

## **AFFILIATION CONTRACT-BATTERIES**

### **1. Background**

According to the future ordinance (hereafter ‘the Ordinance’) concerning producer responsibility for batteries, undertakings that, on a commercial basis in Sweden, transfer batteries, or for their own use have imported batteries to Sweden (hereafter ‘Producer’ or ‘Producers’), are to, among other things, be responsible for collection, pretreatment and disposal management and recovery of waste that such products comprise (hereafter ‘Producer Responsibility’). According to the said Ordinances, Producers must secure financing to ensure performance of Producer Responsibility. The Swedish Environmental Protection Agency has in its General Advice (NFS 2007:6) expressed its views on the interpretation of the obligation to secure financing. (The Ordinances referred to here together with the General Advice of the Swedish Environmental Protection Agency are hereafter jointly referred to as ‘the Legislation’). This obligation includes ensuring that there is a suitable collection system in place for used batteries and that the batteries are taken care of in accordance with a certain procedure (hereafter ‘Producer Responsibility’). The Ordinance also entails other obligations.

El-Kretsen i Sverige AB, which operates on a non-profit basis, organises a nationwide system for the collection, pretreatment and recovery of batteries. When a Producer has concluded this contract (hereafter ‘the Contract’) with El-Kretsen, El-Kretsen will provide its services to the Producer (hereafter ‘Affiliated Undertaking’) and the Affiliated Undertaking must pay charges in accordance with the Contract and a Product and Charges Schedule. The Contract covers portable batteries, which means that car batteries, etc. and certain industrial batteries are not encompassed.

The parties have through this Contract agreed that El-Kretsen shall provide its services to the Affiliated Undertaking to facilitate the performance by the Undertaking of the parts of the Ordinance stated above as Producer Responsibility. If El-Kretsen and the Affiliated Undertaking have previously had a contract governing the performance by El-Kretsen of services related to batteries for the benefit of the

Affiliated Undertaking, this Contract shall replace such previous contract.

In addition to the services provided by El-Kretsen under the Contract, there may be further measures that the Affiliated Undertaking may need to implement in order to comply with the Ordinance; e.g. labelling, registration and certain reporting. El-Kretsen undertakes to, upon request, in such cases provide information about what action needs to be taken by the Affiliated Undertaking.

Producers who have previously conducted operations covered by the Ordinance and that wish to become an Affiliated Undertaking must through a special procedure specify a time period and also the scope and kind of products that have been released onto the market. If such a Producer has not reported the necessary information in the correct manner, the Contract will not enter into force.

This Contract has been concluded without the Ordinance having been issued and before it is possible to have contracts in place with municipal authorities and other stakeholders. For this reason, the Contract is conditional on the Ordinance entering into force with pre-dominantly corresponding regulations as contained in the drafts of the present text in addition to contracts with municipal authorities and other stakeholders being concluded to a sufficient extent.

### **2. El-Kretsen’s obligations**

The Contract encompasses portable batteries.

El-Kretsen shall provide to an Affiliated Undertaking all the services stated below.

(i) Collection: El-Kretsen shall through contracts with municipalities, or others, ensure that as regards waste, at least to the extent as laid down by the Ordinance, there are reception points at which worn out products of the kind in question can be left.

(ii) Transport: El-Kretsen shall organise transport to pretreatment or other approved disposal of all of the material that has been collected at the above described reception points or services.

(iii) Pretreatment: El-Kretsen shall ensure that products collected, to the extent prescribed by the Ordinance, are pretreated in the prescribed manner.

(iv) Recovery: El-Kretsen shall ensure, to the extent laid down by the Ordinance, that all pretreated products are recovered or in another way disposed of in the prescribed manner.

(v) Recycling: To the extent that it is considered possible by El-Kretsen, and following consultation with Affiliated Undertakings, El-Kretsen shall make efforts to facilitate the recycling of products collected.

(vi) Information: El-Kretsen shall provide information to those besides households that may conceivably wish to leave worn out products covered by this Contract for recovery. El-Kretsen shall also provide appropriate information to municipalities as may be required for the municipality to in its turn be able to inform households.

(vii) Consultation with municipalities: El-Kretsen shall, to the extent prescribed by the Ordinance and the Environmental Code, conduct consultation with the municipalities involved.

(viii) Reporting to the supervisory authority: El-Kretsen shall, to the extent and in the manner prescribed by the supervisory authority, report on the operation and the results of the collection and recovery system.

(ix) Inform Affiliated Undertakings: El-Kretsen shall on a continuous basis provide to all Affiliated Undertakings necessary information about relevant laws, ordinances and official decisions and on the results of the operation's collection and recovery.

Notwithstanding the above provisions, El-Kretsen's services shall always be limited to the product groups specified in El-Kretsen's Product and Charges Schedule applicable from time to time.

### 3. Obligations of Affiliated Undertakings

#### 3.1 Reporting obligation and Connection Charge on new subscription

Producers who have not previously been covered by

the Contract, or corresponding contractual relationship with El-Kretsen, shall through a special procedure specify the time period of their operation and the scope and kind of products that have been released onto the market.

For such Producers the Contract is not applicable until a special Affiliation Charge has been paid.

#### 3.2 Reporting of batteries

To calculate the charges that the Affiliated Undertaking must pay under the Contract, the Affiliated Undertaking shall submit reports to El-Kretsen on its sales in Sweden and import of products into Sweden in terms of the products covered by the Contract. This report shall be made in accordance with the rules, and on the occasions, specified more particularly in the applicable Product and Charges Schedule.

Which product groups are covered, how the reporting shall be effected and what periods of time they cover are stated in El-Kretsen's Product and Charges Schedule applicable from time to time.

#### 3.3 Reconciliation and Audit

The Affiliated Undertaking and El-Kretsen shall, on an ongoing basis during the term of the Contract, jointly reconcile the correctness of reports submitted. Normally such a reconciliation shall be conducted every other or every third year, in which connection El-Kretsen through visits and/or some other appropriate means will familiarise itself with the principles for the reporting and audit the Affiliated Undertaking's accounts to an appropriate extent.

If it is considered necessary by El-Kretsen, El-Kretsen can also request that the veracity of the Affiliated Undertaking's reporting to El-Kretsen is certified by the Affiliated Undertaking's auditor.

In the event that the parties disagree on the results of El-Kretsen's audit, the parties shall jointly appoint an authorised public accountant for audit. The costs incurred for such an audit shall be borne by the party whose view has been found to be erroneous upon the audit, or alternatively, to the extent that the view of the party has been found to be erroneous.

## 3.4 Charges

The Affiliated Undertaking shall pay a variable charge, which is determined on the basis of the Affiliated Undertaking's report submitted and the charges determined by El-Kretsen per product/product group. The charges per product/product group are stated in El-Kretsen's Product and Charges Schedule applicable from time to time.

If an Affiliated Undertaking does not submit reports within the prescribed period, El-Kretsen is entitled to impose an estimated charge. El-Kretsen is entitled to when calculating such charge proceed on the basis of factors such as, for example, assumptions made about the Affiliated Undertaking's operations and the sector in question, among other things.

When the Affiliated Undertaking has thereafter submitted reports for the period in question, the difference between the estimated charge and the charge determined shall be adjusted.

An Affiliated Undertaking shall besides the variable charge pay fixed charges in the form of first an entrance charge and, second, an annual charge. These fixed charges are stated in El-Kretsen's Product and Charges Schedule applicable from time to time.

The Affiliated Undertaking is in certain cases entitled to an adjustment of the charge for products covered by the Contract and that the Affiliated Undertaking has collected, pretreated and recovered under its own auspices. The adjustment shall correspond to the reduction of costs for El-Kretsen. Rules for when compensation shall be payable to the Affiliated Undertaking are contained in El-Kretsen's Product and Charges Schedule applicable from time to time.

The fixed and variable charges (and when appropriate the estimated charge) shall be paid by the Affiliated Undertaking upon invoice, with due dates of payment 30 days from date of invoice.

El-Kretsen shall thus be entitled to continuously adjust the Product and Charges Schedule. Changes in the Product and Charges Schedule enter into force, as regards increases, sixty (60) days after the change has been notified. El-Kretsen shall however not be liable to give advance notice of editorial amendments.

In addition to charges mentioned here, the Contract also governs other charges. Upon new subscription, an Affiliated Undertaking may be under an obligation to pay a connection charge, according to Clause 3.1. When the Contract has ceased to apply, the Affiliated Undertaking shall pay a Settlement Charge, according to Clause 11. Special charges may be imposed in the event of inadequate performance of the Contract, in accordance with the provisions of Clause 4.

## 3.5 Reporting to public authorities

The Affiliated Undertaking shall arrange to effect the necessary reporting to and registration with the supervisory authority.

## 4. Supplementary charge, etc.

In the event of delay in making reports according to Clause 3.2, a charge for delay is payable. The amount of the charge for delay is stated in El-Kretsen's Product and Charges Schedule applicable from time to time.

If the Affiliated Undertaking has intentionally or carelessly provided incorrect reports and if charges have been withheld from El-Kretsen as a consequence thereof, El-Kretsen shall be entitled to impose a supplementary charge on the Affiliated Undertaking.

The supplementary charge shall amount to a sum corresponding to the charges withheld. Besides the supplementary charge the charges withheld shall be paid.

If the invoice is not paid when due, El-Kretsen is entitled to impose the prescribed charge for a written reminder. When collecting debts, collection costs will be added as prescribed by law.

The interest for delay is payable according to the Interest Act.

## 5. Confidentiality

El-Kretsen undertakes to, during the term of the Contract and thereafter, treat strictly confidential all the information that the Affiliated Undertaking has provided in its reporting or corresponding information that has become known upon audit or otherwise through contacts between El-Kretsen and the

Affiliated Undertaking.

Information of which El-Kretsen has thus become aware may not be used in another way than for the performance of this Contract. However, El-Kretsen shall always be entitled to disclose information to a third party about the Contract being in force and the grounds for the cessation of the Contract.

## 6. Repayment

If the parties jointly conclude that an Affiliated Undertaking has paid too much for the services referred to in Clause 2, the excess funds shall be repaid to the Affiliated Undertaking.

## 7. Responsibility

El-Kretsen is not liable for loss of production or other damage, whether direct or indirect damage, loss of profit or other inconvenience caused or a consequence of El-Kretsen's performance of its rights and obligations under this Contract, unless it can be shown that El-Kretsen has committed gross negligence.

## 8. Subcontractors

El-Kretsen shall be entitled to engage subcontractors to perform the services referred to in Clause 2. El-Kretsen is responsible for the work of any subcontractors as if it were its own work.

## 9. Use of El-Kretsen's characteristic signs

An Affiliated Undertaking is entitled to use El-Kretsen's characteristic signs in accordance with El-Kretsen's rules regarding the same applicable from time to time. Upon the cessation of this Contract the Affiliated Undertaking undertakes to return or destroy all such material that bears El-Kretsen's characteristic signs.

## 10. Term of Contract

This Contract applies from and including 26 September 2008 or such later date as referred to under Clause 15 below, and indefinitely. Notice may be given terminating this Contract to take effect at the end of the year immediately following the year in which the notice of termination is given.

In the event of a breach of Contract that is not petty on the part of the Affiliated Undertaking, El-Kretsen

is entitled to give notice terminating the Contract with immediate effect.

## 11. Final settlement

When the Contract has ceased to apply, the parties shall draw up a Final Settlement and the Affiliated Undertaking shall pay a charge ('Settlement Charge') as provided below.

The Affiliated Undertaking shall pay to El-Kretsen a Settlement Charge. The Settlement Charge covers the cost of, in accordance with the Contract, disposal of the products that the Affiliated Undertaking has up to the date of Final Settlement put into the market, which have not yet been dealt with. This amount shall be reduced by the costs of disposal relating to the disposal of any products that the Affiliated Undertaking can show that it will manage.

The Affiliated Undertaking undertakes to, no later than one month from the Settlement having taken place, deposit for El-Kretsen the amount determined by the Settlement. This also applies if the dispute is instituted about the Settlement Charge according to Clause 12. El-Kretsen shall in such a case deposit the disputed portion of the Settlement into a locked account.

## 12. Disputes (arbitration clause)

Disputes regarding the creation, application or validity of this Contract shall, subject to the exemptions stipulated below, be determined by Stockholm District Court as the first instance.

Disputes regarding the Settlement Charge shall be considered under the Arbitration Act (1999:116), subject to the following deviations. Disputes shall be determined by one arbitrator. The arbitrator, who should have special knowledge of finance and accounting, shall, if the parties cannot otherwise agree, be appointed by FAR (the institute for the accountancy profession in Sweden).

## 13. Previous contracts

This Contract replaces all previous verbal or written agreements, commitments and undertakings entered into between the parties or previously made that refer to the subject of the Contract.

14. Amendments, etc.

The Contract's entering into force is conditional on the Ordinance entering into force with predominantly corresponding regulations as contained in the drafts of the present text in addition to contracts with municipal authorities and other stakeholders being concluded to a sufficient extent. It is the responsibility of El-Kretsen to immediately – should El-Kretsen assess that the Contract cannot enter into force – communicate this stand-point to the Affiliated Undertaking.

In the event that any provision of this Contract or the application thereof for any reason is found to be completely or partly without effect, invalid or unenforceable, or if the supervisory authority issues such a regulation that leads to such effects or creates a need for amendment to this Contract, the parties shall to the greatest possible extent amend this Contract in accordance with the joint intent of the parties.

## **AFFILIATION CONTRACT-BATTERIES**

15. Affiliated Undertaking

Undertaking:

with Organisation/Corporate identity (ID) no.:

VAT Number:

Postal address:

Tel:                      Fax:

Contact person for this Contract:

E-mail:

E-mail for electronic invoice:

Person responsible for reporting (if other than the contact person above):

E-mail:

This Contract has been drawn up as two (2) similarly worded counterparts, of which the parties have each received their part.

Stockholm, date

Date

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For El-Kretsen AB

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Affiliated undertaking

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Print name

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Print name

2008-08-20