

REPAK ELT COMPANY LIMITED BY GUARANTEE

APPROVED BODY SCHEME RULES

28th August 2019

REPAK ELT CLG

Red Cow Interchange Estate

1 Ballymount Road

**Clondalkin
Dublin 22**

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REPAK ELT 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 and every other enactment which is to be read together with that Act;

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

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

“Companies Act” means the Companies Act 2014 and every statutory modification and re-enactment thereof for the time being in force;

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

“Member” means a person or entity whose application for membership of Repak ELT is accepted by Repak ELT 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 Communications, Climate Action and Environment and any successors of such Minister;

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

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

“Regulations” means the Waste Management (Tyres and Waste Tyres) Regulations 2017 [S.I. No. []/2017, as amended or replaced from time to time;

“Repak ELT” means Repak ELT CLG, a company limited by guarantee which is an Approved Body under the Regulations;

“Reporting Period” means such quarterly, 12 month or other period (as relevant) in respect of which period, Members are required to provide certain information to Repak ELT in accordance with these Rules;

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

“Rules” means the Rules for participation in the Scheme (also referred to as “Scheme Rules”), as set out in this document;

“Scheme” means the Repak ELT - Approved Body Scheme for the environmentally sound management of Waste Tyres submitted by Repak ELT to the Minister and approved by the Minister, including all amendments subsequently made to that Scheme;

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

“**vEMC**” means the visible environmental management cost imposed on tyres placed on the market in the Territory.

“**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** A word or expression used in these Rules which is not otherwise defined and which is also used in the Regulations shall have the same meaning here, as it has in the Regulations.
- 1.4** 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.
- 1.5** For the purpose of these Rules, “person” includes any individual, partnership, firm, trust, body corporate, Subsidiary Undertaking, unincorporated body of persons or association.
- 1.6** These rules take effect from 28th August 2019.

2 OBJECTIVES AND FUNCTIONS OF REPAK ELT

2.1 Repak ELT Objectives

The objectives of Repak ELT are:

- (a) to administer the Scheme as approved by the Minister in accordance with the Regulations and these Rules; and
- (b) to verify the proper management of Waste Tyres by tracking and auditing their movement through the supply chain and further in the waste management stream; and
- (c) to facilitate businesses and industry in the Territory in meeting their obligations under the Act and the Regulations, and
- (d) as otherwise specified in the Constitution of Repak ELT.

2.2 Repak ELT Functions

Repak ELT shall operate a Waste Tyre compliance scheme under the terms and conditions set out in the approval granted by the Minister and in accordance with the Constitution of Repak ELT.

Repak ELT shall:

- (a) Collate, analyse, maintain and supply recycling/recovery records in respect of tyres produced by Members and Waste Tyres managed by Members and their agents;
- (b) Undertake promotional campaigns to educate and raise public awareness and encourage co-operation between Members in relation to Repak ELT’s activities;

- (c) Report from time to time on its activities to the Minister and to Members; and
- (d) Carry out all other functions and obligations required of Repak ELT under the Regulations and these Rules.

3 ELIGIBILITY FOR MEMBERSHIP OF REPAK ELT

3.1 Eligibility to Apply

Any Producer or Retailer may apply for membership of Repak ELT.

3.2 Application Process

All applications for membership shall be in the form provided on the Repak ELT website. Acceptance to membership is at the sole and absolute discretion of Repak ELT.

3.3 Acceptance as a Member

Repak ELT may accept an applicant as a Member where the applicant:

- (a) makes an application under rule 3.2 submitting full and correct details of all information required in the membership application form;
- (b) is in compliance with the Regulations;
- (c) undertakes to fully comply with these Rules;
- (d) pays to Repak ELT the membership Fees (including any VAT), as specified by Repak ELT;
- (e) satisfies any additional or alternative requirements as specified as a precondition of membership for any particular applicant or all applicants by Repak ELT.

If Repak ELT rejects an application for membership, it shall provide the grounds for rejection to the applicant.

3.4 Group Organisations

Applications for membership by Producers or Retailers which consist of a group of related corporate/unincorporated bodies or individuals shall be treated as an application for single membership. Such group organisations are required to provide details of all bodies/individuals in the group and each premises from which they carry on their business.

4 PARTICIPATION AND MEMBERS' ENTITLEMENTS

4.1 Register of Members

Repak ELT 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 ELT website www.RepakELT.ie

4.2 Annual Membership Certificate

Repak ELT shall, subject to the completion of all relevant reports and payment of all fees due by a member under these rules, issue as appropriate to Members a Certificate of Membership in the form set out in Schedule 1 of these Rules confirming the Member as a Member for that year and, subject to the payment of all fees due and completion of relevant reports in each year thereafter, issue a new Certificate of Membership confirming the renewal of that Member's membership of Repak ELT in each such year.

4.3 Use of Repak ELT Logo

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

- (a) Display the Certificate of Membership issued to it under rule 4.2 at its premises; and
- (b) Use Repak ELT's logo on its stationery and in other areas or places as permitted by guidelines issued by Repak ELT to Members from time to time or as otherwise approved in advance in writing by Repak ELT.

5 REPAK ELT SCHEME MEMBERS' OBLIGATIONS

5.1 Basic Obligations

Each Member shall:

- (a) pay all Fees due by that Member to Repak ELT in accordance with the Rules;
- (b) charge and account to Repak ELT for the vEMC on all tyres sold;
- (c) provide such information, as may be requested by Repak ELT from time to time in accordance with these Rules;
- (d) appoint a duly authorised representative to liaise with Repak ELT 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;
- (e) notify Repak ELT of any change to its details as shown on the Register (including the identity and contact details of the Member's authorised representative) within 30 working days of such change;
- (f) permit Repak ELT's authorised representative to attend on the Member's premises to carry out an audit (or at any other premises of the Member) of the Member's tyre data information, as provided to Repak ELT pursuant to Rule 7;
- (g) ensure that Waste Tyres arising on-site are dealt with in a responsible manner in compliance with the Regulations;
- (h) in carrying out its activities, only use the services of a Repak ELT Authorised Waste Collector who complies with all applicable legislative requirements regarding the handling and treatment of Waste Tyres;
- (i) as a retail member, in order to avail of free collection on a like for like basis ensure that all waste tyres placed for collection have had a vEMC paid. Any waste tyres placed for collection on which a vEMC has not been paid, will not be collected for free and are the responsibility of the retailer; and

- (j) account for on and from the date on which the applicant becomes a Member, that Member shall fully observe the Regulations, the Rules and such other conditions or Codes of Practice relating to Members' participation in the Scheme as Repak ELT may from time to time prescribe.

5.2 Display of Certificate of Membership

Each Member shall display at or within one metre of each entrance to each of its premises the Certificate of Membership issued to it under rule 4.2, in a conspicuous position and in such manner as to be clearly visible to members of the public.

6 FEES

6.1 Determination of Fee Amounts

Each Member shall pay a Membership Fee in advance for each Year of membership and, depending on the category of Member and tyre, a Fee in respect of imports for each Reporting Period or part Reporting Period. The Fees payable by Members shall be calculated by Repak ELT and advised by Repak ELT in writing from time to time to the relevant Members.

Membership Fees at the date of adoption of these Rules shall be:

- ***Producers:***
Annual Membership Fee of €70.00 (incl. VAT) applies plus €50.00 (incl. VAT) for each additional premises.
- ***Retailers:***
Annual Membership Fee of €70.00 (incl. VAT) applies plus €50.00 (incl. VAT) for each additional premises.

6.2 Payment Procedure

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

- (a) Payment of Fees by Members shall be by way of direct debit, electronic funds transfer or as otherwise agreed by Repak ELT with the Member. On applying for membership, each Member must register its bank account details to set up a direct debit instruction, so that Repak ELT (or its agent) can collect Fees owed by Members as required. An administration charge may be charged on payments not honoured by a Member's bank - e.g. if the bank account does not support the direct debit instructions. It is a Member's responsibility to advise Repak ELT of changes to its bank details in good time;
- (b) Fees must be paid no later than 30 days after the date of Repak ELT's invoice;
- (c) Repak ELT 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).

6.3 VAT

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

7 MEMBERS REPORTING REQUIREMENTS

7.1 Reporting Requirements

Except where otherwise specified by Repak ELT, each Member shall provide the information set out in Schedule 2 to these Rules for each Reporting Period to Repak ELT in such form as notified to it by Repak ELT no later than 15 days after the end of that Reporting Period. Repak ELT may from time to time vary the information and frequency of the reporting requirements.

7.2 Records and Inspection for Audit Purposes

Each Member shall keep, for a minimum period of 7 years after the end of a Reporting Period, such detailed, true and accurate books and records as are necessary to verify the accuracy of the information it is required to compile and provide to Repak ELT. Records of the methodology, systems and data used to calculate this information must also be maintained by Members. Repak ELT shall be entitled at its own expense to inspect and audit the books and records of each Member and to take copies of such books and records and for this purpose each member shall grant Repak ELT permission for it to have access during normal business hours on giving reasonable notice to all premises where such books and records are maintained.

In the event that any information provided by a Member to Repak ELT is inaccurate by more than [10%] (from the data shown in the books and records kept pursuant to this rule), Repak ELT's costs of such inspection shall be paid by the relevant Member.

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

7.3 Late or Incorrect Returns or Failure to Submit a Return

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

- (a) fails to provide the information required by Repak ELT pursuant to rule 7.1 within the time period specified in that rule; or
- (b) submits incorrect information and has to resubmit information forming part of its return,

Repak ELT may:

- (a) levy a surcharge on that Member for each Reporting Period, as the case may be; and/or
- (b) in the case of a Retailer Member, suspend the free collection of Waste Tyres from the Retailer's premises until such time as the breach is remedied.

7.4 Confidentiality

Repak ELT 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 shall:

- (a) not use or exploit the Confidential Information in any way other than in connection with the performance of Repak ELT’s rights, functions and obligations under the Regulations and/or under the Scheme as approved by the Minister;
- (b) not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted under these Rules.

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

- (a) required by law (including under the Regulations), or by any securities exchange or regulatory or governmental or local authority or nominated authority to which Repak ELT is subject, or submits, wherever situated or is required under the Scheme approved by the Minister;
- (b) to any other Approved Body or Registration Body under the Regulations;
- (c) to the professional advisers, auditors or bankers of Repak ELT;
- (d) information that has already come into the public domain through no fault of Repak ELT;
- (e) is developed by or for Repak ELT independently of the information disclosed by the disclosing Member;
- (f) information which is already lawfully in the possession of Repak ELT 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
- (g) approved by the disclosing Member in writing in advance.

8 REPAK ELT OBLIGATIONS

8.1 Use of Monies

All monies furnished by Members to Repak ELT 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 ELT operates on a not for profit basis.

8.3 Accounting Records

Repak ELT shall cause proper accounting records to be kept with respect to:

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

8.4 Annual Audit

Repak ELT's financial statements shall be audited annually by Repak ELT's auditors.

8.5 Annual General Meeting

All Members shall be invited to attend Repak ELT's Annual General Meeting.

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

A copy of Repak ELT's financial statements for each financial Year together with such other financial documents and reports as are required by the Companies Act shall be presented to the Repak ELT Annual General Meeting.

8.6 Data Protection

Repak ELT will duly observe all its obligations under the Data Protection Act 2018 which may arise in connection with the scheme.

9 REVOCATION OF PARTICIPATION

9.1 Resignation by Member

Any Member may resign its membership of Repak ELT by giving six months prior written notice to Repak ELT. Resignation of membership will be notified, as required by law, to the relevant local authority or authorities, the Registration Body and/or the Environmental Protection Agency (as appropriate) and, if so required, published in local or national publications.

9.2 Revocation of Membership by Repak ELT

Repak ELT may revoke the membership of any Member by notice in writing if that Member commits a breach of any of the Rules and/or that Member's obligations under the Regulations, and in the case of a breach capable of remedy, fails to remedy such breach within 30 (thirty) days after receipt of written notice from Repak ELT 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, the Registration Body and/or the Environmental Protection Agency (as appropriate).

9.3 Immediate Revocation of Membership by Repak ELT

Upon the occurrence of any one of the following events, Repak ELT may revoke membership with immediate effect:

- (a) the Member becomes bankrupt or enters into an arrangement with his/her creditors or if execution is levied against him/her; 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 ELT's sole determination, the Member provides false, misleading or fraudulent information to Repak ELT.

Where a Member goes into liquidation or if a receiver, receiver and manager, or examiner is appointed over and/or in respect of the Member, Repak ELT may at its sole and absolute discretion determine to allow the Member's participation in the Scheme provided the receiver, liquidator or examiner (as appropriate) so appointed assumes the position of the Member as if it were the original person whose application for membership of the Scheme was accepted by Repak ELT.

No failure or delay by Repak ELT 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 membership. On the date of cessation, the Member shall:

- (a) surrender any and all Certificates of Membership to Repak ELT; and
- (b) cease to use its registration number, any notices and the Repak ELT logo on any of its stationery, website, invoices, promotional material and on any other place or object (whether previously approved by Repak ELT or not).

9.5 Ongoing Liabilities

Notwithstanding either:

- (a) resignation of a Member from Repak ELT; or
- (b) revocation of a Member's membership,

under this rule 9 that Member shall:

- (a) remain liable for any Fees accrued and payable prior to the date of resignation or revocation; and
- (b) 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 ELT to confirm membership renewal or demand repayment.

10 APPEALS

10.1 Appeals in relation to Membership Decisions

Any person who is in receipt of a decision of Repak ELT to revoke their membership pursuant to rule 9 or whose application for membership has been rejected pursuant to rule 2 shall have a right to appeal such decision to the Appeals Committee provided that notice in writing of its intention to appeal is received by Repak ELT at its registered office within 21 days of the date of Repak ELT's written notice of revocation/rejection of membership.

10.2 Content of an Appeal

The appeal to the Appeals Committee shall be in writing and shall set out:

- (a) the decision to which the appeal relates and the ground(s) for the appeal;
- (b) the principal facts, documents and/or circumstances relied upon in relation to each ground;
- (c) any submissions the applicant/Member wishes to make generally in support of the appeal.

A person may, at any time before the appeal is heard withdraw the appeal in whole or in part by notifying the Appeals Committee in writing.

10.3 Consideration of an Appeal

The Appeals Committee shall consider any appeal lodged by an applicant/Member and before it makes a decision on the appeal, it shall send to the applicant/Member and Repak ELT a copy of its proposed decision and invite both the applicant/Member and Repak ELT to make submissions relating to its proposed decision. Where requested to do so, the Appeals Committee may, in its discretion, give the applicant/Member and Repak ELT an opportunity of making oral submissions in relation to the proposed decision.

10.4 Decisions open to the Appeals Committee

Following its consideration of an appeal and any submissions received pursuant to rule 10.3, the Appeals Committee may make one or more of the following decisions:

- (a) affirm the decision of Repak ELT;
- (b) vary the decision of Repak ELT;
- (c) set aside the decision of Repak ELT, and either substitute its own decision, or remit the matter to Repak ELT to reconsider in accordance with the guidance of the Appeals Committee,
- (d) order the payment of the costs of the appeal.

Any decision of the Appeals Committee under paragraphs (a), (b) and/or (d) shall be final and shall not be appealable.

Where the Appeals Committee make a decision under paragraph (c) above to remit the matter for re-consideration, Repak ELT shall reconsider the matter concerned, and shall make a fresh decision in accordance with these Rules. Such decision may be the subject of an appeal to the Appeals Committee in the same way as any other decision of Repak ELT in relation to membership.

10.5 Composition of Appeals Committee

The Appeals Committee shall consist of three persons as follows:

- (a) two individuals nominated by Repak ELT's board of directors, who shall be wholly independent and have no involvement, whether as a director, shareholder, partner, employee, consultant or otherwise with [a Producer, Retailer, Authorised Waste Collector or Recovery Operator or any other person otherwise operating in the Waste Tyre Industry];
- (b) one person [nominated by the Minister for Communications, Climate Action and Environment].

11 DISCLAIMER

Repak ELT, 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 ELT by the Minister.

12 PARTICIPATION

No Member shall hold any 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 ELT.

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 ELT Scheme without being a fully paid up and compliant Member.

13 RIGHT TO AMEND RULES

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

The Rules may be amended from time to time by the Board of Repak ELT, having regard to the best interests of the Members and the integrity of the Scheme. Any amendments to the Rules shall be notified to Members and a revised version of the Rules shall be published on the Repak ELT website.

SCHEDULE 1

Form of Certificate of Membership



CERTIFICATE OF MEMBERSHIP

Take Back of Waste Tyres Waste Management Act 1996

Waste tyres are taken back in this outlet on a one-for-one, like-for-like basis.

All waste tyres are collected by an authorised waste collector and treated in an environmentally sound manner.

This certificate is valid from the date of issue below until 31st December 2019 unless earlier revoked in accordance with the membership rules of the scheme.

Repak ELT Member

Member Number

Date of Issue

SCHEDULE 2

REPORTING REQUIREMENTS FOR RETAILERS

The reporting requirements for Retailers are as per the Third Schedule of the WASTE MANAGEMENT (TYRES AND WASTE TYRES) REGULATIONS 2017, see extract;

Information to be provided for the purposes of reporting to an approved body

1. National identification code of the retailer.
2. Reporting period.
3. The quantities by weight or, as appropriate, by number of units of tyres sold in each of the categories specified in the First Schedule for which an environmental management cost as prescribed in Regulations 42 and 43 has been paid.
4. The quantities by weight or, as appropriate, by number of units of tyres sold in each of the categories specified in the First Schedule for which an environmental management charge as prescribed in Regulations 42 and 43 has not been paid.
5. The quantities by weight or, as appropriate, by number of units of tyres received from a producer in each of the categories specified in the First Schedule for which an environmental management cost as prescribed in Regulations 42 and 43 has been paid.
6. The quantities by weight or, as appropriate, by number of units of tyres received from a producer in each of the categories specified in the First Schedule for which an environmental management cost as prescribed in Regulations 42 and 43 has not been paid.
7. The quantities by weight or, as appropriate, by number of units of tyres received from a retailer in each of the categories specified in the First Schedule for which an environmental management cost as prescribed in Regulations 42 and 43 has been paid.
8. The quantities by weight or, as appropriate, by number of units of tyres received from a retailer in each of the categories specified in the First Schedule for which an environmental management cost as prescribed in Regulations 42 and 43 has been not paid.
9. The quantities by weight or, as appropriate, by number of units of waste tyres put forward for collection by an authorised waste collector in each of the categories specified in the First Schedule for which an environmental management cost as prescribed in Regulations 42 and 43 has been paid.
10. The quantities by weight or, as appropriate, by number of waste units of tyres put forward for collection by an authorised waste collector in each of the categories specified in the First Schedule for which an environmental management cost as prescribed in Regulations 42 and 43 has not been paid.
11. The names, addresses and permit numbers of authorised waste collectors or, as appropriate, recovery operators used for the collection or treatment of waste tyres during the reporting period.
12. Declaration stating that the information provided is true.