

to ensure compliance with the obligation to take back, treat, recover and dispose of
waste batteries and accumulators
(COLLECTIVE PERFORMANCE AGREEMENT)

Contracting parties:

Trade name: **ECOBAT s.r.o.**
With its registered office at: Praha 6, Soborská 1302/8, Postcode 160 00
Business ID (IČO): 26 72 59 67
Tax ID: CZ26725967
Represented by: Michal Mazal, Managing Director
Commercial Register: Incorporated in the Commercial Register administered by the Municipal Court in Prague, Section C, Insert 89816
Bank details: Account No. 27-4105580257
E-mail: ecobat@ecobat.cz

(hereinafter the **“Operator”**)
and

Name / Trade name
With its registered office/place of business at:
Business ID (IČO):
Tax ID:
Represented by:
Commercial / Trade register: Incorporated in
Bank details:
E-mail:

(hereinafter the **“Producer”**)

(hereinafter jointly referred to as the **“Contracting Parties”**)

entered into on the day, month and year below, based on full consideration of the facts given below, pursuant to Act No. 542/2020 Coll., on end-of-life products, and S. 1746(2) of the Civil Code (hereinafter the **“Act”**)

**PART I
FUNDAMENTAL PROVISIONS****Article I.
Introductory provisions**

1. Definitions of certain terms for the purposes hereof:

Batteries and accumulators Any source of electrical energy generated by conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or consisting of one or more secondary battery cells (rechargeable); the term “batteries and accumulators”, or “batteries” only, as the case may be, in this Agreement shall refer, jointly or individually, to portable, industrial or automotive batteries and accumulators as defined by law, provided that the relevant category of batteries is subject to this Agreement.

Civil Code Act No. 89/2012 Coll., Civil Code, as amended

Fee for placing on the market (“POM fee”) A sum of money (cash contribution) paid by producers in the amount set by the Operator per kilogramme or unit of batteries and accumulators placed on the market, whose purpose is to ensure the operation and financing of a system for the take back, treatment, recovery and disposal of batteries and accumulators, and to ensure compliance with other producers’ obligations hereunder.

Fee for taking back (“PAC fee”) A sum of money (cash contribution) paid by producers in the amount set by the Operator per kilogramme of batteries or accumulators that the Operator has had collected at producers’ request (“pay as you collect”). The fee is used to cover the costs of take-back, including the treatment, recovery or disposal of batteries and accumulators, and to ensure compliance with other producers’ obligations hereunder.

Operator ECOBAT s.r.o.; the Operator of a collective system for the take-back of portable, industrial and automotive batteries (from the date of obtaining the relevant authorisation) and for their treatment and material recovery pursuant to the Act, ensuring joint fulfilment of obligations of battery producers stipulated by S. 34 *et seq.* of the Act, based on authorisation to operate a collective system pursuant to S. 34 of the Act, the take-back is ensured through a network of collection points across the Czech Republic.

<u>Placing on the market</u>	First delivery (against payment or without payment) of a portable, industrial or automotive battery or accumulator to the Czech Republic within the framework of business activity by a producer or a person who acquired it from another Member State for the purpose of distribution, consumption or use, or import of portable, industrial or automotive batteries or accumulators for the purpose of business activity.
<u>Producer</u>	Any business that, irrespective of the sales technique used, including by means of distance communication, places on the market on a professional basis batteries or accumulators, including those incorporated into or attached to vehicles, electrical appliances or other products.
<u>Act</u>	Act No. 542/2020 Coll., on end-of-life products
<u>Waste Act</u>	Act No. 541/2020 Coll., on waste.

- The Producer and the Operator have entered into this Collective Performance Agreement to ensure compliance with the obligations to take back, treat, recover and dispose of waste batteries or accumulators, keep end-users informed and develop annual reports on batteries and accumulators, as vested in the Producer subject to the law, through the activity of the Operator and its contractors.
- The Operator shall ensure collective performance in cooperation with other entities in the Czech Republic, with end vendors, as well as other entities which carry out or ensure the take-back, treatment and recovery of waste batteries, within the system that it operates, whose other participants are producers as the Operator's contractual clients and whose purpose is to ensure compliance with the producers' obligations under the law (hereinafter the "ECOBAT Collective System").
- The Producer declares that it has become familiar with all provisions of this Agreement (including its annexes and the GTC) and that all of them were legible and comprehensible, and that, prior to concluding the Agreement, it was given an opportunity to seek additional explanation from the Operator pertaining to the provisions of the draft Agreement. The Producer did not find any provision blatantly disadvantageous, or in strong contradiction with usual business practices or the principle of fair business transactions.

For the avoidance of doubt, the Producer confirms that it has complied with the provisions of this Agreement in Article IV (particularly the method and scope of data reporting, changes to the reporting method, Article VI (fees and changes thereof), Article IV of the GTC (producer compliance audit), Article VII of the GTC (contractual penalties), Article VIII of the GTC (amendments to the GTC), Article X of the GTC (territorial jurisdiction of a court to be determined according to the registered office of the Operator), the limitation period extended to four years, exclusion of certain presumptions when issuing an acquittance letter), and with the content of the annexes hereof (Scope, structure and method of information submission (including format), List of Tariffs, Commercial brands of batteries and accumulators and Sworn statement).

Article II. Subject of the Agreement

- The Operator undertakes to ensure on behalf of the Producer compliance with the obligations to take back, treat, recover and dispose of waste batteries or accumulators, keep end-users informed about the take-back option and develop annual reports on batteries and accumulators, as stipulated by law; the Producer, on the other hand, undertakes to pay to the Operator the fee as per Article V hereof.
- Transfer of the Producer's obligations as per paragraph 1 of this Article concerns those groups of batteries and accumulators placed on the market in the Czech Republic, which the Producer shall list in Annex 3 Commercial brands. If Annex 3 is not filled in, the contract applies only to the group of portable batteries and accumulators.

PART II RIGHTS AND RESPONSIBILITIES OF THE CONTRACTING PARTIES

Article III. Obligations of the Operator

- The Operator shall:
 - Ensure on behalf of the Producer, through the ECOBAT Collective System, compliance with its obligations to take back, treat, recover and dispose of waste batteries, prepare an annual report as per S. 51 of the Act, and inform end-users about the take-back option in the extent specified herein;
 - Publish on its website a list of collection points based on information received from entities providing for battery take-back on behalf of the Operator, and update the list of those entities on a regular basis;
 - Use remote access to facilitate inscription of the Producer on the List of Producers of the Ministry of the Environment as per S. 21(4) and (5) of the Act and update the information following Producer's notification of a change thereof;
 - Send to the Producer a digital certificate of participation in the ECOBAT Collective System within 30 days from the conclusion of the Agreement. The purpose of the certificate is to prove to third parties that a Collective Performance Agreement has been signed by both Contracting Parties and that the Producer participates in the ECOBAT Collective System. The Operator may specify a period of validity for the certificate (min. 12 months), and if the Agreement survives and the Producer is not in arrears with any of its obligations hereunder, the Operator shall send a new certificate to the Producer before the original certificate expires;
 - Advise the Producer, upon request, on legal aspects and requirements for battery marking, through seminars, information publications and in exceptional cases (always at the Producer's request and for consideration agreed on an individual basis) also through advisory services;

- f) Inform the Producer about any amendment to the decision of the Operator to operate the collective system pursuant to S. 38 of the Act, which affects the Producer, by means of a notice published on the Operator's website;
 - g) Publish the battery take-back and recovery results of the ECOBAT Collective System and information for end-users pursuant to S. 13 of the Act on its website. Based on the Producer's request, the Operator shall provide the Producer permanent access to anonymised summary data on the quantity of batteries placed on the market by all contractual units of the Operator.
2. The Operator shall ensure take-back of waste batteries through a network of collection points across the Czech Republic. The Operator shall establish and operate a network of collection points within the extent specified in Annex 1 throughout the duration of the Agreement.
 3. Within 14 days from the date of effectiveness hereof, the Operator shall provide the Producer with a sample letter to be used for informing the Producer's customers (and, through these customers, also the end-users) about the method of collecting waste batteries pursuant to S. 13(1) of the Act; the Operator shall send it in electronic form to the Producer's e-mail address. Any potential updates to the letter shall be delivered in the same manner. The Producer shall provide the sample letter including its updates to all its customers immediately after its receipt and/or after entering into a contractual relationship with a customer.
 4. Through the ECOBAT Collective System, the Operator shall ensure compliance with the obligations to take back, treat, recover and dispose of waste batteries or accumulators and to keep end-users informed collectively on behalf of all producers involved in the system based on collective performance agreements. The Operator shall endeavour to achieve the minimum take-back rate of portable battery take-back specified in Annex 2 of the Act.

Obligations of the Producer

1. The Producer shall:
 - a) Pay fees to the Operator pursuant to Part III hereof for fulfilment of the obligations to take back, treat, recover and dispose of waste batteries, to raise awareness, inform end-users about take-back and to prepare the annual reports as per S. 51 of the Act, through the ECOBAT Collective System;
 - b) Continuously, duly and conclusively keep a true and complete register of all batteries that the Producer places on the market, in compliance with the Act, the implementing regulations thereto and this Agreement. The register shall be evidentiary especially with regard to the Producer's accounting and stock records and shall be archived by the Producer for seven years from termination hereof;
 - c) Undergo auditing pursuant to the GTC, provide the auditor appointed by the Operator with all data pertaining to the batteries placed on the market by the Producer (with the exception of data that are not deemed necessary for the calculation of the POM fee or assessment of fulfilment of another obligation of the Producer) and provide necessary cooperation to the auditor;
 - d) Provide necessary cooperation to the Operator for the performance of its obligations pursuant to this Agreement which can be reasonably required from the Producer for performance hereof and for fulfilment of the Producer's obligations pursuant to the Act;
 - e) to fill out the Sworn statement in Annex 4, and to do so in writing, even if he has previously fulfilled his obligations in another collective or individual system and, by signing the collective performance agreement, to confirm the fulfilment of his obligations of take-back and use of waste batteries to the ECOBAT collective system;
 - f) Inform the Operator in writing of any change in the details specified in the header (introductory part) hereof within 14 calendar days of such a change; if the Producer fails to fulfil this obligation, it shall compensate the Operator for any damage caused.
2. On a quarterly basis, the Producer shall provide the Operator with a battery report (hereinafter referred to as the "Report") containing true and complete information on the quantity of all batteries, as per the individual groups and types, placed on the market in the Czech Republic in the given calendar quarter. The scope, structure and manner of providing this information (including the Report format) are specified in Annex 1 hereof. If it can be reasonably assumed that the Producer will not place more than 300 kg of all batteries on the market in a given calendar year, the Operator shall allow the Producer, as per the Producer's written request, to submit the Report once a year (with information relating to the previous year) or semi-annually (with information relating to the previous half-year).
3. The Producer shall submit the Report to the Operator no later than 15 days from the end of the calendar quarter (or half-year or year, if the Producer submits a semi-annual or annual Report pursuant to the previous paragraph) for which the data are provided. If the Producer is in delay in submitting a Report, the Operator shall not be considered to be in delay with the fulfilment of its obligations hereunder.
4. The Operator is entitled to amend Annex 1 hereof (scope, structure and/or manner of providing the information – Report) unilaterally. The Operator shall inform the Producer thereof in writing or by e-mail as well as by publishing this information on its website (currently www.ecobat.cz). If a Report amendment extends the Producer's obligations, the Producer is entitled to reject the amendment and to manifest its disagreement by terminating the Agreement analogously to Article VII (2–5) hereof; however, the Producer shall not be entitled to do so if the amendment results from a change in a binding legal regulation or from a binding decision or other measure of the competent administrative body. If the Producer does not terminate the Agreement in accordance with the previous sentence, it is obliged to provide data to the Operator using the new Report as of the calendar quarter specified in the amendment, but not earlier than for the calendar quarter in which it was notified of the Report amendment;
5. The Producer undertakes to actively participate in awareness-raising and information campaigns for end-users carried out within the ECOBAT Collective System, and to cooperate in informing end-users, in particular through documents accompanying batteries placed on the market in the Czech Republic or in any other appropriate and sufficient manner (e.g. on its website) to inform end-users about the Producer's participation in the ECOBAT Collective System, location of battery collection points (or about a list of such collection points published on the Operator's website), the requirement that batteries must not be disposed of in municipal waste, as well as the material or other information on the recovery of waste batteries and possible harmful environment and human health impacts of hazardous substances contained in batteries and accumulators and on other facts pursuant to S. 13 and S. 82 of the Act. The Producer is obliged to place the above information on its website.

PART III COLLECTIVE SYSTEM CONTRIBUTIONS

Article V Methods of contribution to the Collective System

1. Producers contribute to the Collective System by paying POM and PAC fees that are used in particular to finance the take-back, treatment, recovery and disposal of waste batteries and accumulators as well as awareness-raising campaigns for end-users and to fulfil other obligations of the Operator of the Collective System for battery and accumulators.
2. The amounts of POM and PAC fees are defined by the Operator in the List of Tariffs depending on the type, weight, volume and eco-modulation of selected products placed on the market by the Producer. Specific fee amounts shall be calculated based on the List of Tariffs which forms Annex 2 hereof and which includes unit tariffs of POM and PAC fees for each battery type, weight and electrochemical system. The List of Tariffs further includes a minimum fee ensuring the operation of the Collective System for each calendar year (hereinafter the "minimum annual fee").
3. The Operator is obliged to evaluate and assess at least once a year the amounts of all POM and PAC fees, especially with regard to the incurred and expected costs relating to the operation of the Collective System, the number of batteries placed on the market, legal obligations of producers and changes thereto and the expected development of the battery and secondary raw materials markets, as well as with regard to the obligation of eco-modulation, and to change the amounts of POM and PAC fees pursuant to Article VII hereof, if necessary.

POM and PAC fees

1. The total amount of the POM and PAC fees shall be calculated based on the List of Tariffs by a procedure specified in the following paragraphs.
2. The total amount of the POM fee for the first calendar year (i.e. for the first calendar quarters) of duration hereof shall be determined based on the tariffs defined in the applicable List of Tariffs depending on the total quantity of individual types of batteries subject to the POM fee which were placed on the market by the Producer in the given calendar quarter (or half-year or year) provided that the Producer submits a semi-annual or annual Report pursuant to Article IV(2) hereof) by multiplying the relevant item in the List of Tariffs and the corresponding quantity of batteries placed on the market by the Producer (in units or kilogrammes, based on the List of Tariffs). If the calculated amount of the POM fees for a given calendar year is lower than the minimum annual fee specified in the List of Tariffs, the Operator shall charge the difference between the calculated fee amount and the amount of the minimum annual fee (or its proportionate part, if the Agreement did not last for an entire calendar year) to the Producer in the last accounting period of that year.
3. If the Agreement was in effect for four calendar quarters and the Producer submits quarterly Reports, the fee shall be calculated for the subsequent period in the following manner:
 - a) The amount of the POM fee for the given calendar quarter, with the exception of the last quarter (October – December), shall be calculated according to the average aggregate POM fee charged by the Operator in the previous calendar year. Specific POM fee amounts shall be calculated as one-fourth of the total amount of the POM fees for the previous calendar year.
 - b) The POM fee for the last (fourth) quarter of every calendar year shall be determined according to the valid List of Tariffs and according to the difference in the invoicing calculated according to the actual quantities that the Producer placed on the market in a given calendar year and the quantity of batteries for which the POM fee was paid in the previous paragraph. If the calculated amount of the POM fees for a given calendar year is lower than the minimum annual fee specified in the List of Tariffs, the Operator shall also charge the Producer the minimal annual fee specified in the List of Tariffs for the last calendar quarter of the given year. The Operator shall return any overpayment to the Producer.
 - c) If the Agreement was in effect for only part of the calendar year, the procedure is analogous to letter b) and the fee for the difference between the quantity of batteries for which the fee was paid and the quantity of batteries actually placed on the market shall be settled during payment for the last calendar quarter of the Agreement's duration.
4. The total PAC fee shall be determined according to the valid List of Tariffs and according to the total weight of PAC fee-applicable batteries that were taken back, which the Operator took back based on the Producer's request, where the applicable PAC fee item specified in the List of Tariffs shall be multiplied by the quantity of batteries in kilogrammes taken back in the given calendar quarter.
5. The total amount of POM fee for each quarter (or half-year or year) if the Producer submits semi-annual or annual reports per Article IV. (2) herein shall be calculated as the sum of the total POM fee for the given quarter (or half-year or year). If the total calculated amount of POM fee is lower than the minimal annual fee specified in the List of Tariffs for a given calendar year, the Operator shall charge the Producer a fee that brings the total up to the minimal annual fee (or a proportionate part of the minimal annual fee if the Agreement was not in effect for the entire calendar year).
6. The due dates for POM and PAC fees are specified in the GTC.

Article VII. Fee amendment

1. Pursuant to Article V (2) herein, the Contracting Parties may amend the List of Tariffs, which comprises Annex 2 hereto, through a written agreement or procedure per the following paragraphs.
2. The Operator shall be entitled to send the Producer a notice on an amendment to the List of Tariffs in writing or by e-mail, effective no sooner than for one month before the beginning of the calendar quarter to which the new List of Tariffs will apply. Such notice shall be considered a draft amendment to the List of Tariffs and must designate the quarter as of which the amendment shall apply.
3. If the Producer receives a notice from the Operator per paragraph 2 herein, the Producer shall be entitled to withdraw from this Agreement in writing; withdrawal from the Agreement is the sole instrument for expressing objections to the draft amendment to the List of Tariffs upon which the Contracting Parties have agreed. The Producer may exercise the right to withdraw from the Agreement within one month from receipt of the notice and the withdrawal must contain an explicit reference to this provision of the Agreement. If the withdrawal from the Agreement is not in writing, does not contain an explicit reference to this provision of the Agreement or is not delivered to the Operator within the one-month period, it shall be considered null and void. If an amendment does not result in an increase in the fees charged to the Producer, the Producer shall not be entitled to withdraw from the Agreement.
4. If the Producer withdraws from the Agreement in the manner specified in the previous paragraph, the Agreement shall expire on the day immediately preceding the calendar quarter in which the new List of Tariffs will apply.
5. If the Producer does not withdraw from the Agreement in the manner specified in paragraph 3 herein after receiving the notice from the Operator in the manner specified in paragraph 2 herein, it is understood that the Producer has accepted the draft amendment to the List of Tariffs, thereby expressing its will to accept it and shall be required to pay the Operator fees per the amended List of Tariffs, which is then binding on both Contracting Parties. This applies even if the Producer pays a fee calculated per the amendment to the List of Tariffs or if the Producer takes other legal action in relation to the Operator's amendment.

**ART IV
GENERAL AND FINAL PROVISIONS**

**Article VI
Duration of the Agreement**

1. This Agreement is concluded for an indefinite period of time. The GTC specify ways of terminating the Agreement.
2. This Agreement takes effect on the date of its conclusion, or on the date of acquisition of legal force of the decision on authorization to operate a collective system according to § 9 letter b) of Act No. 542/2020 Coll., on End-of-Life Products, it however also applies to all batteries and accumulators that the Producer has placed on the market or into circulation since the first day of the calendar year in which the Agreement became effective, and to the rights and obligations and actions of the Contracting Parties that arose after this date.
3. When this Agreement takes effect (paragraph 2), it shall replace any verbal agreements between the Operator and Producer or any previous agreement concluded between the Operator and Producer pertaining to the security take-back of used portable batteries and accumulators. If this Agreement takes effect on a date other than the first day of a calendar year, it shall be applied with in relation to all batteries and accumulators that the Producer placed on the market or in circulation since the first day of the calendar year in which the Agreement took effect; the Contracting Parties give their explicit consent that all performance provided or reported from that day according to an earlier agreement shall be reported, invoiced and accounted as if implemented under this new Agreement, and any violations of an earlier agreement or arrears in fees shall be addressed in a manner complying with the newly concluded agreement to ensure that the performance of the Contracting Parties smoothly follow on one another (i.e. for example an audit of the fulfilment of the obligations of the Producer may be conducted according to the earlier agreement); however, the accuracy and timeliness in fulfilment of the Contracting Parties' rights and obligations shall be assessed according to the earlier agreement until the date of legal effect of this Agreement.

**Article IX.
Final Provisions**

1. This Agreement has been elaborated in two counterparts. Each Contracting Party shall receive one counterpart at the time of the signing of the Agreement.
2. The General Terms and Conditions issued by the Operator ("GTC") are an integral part of this Agreement and in combination with the Agreement they comprise a set of unified conditions as defined in Article IV. (2) of this Agreement. The Producer explicitly declares and confirms with its signature that it has familiarised itself with the GTC valid at the time of the signing of the Agreement and undertakes to comply with said GTC as well as any amendments to the GTC that are implemented in a manner and under the conditions specified in the GTC.
3. By signing the Agreement, the natural persons who conclude the Agreement on behalf of the Contracting Parties declare that they are fully authorised to validly conclude this Agreement.
4. This Agreement may be amended (with the exception of changes pursuant to Article IV. (4) and Article VII. (2–5), or exceptions assumed in the GTC), supplemented or cancelled in writing only; such written format is also required for any legal action intended to waive the written format requirement.
5. The Contracting Parties declare that they have read this Agreement, its annexes and the GTC carefully, understood the Agreement and all of its individual provisions and the terminology and language used herein, and that they agree with all of its contents which express their true and free will, which they confirm with their signatures.
6. In addition to the GTC, the three annexes comprise integral parts of this Agreement; they are:

- Annex 1: Scope, structure and method of information submission (including Reporting format)
- Annex 2: List of Tariffs
- Annex 3: Commercial brands of batteries and accumulators
- Annex 4: The Sworn statement

Prague, on _____

In _____ on _____

On behalf of the Operator

On behalf of the Producer