



General Terms and Conditions
of the User Contract
of the Foundation for a Joint Battery Collection System

Preface

1. On March 27th 1998 the German Federal Government adopted the Verordnung über die Rücknahme und Entsorgung gebrauchter Batterien und Akkumulatoren - German Regulations on the Collection and Disposal of Used Batteries and Accumulators - (Regulations on Batteries in the version dated July 2nd 2001 [Federal German Gazette I 1486] last amended by the law governing the conversion of the Environmental Regulations to the euro [Federal Gazette I 1231]). The purpose of these Regulation is to prevent batteries and accumulators (hereinafter collectively referred to as “batteries”) from contaminating household waste through the collection and safe and orderly recycling of used batteries or the disposal of non-recycled batteries in the interest of public welfare in compliance with the 'Kreislaufwirtschafts- und Abfallgesetz' - Law on Recycling and Waste Management (§ 1 of BattV). The manufacturers are obliged to take back free of charge hazardous batteries returned to the distributors or provided by a public disposal agency and either recycle them or dispose of unusable batteries under the regulations of the Law on Recycling and Waste Disposal (§ 4 Par. 1 of BattV). To this end, the manufacturers are amongst other things obliged under § 4 Par. 2 of the Regulations on Batteries to ensure the collection of used batteries by establishing a joint collection system or participating in a system that meets the requirements of the provisions in the Regulations on Batteries. The manufacturers may also establish their own collection system for the batteries brought into circulation by them in accordance with § 4 Par. 3 of the Regulations. In accordance with § 5 Par. 2 of BattV, the distributors are obliged to entrust the collection of batteries returned to them under § 5 Par. 1 of BattV to a collection system of the manufacturers as specified in the aforementioned § 4 Par. 2 or 3 of BattV.



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Under § 9 Par. 2 of BattV, public waste disposal agencies are obliged to provide batteries accepted by them under § 9 Par. 1 of BattV for removal by such a collection system free of charge.

2. The Foundation was set up to facilitate the organization, management and execution of private-sector disposal of batteries in compliance with statutory provisions or private-law obligations and in particular to operate the collection system in accordance with § 4 Par. 2 of BattV. The Foundation, however, shall merely recover costs, not make a profit. Accordingly, it is prepared to meet the obligations of manufacturers of batteries under the Regulations on Batteries as regards their collection and disposal. It shall assign the actual disposal services to a third party; only where no reliable disposal service provider is available at a reasonable price may the Foundation resort to providing such a disposal service itself.
3. The Foundation provides its services to battery manufacturers on the basis of the General Terms and Conditions stipulated below. These shall apply for all manufacturers alike.
4. The User is a manufacturer as specified in § 2 Par. 2, or 4 of BattV. He has chosen not to establish his own collection system for the batteries he has brought into circulation in accordance with § 4 Par. 3 of BattV, but on the basis of the Agreement reached between himself and the Foundation and these General Terms and Conditions in accordance with § 4 Par. 2 of BattV to participate in the joint collection system initiated by the Foundation.

§ 1

Duties of the Foundation

1. The Foundation undertakes to operate a collection system according to the requirements of the Regulations on Batteries, in particular
 - To arrange collection points with the distributors of batteries and end users that are commercial or other industrial enterprises or public institutions.
 - To provide suitable collection containers for batteries at such agreed collection points or at the collection points of public waste disposal agencies.
 - To remove the batteries provided for collection by distributors or public waste disposal agencies at the collection points, regardless of type, brand or origin and recycle these batteries.
 - To recycle these batteries in accordance with the provisions of the Law on Recycling and Waste Management and dispose of non-recyclable batteries,
 - To issue invitations to tender for disposal services in accordance with the Regulations on Batteries.
 - To secure finance for the collection system as required in the Regulations on Batteries.
 - To disclose the costs of the collection system in the manner prescribed in the Regulations on Batteries and prepare a report on its activities in accordance with § 10 Par. 1 of BattV.

2. The collection, recycling and disposal of equipment with built-in batteries are not subject to this Agreement. After dismantling, batteries previously built into equipment are subject to the provisions of this Agreement.

3. In accordance with the Regulations on Batteries, the Foundation may itself provide the services incumbent on it under Pars. 1 and 2 or have these services performed by a third party.
4. The Foundation shall perform its duties according to Pars. 1 and 2 in an efficient way.

§ 2

General Duties of the User

The User is obliged

- To make payment to the Foundation of the fee owed according to § 3, in particular to make payment of amounts owed to the Trustee in accordance with § 4 Pars. 2 and 3,
- To provide the Trustee with the requisite information for his activities as detailed in § 6 Par. 1 below.
- To point out in his instructions for use of lithium batteries and powerpacks of all systems that only discharged batteries should be deposited in the spent battery collecting pots at trade and public waste disposal agencies and that precautions must be taken against short-circuiting in the case of partially discharged batteries; 'lithium batteries' are single discharge primary lithium batteries; 'powerpacks' also comprise accumulators of the lead, nickel-cadmium, nickel-metal hydride and lithium rechargeable systems; instructions printed or even in circulation prior to the conclusion of the User Agreement need not be altered; the condition of 'complete discharge' can in particular be understood to mean that the customary end of use (for example switch off of unit when it reaches cutoff voltage or at the onset of functional impairments due to inadequate battery capacity) must have been attained; an additional indication that short-circuiting can be prevented by insulating the poles with adhesive tape is recommended; the above provisions do not apply where constructional measures have been taken to ensure that the returned batteries cannot be short-circuited,

- give immediate, truthful and complete notification to the Trustee of changes in his sales programme, where these in his reasonable business judgement will result in changes to the quantity of certain categories of battery brought into circulation.

§ 3

Ascertainment of Fee

1. The fee to be paid by the User shall meet the costs arising from the performance of the services under this Agreement in accordance with Par. 4. It is determined by the latest List for Contributions to Disposal Costs issued by the Foundation, in which a contribution to disposal costs for the services of the Foundation under this Agreement is stipulated for every battery category (classified by minimum and maximum weight, type groups - primary battery, secondary battery, button cell battery or battery made of button cells batteries - and the respective electrochemical system used); fee alterations are only permitted under Par. 3. The fee to be paid by the User must be ascertained separately for every category and is calculated for each calendar quarter ('settlement period' in the following) by multiplication of the current unit disposal cost contribution for this category with the number of batteries in this category the User has brought into circulation during the settlement period. The fee is ascertained by the Trustee in accordance with § 4 below.

2. Batteries are deemed to have been brought into circulation by the User if he is in accordance with § 2 Pars. 2 or 4 of BattV the manufacturer - particularly also the importer - of these batteries, provided the batteries have not been exported from the scope of the Regulations on Batteries by virtue of the manufacturer status under said provisions. Proof that batteries have been exported is at all events possible, where
 - (a) The User himself has exported the batteries and the Trustee can verify this in accordance with § 6 Par. 1 or

 - (b) A third party has exported the batteries and the Trustee can control the exportation by the third party under a contractual agreement between the User and the third party.

§ 4 par. 5 shall apply accordingly for exports.

If several users are manufacturers according to § 2 of BattV (for example because one user has manufactured the batteries on behalf of another user), they shall reach agreement on the person of the debtor with regard to these batteries; if no agreement has been reached within a month after the requisite request, the batteries are deemed as having been brought into circulation by all the users concerned. With an enterprise domiciled abroad that imports batteries into the purview of the Regulations on Batteries, the Foundation may for the benefit of the clients of such an enterprise here also conclude a user agreement, even if the enterprise does not meet the requirements of § 2 Pars. 2 or 4 of BattV. The batteries sold by this User to his clients within the purview of the Regulations on Batteries shall be deemed as brought into circulation by such User in the sense of Par. 1.

3. The Foundation is entitled to alter the unit disposal cost contributions for individual categories in keeping with the costs incurred to it for performing the requisite services in relation to the batteries of the respective category by issuing a new List for Contributions to Disposal Costs. The alteration will take effect as of the beginning of the second calendar quarter following the issue of the new List for Contributions to Disposal Costs. The new List for Contributions to Disposal Costs is issued by despatch to the users on the understanding that the List is also deemed to have been issued even if it has not been sent to all users.
4. Included in the costs of executing the services under this Agreement are total costs incurred to the Foundation (including in particular administrative costs, personnel costs, costs of PR measures, remuneration payable to the Trustee under § 5, possible finance costs and costs of transporting, sorting out, recycling and/or disposal of the batteries of manufacturers who do not belong to the collection system) less income not derived from fees paid by users, that is in particular income derived from recycling, recourse to outside manufacturers under § 8 below, income on interest and donations. Where the costs and income cannot be assigned to specific categories, an equal proportion of such costs and income shall be assigned by unit of weight to the individual batteries brought into circulation by the users.

5. Where services incumbent on the Foundation under § 1 are provided by a user (e.g. packing into larger transport units, the logistics for a sorting centre or sorting into systems), the Foundation may agree a smaller fee with the User for the batteries concerned. Reimbursement shall generally equal the costs that would have been incurred to the Foundation, if the services had been provided by a third party less administrative costs arising to the Foundation through the provision of such services by the User himself. This Par. 5 shall not apply to the disposal or recycling of batteries; these services are solely incumbent on the Foundation.
6. Where the User can ascertain the type and number of built-in batteries brought into circulation by him only at unreasonable cost, the parties may agree on the type and number of batteries - possibly within specific parameters - deemed as brought into circulation by the User. Such agreement shall ensure that the fee charged on this basis equals at least the fee that would have been charged on ascertaining the batteries actually brought into circulation. Such agreement must make provision for what notifications are to be made instead of the notifications specified in § 4. Par. 1. § 4 Par. 3 shall apply analogously.
7. Par. 1 shall not apply to batteries brought into circulation by the User for which the User has established a separate collection system in accordance with § 4 Par. 3 of BattV due to their special characteristics or exceptional use and of which the competent authority has been notified and the User has provided evidence of the establishment of the separate collection system and the notification of the competent authority.

§ 4

Payment of Fees; Payment of Interest

1. Subject to Par. 7 below, the User shall make part payments in every settlement period amounting to the fee he was obliged to pay for the corresponding settlement period in the previous year. The part payments shall be made in three equal monthly installments, the first payable after six weeks, the second after ten weeks and the third after fourteen weeks from the beginning the settlement period; however, the User may pay all three installments

together in one payment six weeks after the beginning the settlement period. The part payments shall be levied by the Trustee by written request as a rule three weeks before settlement date of the first installment specified. On behalf of the Foundation the Trustee makes out an invoice in compliance with the provisions of the Turnover Tax Law. If the User was not yet a User in the corresponding settlement period of the previous year, the quantity of batteries brought into circulation in the settlement period in question must be estimated by the User. The User and the Foundation (through the Trustee) may demand an alteration to the part payments, if they can provide evidence that the quantity of batteries brought into circulation in the settlement period has altered by more than 10% as compared with the corresponding settlement period in the previous year.

2. Within thirty days after expiry of the respective settlement period, the User shall report to the Trustee using a questionnaire provided by the Trustee the number and (with a view to the duties of the Foundation under § 10 Par. 1 No. 1 of BattV) the total weight of batteries for each category of battery brought into circulation by the User in the settlement period. If the notification is not made in due time, it will be assumed until notification has been made that in the settlement period the User has brought into circulation 120% of the batteries in every category brought into circulation by him in the previous settlement period.
3. The Trustee charges the fee for the settlement period by notification in writing to the User. The Trustee notifies the User how far the part payments made exceed or fall short of the fee for the settlement period. On behalf of the Foundation the Trustee in turn makes out an invoice or a credit note in compliance with the provisions of the Turnover Tax Law. Within three weeks of notification, the User must pay the difference between the part payments and the fee for the settlement period or receive a refund.
4. The payments under this paragraph are to be made to the Trustee. The Trustee remits payments received (in anonymous form) immediately to the Foundation.
5. If on examination of the User's records the Trustee determines that the User has brought into circulation more or fewer batteries in past settlement periods than he has notified, the Trustee will demand an additional payment or the Foundation (in anonymous form via the

Trustee) will pay a refund in keeping with the valid List of Contributions to Disposal Costs at the time of the incorrect notification.

6. Should the User fail to make due payment or fail to make due payment in full, interest will be charged on the overdue balance at a rate of three percentage points above the basic interest rate as at settlement date.
7. By written statement to the Trustee the User may opt to immediately pay the fee charged under § 3 instead of part payments at the intervals specified in Par. 1. In this case the notifications under Par. 2 are made within 30 days after the end of the calendar month, in which the fee is payable ('settlement month' in the following). The notifications under Par. 3 must be made monthly. Par. 3 Sentences 2 and 4 shall not apply. Payment of the fee for the settlement month is due six weeks after the end of the settlement month, even if the notifications under Par. 3 for the settlement month have not yet been submitted at this time.

§ 5

Trustee

The Foundation shall engage an auditor as Trustee for the ascertainment of the fee in accordance with § 3 and its collection in accordance with § 4. The Foundation shall notify the User immediately of the name of the Trustee commissioned for this purpose.

§ 6

Duties of Trustee

1. The Foundation and the User undertake to provide the Trustee with all information he deems necessary for ascertainment of the fee owed by individual users and for determining all the relevant facts required for disclosure of information under § 10 Par. 1 No. 1 of BattV (weight of batteries brought into circulation in the past year, classified by system and type group) and for controlling the notifications of the users in accordance with § 4 Par. 1 of this Agreement. The Foundation and the User shall allow the Trustee to inspect their business records as required by the Trustee, provided this is necessary for the above specified purposes.

2. The agreement between the Foundation and the Trustee ('Trust Agreement' in the following) shall require the Trustee to give an undertaking to the Foundation and the User to keep confidential any information given by the User and obtained from the perusal of his business records as well as the fees charged to the User, in particular not to disclose such information to the Foundation itself and other users.
3. The Trust Agreement shall require the Trustee to exert due vigilance in collecting payments from users and if necessary enforce such payments by court order after a reasonable period after settlement date.

§ 7

Appointment of a New Trustee

1. The Trust Agreement expires at the end of a calendar year (though not earlier than the end of the third calendar year following the year of its conclusion), unless it is extended by one year via written notification by the Foundation to the Trustee six months prior to expiry at the latest.
2. The Foundation shall not extend the Trust Agreement, if the majority of all users object to the extension nine months before expiry of the Trust Agreement. The Foundation is required to make enquiries of the users in this regard nine months at the latest before the envisaged extension of the Trust Agreement. If the majority object, the following shall apply:

Within a further month, the Foundation must propose in writing to the users four alternative auditors to act as Trustee instead of the prior trustee; the Foundation shall notify the users how far the terms and conditions to be agreed with the new trustee differ from the prior Trust Agreement. The Foundation shall request the users in writing to indicate whom they favour for appointment as the new trustee. It concludes the new Trust Agreement with the auditor chosen by the relative majority of users by written notification to the Foundation within one month after its suggestions.

3. In the event of a termination of the Trust Agreement by the Trustee and the appointment of another Trustee for this reason, Par. 2 shall apply accordingly.

§ 8

Recourse to Outside Manufacturers

Insofar as it is economically reasonable, the Foundation undertakes the obligation to charge manufacturers who do not belong to the collection system of the Foundation, the costs for the logistics, sorting, recycling or disposal of sorted out batteries.

§ 9

Term; Notice of Termination

1. The User may give due notice of termination of the User Agreement with a period of notice of 12 months to take effect at the end of each calendar month.
2. The Foundation may not give due notice of termination of the User Agreement. The Foundation is only permitted to give notice of amendments of the Terms and Conditions of the Agreement in keeping with changed circumstances. These amendments shall apply equally to all users.
3. Both parties to the Agreement retain the right of termination for cause.

§ 10

Scope; Applicable Law and Terminology; Place of Jurisdiction

1. The provisions of the User Agreement apply solely to batteries produced within the scope of the Regulations on Batteries or batteries imported into the purview of these Regulations.
2. The User Agreement is subject to German law. Unless otherwise explicitly stated in this Agreement, the terminology used in this Agreement is understood to have the meaning specified or assumed in the Regulations on Batteries.

3. Place of jurisdiction is the registered office of the Foundation.

§ 11

Separability Clause

If any provision of this Agreement, including these General Terms and Conditions, is or becomes invalid or cannot be enforced, the remaining provisions shall remain in full force and effect. Where legally permissible, in place of the invalid or unenforceable provision, a valid and enforceable provision will be deemed to have been agreed which best accomplishes the economic purpose of the invalid and unenforceable provision and is thus valid and enforceable. The Foundation and the User undertake to reach immediate, express agreement on such a provision. The same applies where and in as much as there is an omission in the User Agreement or these General Terms and Conditions.

§ 12

Transitional Clause

1. The General Terms and Conditions for participation in the joint collection system in the present version shall apply as of 01 January 2006.
2. If the Agreement commences in the course of a settlement period, the fee to be ascertained under § 3 Par. 1 Sentence 2 is payable pro rata temporis (corresponding to the number of days in the settlement period the User Agreement has been in force).