



MEMBERSHIP AGREEMENT TO
THE VALIPAC SYSTEM

This English version is only a translation of the French and Dutch Valipac membership agreement and is provided for reference only. In the event of any conflict or discrepancy between the original French or Dutch version and this English version, the French and Dutch version shall (for all intents and purposes) prevail and be treated as the correct version. This agreement does not need to be signed; only the French and Dutch version have force of law.

This Agreement has been drawn up in consultation between Valipac's legal advisers and the legal advisers to the various economic sectors in which the Parties Responsible for Packaging operate. This Agreement has been submitted to the Interregional Packaging Commission. Valipac is unable to accept any amendments to or deletions from this Agreement that a Member may wish to make.

MEMBERSHIP AGREEMENT TO THE VALIPAC SYSTEM

BETWEEN THE UNDERSIGNED:

1. Valipac, a non-profit organisation incorporated under Belgian law, having its registered office at 1780 Wemmel, Koningin Astridlaan 59A - bus 11, represented for the purposes of this Agreement by:
.....,
acting in his/her capacity as,
duly authorised for this purpose,
hereinafter referred to as 'Valipac'

AND

2. The company
having its registered office at
.....
Represented for the purposes of this Agreement by:,
acting in his/her capacity as,
duly authorised for this purpose,
hereinafter referred to as the 'Member',

Hereinafter referred to jointly as 'the Parties',

IS SET OUT AS FOLLOWS:

- I. Whereas, in accordance with the Cooperation Agreement on the Prevention and Management of Packaging Waste, the Party Responsible for Packaging is deemed to comply with its Industrial Packaging Waste Takeback Obligation by providing evidence he has concluded an agreement with an Accredited Organisation and the latter achieves the recycling and recovery rates specified in the Cooperation Agreement.
- II. Whereas Valipac was constituted on 7 November 1997 at the initiative of an important group of Belgian companies with the purpose to comply with the Take-back and Information Obligations of Parties Responsible for Packaging.
- III. Whereas Valipac has been recognised as the Accredited Organisation for Industrial Packaging Waste. The text of this accreditation is published in the Moniteur Belge and may be obtained from the Interregional Packaging Commission, WWW.IVCIE.BE.
- IV. Whereas the Member wants to instruct Valipac to fulfil its Take-back Obligation and in that regard wishes to join the Valipac system.

IS AGREED AS FOLLOWS :

Article 1 - Definitions

For the purposes of this Agreement, the terms listed below shall be deemed to have the following meanings :

Valipac system: the system set up by Valipac in order to fulfil the Take-back Obligation and the Information Obligation relating to the Industrial Packaging.

Cooperation Agreement: the Cooperation Agreement of 4 November 2008 on the prevention and management of packaging waste concluded between the Brussels Capital, Flemish and Walloon Regions, published in the Moniteur Belge on 29 December 2008, approved by decree/ordinance, including all subsequent amendments to the Cooperation Agreement.

Agreement: the present signed document including all its amendments and additions subsequently agreed by common consent within Valipac, unless expressly stipulated otherwise, as well as all Appendices to this Agreement.

Appendices: all present and future Appendices to the Agreement, both those notified at the signing of the Agreement as those subsequently published on the Valipac website, as part of the Valipac system.

Take-back Obligation: the duty incumbent upon the Party Responsible for Packaging to meet the recycling and recovery quotas for Industrial Packaging Waste specified in Article 3 § 2 and 3 of the Cooperation Agreement.

Information Obligation: the Information Obligation as detailed in Article 18 of the Cooperation Agreement.

Industrial Packaging: the packaging for which Valipac is accredited, described as follows:

- all tertiary packaging (or transport packaging);
- all secondary packaging (or grouped packaging) except the multi-packs;
- the primary packaging of products designed exclusively for professional, industrial, local authority, school, hospital, ... use. In case of a primary packaging of products intended for both domestic and commercial use, please consult the household/industrial product identification list in order to ascertain whether or not a product is industrial. This list is approved by the Interregional Packaging Commission and reviewed annually (WWW.IVCIE.BE).

Reusable Industrial Packaging: any Industrial Packaging intended and designed to complete a minimum number of cycles within its lifetime and to be refilled or reused for the same purpose it was designed to and that is qualified as Reusable Industrial Packaging by the application of what is specified in Appendix "Explanatory Note on the Declaration".

Single-use Industrial Packaging: any Industrial Packaging that is not a Reusable Industrial Packaging as defined in the Cooperation Agreement.

Packaging Waste: any packaging or packaging material covered by the definition of waste in Directive 2006/12/EC (formerly 75/442/EEC), with exception of production residues, according to the Cooperation Agreement.

Industrial Packaging Waste: any Packaging Waste that can not be considered as Household Packaging Waste, according to the Cooperation Agreement.

Party Responsible for Packaging (PRP): the Party Responsible for Packaging as defined in the Cooperation Agreement, i.e.:

- a) any person who has packaged its products or had them packaged in Belgium with a view to or at the time of their sale on the Belgian market (hereinafter referred to as the PRP/A);
- b) where the products put on the Belgian market have not been packaged in Belgium, any person who has imported packaged products or had them imported and who does not unpack or use them himself (hereinafter referred to as the PRP/B);
- c) in the case of Industrial Packaging Waste of products that do not come under a) or b), any person who unpacks or uses the packaged products on Belgian territory and is thereby deemed responsible for the packaging waste generated (hereinafter referred to as the PRP/C).

Accredited Organisation: the legal entity accredited in accordance with Articles 9 and 10 of the Cooperation Agreement that undertakes the Take-back Obligation incumbent on the Party Responsible for Packaging.

Operator: the natural person or legal entity with which Valipac has concluded an agreement within the framework of the Valipac system and which itself carries out or manages one of the following activities: collection, sorting, processing, recycling and/or recovery of Industrial Packaging Waste.

Delay Interest: the interest calculated on the basis of the 1-year Euribor rate, based on a three hundred and sixty (360) days year, plus two base points. This interest is applied in the event of a delay in the settlement of invoices or the submission of the Declaration and is calculated on the amounts due.

Declaration: the annual declaration submitted online or completed manually on the forms and in accordance with the procedure as described in Appendix "Explanatory Note on the Declaration" relating to Industrial Packaging for which the Member is the Party Responsible for Packaging.

Registration Declaration: the declaration made at the time of joining, reporting the quantities of Single-use and Reusable Industrial Packaging for which the Member is the Party Responsible for Packaging and which also allows to calculate the Advance Funding Contributions in the context of joining the Valipac system.

References to specific texts or articles of the Cooperation Agreement are such as they exist at the time of signature of present Agreement, although including any subsequent amendments of these texts both formally as concerning content.

Article 2 – Object of the Agreement

- 2.1. The Member declares to join the Valipac system and commits himself to pay the Funding Contributions agreed below to Valipac.
- 2.2. By joining the Valipac system, the Member entrusts Valipac, which accepts, to perform all acts necessary for the execution of his Take-back Obligation and his Information Obligation as well as for the smooth functioning of the Valipac system, in accordance with the conditions specified in both the Cooperation Agreement and the Agreement.

Article 3 – Scope of Application

- 3.1. The Membership to the Valipac system covers **all** Industrial Packaging which is subject, currently or in the future to a Take-back and/or Information Obligation incumbent upon the Member. The Take-back Obligation, both for Single-use and Reusable Industrial Packaging, **may not** be delegated **in part** to Valipac.
- 3.2. [without object]
- 3.3. The Agreement covers the entire territory of Belgium.

Article 4 - Duration

- 4.1. The Agreement shall enter into force on 1 January of the year of its signature. However, in case of a retroactive membership, the specifications detailed in Article 5.2.4. will be applied.
- 4.2. [without object]
- 4.3. The Agreement is concluded for an indefinite period.

Article 5 – Funding Contributions

5.1. General

5.1.1. In order to enable Valipac to carry out its mission, the Member shall pay the Funding Contributions as defined below throughout the duration of the Agreement.

The Funding Contributions include : - a Basic Contribution;
- a Special Contribution.

5.1.2. The amount, the method of calculation and the use of the Funding Contributions are decided annually by the Board of Directors of Valipac and apply automatically to this Agreement from any date of entry into effect as set by the said Board. The rates of the Funding Contributions are available on Valipac's website. The Funding Contributions may never be less than the Minimum Funding Contribution.

5.1.3. All payments must be made by bank transfer to Valipac's bank account or by any other means of payment agreed and accepted by Valipac as given on Valipac's website.

5.1.4. Unless expressly stipulated otherwise below or following a valid protest of the invoices within twenty (20) calendar days of receipt, invoices sent by Valipac to the Member shall be settled by the latter within thirty (30) calendar days of the date of invoice. The Member shall be indebted automatically and without further notice or additional formality, to pay the Delay Interest on any amount, whatever it may be, not paid within the aforementioned period until full settlement of the amount.

5.2. Types of Funding Contributions

5.2.1. Specific provisions relating to the Basic Contribution

5.2.1.1. The Basic Contribution is intended to finance Valipac's operating costs and all specific costs incurred, irrespective of the materials or other factors involved, in order to permit Valipac to carry out its mission, to set up a reserve fund and to pay the additional administrative costs of the Operator for the collection, processing and submission of data relating to the quantities of Industrial Packaging Waste collected, recycled and recovered.

5.2.1.2. The Member shall pay a Basic Contribution for all the Single-use Industrial Packaging for which he is responsible.

5.2.1.3. Single-use Industrial Packaging of goods taken back in their original packaging by the supplier and that have been the subject of a credit note, are exempt from the Basic Contribution.

5.2.2. Specific provisions relating to the Special Contribution

5.2.2.1. The Special Contributions for certain packaging materials are intended to raise the funds required for, in particular, the recycling and recovery of packaging materials for which, on drawing up the rate of funding contributions, it is ascertained that the recycling and/or recovery rates are insufficient or need development.

5.2.2.2. At the suggestion of its Executive Committee, the Board of Directors of Valipac may, during a given calendar year, increase the existing Special Contribution and/or set one or more new Special Contributions for other packaging materials in order to achieve the global recycling and recovery rates or the recycling rates per packaging material.

5.2.2.3. The Special Contribution is due only in the calendar year in which the decision in accordance with Articles 5.2.2.1. or 5.2.2.2. was taken and ends automatically on 31 December of the year involved.

5.2.3. [without object]

5.2.4. Specific provisions relating to the retroactive membership

The following provisions shall apply until the Board of Directors of Valipac decides to differ from it within the limits of the accreditation of Valipac.

Valipac's accreditation obliges Valipac to apply a retroactive membership for the five calendar years prior to the year of joining. The membership will be retroactive and the Funding Contributions will be due with effect from 1 January of the first year for which the Member : (a) has not made a statement on oath specifying that he has not sold any packaging on the Belgian market, or (b) has not presented clear evidence of fulfilling his Take-back Obligation himself or via a third party, or (c) has not provided evidence having been subject to a penalty as specified in Article 32 of the Cooperation Agreement. The Funding Contributions are determined at a fixed amount for each year of the retroactive membership (see Overview of the Funding Contributions annexed). On these Funding Contributions a Delay Interest, of which the interest rate is equal to the legal interest rate applicable in the calendar years involved, is due.

Any retroactive membership should be communicated by Valipac to the Interregional Packaging Commission.

5.3. Period for which the Funding Contributions are due

5.3.1. Unless expressly stipulated otherwise, including the retroactive membership as specified in Article 5.2.4., the Funding Contributions are due with effect from 1 January of the year in which the Agreement takes effect.

5.3.2. [without object]

5.4. Settlement of Funding Contributions

5.4.1. Advance Funding Contributions

In order to enable Valipac to carry out its mission, the Member must pay an Advance Funding Contribution at least equal to the Minimum Funding Contribution. The Advance Funding Contribution is calculated by means of the Declaration with regard to the preceding year.

The Overview of Funding Contributions is published on Valipac's website. In the absence of a Declaration relating to the previous year, Valipac may calculate the Advance Funding Contribution on the basis of the most recent declaration in its possession.

Against a Member who does not provide Valipac with his Declaration as defined in Article 6.1., at the latest by 28 February of each year, following measures will be taken:

- charging of a Delay Interest;
- charging of the costs incurred by or on behalf of Valipac with a view to carry out the checks required to draw up the Declaration to be submitted by the Member.

5.4.2. Invoicing of Advance Funding Contributions

The terms of payment of the Advance Funding Contributions are based on the amount of the Advance Funding Contributions due as calculated in accordance with Article 5.4.1.

- If the total amount of the Advance Funding Contribution for the calendar year involved is less than € 25.000, a single invoice will be issued for payment within thirty (30) calendar days.
- If the total amount of the Advance Funding Contribution for the calendar year involved is greater than € 25.000, two invoices will be issued. A first invoice covering half of the Advance Funding Contribution for the calendar year in question, payable within 30 days. A second invoice for the second half of the Advance Funding Contribution due for the calendar year involved and payable within six months, although not later than the end of the relevant calendar year.

5.4.3. Final calculation

The final calculation of the Funding Contributions shall be done by means of the Declaration of the relevant year.

- If the total Advance Funding Contribution paid by the Member exceeds the amount of the Funding Contribution calculated on the basis of the Declaration, the credit balance thus calculated shall be credited to the Member's account and deducted from the Advance Funding Contribution to be paid for the following year. In the case of the last twelve (12) months prior to the effective expiry of the Agreement, this credit will be refunded to the Member within sixty (60) calendar days following receipt by Valipac of the Declaration.
- If the total of the Funding Contribution calculated on the basis of the Declaration exceeds the total Advance Funding Contribution paid by the Member, Valipac will issue an additional invoice for the difference thus calculated to be paid within thirty (30) calendar days following the date of issue of the invoice.

Article 6 – Communication and data processing

6.1. General

The Member commits himself to submit the Declaration duly completed online via the internet or by means of the forms provided by Valipac, by the deadline set. The data thus transmitted shall be gathered in a reliable and verifiable manner in accordance with the procedures and criteria detailed in Appendix "Explanatory Note on the Declaration". This Declaration must be certified in accordance with the procedure laid down by Valipac. The organisation and the costs related to this certification, shall be borne by the Member. By joining Valipac, the Member agrees to follow the verification procedures stipulated by Valipac in order to ensure the proper performance of the obligations incumbent on the latter.

6.2. Administration

- 6.2.1. The Member will keep a record containing the calculation data and all the documents used to complete the Declaration. Valipac has the right, at any time, to carry out the checks required to verify the accuracy of the information provided by the Member or have them carried out by the intervention of an auditor or an external accountant bound by professional secrecy.
- 6.2.2. The costs of these verifications will be borne by Valipac unless the Funding Contributions due, calculated on the basis of the Declaration modified following to the audit, exceed the total amount of the Basic Contribution and the Special Contribution paid by more than 10%. In such a case, the cost of the aforementioned checks shall be borne by the Member.
- 6.2.3. If, by any remedy at law and on the basis of the checks specified in Article 6.2.1., Valipac should discover irregularities in the documents specified in Article 6.1., the Member shall, in the event of obvious negligence or fraud, be bound to pay to Valipac both any Funding Contributions which he has failed to pay plus a Delay Interest and, by way of damages, an additional amount equal to that of the evaded Funding Contributions.

6.3. [without object]

Article 7 – Obligations incumbent on Valipac

- 7.1. Valipac commits itself to respect the obligations of the Cooperation Agreement, to do whatever is necessary to preserve its accreditation and to ensure that the Member's Take-back Obligation and Information Obligation are fulfilled.
- 7.2. Valipac commits itself to treat as strictly confidential any financial and commercial information given to it by the Member or acquired during the performance of the Agreement. This duty of confidentiality relates, in particular, to the information specified in Article 6 of the Agreement. This duty of confidentiality shall not prejudice any obligation of information which Valipac has or may have under the terms of any law or statutory provision.
- 7.3. Valipac commits itself to draw up a list of all Operators. This list is published on the website of Valipac. In addition, Valipac is authorised to use all or part of the list of Members in its own publications and communications.
- 7.4. Except for the name of the Member, Valipac may only use the trademarks, logos and other identifying devices of the Members, particularly for information purposes, by virtue of a written authorisation stipulating the conditions of use.
- 7.5. Valipac's annual accounts as approved by its General Meeting, shall be held at the disposal of the Member at its registered office during the working hours.

Article 8 – Settlement of disputes

In the event of a dispute relating to the validity, interpretation or execution of the Agreement, the Parties commit themselves to consult each other with a view to reaching an amicable settlement. Failing an amicable settlement of the matter, the dispute shall be settled, once and for all by arbitration by one or more arbitrators sitting in Brussels and appointed in accordance with the provisions of the Judicial Code, unless agreed otherwise between the Parties involved.

Article 9 – End of the Agreement

9.1. Expiry without fault

- 9.1.1. Each of the Parties may end the Agreement with effect from 31 December of any year, subject to a six month's notice.
- 9.1.2. The Member may end the Agreement in consultation with Valipac at the end of the current calendar year if it is no longer bound by a Take-back Obligation for the following year. To this end, the Member shall send a request stating its reasons to Valipac. The latter may only reject such a request providing a duly motivated decision.
- 9.1.3. The Parties may end the Agreement unilaterally by simple notice and without any further formality if:
 - Valipac's accreditation fails to be renewed;
 - Valipac's accreditation is permanently withdrawn by the competent authorities;
 - Valipac is dissolved or permanently ceases trading;
 - the Member is subject to bankruptcy, judicial reorganisation or liquidation procedures.

In the various assumptions referred to in Article 9.1.3. the Parties commit themselves to consult each other on the destination of the Advance Funding Contributions paid by the Member to Valipac and find an alternative solution which enables the Member to fulfil its obligations as specified in the Cooperation Agreement, without prejudicing the legitimate interests of the respective Parties.

9.2. Termination at the expense of the Member

Valipac may end the Agreement automatically at the expense of the Member without further formality and without damages or legal proceedings:

- (i) in the event of any failure by the Member to fulfil the obligations incumbent upon him pursuant to the terms of the Agreement and which he has failed to remedy within twenty (20) working days after formal notice by Valipac, specifying its intention to end the Agreement;
- (ii) in the event that Valipac discovers new irregularities in the Declarations which are the result of clear negligence or fraud on the part of the Member and the latter has already been required to pay the damages specified in Article 6.2.3.

9.3. Termination at the expense of Valipac

The Member may terminate the Agreement automatically at the expense of Valipac without further formality and without damages or legal proceedings in the case of any serious failure by Valipac to fulfil the obligations incumbent upon it under the terms of the Agreement which it has failed to remedy within twenty (20) working days after formal notice by the Member.

9.4. Effects of the termination of the Agreement

- 9.4.1. In the event of the termination of the Agreement pursuant to Article 9.1., neither of the Parties shall be bound to pay to the other damages, termination penalties or any other sums with the exception of any amount which might be payable and due in accordance with the provisions of the Agreement.
- 9.4.2. In the event of the termination of the Agreement pursuant to Article 9.2., the amounts paid by the Member shall be acquired permanently by Valipac without prejudice to Valipac's right to claim compensation for any damage suffered.
- 9.4.3. In the event of the termination of the Agreement pursuant to Article 9.3., Valipac shall be bound to pay damages to the Member only if fraud or deliberate fault can be proven.

Article 10 – Final provisions

10.1. Fines

- 10.1.1. Valipac shall pay any fines imposed by the public authorities as a result of its failure to achieve the recycling and/or recovery rates stipulated in the Cooperation Agreement.
- 10.1.2. Where applicable, the Member commits himself to contribute towards the payment of these fines in accordance with the allocation key adopted by Valipac's Board of Directors at the suggestion of its Executive Committee.

10.2. [without object]

10.3. Non-assignability

The Member may under no circumstances assign the Agreement or sub-contract the performance thereof to a third party, except with the prior consent of Valipac.

10.4. Use of the Valipac name and logo(s)

10.4.1. With the exception of the use of the name ‘Valipac’ for purely informative purposes, the Member may use the Valipac name, trademarks, logos and other identifying devices only on the basis of a written authorisation stipulating the conditions of use.

10.4.2. In order to ensure the smooth functioning of the Valipac system, Valipac reserves the right to introduce a logo at any time on the basis of a motivated decision of its Board of Directors which will determine both the need therefore and the conditions of use thereof.

10.5. Notifications

Unless expressly stipulated otherwise, any notification with respect to the Agreement shall validly be given to the other Party by simple registered letter with acknowledgement of receipt.

10.6. Amendments and appendices

10.6.1. Unless expressly stated otherwise in the Agreement and with exception of the appendices whose content and changes will be published on the Valipac website, any amendments or additions to the Agreement shall be drawn up in writing and signed by both Parties.

10.6.2. Without prejudice to the provisions of the preceding paragraph, Valipac shall at all times be entitled to amend the Agreement unilaterally at the decision of its Board of Directors based on the advice of its Executive Committee, in order to comply with the legislation or the conditions imposed upon it in respect of its accreditation, and without that this amendment may result in a significant extension or increase of the obligations of the Member. Where the aforementioned amendment of the Agreement results in a significant extension or increase of the obligations of the Member, the authorisation of the Member shall always be required as stipulated in the preceding paragraph.

Drawn up in on (date)
 in duplicate, each Party declaring having received one original copy.

For the Member

For Valipac

Name

Name

Function

Function

Appendices:

- Explanatory Note on the Declaration
- Registration Declaration
- Overview of the Funding Contributions

These documents are published on the website of Valipac

valipac