



PV CYCLE WEEE DISTRIBUTOR TAKE BACK SCHEME

TERMS AND CONDITIONS OF MEMBERSHIP

1 BACKGROUND AND OVERVIEW

- 1.1 PV CYCLE operates a government-approved PV-dedicated WEEE Distributor Take Back Scheme (DTS).
- 1.2 The WEEE Distributor Take Back Scheme Membership Terms below are applicable to all Members of the DTS.

2. DEFINITIONS:

"Agreement" means the agreement between PV CYCLE and the Member as set out in the Application Form and these Terms;

"Application Form" means the application form and all notes (including but not limited to a declaration of turnover) completed and submitted by the Member whether on-line or in hard copy;

"BIS" means the Department for Business, Innovation and Skills;

"Commencement date of the DTS" means the 1st January 2014

Data Protection Act" means the Data Protection Act 1998;

"DCF" means a designated collection facility as detailed in the Regulations;

"Distributor" has the same meaning as in the Regulations;

"Distributor Responsibility Obligations" means (in accordance with the Regulations): (a) (where the Distributor has supplied new EEE to a person) the Distributor's obligation under the Regulations to ensure that WEEE from private households can be returned to the Distributor free of charge and on a one to one basis by such person provided that any such WEEE is of an equivalent type to and has fulfilled the same function as the new EEE supplied by the Distributor to such person; (b) the Distributor's obligation to maintain records of the number of units of WEEE from private households returned to the Distributor in accordance with the Distributor's obligation in point (a) above;

"Distributor Take Back Scheme" has the same meaning as in the Regulations;

"DTS" shall mean an abbreviated written form of Distributor Take Back Scheme;

"DTS Fund" means the fund into which the Membership Fee shall be paid and shall be allocated by PV CYCLE towards the development and auditing of the network of DCFs, improving the collection rate of PV WEEE under the Regulations and for the promotion of the DCFs for the collection of PV WEEE from consumers as advised by BIS in accordance with the Operational Plan;

"EEE" has the same meaning as in the Regulations;

"Fee" means the Membership Fee payable by the Member or any other charges or payments due from the Member in accordance with this Agreement;

"Financing Mark" shall mean any symbol, badge, icon, or brand developed by PV CYCLE for the use of the Member to demonstrate its membership of the DTS;

"Intellectual Property Rights" means all patents, design rights, trade marks, trading or business names, copyrights, database rights, whether registered or not and any applications to register or rights to apply for registration of these, rights in inventions, know-how, trade secrets and confidential information and all other intellectual property rights of a similar or corresponding character that subsist now or in the future in any part of the world;

"**In writing**" or "**written**" shall, unless the contrary intention appears, be construed as including references to printing, electronic communication and any other method of reproducing words in visible form.

"**Legislation**" means all statutes, enacting instruments, common law, delegated legislation, regulations, directives, bye-laws, codes of practice, circulars, guidance notes, decisions, recommendations and the like, including, without limitation, the WEEE Directive, the Regulations and the Data Protection Act;

"**Member**" means a Distributor which has become a member of the DTS in accordance with clause 3.1 and "**Members**" shall be construed accordingly ;

"**Membership Fee**" means the membership fee payable by the Member in accordance with clause 6.2, which shall be paid into the DTS Fund;

"**Operational Plan**" means the operational plan for the DTS submitted by PV CYCLE to the Department of Business, Innovation and Skills as approved by the Secretary of State;

"**Photovoltaic panel**" shall mean a packaged interconnected assembly of photovoltaic cells, also known as solar cells. The photovoltaic module is then used as a component in a larger photovoltaic system

"**PV**" shall mean an abbreviated written form of photovoltaic

"**PV WEEE**" shall mean a PV panel disposed of for recycling;

"**PV CYCLE**" shall mean PV CYCLE A.i.s.b.l. 23 Rue Montoyer, Belgium, Brussels, 1000;

"**Regulations**" means the Waste Electrical and Electronic Equipment Regulations 2013 (and any subsequent amendments) in force in the United Kingdom;

"**Relevant Date**" means the date on which the Distributor applied to become a member of the DTS;

"**Term**" shall mean the period of this Agreement which shall be as per clause 3.1

"**Terms**" shall mean the conditions laid out within this Agreement;

"**WEEE**" has the same meaning as in the Regulations; and

"**WEEE from private households**" has the same meaning as in the Regulations.

"**WEEE Directive**" means Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (recast);

3. DTS MEMBERSHIP

3.1 This Agreement and the Distributor's membership of the DTS shall commence when PV CYCLE notifies the Distributor in writing that

- i) the Distributor's application to become a member of the DTS has been successful, ii) the Distributor has provided all information reasonably required by PV CYCLE; and iii) PV CYCLE has received the Distributor's payment of the Fee.

This Agreement shall (unless otherwise terminated earlier in accordance with these Terms) continue in force until 31st December 2016.

3.2 Where and to the extent provided by the Regulations, the Member's membership of the DTS shall (subject to and in accordance with these Terms and the Regulations), exempt the Member from complying with the Member's Distributor Responsibility Obligations for the period of the Member's membership of the DTS.

3.3 PV CYCLE may also from time to time provide to the Member (free of charge) such assistance with the Member's information obligations under regulation 33 of the Regulations as PV CYCLE may in its discretion decide.

3.4 Where a Member's membership of the DTS terminates or expires (for whatever reason):

- (a) the Member shall be responsible for complying with the Member's Distributor Responsibility Obligations from the date of such termination or expiry (as appropriate) and
- (b) PV CYCLE shall not (unless otherwise expressly set out in these Terms) be liable to repay or refund (in whole or in part) the Fee or any other sums already paid or payable by the Member in accordance with these Terms.

3.5 PV CYCLE shall use its reasonable endeavours to carry out its operations diligently and in a reasonable, proper and cost effective manner having regard to the interests of Members and exercise the skill and expertise reasonably to be expected of an organisation approved by the Secretary of State as the operator of the Distributor Take Back Scheme.

4. MEMBER'S OBLIGATIONS

- 4.1 (Subject to clause 3.2) the Member shall comply with the Regulations.
- 4.2 The Member shall comply with the terms of this Agreement.
- 4.3 The Member shall provide such co-operation, assistance, information, records and/or reports as PV CYCLE may reasonably request and the Member shall comply with all reasonable instructions given and requests made by PV CYCLE (including but not limited to such co-operation, assistance, information, records and/or reports as may be required to enable PV CYCLE to comply with any request by and/or requirement of any appropriate agency, governmental authority and/or any other regulatory body).
- 4.4 The Member shall promptly (and in any event within 31 days) notify PV CYCLE of any and all enforcement notices and/or proceedings (including but not limited to entry and inspection proceedings) (and all associated information) issued or taken against the Member under the Regulations and any conviction of the Member for any offence under the Regulations.

5. PROVISION OF INFORMATION

- 5.1 The Member acknowledges and agrees that PV CYCLE shall be entitled to make a list of Members of the DTS publicly available.
- 5.2 (Without prejudice to clause 5.1) the Member agrees that PV CYCLE shall be entitled to provide copies and/or details of information provided to PV CYCLE by the Member to any person (including but not limited to any appropriate agency and/or any governmental authority) to which PV CYCLE is obligated pursuant to Legislation or in response to a request from any relevant enforcement agency and/or governmental authority and/or agency.
- 5.3 The Member shall inform PV CYCLE promptly upon becoming aware of any change in the information provided by the Member to PV CYCLE in connection with the Member's membership of the DTS (including but not limited to any change in the address or other telephone/facsimile, email address and/or address of the registered office and/or person who is nominated as the Member's primary contact, where such details are provided for the purpose of its membership of the DTS).
- 5.4 The Member shall inform PV CYCLE promptly where any appropriate agency and/or governmental authority has requested and/or carried out any audit of the Member under the Regulations.
- 5.5 The Member shall maintain and store in either electronic or written form all documents, data and/or appropriate records it holds, obtains or creates in respect of its membership of the DTS and in respect of its obligations under these Terms for a minimum of 5 years from the date on which such document, data and/or record is made and the Member shall make available such document, data and/or records to PV CYCLE on request, provided that PV CYCLE requires the same in relation to compliance with Legislation.

6. FEE CALCULATION

- 6.1 The Member shall pay the Membership Fee in accordance with clause 7.
- 6.2 PV CYCLE shall from time to time publish its Membership Fees for membership of the DTS (a copy of the Membership Fees is available on request). The Membership Fee payable by the Member shall be the Membership Fee applicable to that Member which is current on the Relevant Date.
- 6.3 Where the Member applied to become a member of the DTS for the first time then the Member shall pay to PV CYCLE the Membership Fee for new Members (which will be current as on the Relevant Date) as prescribed in the Operational Plan and published on the PV CYCLE website <http://dts.pvcycle.org.uk/>
- 6.4 The same Membership Fee applies to all Members until 31st December 2016 regardless of when the Member joined the DTS.

7. PAYMENT OF FEES

- 7.1 Unless otherwise agreed in writing:
 - (a) the Membership Fee shall be paid by the Member in full and in advance on application to become a member of the DTS; and
 - (b) any other sums that shall be payable by the Member to PV CYCLE under the Agreement shall be paid by the Member within 30 days from the date of invoice.
- 7.2 All sums payable under the Agreement are exclusive of any value added tax and any other sales or similar taxes, which shall be added to such sum to the extent applicable from time to time.

- 7.3 All sums payable by the Member to PV CYCLE shall be paid in full without any deduction, withholding, counterclaim or set off.
- 7.4 If any sum payable by the Member to PV CYCLE under this Agreement remains unpaid for more than 30 days from the date of invoice PV CYCLE may charge the Member interest on such sum (after as well as before judgment) at the rate of 4 per cent per annum (or such other percentage rate as PV CYCLE shall from time to time decide and notify to Members such revised rate to come into effect 10 working days after the date of such notice) above HSBC's base rate from time to time, such interest to be calculated on a daily basis from the date upon which such sum became due to be compounded with quarterly rests and to be payable on demand.

8. CONFIDENTIALITY

- 8.1 Each party hereby undertakes to the other that it shall not (and shall procure so far as it is able that each of its directors, officers and employees shall not) at any time (whether before or after the termination or expiry (as appropriate) for whatever reason of the Agreement) (save with the prior consent in writing of the other) divulge or communicate to any person other than as is reasonably necessary for the purpose of conducting its business any secret or confidential information concerning the business, financial or contractual arrangements or other dealings or affairs of the other party or of any customers or clients thereof save to the extent to which:
- (a) such information shall (other than through any unauthorised disclosure by it or any of its directors, officers or employees) come within the public domain on a non-confidential basis; or
 - (b) it is required by law or by any court or tribunal of competent jurisdiction or other applicable regulatory body to divulge or communicate such information; or
 - (c) (in the case of PV CYCLE only) PV CYCLE is required to divulge or communicate such information in the circumstances referred to in clauses 5.1 and/or 5.2.
- 8.2 The provisions of this clause 9 shall continue in force notwithstanding the termination or expiry of the Agreement howsoever caused.

9. DATA PROTECTION

- 9.1 The Member agrees to PV CYCLE holding and/or processing its personal data, and providing such personal data directly or indirectly to any appropriate agency and/or governmental authority, by electronic means or otherwise.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Member acknowledges and agrees that PV CYCLE is and shall remain the owner of all Intellectual Property Rights in, arising from or created under, or as a result of the operation by PV CYCLE of the DTS (including but not limited any Financing mark and that nothing in these Terms shall confer on the Member any ownership or other rights in these or any other Intellectual Property Rights except such rights as are expressly set out in these Terms or are agreed in writing by PV CYCLE from time to time.
- 10.2 The Member shall be entitled to use the Financing Mark subject to and in accordance with such terms as PV CYCLE may from time to time specify.
- 10.3 The provisions of this clause 10 shall continue in force notwithstanding the termination or expiry of the Agreement howsoever caused.

11. INDEMNITY

- 11.1 The Member hereby irrevocably and unconditionally agrees to indemnify and keep indemnified PV CYCLE from and against all demands, claims, liabilities, losses, damages, costs and expenses whatsoever (including all reasonable legal and other costs and expenses, together with value added and similar taxes thereon (if applicable) incurred by PV CYCLE in enforcing PV CYCLE's rights under this indemnity) and from and against all actions, suits and proceedings which may be commenced, taken or made against PV CYCLE arising in relation to or in connection with any breach by the Member of the Agreement.
- 11.2 The provisions of this clause 11 shall continue in force notwithstanding the termination or expiry of the Agreement howsoever caused.

12. LIMITATION OF LIABILITY

- 12.1 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Agreement.
- 12.2 Nothing in the Agreement shall exclude or restrict either parties' liability for death or personal injury resulting from its own negligence, for fraudulent misrepresentation or for breach of the terms (if any) implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 12.3 (Subject to clause 12.2) PV CYCLE shall not be liable to a Member (in contract, tort (including but not limited to negligence), misrepresentation or otherwise) for any loss or damage suffered or incurred by the Member (or its employees, agents, sub-contractors or any third party) (even if the loss or damage is reasonably foreseeable or the possibility of such loss or damage occurring has been advised) arising from:
- (a) any circumstances outside PV CYCLE's reasonable control;
 - (b) the Member's failure to comply with the Agreement;
 - (c) loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings;
 - (d) loss of data or use of data; and/or
 - (e) consequential, special or indirect loss or damage.
- 12.4 (Subject to clauses 12.2 and 12.3) PV CYCLE's entire liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise for all matters arising out of or in connection the Agreement shall not exceed the total amount of the Membership Fee paid by the Member to PV CYCLE under these Terms.
- 12.5 The provisions of this clause 12 shall continue in force notwithstanding the termination or expiry of the Agreement howsoever caused.

13. EFFECTIVE DATE AND TERMINATION

- 13.1 The Agreement and the Member's membership of the DTS may be terminated by PV CYCLE by notice in writing to the Member with immediate effect on or after the occurrence of any of the following events:
- (a) any failure by the Member to pay to PV CYCLE any sum due to PV CYCLE under these Terms within 15 days of the due date for payment thereof;
 - (b) the Member (if an individual) having a bankruptcy petition presented against him (such petition not being dismissed within 14 days), presenting his own bankruptcy petition, proposing a voluntary arrangement with his creditors or a deed of arrangement, being unable to pay his debts within the meaning of Section 268 of the Insolvency Act 1986, dying, becoming of unsound mind or a patient under any statute relating to mental health or becoming incapable through illness or injury of being able properly to perform his obligations hereunder;
 - (c) the Member (if a company) becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, proposing or making a composition or arrangement with its creditors, the presentation of a petition that the Member be put into liquidation or administration (such petition not being dismissed within 14 days), the passing of a resolution putting the Member into voluntary liquidation (other than for the purposes of amalgamation or reconstruction), the appointment of an administrator, provisional liquidator, receiver, manager or administrative receiver, the crystallisation of a floating charge over the business undertaking or assets or any part thereof of the Member or the dissolution of the Member;
 - (d) the Member (if a partnership) becoming unable to pay its debts within the meaning of Section 222 of the Insolvency Act 1986, the presentation of a petition that the Member be wound up or dissolved (such petition not being dismissed within 14 days) or the dissolution of the Member;
 - (e) the Member suffers any equivalent or analogous events to those set out in clauses 13.1(b), (c), or (d) above;
 - (f) any material breach by the Member of the Agreement which, if capable of remedy, shall not have been remedied to the reasonable satisfaction of PV CYCLE within 31 days of receipt by the Member of a written request from PV CYCLE for such breach to be remedied;

- (g) (without prejudice to the generality of clause 13.1(f)) by PV CYCLE (in its absolute discretion) by notice in writing to the Member with immediate effect where any enforcement notice and/or proceedings are issued and/or taken against the Member under the Regulations or the Member is convicted of any offence under the Regulations or has failed to comply with the Regulations;
 - (h) the Member knowingly and/or recklessly supplies false information to PV CYCLE in connection to the Member's membership of the DTS; and/or
 - (i) PV CYCLE collects insufficient funding for the DTS Fund and/or attracts insufficient membership of the DTS (for whatever reason).
- 13.2 The Agreement and the Member's membership of the DTS may be terminated by the Member giving not less than 90 days' notice in writing to PV CYCLE at any time.
- 13.3 The Agreement and the Member's membership of the DTS may be terminated by either party by notice in writing to the other party with immediate effect if the approval of the DTS is withdrawn for any reason under the Regulations and PV CYCLE has not successfully appealed (for whatever reason) such decision to withdraw such approval under the Regulations.
- 13.4 Termination or expiry (for whatever reason) shall not:
- (a) affect any provision of the Agreement which is expressed to survive or operate (or which by implication survives or operates) in the event of such termination or expiry (as appropriate) which shall remain in full force and effect; and
 - (b) shall not prejudice or affect the accrued rights and/or liabilities of either party including but not limited to the rights of either party against the other in respect of any breach of the Agreement or any monies payable by one party to the other prior to such termination or expiry (as appropriate).

14. WHOLE AGREEMENT

- 14.1 In entering into the Agreement the Member does not rely on any agreement, understanding, arrangement, representation, warranty, collateral contract or other assurance, made by or on behalf of PV CYCLE (in particular, but not limited to, the interpretation of the Regulations) that is not expressly set out in the Agreement and the Member waives all rights and remedies which, but for this clause 14.1, might otherwise be available to it in respect of any such agreement, understanding, arrangement, representation, warranty, collateral contract or other assurance provided that nothing in the Agreement shall limit or exclude any liability for fraud.
- 14.2 The Agreement and any other document specified as constituting part of the Agreement sets out the entire understanding and agreement between PV CYCLE and the Member relating to the DTS and supersedes all prior written or oral agreements, understandings and/or arrangements made between PV CYCLE and the Member relating to the subject matter of the Agreement.

15. GENERAL

- 15.1 The provisions of the Agreement shall be binding on and inure to the benefit of the successors and personal representatives of each party hereto.
- 15.2 PV CYCLE may at any time and from time to time amend, modify or add to any provision of the Agreement on giving to the Member not less than 60 days' notice in writing of such amendment, modification or addition, unless such amendment, modification or addition is made by reason of any requirement of or any amendment to or pursuant to Legislation or the requirement of any relevant appropriate agency, governmental authority and/or other regulatory body in which event such amendment, modification or addition shall have effect from the date specified in the notice.
- 15.3 Each party irrevocably and unconditionally waives any right which it may have to claim damages and/or to rescind the Agreement for any misrepresentation whether or not contained in the Agreement or for any breach of any warranty not contained in the Agreement unless such misrepresentation or warranty was made fraudulently.
- 15.4 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.
- 15.5 Except as otherwise expressly provided the rights and remedies provided in the Agreement are cumulative and not exclusive of any other rights and remedies provided by law.

- 15.6 (Subject to clause 15.2) no variation of the Agreement shall be valid unless it is in writing and validly signed by or on behalf of both PV CYCLE and the Member.
- 15.7 Each provision of the Agreement is severable and distinct from every other provision. If any provision of the Agreement is found by any competent court or administrative body to be illegal, invalid or unenforceable, this shall not affect the other provisions of the Agreement or remainder of the affected provision, which shall remain in full force and effect.
- 15.8 A waiver of any term, provision or condition of the Agreement shall be effective only if given in writing and validly signed by the waiving party.
- 15.9 Nothing in the Agreement and no action taken by either party pursuant to the Agreement shall constitute, or be deemed to constitute, a partnership, association, joint venture, agency or any other co-operative entity.
- 15.10 No terms of the Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Agreement.
- 15.11 PV CYCLE shall not be in breach of the Agreement or otherwise liable to the Member by reason of any delay in performance, non-performance and under performance of PV CYCLE's obligations under the Agreement or the consequences of any such delay in performance, non-performance and/or under performance due to any circumstances outside PV CYCLE's reasonable control.

16. NOTICES AND COMMUNICATIONS

- 16.1 Any notice to be given to or by any person under the Agreement must be in writing. Any notice or document may be served by PV CYCLE on any Member either personally or by leaving it and/or by sending it through the post in a prepaid letter addressed to him at his registered address. PV CYCLE may also send a notice or document by electronic communication to an address notified to PV CYCLE by the Member.
- 16.2 Any notice or other document, if served by post or by electronic communication shall be deemed to have been served at the expiration of 48 hours after the envelope containing it was posted and in the case of a notice contained in an electronic communication at the expiration of 48 hours after the time it is sent. In proving postal service it shall be sufficient to prove that the letter containing the notice or document was properly addressed, stamped and posted, and in the case of proving electronic communication it shall be sufficient to show that it was sent in accordance with the guidance issued by the Institute of Chartered Secretaries and Administrators.
- 16.3 For the purpose of clause 16.1 PV CYCLE's address, fax, email and website address are: PV CYCLE a.i..s.b.l. Rue Montoyer 23 1000 Brussels Belgium Tel: (00) 32 2 880 7250 Fax (00) 32 2 880 7251 and (c) Website address www.pvcycle.org or email address info@pvcycle.org.

17. GOVERNING LAW

- 17.1 The Agreement shall be governed by and construed in all respects in accordance with English law. The parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to the Agreement.