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General Terms of User Contract

of the Stiftung Gemeinsames Rücknahmesystem Batterien

Introduction

1. The Batteriegesetz – BattG (Batteries Act - Act Concerning the Placing on the Market, Collection and Environmentally Compatible Waste Management of Batteries and Accumulators) stipulates that battery manufacturers are required to collect and recycle waste batteries. Manufacturers of portable batteries fulfil this requirement by managing or participating in a collection scheme for waste portable batteries.

2. The non-profit Foundation operates a collection scheme for waste batteries, which was established as a Joint Collection Scheme in accordance with sect. 6 of the BattG by the Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit (Federal Ministry for the Environment, Nature Conservation and Nuclear Safety) on 1 December 2009. The Foundation offers services to all manufacturers of portable batteries as defined in the BattG to enable them to fulfil their requirements of collecting and recycling waste batteries in accordance with sect. 5 of the BattG. The Foundation can also enter into user contracts with third parties who wish to participate in the Joint Collection Scheme on behalf of one or more manufacturers and fulfil said manufacturers' obligations. In addition, the Foundation can, upon request, carry out Notification with the Umweltbundesamt (Federal Environment Agency) in accordance with sect. 4 of the BattG ("**Notification of market participation**") on behalf of users or manufacturers who have contracted a user to fulfil these requirements. The Foundation also intends to collaborate with collection schemes in other EU countries, which support users in fulfilling collection and Notification requirements in these countries.

3. The Foundation provides its services to users in accordance with the following General Terms of Contract, which shall apply equally to all users.

4. The term "User" represents a manufacturer as defined in sect. 2, para. 15, of the BattG or an entity that has contractually assumed the obligations under the BattG of one or more manufacturers. The User has resolved not to develop a manufacturer-specific collection scheme in accordance with sect. 7 of the BattG or to participate in such a scheme, but instead to participate in the Foundation's Joint Collection Scheme, based on the User Contract drawn up between itself and the Foundation and based on the General Terms of Contract in accordance with sect. 6, para. 1, of the BattG.

Sect. 1

The Foundation's obligations

1. The Foundation is obliged to operate a collection scheme in compliance with the requirements of the BattG and, in particular, to
 - offer to collect waste portable batteries at no charge from all distributors of portable batteries, all public waste management authorities, all treatment facilities as defined under sect. 12, para. 1 and 2, of the BattG, and those end-users categorised as business enterprises, other commercial enterprises or public entities;
 - ensure that waste portable batteries are accepted for return nationwide by all distributors of portable batteries, all public waste management authorities (if they are participating in the collection scheme) and all treatment facilities as defined

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under sect. 12, para. 1 and 2, of the Batteries Act, and all end-users set out in the previous clause which have made use of the services outlined in said clause ("**participating collectors**");

- collect waste portable batteries at no charge from participating collectors regardless of their type, brand or origin, submit them for recycling in accordance with sect. 14 of the BattG, and dispose of non-recyclable waste portable batteries in accordance with sect. 14 of the BattG;
 - provide participating collectors with suitable transport containers at no charge;
 - put disposal services in accordance with the BattG out to tender;
 - secure collection scheme financing in accordance with the BattG;
 - report the costs of collection as defined by the BattG;
 - safeguard the confidentiality of that data to which it has access which is specific to or directly attributable to individual manufacturers.
2. The Foundation shall also fulfil the User's obligations as defined by sect. 8 of the BattG as regards any other batteries, for which the User and the Foundation have come to a special agreement and which are classified as having been supplied by the User as defined under sect. 4, para. 2.
 3. The User Contract also applies to batteries which are integrated into other products or accompany other products; the Foundation's collection and recycling obligations apply to the (removed) batteries only and not the products.
 4. The Foundation may either commission third parties to provide the services required of it under the BattG or provide the services itself.
 5. The Foundation fulfils their obligations as defined by the User Contract in a cost-efficient manner.
 6. The Foundation shall carry out Notification of market participation on behalf of the User or third party for which the User assumes said third party's manufacturer obligations, with the agreement and approval of the Foundation, and carries out changes therein at the Umweltbundesamt (Federal Environment Agency), if the User has requested this of the Foundation in writing and provided that the Foundation has the required documentation. This only applies if the Federal Environment Agency has authorised the Foundation to carry out the Notification.

Sect. 2
The User's general obligations

1. The User is obliged to
 - a) pay the fee due to the Foundation under sect. 4 and, in particular, the payments incurred to be collected by the Trustee in accordance with sect. 5;
 - b) provide the Trustee with the information they require to carry out their work as detailed in provisions of sect. 6, para. 2 (below);
 - c) indicate, in accordance with para. 2, in the instruction manuals for lithium batteries and accumulator packs of all systems that these batteries may only be returned to collection points fully discharged or, in the case of charged or partially discharged batteries, that care should be taken to prevent short circuiting; this requirement shall apply to all such instruction manuals once the contract has entered into force.

2. For the purposes of para. 1, clause c), the following stipulations shall apply:
 - a) **"accumulator packs"** shall include accumulators based on lead, nickel-cadmium, nickel-metal hydride and lithium systems;
 - b) the **"fully discharged"** state can also be described as the battery having reached the end of its standard useful life (e.g. the appliance turns off once it reaches its cut-off voltage or appliance functioning is affected due to insufficient battery capacity);
 - c) it is recommended that an indication be provided which explains that a short circuit can be prevented by isolating the terminals using adhesive tape.

Sect. 3
Contractual assumption of the manufacturer obligations of a third party

1. The Foundation can at its own discretion authorise an agreement between a user and a third party which allows the User to fulfil the manufacturer obligations of said third party in accordance with sect. 5 of the Batteries Act (**"Agreement to fulfil manufacturer obligations"**). In such cases, the Foundation extends the same rights and obligations to the User as they would extend to the third party if said third party were participating directly in the Joint Collection Scheme. The Notification of market participation in such cases applies with the stipulation that Notification takes place solely under the name of the third party.
2. The agreement to fulfil manufacturer obligations must stipulate that the third party is bound by the Foundation to provide the Trustee with information and grant the Trustee access to business documents upon request in accordance with sect. 6, para. 2.
3. A third party as defined under para. 1 may also be a user. A user which enters into an agreement with a third party to fulfil said third party's manufacturer obligations, or has entered into such an agreement, does not have to be a manufacturer as defined by the BattG.

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4. If the Foundation has authorised an agreement to fulfil manufacturer obligations, the Foundation cannot demand that payment be made by the third party, whose manufacturer obligations are to be fulfilled by the User as stipulated in the agreement, for the batteries marketed by the User and covered under the agreement in accordance with sect. 6, para. 4, of the BattG.

Sect. 4 Fee

1. The fee to be paid by the User must cover the costs incurred through provision of the services set out in this contract, as stipulated under para. 5. The fee is calculated based on the latest "**list of disposal contributions**" provided by the Foundation and as amended from time to time, in which a contribution fee for the Foundation's services as set out in this contract is determined per item or weight unit for every battery category (each characterised by a minimum and maximum weight, a type group – primary battery cell, secondary battery cell, button cell or battery composed of multiple button cells – and the electrochemical system each); fee changes are only permissible subject to the provisions of para. 4. The fee payable by the User is determined individually for each category and is calculated for each billing period by multiplying the applicable contribution fee by the number of batteries or weight units distributed by the User during the billing period. The Trustee is responsible for determining the fee as set out in these regulations in accordance with sect. 5 (below).
2. Batteries are considered to be brought into circulation by the User if the User or a manufacturer with whom the User has entered into an agreement to fulfil manufacturer obligations has
 - a) marketed the batteries for the first time within the geographical area of validity ("**Germany**"),
 - b) directly imported the batteries for use in the User's commercial operations in Germany, or
 - c) distributed the batteries directly to end-consumers in Germany for non-commercial purposes and does not operate a business establishment in Germany,

provided the batteries are not (i) subsequently verifiably exported from Germany or (ii) registered by another user as a result of an agreement to fulfil manufacturer obligations which has been authorised by the Foundation.

3. Proof shall be deemed to exist that batteries have been exported if
 - a) the User has itself exported the batteries and the Trustee can verify this in accordance with sect. 6, para. 2, or
 - b) a third party has exported the batteries and a contractual agreement between the User and the third party ensures that the Trustee can verify the export through the third party; sect. 5, para. 5, shall apply mutatis mutandis to such exports.

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4. The Foundation shall be entitled to amend the contributions towards disposal costs per item or weight unit for the individual categories if there are changes in the costs associated with the provision by the Foundation of services related to said category. Such an amendment shall be implemented through the issue of a revised list of contributions towards disposal costs. Such amendments shall become effective at the beginning of the second quarter following issue of the new list of contributions towards disposal costs. The new list of contributions towards disposal costs is considered to have been issued once it has been sent to users, even if not all users receive a copy.
5. The costs associated with provision of these services as set out by the contract include the Foundation's costs incurred through operating the Joint Collection Scheme (including, in particular, the costs of administration, staffing and PR activities, any fees to be paid to the trustees, financial expenditure as well as the costs of collection, sorting, recycling and disposal of batteries distributed by manufacturers which do not participate in the collection scheme, but excluding costs associated with Notification of market participation or amendments thereto, which shall be subject to additional costs) less revenue, which exclude fees paid by users but specifically include fees received for recycling, revenue from recourse against non-participating manufacturers in accordance with sect. 7 (below), income from interest and donations. Any costs or revenue which cannot be attributed to a specific category shall be equally distributed across all individual battery weight units placed on the market by users in terms of costs and hence fees.
6. If services are provided by the User which fall within the remit of the Foundation under the terms of sect. 1 (e.g. consolidation into larger load units, delivery to a sorting plant or sorting into systems), the Foundation is entitled to, at its own discretion, enter into an agreement with the User to pay suitable reimbursement. As a rule, reimbursement shall be based on the expenditure that would have resulted if the Foundation had provided the services through a third party, minus the administrative costs borne by the Foundation as a result of the User having provided the services itself.
7. If the User's services include collection and recycling or disposal of batteries, the Foundation can also at its own discretion declare that the volume of batteries distributed by the User as defined under para. 2 can be deducted from or offset against the fee to be paid by the User based on agreed offset prices. The User shall be required to provide the Foundation with proof of the volume of batteries of which they have disposed and that the disposal process has been carried out in accordance with the requirements of the Batteries Act. This proof must be suitable for use in the Foundation's annual performance review as required by sect. 15 of the BattG.
8. If determining the type and quantity of batteries integrated into appliances by the User should prove to be disproportionately costly, the parties can agree on the type and quantity of batteries to be considered as having been distributed by the User – possibly based on specific parameters. The agreement must ensure that the agreed fee is higher than that which would be payable if the exact type and quantity of batteries distributed were known. The agreement must stipulate what the User should record in place of the variables stipulated under sect. 5, para. 2. Sect. 5, para. 5, shall apply mutatis mutandis.

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9. Para. 2 shall not apply to batteries which, due to their specialised characteristics or specific areas of application, require that the User manage its own collection scheme approved by the responsible authorities in accordance with sect. 7 of the BattG, or join such a scheme. However, this shall not come into effect until the commencement of the next calendar month following (i) the conclusion of a 12-month period initiated by appropriate notification by the user in written form and (ii) provision by the user of proof that said User fulfils the conditions set out in clause 1. This 12-month period shall not apply to new users.
10. If the User commissions the Foundation to carry out Notification of market participation or changes thereto, the User is required to pay the Foundation the applicable fee detailed in the list of contributions towards disposal costs. The fee must cover all resulting costs incurred by the Foundation (including any fees payable to the Umweltbundesamt - Federal Environment Agency). Sect. 4 shall apply correspondingly.

Sect. 5 Fee payments; interest

1. The fee payable by the User issued by the Trustee on a monthly basis. In accordance with sect. 5, the Foundation is entitled to agree with users whose contributions towards disposal costs do not exceed €2,000 per calendar year on the issue of an annual statement and further deviations in relation to the notification and payment obligations.
2. The User is required, within 30 days following the end of each billing period, to notify the Trustee of battery quantity or weight for each battery category distributed by said User as well as the total weight of all batteries distributed by said User during the billing period in the form defined by said Trustee (e.g. by entering the information on a website). If notification is not submitted within the time stipulated, it will be assumed, until notification is submitted, that during the billing period in question the User has distributed a volume equal to 120% of the batteries distributed in the previous billing period. If notification is still not submitted within 14 days following the issue of a reminder, the User must bear the cost of a review performed by the Trustee following the deadline, unless the User can prove that its failure to submit notification is through no fault of its own.
3. The statement for the fee payable as issued by the Trustee shall take the form of an invoice, which shall be in compliance with the Umsatzsteuergesetz (Turnover Tax Law) and shall furthermore take any partial payments into account. The fee – or refund of contributions in the case of a credit – is to be paid within six weeks following the end of the billing period. Should the invoice reach the User at a later point in time through no fault on the part of said User (particularly in the case of delayed notification as set out in para. 2), payment shall not become due until receipt of the invoice. Should a credit be determined at a later point in time and the Foundation or Trustee is not at fault, a refund of contributions shall not be due until receipt of the invoice.

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4. Payment as defined in these paragraphs is payable to the Trustee. The Trustee shall transfer the payments received to the Foundation immediately and in anonymous form.
5. If a user review performed by the Trustee or any other information in any form should reveal that the User has in the past distributed more or fewer batteries in the billing period than said User has recorded in their notifications, the Trustee shall demand additional payment or the Foundation (in anonymous form via the Trustee) shall provide a refund of contributions based on the list of contributions towards disposal costs applicable at the time of the incorrect notification. If, following a review of a period of at least one calendar year, additional payment equal to more than 20% of the original fee based on notification is payable, the User must bear the costs of the review conducted by the Trustee.
6. Should the User fail to make a payment or fail to pay the amount due in full by the due date, the outstanding amount shall be subject to an interest rate equal to three percentage points higher than the base interest rate applicable on the due date. The right to demand payment of a higher interest rate or reimbursement of damages due to delayed payment remain unaffected.

Sect. 6

Trustees; provision of information; confidentiality of User information

1. The Foundation can commission a trustee to determine the fee in accordance with sect. 4 and collect it in accordance with sect. 5. The Foundation shall inform the User immediately upon contracting a trustee or the termination of a trustee's tenure. If no trustee is contracted, the Foundation shall assume the rights and functions of the Trustee as defined in these General Terms of Contract.
2. The User shall be obliged to provide the Trustee with all information deemed necessary by the latter for the purposes of determining the fee payable by said individual User, ascertaining key facts and information as required by the Foundation in order to fulfil its legal obligations with regard to reporting, and reviewing the User's notifications in accordance with sect. 5, para. 2, of this contract. The User shall grant the Trustee access to its business records upon request, provided these are required for the purposes specified above.
3. The Foundation and the Trustee shall treat the data and information supplied by the User with the utmost confidentiality. As regards sales figures and other competition-relevant information, this duty of confidentiality shall also extend to the provision of information to the Foundation's Advisory Board, who shall only receive such data in an anonymous form.

Sect. 7

Recourse against manufacturers which do not belong to a collection scheme

As far as is economically justifiable, the Foundation is required to invoice manufacturers of portable batteries which neither belong to the Joint Collection Scheme nor operate their own

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collection scheme. The amount invoiced shall comprise the costs of collection, sorting and recycling or disposal of the waste portable batteries marketed by said manufacturers and collected by the Joint Collection Scheme as well as said manufacturers' share of the overhead costs of the Joint Collection Scheme, as set out under sect. 6, para. 4, of the BattG.

Sect. 8

Duration; termination

1. Under normal circumstances, the User can terminate the User Contract at the end of any calendar month subject to a 12-month notice period.
2. Under normal circumstances, the Foundation is not permitted to terminate the User Contract. The Foundation may only make amendments to the contract conditions in order to adjust them to changing situations. Such amendments shall affect all users equally.
3. The right of both contract partners to terminate the contract for important reasons under exceptional circumstances remains unaffected.

Sect. 9

Geographical area of validity; applicable law and terminology; place of jurisdiction; amendments to the General Terms of Contract

1. The stipulations of the User Contract shall apply exclusively to batteries marketed within the geographical area of validity of the BattG.
2. The User Contract shall be subject to German law. Unless expressly stated otherwise in this contract, the terms used in this contract coincide in meaning or implied meaning with the terms used in the BattG.
3. Place of jurisdiction in the event of disputes resulting from or in connection with the User Contract is Hamburg.
4. The User shall be informed of any amendments to these General Terms of Contract in writing. The amendment shall be deemed as agreed between the Foundation and the User provided the User does not object in writing within six weeks of receiving written notification of the amendment. For an objection to be deemed valid, it shall be sufficient for it to have been sent by the deadline. The Foundation shall expressly state this deadline when notifying the User of the amendment.

Sect. 10

Severability clause

Should one of the stipulations of the User Contract, including these General Terms of Contract, be or become invalid or unenforceable, the validity of the remaining stipulations

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shall remain unaffected. In place of the invalid or unenforceable stipulation, a valid and enforceable stipulation shall be deemed to have been agreed which insofar as possible achieves the economic aims of the invalid and unenforceable provision whilst being legally valid and enforceable. The foundation and the User shall be required to immediately and expressly come to an agreement on such a stipulation. The severability clause shall also apply should a loophole be determined in these User Contract or the General Terms of Contract.

Sect. 11 Transitional provision

1. The General Terms of Contract for participation in the Joint Collection Scheme in this version are valid as of 9 December 2009.
2. Should the contract come into effect during the course of a billing period, the fee, which shall be determined in accordance with sect. 4, shall be payable pro rata temporis (based on the number of days of the billing period on which the User Contract was in force).
3. The amended rules in relation to calculating the fee (sect. 5) shall apply with immediate effect to user contracts which come into effect on or after 9 December 2009. The amended rules shall only apply to those user contracts which came into effect before this date if the Foundation or the User have given at least three months' notice before the end of the current billing period that the previous set of rules shall be superseded at conclusion of the said billing period.