

REPAK LIMITED

APPROVED BODY SCHEME RULES

1 October 2015

**REPAK Limited
Red Cow Interchange Estate
1 Ballymount Road
Clondalkin
Dublin 22**

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION.....

2. OBJECTIVES AND FUNCTIONS OF REPAK

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

4. PARTICIPATION AND MEMBERS' ENTITLEMENTS.....

5. MEMBERS' OBLIGATIONS.....

6. FEES.....

7. PROVISION OF PACKAGING INFORMATION

8. REPAK OBLIGATIONS.....

9. REVOCATION OF PARTICIPATION.....

10. DISCLAIMER.....

11. PARTICIPATION NOT TRANSFERABLE.....

12. RIGHT TO AMEND RULES.....

REPAK MEMBERSHIP SCHEME RULES

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following words and expressions have the following meanings:

The “**Act**” means the Waste Management Act 1996 (No.10 of 1996) and the Waste Management Act (Amendment) 2001;

“**Annual General Meeting (AGM)**” has the meaning ascribed to that term in the Companies Act 2014;

“**Annual Returns**” means a document setting out certain prescribed company information which is required to be delivered by an Irish company, whether trading or not, to the Companies Registry Office once at least in every calendar year;

“**Approved Body**” means a body corporate or association approved by the Minister to undertake a licensed scheme for the recovery of packaging and packaging waste, as described in the Regulations;

“**Approval**” means any approval or re-approval granted by the Minister to Repak to operate as an Approved Body in accordance with the Regulations;

“**Back-Door Waste**” means waste arising from secondary and tertiary packaging which is received by a producer but is not thereafter used in the supply of products;

“**Companies Act**” means the Companies Act 2014;

“**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, in respect of earlier periods of obligation under the Regulations, determined in accordance with Rule 6;

Fees” means all fees due to Repak from each Member determined in accordance with Rule 6, 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);

“**Information Pack**” means the information about Repak obligations and the Scheme as provided to applicants for membership;

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

“**Major Producing Member**” means a Member whose turnover and aggregate weight of packaging supplied would lead to its determination as a Major Producer as set out in the Regulations;

“**Member Directors**” means the Directors elected by the Members in accordance with Article 17 of the Repak Articles of Association;

“**Member**” means a person or entity whose application for membership of the Scheme is accepted by Repak and who has paid their Fees, unless or until such membership of the Scheme is revoked, resigned or surrendered in accordance with these Rules;

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

“**Non-Major Members**” means a Member whose turnover and aggregate weight of packaging supplied would not lead to its determination as “Major Producer” as set out in the Regulations;

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

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

“**Recovery Operator**” has the meaning ascribed to that term in the Regulations;

“**Regular Members**” means those Members who are obliged by virtue of their membership of the Scheme to provide statistical returns to Repak of the amount and type of packaging they place on the market and whose membership fees are payable twice yearly based on the statistical returns they have submitted, in accordance with Rule 6;

“**Register**” means the register maintained by Repak pursuant to rule 4.1;

“**Regulations**” means the European Union (Packaging) Regulations 2014, as amended or replaced from time to time;

“**Repak**” means Repak Limited, 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 (also referred to as “Scheme Rules”), as set out in this document. These rules are published on the Repak website *www.repak.ie*;

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

“**Scheduled Members**” means those Members who retail directly to consumers but who are not brandholders of the products sold on-site and whose membership fees are payable based on turnover and a schedule of fees, in accordance with Rule 6;

“**Scheme**” means the Repak Approved Body Scheme submitted by Repak to the Minister and originally approved by the Minister on 10 June 1997, including all amendments subsequently made to that Scheme and all subsequent renewals of approval including the recent renewal on 3 October 2013;

“**Stand-Alone Undertaking**” means a company that is not a subsidiary of another company;

“**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;

“**Undertaking**” means a body corporate, a partnership, or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods, the provision of a service or the making or holding of investments; 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, Undertaking, Subsidiary Undertaking, unincorporated body of persons or association.
- 1.5 These rules (as amended) take effect from 1 July 2015.

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 Packaging obligations under the Act and the Regulations, and
- (c) as otherwise specified in the Memorandum of Association of Repak.

2.2 Repak Functions

Repak shall operate a packaging waste recovery and recycling compliance scheme under the terms and conditions set out in the approval granted by the Minister and in accordance with the Memorandum and Articles of Association of Repak.

Repak will:

- (a) develop and implement strategies with Members and Recovery Operators for meeting recycling and recovery targets as agreed from time to time with the Minister;
- (b) raise and disburse funds collected under the Scheme to contribute towards the implementation of such strategies;
- (c) collate, analyse and maintain recycling/recovery records in respect of Packaging produced and/or supplied by Members;
- (d) provide a programme with the objective of the prevention, minimisation and reuse of packaging waste;
- (e) seek to maximise opportunities for job creation within the green economy in Ireland;
- (f) adopt policies that are committed to environmental best practice in the procurement of goods and services;

- (g) operate a programme of national and sectoral awareness of packaging recycling across all main media platforms;
- (h) carry out elections from among the Members, as required, to appoint Member Directors to the Board of Repak.
- (i) provide annual reports and other reports from time to time on its activities to the Minister and to Members;
- (j) hold an Annual General Meeting (AGM) for Members in addition to any other meeting in each year. Regular Members and Scheduled Members shall be entitled to attend all AGMs;

3. APPLICATION FOR PARTICIPATION IN THE SCHEME

3.1 Application Process

All applications from persons or Undertakings to participate in the Scheme shall be in the form provided in the Repak information pack (or as otherwise provided by Repak). Acceptance to Membership is at the sole and absolute discretion of Repak.

3.2 Acceptance as a Member

Repak may accept an applicant as a Member where:

- (a) the applicant has made an application under rule 3.1 and Repak accepts that application;
- (b) the applicant has undertaken to fully comply by these Rules 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 by Repak;
- (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 of the Scheme for any particular applicant or all applicants by Repak.

3.3 Subsidiary Undertakings

Where an Undertaking which has one or more Subsidiary Undertakings makes an application on behalf of itself and its Subsidiary Undertakings, Repak may accept this application either as a single Member or as several Members.

Repak may prescribe rules for the treatment of membership of Subsidiary Undertakings based on aggregate turnover, group structure and determination of Stand-Alone Undertakings having individual Scheme obligations.

3.4 Contact Information

All applicants shall provide name(s), address, telephone number, electronic mail address and other contact information of the registered office of the applicant where that applicant is a company registered under the Companies Act or, the principal place of business of the producer where that producer is any other body corporate or unincorporated body.

3.5 Place of Business

All applications from persons to participate in the Scheme shall identify

- (a) the principal place of business in Ireland, and all other premises in Ireland, from which packaging is placed on the Irish market;
- (b) the principal premises which contains information on the Member's packaging data information and statistical returns, which may be subject to audit by Repak.

4. PARTICIPATION AND MEMBERS' ENTITLEMENTS

4.1 Register of Members

Repak shall maintain a Register containing the name, principal place of business and contact details (telephone, facsimile numbers and e-mail address) of each Member and the name of each Member shall be published on the Repak website www.repak.ie

4.2 Registration Number and Certificate

Repak shall:

- (a) on the acceptance by Repak of a Member issue that Member with an individual registration number which shall be recorded in the Register against the name of the relevant Member;
- (b) subject to the payment of all Fees due by a Member under these Rules, issue
 - (i) a certificate of compliance to each Member confirming that Member as a Member for that year and, subject to the payment of all Fees due in each Year thereafter, issue a new certificate of compliance confirming the renewal of that Member's membership of Repak in each such Year; and
 - (ii) a notice certifying that the Member is participating in a satisfactory manner in the Scheme and is exempt from the requirements of regulations 10, 11, 12, 13, 14, 15 16 and 25 of the Regulations.

4.3 Use of Registration Number and Repak Logo

Each Member during and limited to the Year of their relevant Membership, shall be entitled to:

- (a) use its registration number on its stationery, website and invoices;
- (b) use Repak's logo on its stationery and in other areas or places approved in advance in writing by Repak.

5. REPAK SCHEME MEMBERS' OBLIGATIONS

5.1 Basic Obligations

Each Member shall:

- (a) pay all Fees due by that Member to Repak in accordance with the 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;

- (d) promptly notify Repak of any change to its details as shown on the Register (including the identity and contact details of the Member's authorised representative);
- (e) on and from the date on which the applicant becomes a Member that Member shall fully observe the Rules and such other conditions relating to participation in the Scheme as Repak may from time to time prescribe.

5.2 Display of Notices

Each Regular and Scheduled Member shall display at or near each entrance to its premises the certificate and notice issued to it under rule 4.2(b), in a conspicuous position and in such manner as to be clearly visible to members of the public.

5.3 Audit

Each Member shall permit Repak's authorised representatives to attend on the Member's premises to carry out an audit there (or elsewhere, as may be required by Repak) of the Member's required data, as prescribed in Rule 7.

5.4 Waste Management and Prevention

Each Regular Member shall

- (a) prepare a three-year implementation plan (in a form that is satisfactory to Repak) for the management of Packaging Waste arising on that Member's premises, including steps to prevent or minimise Packaging Waste, and in each Year thereafter review and update the plan (where necessary). Repak reserves the right to approve and/or seek amendments to a Member's plan prepared under this rule;
- (b) ensure in accordance with the plan prepared under rule 5.4(a) that:
 - (i) Packaging Waste arising on its premises that is capable of being recycled is segregated appropriately and made available for recycling;
 - (ii) measures are implemented to ensure that Packaging supplied to the market is minimised; and
 - (iii) that Member complies fully with all other obligations as a producer under Part II and Part VI of the Regulations;

- (c) 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.

6. FEES

6.1 Fee Periods

Each Member shall pay a Fee in advance, in accordance with Rule 6.3:

- (a) for Non-Major Members and Scheduled Members for each Year or part Year of Membership; and
- (b) for Regular Members for each Reporting Period or part Reporting Period of Membership.

6.2 Determination of Fee Amounts

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 Members, and calculated and levied for all Members. Fees charged to Members shall be as follows:

- (a) Fees charged to Regular Members shall be based on the weight of packaging material and packaging sold or supplied in the Member's business or otherwise, and shall include all packaging waste (including back-door waste) arising on a Member's premises, based on Statistical Returns as outlined in Rule 7;
- (b) Fees charged to Scheduled Members shall be based on turnover, based on a schedule of fees calculated and published by Repak;
- (c) Fees charged to Non-Major Members shall be a flat fee, as determined and published by Repak.

6.3 Fee Rebate

Repak at its sole and absolute discretion may reduce or rebate Fees charged to Members, subject to terms and conditions which shall be disseminated to all Members.

6.4 Payment Procedure

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

Unless otherwise advised by Repak by notice in writing fees must be paid the earlier of:

- (a) 30 days from the beginning of the Membership Period to which the Fee relates, or
- (b) 30 Days from date of Membership Invoice

Any payment of Fees must be accompanied by a statement identifying the Member and the Reporting Period or Year to which the payment relates.

Repak will be entitled to apply late payment interest to any late payments of Fees, in the manner set out in the S.I. No. 580/2012 - European Communities (Late Payment in Commercial Transactions) Regulations 2012 (as may be amended or replaced from time to time).

6.5 VAT

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

6.6 Back Fees

Back Fees are applicable to any Major Producer in relation to periods where such Producer failed to fulfil compliance requirements under the Regulations, and may be applied in accordance with the provisions of rule 6.2., until such Producer is accepted as a Member.

Repak shall determine rules for the application of Back Fees which will be made known to all applicants.

7. PROVISION OF PACKAGING AND FEE CALCULATION INFORMATION

7.1 Statistical Returns from Members

Except where otherwise specified by Repak, each Regular Member shall provide statistical returns for each Reporting Period to Repak in the form as notified. 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, type and composition of Packaging supplied and received by the Member in the Territory, including
 - (i) Packaging recovered and recycled;
 - (ii) Packaging exported from the Territory;
 - (iii) Packaging Destined for Re-use; and
- (b) any other particulars as Repak may reasonably require.

7.2 Late or Incorrect Returns

Without prejudice to Repak's rights under rule 9.2, if any Regular Member

- (a) fails to provide the information required by Repak pursuant to rule 7.1 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 and / or penalties on that Member for each reporting period, as the case may be.

7.3 Provision of turnover data

Except where otherwise specified by Repak

- (a) each Non-Major Member shall provide certified turnover data for each reporting period or calendar year;
- (b) Each Scheduled Member shall provide certified turnover and /or packaging tonnage data for each calendar year if such turnover or tonnage has materially changed to the extent that it would require a change to that Member's annual fee, as outlined in Rule 6.2 (b). Any adjustments to fees which may be required will apply to the most recent invoice period only.

7.4 Records and Inspection for Audit Purposes

Each Regular Member 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 Regular Member in the Territory, for a minimum period of 7 years. This will include records of the methodology, systems and data used to calculate this information. Repak shall be entitled at its own expense to inspect and audit the books and records of each Regular Member during normal business hours by its authorised representative on giving reasonable notice, and to take copies of such books and records. The fieldwork of the audit will mainly concentrate on a six or twelve month reporting period. However the number of historical reporting periods under review during audit will only be limited by the existence of a previous passed member audit.

In the event that any return rendered under Rules 7.1 and/or 7.3 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 relevant Regular Member.

Where the amount of Fees due from a Regular Member in any Year is found to be under reported, the Regular Member shall promptly pay to Repak the difference between the initial amount submitted by the Regular Member and the amount of Fees calculated from information obtained by Repak during audit. If it follows that historical under reporting has also occurred, then this difference shall also be paid promptly to Repak.

7.5 Confidentiality

Repak shall treat as strictly confidential all information disclosed to it by any Member under Rule 7 hereto (the "Confidential Information") however recorded, preserved or disclosed and except with the prior written consent of that disclosing Member shall:

- (a) (i) not use or exploit the Confidential Information in any way except for the purposes under Rule 7 hereto;
- (ii) not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this agreement;
- (iii) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Disclosing Party);

Repak shall not provide a copy of or disclose the Confidential Information to any third party except if and to the extent disclosure is:

- (b) (i) required by Law, or by any securities exchange or regulatory or governmental authority to which either Repak or the disclosing Member is subject, or submits, wherever situated provided that, to the extent it is legally permitted to do so, one party gives the other party as much notice of this disclosure as possible;
- (ii) disclosed to the professional advisers, auditors or bankers of either Repak or the disclosing Member;
- (iii) information that has already come into the public domain through no fault of Repak;
- (iv) is developed by or for Repak independently of the information disclosed by the disclosing Member;
- (v) information which is already lawfully in the possession of Repak as evidenced by its or its professional advisers' written records and which was not acquired directly or indirectly from the disclosing Member to whom it relates; or
- (vi) approved by the disclosing Member in writing in advance provided that any information disclosed pursuant to this clause 7.6 shall be disclosed only after notice to disclosing Member, and disclosing Member shall take reasonable steps to co-operate with Repak regarding the manner of that disclosure (or any action which any of them may reasonably elect to take to challenge legally the validity of that requirement).

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 in accordance with the terms of its Approval.

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) the assets and liabilities of Repak.

8.4 Annual Audit

Repak's books of account shall be audited annually by Repak's auditors.

8.5 Annual General Meeting

Repak shall in each year hold a general meeting at which all Members shall be entitled to attend in accordance with the provisions in Repak's Articles of Association.

The Annual General Meeting shall be held at such time and place as the Directors of Repak shall appoint.

A copy of Repak's income and expenditure account and balance sheet for each financial Year together with other financial documents and reports as are required by the Companies Act shall be presented to the Repak Annual General Meeting.

8.6 Data Protection

Repak shall and shall procure that any of its employees involved in the provision of the Scheme comply with any notification requirements under the Data Protection Act 1988, and Repak will duly observe all its obligations under the Data Protection Act 1988 which may arise in connection with the Scheme.

9. REVOCATION OF PARTICIPATION

9.1 Resignation by Member

Any Member may resign from the Scheme by giving six months prior written notice to Repak. Resignation of membership of the Scheme will be notified, as required by law, to the relevant local authority or authorities and, if so required, published in local or national publications.

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 such breach within 30 (thirty) days after receipt of the written notice from Repak giving full particulars of such breach and

requiring it to be remedied forthwith. Revocation of membership will be notified, as required by law, to the relevant local authority or authorities.

9.3 Immediate Revocation of Membership by Repak

Upon the occurrence of any one of the following events, Repak may revoke the participation in the Scheme of any Member with immediate effect:

- (a) the Member becomes bankrupt or enters into an arrangement with his creditors or if execution is levied against him; or
- (b) a petition is presented or an order made or resolution is passed for the winding-up of the Member or if a receiver, receiver and manager, or examiner is appointed over and/or in respect of the Member, or any part of the Member's business, or if action is taken by the holder of a debenture secured by a floating charge of any property of the Member comprised in or subject to a floating charge or fixed charge or undertaking is appointed; or
- (c) at Repak's sole determination, the Member provides false, misleading or fraudulent information to Repak;
- (d) where the Member goes into liquidation or if a receiver, receiver and manager, or examiner is appointed over and/or in respect of the Member, Repak may at its sole and absolute discretion determine to allow the Member's participation in the Scheme provided the receiver so appointed assumes the position of the Member as it were the original person whose application for membership of the Scheme was accepted by Repak.
- (e) No failure or delay by Repak to exercise any right or remedy provided under the Rules or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

9.4 Rights and Privileges

All rights, privileges and obligations of being a Member shall cease on the date of cessation of that Member's participation in the Scheme. On the date of cessation, the Member 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, promotional material and on any other place or object (whether previously approved by Repak or not);
- (c) cease to have the benefit of the Green Dot Licence Agreement

9.5 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.

9.6 Renewal of Membership

Unless membership is terminated by resignation or revocation pursuant to Rule 9.1 or 9.2 respectively, membership will automatically renew from year to year and the Fees shall be payable in accordance with Rule 6.2 without any requirement on the part of Repak to confirm membership renewal or demand repayment.

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

No Member shall hold beneficial interest or shall assign or transfer its right to participate in the Scheme to any other person or entity without the prior written consent of Repak.

No Member shall hold a beneficial interest for and on behalf of any third party allowing that third party to participate in the benefits of the Repak Scheme without being a fully paid up and compliant Member.

12. RIGHT TO AMEND RULES

These Rules are adopted by the Board of Repak. They shall be published on the Repak website www.repak.ie at all times. A written version shall be made available to any Member, on request.

The Rules may be amended from time to time by the Board of Repak, having regard to the best interests of the Members and the integrity of the Scheme.

All Members shall be entitled to one calendar month's notice of any amendments to these Rules. Proposed amendments to the Rules will be published in advance on the Repak website and circulated to Members with an explanatory note.