strategies with industry for meeting recycling/recovery targets as agreed from time to time with the Minister;
- (b) plan and implement such strategies;
- (c) raise and disburse funds collected under the Scheme to contribute towards the implementation of such strategies;
- (d) collate, analyse and maintain recycling/recovery records in respect of Packaging produced and/or supplied by Members;
- (e) undertake promotional campaigns to educate and raise public awareness and encourage co-operation between Members in relation to REPAK's activities;
- (f) report from time to time on its activities to the Minister and to Members; and
- (g) carry out all other functions and obligations required of REPAK under the Regulations and these Rules.

### **3. ELIGIBILITY FOR PARTICIPATION IN THE SCHEME**

#### **3.1 Eligibility to Apply**

Any person may apply to REPAK to participate in the Scheme.

#### **3.2 Application Process**

All applications from persons to participate in the Scheme shall be made in writing and shall be in the form provided in the REPAK Information Pack (or as otherwise provided by REPAK). Acceptance to Membership is within the sole discretion of REPAK.

#### **3.3 Acceptance as a Member**

REPAK may accept an applicant as a Member where:

- (a) the applicant has made an application under rule 3.2 and REPAK accepts that application;
- (b) the applicant has undertaken to fully abide by these Rules as they apply from time to time, by signing and providing to REPAK a Rules Undertaking Form;
- (c) the applicant has paid to REPAK the membership fee (including any VAT), as specified from time to time by REPAK; and

(d) the applicant has paid to REPAK Back Fees (where applicable);

and/or

(e) the applicant has satisfied any additional or alternative requirements as specified as a precondition of Membership for any particular applicant or all applicants by REPAK from time to time.

### 3.4 **Observe Rules**

On and from the date on which the applicant becomes a Member, that Member shall observe the Rules and such other conditions relating to participation in the Scheme as REPAK may from time to time prescribe.

### 3.5 **Subsidiary Undertakings**

An undertaking which has one or more Subsidiary Undertakings may, on behalf of itself and its Subsidiary Undertakings, participate in the Scheme as a single Member.

### 3.6 **Application by Associations**

An association may apply to participate in the Scheme as a Member in its own right (but not on behalf of its members). An association for this purpose shall include a trade association and any association or body corporate carrying on waste recovery activities (whether approved by the Minister in accordance with regulations made under section 29(4)(t) of the Waste Management Act, 1996 or otherwise).

## 4. **MEMBERS' OBLIGATIONS**

### 4.1 **Basic Obligations**

Each Member shall:

- (a) pay all Fees due by that Member to REPAK in accordance with these Rules;
- (b) provide such statistical and other information, as may be requested by REPAK in accordance with these Rules;
- (c) appoint a duly authorised representative to liaise with REPAK at all reasonable times in relation to that Member's participation in the Scheme. The duly authorised representative of each Member shall be listed as the contact name for each Member in the Register; and
- (d) promptly notify REPAK of any change to its details as shown on the Register (including as to the identity of the Member's authorised representative).

## 4.2 **Obligations on Major Producers**

In addition to observing its obligations under rule 4.1, each Member which is a Major Producer shall:

- (a) permit REPAK's authorised representatives to attend on the Member's premises to carry out an audit there (or elsewhere) of the Member's statistical returns and packaging data information, as provided to REPAK pursuant to rule 6;
- (b) except where otherwise specified by REPAK, prepare and implement a written plan (in a form that is satisfactory to REPAK) for the management of Packaging waste arising on that Member's premises, and in each Year thereafter review and update the plan (where necessary). In particular each Member must review and, where necessary, update the plan within 60 days of any request by REPAK to do so. REPAK reserves the right to approve and/or seek amendments to Members' plans prepared under this rule;
- (c) ensure in accordance with the written plan prepared under rule 4.2(b) that:
  - (i) Packaging waste arising on its premises is dealt with in a responsible manner; and
  - (ii) any such Packaging waste that is capable of being recycled is segregated appropriately and made available for recycling, and that Member complies fully with its obligations as a producer under Part II of the Regulations; and
- (d) in carrying out its activities, only use the services of lawfully permitted or licensed recovery operators, and otherwise comply with all applicable legislative requirements regarding the generation, segregation, storage, transport and disposal of Packaging waste.

## 5. **FEES**

### 5.1 **Determination of Fee Amounts**

Each Member shall pay a Fee in advance:

- (a) for Members, which are not Major Producers, for each Year or part Year of Membership; and
- (b) for Members which are Major Producers, for each Reporting Period or part Reporting Period of Membership.

The Fee for each Member shall be calculated by REPAK according to a calculation formula or formulae as advised by REPAK in writing from time to time to the relevant Member or Members.

## 5.2 **Payment Procedure**

Each Member shall pay Fees to REPAK in accordance with the following procedure:

- (a) Fees must be paid no later than 30 days after the beginning of the Year or Reporting Period (as the case may be) to which the Fees relate, unless otherwise advised by REPAK by notice in writing.

REPAK will be entitled to apply late payment interest to any late payments of Fees, in the manner set out in the European Communities (Late Payment in Commercial Transactions) Regulations, 2002 (as amended or replaced from time to time); and

- (b) any payment of Fees must be accompanied by a statement identifying the Member and the Reporting Period or Year to which the payment relates.

## 5.3 **VAT**

All sums payable under these Rules are exclusive of Value Added Tax, which shall in addition be payable by the Member where applicable.

# 6. **PROVISION OF PACKAGING INFORMATION**

## 6.1 **Statistical Returns from Members**

Except where otherwise specified by REPAK, each Member that is a Major Producer shall provide statistical returns for each Reporting Period to REPAK in the form as notified to it from time to time by REPAK no later than 30 days after the end of that Reporting Period. The statistical returns shall contain the following data from that Reporting Period (whether or not the Member was a Member for the entirety of that Reporting Period):

- (a) the weight and composition of:
  - (i) Packaging supplied by the Member in the Territory;
  - (ii) Packaging recovered and recycled;
  - (iii) Packaging exported from the Territory;
  - (iv) Packaging Destined for Re-use; and
  - (v) Packaging waste arising from the Member in the Territory; and

(b) any other particulars as REPAK may reasonably require.

## 6.2 **Late or Incorrect Returns**

Without prejudice to REPAK's rights under rule 9.2, if any Member which is a Major Producer:

- (a) fails to provide the information required by REPAK pursuant to rule 6.1 within the time period specified in that rule; or
- (b) submits an incorrect statistical return and has to resubmit information forming part of its return,

REPAK may levy a surcharge on that Member which will represent a reasonable pre-estimate of REPAK's costs incurred in dealing with the late or incorrect return (as the case may be).

## 6.3 **Records and Inspection for Audit Purposes**

Each Member which is a Major Producer shall keep separate, detailed, true and accurate books and records of all Packaging volumes and characteristics, including details of the types of the Packaging Material supplied by the Member in the Territory, for a minimum period of 6 years, to enable REPAK to check the accuracy of the information contained in the statistical returns of that Member under rule 5.1, and REPAK shall be entitled at its expense to inspect and audit the books and records of each Member during business hours by its authorised representative on giving reasonable notice, and to take copies of such books and records. In the event that any return rendered under rule 6.1 is inaccurate by more than 25% (from the data shown in the books and records kept pursuant to this rule), REPAK's costs of such inspection shall be paid by the Member.

Where the amount of the Fee due for a Member in any Year is an under payment, the Member shall promptly pay to REPAK the difference between the amount paid by the Member and the Fee amount calculated from information obtained by REPAK pursuant to rule 6.

## 6.4 **Information Required from Other Members**

Any Member which is not a Major Producer must supply to REPAK such information about its production, supply, recovery, recycling and/or use of Packaging as REPAK may notify that Member from time to time. REPAK must provide such Member with reasonable prior notice in requesting such information.

## 6.5 **Confidentiality**

REPAK shall treat any information furnished to it under rule 6 as confidential but subject to the following:

- (a) such information shall not, without the prior written consent of the Member concerned, be disclosed to a third party; and
- (b) REPAK shall also use its best endeavours to ensure that such information is not disclosed by REPAK or its officers or employees in the course of dealings with third parties save that such information may be disclosed to a third party if it is aggregated with information furnished by the Member or other Members and the identities of the individual Members which provide the information is not disclosed.

## **6.6 Confidentiality Exceptions**

The foregoing obligation shall not extend to information which:

- (a) is in or comes into the public domain other than by reason of any breach by REPAK of its obligations hereunder;
- (b) is in the possession of REPAK prior to receipt of such information from the Member;
- (c) is received bona fide by REPAK from a third party not receiving such information directly or indirectly from the Member;
- (d) is required by any governmental agency, authority or other regulatory body or otherwise required to be disclosed as a matter of law.

## **7. PARTICIPATION AND MEMBERS' ENTITLEMENTS**

### **7.1 Register of Members**

REPAK shall maintain a Register containing the name, principal place of business and contact details (telephone and facsimile numbers as well as e-mail address, if available) of each Member, and the name of each Member shall be published on REPAK's website.

### **7.2 Registration Number and Certificate**

REPAK shall:

- (a) on the acceptance by REPAK of a Member to the Scheme, issue that Member with an individual registration number which shall be recorded in the Register against the name of the Member concerned; and
- (b) subject to the payment of all Fees due by that Member under these Rules, issue a certificate to each Member confirming that that Member is a Member of REPAK and, subject to the payment of all Fees due in each Year thereafter, issue a new certificate confirming

the renewal of that Member's membership of REPAK in each such Year.

### **7.3 Use of Registration Number and REPAK Logo**

Each Member shall be entitled to:

- (a) use its registration number on its stationery, website and invoices;
- (b) display the certificate issued to it under rule 7.2(b) at its premises;
- (c) use REPAK's logo on its stationery and in other areas or places approved in advance in writing by REPAK; and
- (d) enter into a Green Dot Licence Agreement.

## **8. REPAK OBLIGATIONS**

### **8.1 Use of Monies**

All monies furnished by Members to REPAK pursuant to these Rules shall be used solely for the purposes of administering the Scheme, furthering compliance with REPAK's objectives and these Rules.

### **8.2 Not for Profit**

REPAK operates on a not for profit basis.

### **8.3 Books of Account**

REPAK shall cause proper books of account to be kept with respect to:

- (a) all sums of money received and expended by REPAK;
- (b) all sales and purchases of goods by REPAK; and
- (c) the assets and liabilities of REPAK.

### **8.4 Annual Audit**

REPAK's books of account shall be audited annually by REPAK's auditors. A copy of REPAK's income and expenditure account and balance sheet for each financial year shall be available to every Member upon request within 9 months of the end of each financial year of REPAK.

## **9. REVOCATION OF PARTICIPATION**

### **9.1 Resignation by Member**

Any Member may resign from the Scheme by giving one month's prior notice in writing to REPAK. Resignation of membership of the Scheme

will be notified, as required by law, to the relevant local authority or authorities.

## 9.2 **Revocation of Membership by REPAK**

REPAK may revoke the participation in the Scheme of any Member by notice in writing if that Member commits a breach of any of the Rules and, in the case of a breach capable of remedy, fails to remedy the same within thirty days after receipt of the written notice from REPAK giving full particulars of the breach and requiring it to be remedied.

Revocation of Membership will be notified, as required by law, to the relevant local authority or authorities.

## 9.3 **Rights and Privileges**

All rights, privileges and obligations of a Member shall cease on the date of cessation of that Member's participation in the Scheme. On the date of cessation, the Member concerned shall:

- (a) surrender any and all certificates of participation in the Scheme to REPAK; and
- (b) cease to use its registration number and the REPAK logo on any of its stationery, website, invoices and on any other place or object (whether previously approved by REPAK or not).

## 9.4 **Ongoing Liabilities**

Notwithstanding either:

- (a) resignation of a Member from the Scheme; or
- (b) revocation of a Member's participation in the Scheme,

under this rule 9:

- (c) that Member shall remain liable for any Fees accrued and payable prior to the date of resignation or revocation; and
- (d) that Member shall not be entitled to any refund of the Fees paid by that Member in respect of the Reporting Period in which the resignation or revocation occurs.

## 10. **DISCLAIMER**

REPAK, its servants or agents shall have no liability whatsoever or howsoever arising to any Member in respect of any claim for damages, expenses or other compensation relating to any act or omission in or about the management of this Scheme and any legal proceedings arising in connection with the Scheme or the Regulations; and without prejudice to the generality of the foregoing shall have no

liability to any Member in respect of or in connection with any resignation, revocation or proposed revocation of a Member's participation under the Scheme, or in respect of any injury to persons, damage to property or other loss alleged or found to have been caused or contributed to by a failure to perform or comply with any of the functions conferred on REPAK by the Minister.

11. **PARTICIPATION NOT TRANSFERABLE**

No Member shall transfer its right to participate in the Scheme to any other person or entity, unless such transfer is approved by REPAK.

12. **RIGHT TO AMEND RULES**

The Rules may be amended from time to time by REPAK. Such amendments shall be binding on all Members from the date of notification by REPAK to Members.