

Export Supply Deed Poll

This Deed Poll is made on

By

1 [] (ABN []) of [] (**Exporter**)

In favour of

2 **The person appointed as Scheme Coordinator (as defined in the Act) under section 82 of the Act**, which, as at the date of this Deed Poll is **VicReturn Limited, ABN 54 643 014 895** c/o HWL Ebsworth Lawyers, Level 8, 447 Collins Street, Melbourne Victoria 3000 (**Scheme Coordinator**)

Recitals

- A The Exporter acknowledges that First Suppliers have entered into Supply Arrangements with the Scheme Coordinator for the purpose of section 110 of the Act.
- B First Suppliers Supply the Exporter with Suitable Eligible Containers in Victoria.
- C The Exporter subsequently Supplies a portion of those Suitable Eligible Containers outside of Victoria.
- D The Exporter wishes to enter into this Deed Poll to enable it to receive payments from the Scheme Coordinator in relation to Export Supplies.

It is declared as follows.

1 Definitions and interpretation

1.1 Definitions

In this Deed Poll:

Act means the *Circular Economy (Waste Reduction and Recycling) Act 2021 (Vic)*.

Associate means, in respect of a party, any employee, officer, agent, or subcontractor of that party.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Melbourne.

Confidential Material means any data and other commercially sensitive information provided by the Scheme Coordinator to the Exporter in relation to the Scheme or arising out of, or in connection with, this Deed.

Corresponding Law means a law of another state or territory of Australia pursuant to which a container deposit scheme or container refund scheme, similar to the container deposit scheme established under Part 6 of the Act, is established.

Exporter ID means a unique number issued by the Scheme Coordinator to an Exporter.

Export Statement means a document satisfying the requirements of clause 7.

Export Supply means the Supply of a Suitable Eligible Container previously Supplied by a First Supplier in Victoria that the Exporter subsequently Supplied outside of Victoria which the Exporter reasonably believes will not be further Supplied to a person within Victoria.

Export Supply Protocol means the protocol of that or a similar name which is made available by the Scheme Coordinator as amended from time to time in accordance with its terms.

Export Supply Statement means any Export Supply Statement that is provided by the Exporter to the Scheme Coordinator pursuant to the Export Supply Protocol.

Exporter Materials means any Materials developed, disclosed, made available, communicated, delivered or provided to the Scheme Coordinator that are uploaded to the Interface by the Exporter (including on behalf of a third party) in connection with the Scheme.

First Supplier has the meaning given in the Act.

Interface means the secure web portal or online webform, application programming interface or other method to provide or receive data which is administered by the Scheme Coordinator and notified to the Exporter from time to time.

IP Rights means:

- (a) all copyright and analogous rights;
- (b) all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs (whether or not registrable), confidential information (including trade secrets and know-how), circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific or artistic fields; and
- (c) all rights to register, rights in applications for the registration of and rights to extend or renew the registration of any of the foregoing,

whether created before, on or after the date of this Deed Poll and whether existing in Australia or otherwise.

Law means:

- (a) Commonwealth, Victorian or local government legislation including regulations, by-laws and other subordinate legislation; and
- (b) principles of law or equity established by decisions of courts.

Materials means all data, information, text, drawings, statistics, analysis, records and any other materials embodied in any form or medium.

Material Type means any of the following material types of a Suitable Eligible Container:

- (a) glass;
- (b) aluminium;
- (c) PET;
- (d) liquid paper board;
- (e) steel;
- (f) HDPE;
- (g) other plastics;
- (h) other materials; and
- (i) any additional material type as prescribed in the Act or the Regulation.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth).

Privacy Laws means all legislation, binding principles required by Law, industry codes and policies required by Law relating to the collection, use, disclosure, storage or granting of access rights to Personal Information (including the *Privacy and Data Protection Act 2014 (Vic)*).

Regulations means any regulation made under the Act.

Scheme means the container deposit scheme established under Part 6 of the Act.

Scheme Commencement Date means 1 November 2023 or such later date as is notified to the Exporter by the Scheme Coordinator.

Scheme Payments and Contribution Methodology means the document described as the "Scheme Payments and Contribution Methodology" issued by Recycling Victoria and published on its website as varied or replaced from time to time.

State means the Crown in right of the State of Victoria.

Suitable Eligible Container has the meaning given in the Act.

Supply has the meaning given in the Act.

Supply Arrangement has the meaning given in the Act.

System means the information technology systems used by the Scheme Coordinator and its Associates in connection with the Scheme.

1.2 Interpretation

In this Deed Poll:

- (a) headings are for convenience only and do not affect interpretation;
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) a reference to a party includes that party's executors, administrators, successors, permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this Deed Poll) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (g) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation".

2 Scheme Payments and Contribution Methodology and Export Supply Protocol

- (a) The Exporter agrees that it is bound by and must comply with the terms of the:
 - (i) Scheme Payments and Contribution Methodology; and
 - (ii) Export Supply Protocol,as if they were a part of this Deed Poll.
- (b) The Exporter acknowledges that the Export Supply Protocol may be amended by the Scheme Coordinator from time to time. The Exporter accepts that amendments will be

published on the Scheme Coordinator's website, <https://vicreturn.com.au/exporters/>, and will take effect 30 days after that publication.

- (c) If there is any ambiguity, discrepancy or inconsistency between the Protocol, the Scheme Payments and Contribution Methodology and any other term of this Deed Poll, the documents will be read in the following order:
 - (i) the Scheme Payments and Contribution Methodology;
 - (ii) the Export Supply Protocol;
 - (iii) this Deed Poll.
- (d) The Exporter acknowledges and agrees that:
 - (i) to the extent permitted by law, the Scheme Coordinator and the State have no obligation, whether under contract or any other basis, to the Exporter in relation to the Export Supply Protocol;
 - (ii) to the extent permitted by law, the Exporter releases and forever discharges the Scheme Coordinator from all claims arising directly or indirectly out of or in connection with this Deed Poll; and
 - (iii) the Scheme Coordinator and the State will rely upon the commitments made by the Exporter in this Deed Poll.

3 Overpayments

- (a) The Exporter must pay the Scheme Coordinator any amount of overpayment the Scheme Coordinator reasonably determines (whether as a result of an audit, investigation or otherwise) has been made to the Exporter by the Scheme Coordinator pursuant to the Export Supply Protocol.
- (b) Any amount payable under clause 3(a) is a debt due and payable by the Exporter to the Scheme Coordinator. The Scheme Coordinator may, at its discretion, deduct this debt from any amounts which are to be paid to the Exporter pursuant to the Export Supply Protocol.
- (c) The Exporter agrees that confirmation or payment by the Scheme Coordinator of any amount relating to the Export Supply Protocol:
 - (i) does not constitute approval of any information provided by the Exporter to the Scheme Coordinator in relation to the Export Supply Protocol;
 - (ii) does not constitute approval of the Exporter's compliance with the Export Supply Protocol or the Deed Poll; and
 - (iii) does not prevent the Scheme Coordinator from subsequently making a determination that an overpayment has been made to the Exporter pursuant to the Export Supply Protocol.
- (d) If the Scheme Coordinator is unable to deduct an amount payable under 3(a) from amounts to be paid to the Exporter, the Exporter must, within 14 days of notice from the Scheme Coordinator pay all such moneys owed to the Scheme Coordinator.

4 Adjustments

The Scheme Coordinator may, at any time, adjust the amount payable under an Exporter Invoice:

- (a) in accordance with the Scheme Payments and Contribution Methodology;

- (b) after the Scheme Coordinator has assessed the validity of claims made in the Exporter Statement; or
- (c) to account for any previous overpayment identified as a result of an audit.

5 Right of set-off

The Scheme Coordinator may deduct from any amounts which may or are to be paid to the Exporter by the Scheme Coordinator any debt or moneys due or owing from the Exporter to the Scheme Coordinator.

6 Initial declaration

Within 10 Business Days after the date of this Deed Poll, the Exporter must provide to the Scheme Coordinator a statement which specifies the number of Suitable Eligible Containers Export Supplied by the Exporter in Victoria (if any) in the 12 month period immediately prior to the Scheme Commencement Date, and such other period as determined by the Scheme Coordinator in its sole discretion as notified by the Scheme Coordinator to the Exporter in writing, itemised on a month to month basis:

- (a) in aggregate in respect of Victoria; and
- (b) in aggregate in respect of Victoria by Material Type,

and such statement is to be submitted via the Interface or as otherwise directed by the Scheme Coordinator in writing.

7 Exporter Statements

7.1 Content of Exporter Statements

Once per month, the Exporter may submit an Exporter Statement in respect of the month which the Exporter proposes to make a claim for an Export Supply. In order to submit a valid Exported Statement, the Exporter must submit Exporter Statements to the Scheme Coordinator:

- (a) stating the Exporter ID issued to that Exporter;
- (b) substantially complying with the requirements of the Scheme Payments and Contribution Methodology and Export Supply Protocol;
- (c) in the format and using the submission method reasonably required by the Scheme Coordinator; and
- (d) during the month that is twelve calendar months after the month in respect of which the Exporter Statement is made, by the 15th day (or, if that day would not be a Business Day, the next Business Day) of that month.

7.2 Exporter ID necessary to lodge Exporter Statement

In order to submit an Exporter Statement to the Exporter, the Exporter must have a valid, current Exporter ID.

7.3 Requests for supplementary Exporter Statement

If, in the opinion of the Scheme Coordinator (acting reasonably) an Exporter Statement does not satisfy clause 7.1 of this Deed Poll, or the Scheme Coordinator requires further information in connection with assessing that Exporter Statement, the Exporter must provide, within 10 Business Days of notice from the Scheme Coordinator, a supplementary Exporter Statement providing:

- (a) the information required to satisfy the requirements of clause 7.1; and
- (b) any other additional information requested by the Scheme Coordinator (acting reasonably) to assist the Scheme Coordinator in assessing the Exporter Statement.

8 Annual statutory declaration

- (a) No later than the date which is 40 Business Days after the end of each financial year in respect of which the Exporter has made a claim in relation to an Export Supply pursuant to the Export Supply Protocol, the Exporter must prepare and deliver to the Scheme Coordinator a statutory declaration by the means, in the form, and with the signatory of a category, set out in the Export Supply Protocol.
- (b) The statutory declaration referred to in clause 6(a) must declare:
 - (i) that each Exporter Statement provided by the Exporter in respect of the previous financial year was true and correct or specifying the extent to which any Exporter Statement was not true and correct;
 - (ii) the number of Suitable Eligible Containers exported by that Exporter in the State in the previous financial year; and
 - (iii) each other matter prescribed by the Export Supply Protocol, the State or which is otherwise required by the Act or the Regulation from time to time (as notified in writing by the Scheme Coordinator to the Exporter).

9 Records and Auditing

- (a) The Exporter agrees that the Scheme Coordinator may engage an independent auditor to, at any time, audit (including a real-time audit of any applicable electronic systems for deliveries, supply chain logistics, payments, collections and verification) or review data provided by the Exporter under this Deed Poll to determine if the Exporter is complying with the Act, the Regulations and this Deed Poll.
- (b) For the purposes of clause 6(a), the Exporter must:
 - (i) at all reasonable times give the independent auditor appointed by the Scheme Coordinator access to any areas where the Exporter's business is being carried out; and
 - (ii) if requested by the Scheme Coordinator, provide all reasonable assistance to the independent auditor appointed by the Scheme Coordinator in connection with any audit as contemplated by the Act or any other review or audit in accordance with this Deed Poll.
- (c) The Exporter agrees:
 - (i) to keep appropriate and sufficient electronic records of all Export Supplies and all Export Supply Statements for a minimum of 7 years;
 - (ii) to provide a statutory declaration by the means, and in the form, specified by the Scheme Coordinator within 10 Business Days of the notification by the Scheme Coordinator of the proposed audit for the period audited (or to be audited); and
 - (iii) that until the Scheme Coordinator specifies otherwise, the statutory declaration required under clause 6(c)(ii) must be in the form set out in Schedule 1 to the Export Supply Protocol and signed on behalf of the Exporter.

10 Fraud

10.1 Revocation of Exporter ID

The Exporter acknowledges and agrees that the Scheme Coordinator may revoke the Exporter's Exporter ID if:

- (a) the Exporter breaches the relevant Export Supply Deed, including failure to provide an annual statutory declaration or failure to comply with the records and audit obligations;
- (b) an audit identifies fraudulent conduct, a material inconsistency or a deliberate misstatement in connection with the Exporter's reported Export Supplies; or
- (c) the Exporter is not a fit and proper person.

10.2 Consequences of Fraud

Consequences for fraud may include:

- (a) a requirement to repay previous overpayments;
- (b) revocation of the Exporter ID; and
- (c) other potential financial penalties as may be prescribed by the Act and the Regulations.

11 Information Sharing

The Exporter agrees that the Scheme Coordinator may share any information provided by the Exporter in relation to the Export Supply Protocol with:

- (a) the State, its agencies, instrumentalities and authorities;
- (b) the government of any jurisdiction in which a Corresponding Law is in force, its agencies, instrumentalities and authorities; and
- (c) the occupant of a position equivalent to the Scheme Coordinator in any jurisdiction in which a Corresponding Law is in force,

and with no other person, and that person referred to in clause 7(a), 7(b) and 7(c) may share any information so provided with one another.

12 Interface

- (a) The Exporter acknowledges and agrees that the Scheme Coordinator may impose reasonable terms and conditions on the Exporter, as updated by the Scheme Coordinator from time to time, in connection with the Scheme prior to the Exporter accessing the Interface (or accessing, uploading, or modifying any Exporter Material), including terms requiring that Exporter Material:
 - (i) is provided to the Scheme Coordinator in compliance with all applicable Laws (including Privacy Laws) and comply with all applicable Laws (including any Privacy Laws); and
 - (ii) is true, accurate, correct, and complete.
- (b) The Exporter:
 - (i) represents and warrants that the processing of Personal Information provided by or on behalf of the Exporter in connection with this Deed Poll by or on behalf of the Scheme Coordinator in accordance with this Deed Poll will not infringe any Privacy Laws or any users' rights under the Privacy Laws, and that that the Exporter has obtained all necessary consents in relation to the collection and

handling of Personal Information provided by or on behalf of the Exporter in connection with this Deed Poll.

- (ii) warrants that no materials, documents, or other data, provided by or on behalf of the Exporter in connection with this Deed Poll, will infringe on the IP Rights of any third party.
- (iii) agrees and acknowledges that it is responsible for all acts and activities that occur using all of its employees, contractors, clients, agents, customers, suppliers or other third parties, as applicable, authorised by the Exporter to use the System or in accordance with this Deed Poll (collectively **Users**) accounts, including any unauthorised use of a User account or any unauthorised use of the System, whether undertaken by the Exporter, its personnel or any third party, and any breach of the Exporter obligations under this Deed Poll.
- (iv) must ensure that each User has their own unique User account, and must ensure to the extent within its control that these are not shared across Users.
- (v) must promptly provide the Scheme Coordinator all relevant information and assistance requested by the Scheme Coordinator from time to time in connection with the set up and management of User accounts.
- (vi) must comply, and must ensure that all of its Users comply, with the terms of use and all other terms provided by the Scheme Coordinator in relation to the access to and use of the System and must remediate any non-compliance.
- (vii) must not and must ensure that any User does not:
 - (A) knowingly upload or distribute in any way files that contain viruses, corrupted files, malware or other similar software or programs that may damage the operation of the System, operations, or information technology infrastructure;
 - (B) use the System for illegal purposes;
 - (C) knowingly interfere with any third party's use or enjoyment of the System;
 - (D) post, promote or transmit through the System any unlawful, harassing, defamatory, privacy invasive, abusive, threatening, offensive, vulgar, obscene, tortuous, hateful, racially, ethnically or otherwise objectionable information of content of any kind or nature;
 - (E) upload or distribute any information or data to the System which, either by the uploading itself or as a result of the Scheme Coordinator (or any other party) storing or processing such data or information in accordance with this Deed Poll, infringes the rights of any third party (including IP Rights or otherwise);
 - (F) attempt to copy, modify, duplicate, create a derivative work from, republish or adapt all or any part of the System;
 - (G) except to the extent such rights may not be excluded by applicable law, reverse engineer, reverse compile or disassemble any or part of the System;
 - (H) access the System in any way in order to build a product or service which competes with the System; or
 - (I) licence, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit, use as a bureau service, as an

outsourced service, or otherwise make available to any third parties, the System, except to the extent contemplated under this Deed Poll.

- (viii) must ensure that the Exporter has all applicable rights (including IP Rights) to provide all Exporter Material and that the Exporter Material:
 - (A) does not breach any third party IP Rights or other rights;
 - (B) is provided to the Scheme Coordinator in compliance with all applicable Laws (including Privacy Laws) and complies with any applicable Laws (including Privacy Laws); and
 - (C) is true, accurate, correct and complete.
- (ix) acknowledges and agrees that the Exporter is entirely responsible for ensuring that any information or data uploaded to the System or otherwise provided to the Scheme Coordinator by or on behalf of Users:
 - (A) does not violate any applicable Law (including for avoidance of doubt the Privacy Laws);
 - (B) does not violate any IP Rights, confidentiality rights, publicity right or any other rights of any third party; and
 - (C) is accurate, complete, reliable and up to date.
- (x) acknowledges and agrees that the Scheme Coordinator is not responsible for ensuring that any information or data uploaded to the System or otherwise provided to the Scheme Coordinator:
 - (A) does not violate any applicable Law (including for avoidance of doubt the Privacy Laws);
 - (B) does not violate any IP Rights, confidentiality rights, publicity right or any other rights of any third party; and
 - (C) is accurate, complete, reliable and up to date.

13 Confidentiality

13.1 Confidentiality of Confidential Material

The Exporter acknowledges and agrees that, to the extent permitted by law and subject to clause 13.2:

- (a) the Confidential Material is and will remain confidential to the Scheme Coordinator;
- (b) it has not disclosed and will not at any time, without the Scheme Coordinator's prior written consent, disclose the Confidential Material to any employee or third party who has not agreed to keep the Confidential Material, confidential on the same terms as this clause 13; and
- (c) it will not, and will ensure that its Associates do not, at any time use or reproduce or permit or allow any other person to use or reproduce the Confidential Material, other than for the purposes of this Deed, including to carry out its obligations and exercising its rights pursuant to this Deed.

13.2 Exceptions to confidentiality

Where:

- (a) the party for whom the Confidential Material is confidential has notified the other party (**Disclosing Party**) in writing that the Confidential Material is in the public domain;
- (b) the Confidential Material is in the public domain through no act, neglect or default of the Disclosing Party or its Associates (the onus of proving which will be on the Disclosing Party); or
- (c) the other party has notified the Disclosing Party in writing that the other party no longer requires the Disclosing Party to maintain the confidentiality of the Confidential Material,

then the obligations in clauses 13.1 will not, or will no longer, apply to that Confidential Material provided that this clause 13.2 will not excuse any prior breach of clauses 13.1 and the other party's rights and remedies in respect of any prior breach are expressly preserved.

14 Assignment

The Exporter agrees that the Scheme Coordinator may assign any or all of its rights under this Deed Poll to the State or a person nominated by the State.

15 Notices

Any notice or other communication given or made by the Exporter under this Deed Poll:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender); and
- (b) must be delivered to the Scheme Coordinator by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address or email address below or the address or email address last notified by the Scheme Coordinator to the Exporter:
 - (i) Address: c/o HWL Ebsworth Lawyers, Level 8, 447 Collins Street, Melbourne Victoria 3000
 - (ii) Email: Jim.Round@vicreturn.com.au
 - (iii) Attn: Scheme Coordinator's Representative.

16 Executed Softcopy an Original

The Exporter may sign electronically a soft copy of this Deed Poll through DocuSign, and bind itself accordingly. That will satisfy any statutory or other requirements for it to be in writing and signed by the Exporter. Any soft copy so signed will constitute an executed original. In addition, the Exporter intends to print it out when so signed, so that the relevant signatures will appear in the printout, and any print-out will also be an executed and delivered original.

17 Governing law

This Deed Poll is governed by and construed in accordance with the laws of Victoria.

18 Jurisdiction

- (a) The Exporter irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Victoria and the courts to which the appeals from those courts may be made with respect to any proceedings that are permitted to be brought at any time.
- (b) The Exporter irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim they it now or in the future have that any

proceedings has been brought in an inconvenient forum, where that venue falls within clause 13(a).

Executed and delivered as a Deed Poll

Executed and delivered as a deed poll in accordance with section 127 of the *Corporations Act 2001* by

Director Signature

Director / Secretary Signature

Print Name

Print Name

SAMPLE