

# GENERAL TERMS OF PARTICIPATION IN THE COLLECTIVE SYSTEM OF EKOLAMP

[English translation of Czech original for information purposes only.]

## 1. TRANSFER OF OBLIGATIONS TO EKOLAMP

### 1.1 Transferable WEEE obligations

EKOLAMP s.r.o. ("**Ekolamp**") is the operator of a non-profit collective system for processing waste lighting equipment registered with the Ministry of the Environment's List of EEE Producers under the number KH002/05-ECZ ("**Collective System**"). The Participant

- i. within the meaning of Article 37g (e) of Act No. 185/2001 Coll., the Act on Waste, as amended, sells, imports or puts on the market (put on the market, "**POM**") lighting equipment listed in Appendix No. 1 to Decree No. 352/2005 Coll., on Processing of EEE and WEEE, as amended, in subgroups 5.2 – 5.5 and 5.6 (other lamps, e.g., LED) ("**Lamps**") and/or in subgroups 5.1 and 5.6 (other luminaires, e.g., LED luminaires) ("**Luminaires**"), and is thus their "producer" within the meaning of Article 37g (e) of the Act on Waste; or
- ii. is an authorized representative of such producer within the meaning of the Article 37q of the Act on Waste in relation to all Lamps/Luminaires put on the market by the producer (hereinafter EEE POM by the Participant).

As a result of the above mentioned grounds the Participant has the obligation to fulfil the respective obligations aiming especially at the protection of human health and the environment. With respect to statutory obligations, viz. the obligation to ensure the return, separate collection, treatment, recovery and disposal of EEE and WEEE, the obligation to prepare and file annual reports on fulfilment of these obligations, the obligation to record particular information in the List of EEE Producers and to regularly update the recorded matters, to operate appropriate network of collection points and to record the respective flows of EEE and WEEE ("**Transferable WEEE Obligations**"), the Participant fulfils the Transferable WEEE Obligations through the Collective System.

### 1.2 Participation in the Collective System

In relation to all Lamps and/or Luminaires POM by the Participant during its participation in the Collective System, the Participant hereby transfers its Transferable WEEE Obligations to Ekolamp, and Ekolamp accepts them and assumes the obligation to duly fulfil them, for which the Participant assumes the obligation to pay to Ekolamp a recycling fee. The Participant's participation in the Collective System lasts for the duration of the Agreement on Participation in the Collective System for Processing of Waste Lighting Equipment concluded between Ekolamp and the Participant ("**Participation Agreement**"), of which these General Terms of Participation in the Collective System ("**GTP**") form part.

## 2. RECORD-KEEPING AND RECYCLING FEE

### 2.1 Record-keeping of POM

To the extent and by the means as set by the relevant legal regulations and accordingly set by Ekolamp, the Participant shall continuously keep records of EEE POM by it and shall provide Ekolamp with outputs from these records and related information via Ekolamp's information system ("IS") accessible at the website [www.ekolamp.cz](http://www.ekolamp.cz). The Participant shall provide Ekolamp with monthly outputs from these records by the 10th day of each month following the month of POM ("**Monthly Report**") and annual outputs from these records by 10 January of the year following the year of POM ("**Annual Report**"), even if no EEE was POM in the respective month or year. Subject to Ekolamp's consent, Monthly Reports and Annual Reports include records of EEE POM by the Participant which were subsequently returned to the Participant without becoming waste in the meantime and by which the recorded amount of EEE POM should be decreased. Records of EEE POM which the Participant provided through Monthly Reports during the respective calendar year can be corrected by duly providing the respective Annual Report. This possibility is without prejudice to the Participant's obligation to duly keep records of EEE POM and duly provide Monthly Reports, and does not exonerate the Participant of its responsibility for its possible failure to fulfil these obligations in the period until a correction is made of the reported data through the Annual Report.

### 2.2 Record-keeping of other matters

The Participant shall continuously keep records of other matters recorded in the List of EEE Producers or otherwise required by the respective legal regulations [e.g., the means of labelling its EEE, the means of fulfilment of its statutory information and educational obligations or technical requirements for processing its EEE] and provide Ekolamp with outputs from these records and related information via the IS or in writing. The Participant shall comply with up-to-date terms of operation of the IS. The Parties confirm that before the conclusion of the Participation Agreement, Ekolamp familiarised the Participant with the current terms of operation of the IS, and that the Participant handed over to Ekolamp all information and documents necessary for the recording of the Participant to the List of EEE Producers and for its participation in the Collective System. In case of a change of any of the aforementioned recorded matters, the Participant shall register this change in the IS or inform Ekolamp in writing within three weeks from the occurrence of the change, and shall hand over to Ekolamp the originals or verified copies of documents sufficiently proving the change ("**Update of Recorded Matters**") within the same period. Part of the Update of Recorded Matters can also be a change in the scope of participation in the Collective System (Lamps/Luminaires). The Participant shall provide Ekolamp with the information on the technical requirements for processing its new EEE within one year from the first POM.

### 2.3 Recycling fee

The amount of the recycling fee is calculated as a multiple of the amount of EEE POM by the Participant and the amount of CZK 2.50 for Lamps and CZK 8.40 for Luminaires, plus VAT. The Participant's records provided in the Monthly Reports are primarily used to calculate the recycling fee. If the respective Monthly Report is not duly provided to Ekolamp, the recycling fee shall be calculated based on the Participant's records from the last Monthly Report provided. The amount of the recycling fee shall be possibly corrected based on records from the duly provided Annual Report or the Report on Audit Findings (see below), and this possible

difference will be reflected in a separate invoicing document. Ekolamp issues invoices for the recycling fee by the 15<sup>th</sup> day of the month following the month of POM, in the amount of at least CZK 2,000 without VAT. If this amount is not attained, Ekolamp issues invoices by the 15<sup>th</sup> day of the subsequent month or further months until the amount is cumulatively attained, but in any case at the latest by 15 January following the POM. When invoicing the difference in the recycling fee based on the Annual Report, Ekolamp issues the respective invoicing document by 15 January of the year following the year for which the Annual Report was prepared; when invoicing the difference in the recycling fee based on the Report on Audit Findings, Ekolamp issues the respective invoicing document by the 15<sup>th</sup> day following the day of insertion of the Report on Audit Findings to the IS (see below). The services provided by Ekolamp to the Participant according to the Participation Agreement represent partial performance realised on the day of issuance of the respective invoicing document. The invoicing documents can be issued electronically, and their due date is the 30<sup>th</sup> day from the day of their issuance.

#### **2.4 Agreement on non-discerning of Lamps**

Contractual Parties are aware of inherent characteristics of Lamps (general usability both for households and other users, and a high number of articles, actually preventing them from being separated on the basis of origin and date of POM). In compliance with Article 5 (9) of the Decree on Processing of EEE and WEEE and Article 3 (1) (h) of Directive 2012/19/EU, the Parties thus agree that during the fulfilment of Transferable WEEE Obligations, including with respect to the structure of recycling fees and setting of Collective System operation, Lamps shall not be in these aspects differentiated.

### **3. OPERATION OF THE COLLECTIVE SYSTEM**

#### **3.1 Principles of the Collective System**

Ekolamp shall operate the Collective System in compliance with relevant legal regulations and under the supervision of the Ministry of the Environment. During the operation of the Collective System, Ekolamp shall observe the principles of transparency and non-discrimination. With regard to these principles the contractual parties explicitly exclude the application of Article 1740 (3) (offer acceptance with an amendment or deviation) and Articles 1798 – 1800 (contracts concluded by means of adhesion) of Act No. 89/2012 Coll., the Civil Code. Ekolamp shall operate the Collective System in a way which ensures credibility on the part of public administration, participants in the Collective System, as well as the general public. Ekolamp shall operate the Collective System with the aim to the utmost contribution to the protection of human health and the environment in the area of processing waste lighting equipment in a way that is sustainable over the long-term and the most efficient with regard to related expenses of participants in the Collective System, public budgets and the general public. Ekolamp has to protect the confidentiality of information. Information is deemed as confidential if it is not generally known and its possessor himself legitimately considers it confidential and operates with it in an appropriate way. Confidential information includes, e.g., information on a market share, economic situation or economic plans of a participant in the Collective System. In case of doubt, the information and documents containing it are deemed to be confidential. The protection of confidential information is without prejudice to Ekolamp's obligations to use the confidential information under the conditions and by the means stated in legal regulations and to Ekolamp's right to use the confidential information in aggregated form in a way which is not in conflict with the legitimate interests of the participants in the Collective System (e.g., publication

of the overall amount of EEE POM by the participants in a relevant period). The Parties acknowledge the competitive position of the participants in the Collective System, and, during the operation of the Collective System and within the participation in it, both Parties shall adhere to legal regulations in the area of protection of competition.

### 3.2 **System of financing of the Collective System; non-profitability**

Ekolamp is obliged to operate the Collective System and ensure its financing in a way which ensures its long-term sustainability and financial covering of all expenses related to the fulfilment of the assumed Transferable WEEE Obligations, without the Participant having to hold its own financial guarantees or other reserves to cover these expenses. Ekolamp shall not distribute its profit to its shareholders or bodies, and shall use it only for the operation of the Collective System. After termination of its participation in the Collective System, the Participant is not entitled to a return of recycling fees paid to Ekolamp. After the termination of the Participant's participation in the Collective System, out of the assumed Transferable WEEE Obligations, Ekolamp shall continue to ensure only the return, separate collection, treatment, recovery and disposal of EEE and WEEE, and this only in relation to EEE POM by the Participant during the time of its participation in the Collective System and within the average life-span of the respective subgroup of the EEE according to Ekolamp's current estimation.

### 3.3 **Cooperation and audits, purpose of audits**

The Parties shall provide a level of cooperation to each other as can be justly required from them for the aim of proper fulfilment of the assumed Transferable WEEE Obligations and proper operation of the Collective System. Ekolamp shall therefore, e.g., confirm the existence of the Participant's participation in the Collective System upon the latter's request and provide it with cooperation in the latter's fulfilment of its related statutory information and educational obligations. The Participant shall, e.g., provide Ekolamp upon its request with other information and documents necessary within the scope of the Participant's registration in the List of EEE Producers, or shall undergo audits of fulfilment of its obligations stated in the GTP and provide Ekolamp with all the necessary cooperation which can be justly required during the audits, especially provide upon request the accounting documents and other documents necessary for the performance of the audit. The Participant – authorized representative is obliged to ensure to Ekolamp on its own costs such cooperation from the respective producer and it is obliged to provide all logistic, linguistic and communication support stemming from the nature of the authorized representation. Ekolamp shall enable the Participant to express itself on the findings of the performed audit and shall provide the Participant with the conclusions of the audit in writing and without undue delay upon the performance of the audit. Within five working days upon the receipt of the mutually accepted conclusions of the audit, the Participant shall insert the conclusions into the IS ("**Report on Audit Findings**"), if the audit identified a difference between the amount of EEE actually POM by the Participant and the amount reported by the Participant to Ekolamp. The audits are performed in order to ensure equal conditions for all Participants in the Collective System as well as sustainability and credibility of the Collective System and thus to minimize the need of intervention by the control bodies of public administration.

### 3.4 **Participation in operation of the Collective System**

Ekolamp shall operate the Collective System in cooperation with its participants and for this aim shall ensure the possibility of the exercise of their rights as follows:

- (i) The right to be regularly and timely informed about the material aspects of the functioning of Ekolamp and the Collective System.
- (ii) The right of access to the information and documents concerning the functioning of Ekolamp and the Collective System.
- (iii) The right to express oneself on the functioning of Ekolamp and the Collective System and to propose changes.
- (iv) The right to initiate an audit of the fulfilment of obligations of other Collective System participant arising out of the GTP.

The participants in the Collective System do not have access to the confidential information. They have to exercise their rights in such a way that the proper and smooth operation of Ekolamp and the Collective System is not threatened or inadequately burdened. In case of doubt about the permissibility of the manner of exercise of a participant's rights, Ekolamp's Executives shall make a decision with regard to the necessity of proportionate protection of the rights of the participants, Ekolamp and the Collective System and in compliance with the principles of Ekolamp's governance and the Collective System's operation set in Ekolamp's founding documents and the GTP. The Participant may initiate an audit of fulfilment of another Collective System participant's obligations arising out of the GTP under the condition that the Participant's participation in the Collective System has lasted for longer than 12 months. The Participant is obliged to pay an advance on the costs of the audit amounting to CZK 10,000 when it initiates the audit. If no material shortcomings of the participant in the fulfilment of obligations are discovered by the audit, the Participant is obliged to pay all Ekolamp's costs of the audit to Ekolamp.

### **3.5 Publicity**

During the Participant's participation in the Collective System, Ekolamp and the Participant may disclose information about the Participant's engagement in the Collective System. In compliance with the current terms of Ekolamp, the Participant may also reproduce the mark confirming due participation in the Collective System on its communication materials.

### **3.6 Contractual penalties**

The Participant is entitled to claim from Ekolamp payment of the following contractual penalties in case it breaches the respective obligations set in the GTP:

- (i) Contractual penalty amounting to CZK 500,000 in every case of breach of its obligation to protect confidential information concerning the Participant.
- (ii) Contractual penalty amounting to CZK 100,000 in every case of its substantial breach of the obligation to ensure proper fulfilment of the assumed Transferable WEEE Obligations.

Ekolamp is entitled to claim from the Participant payment of the following contractual penalties in case it breaches the respective obligations set in the GTP:

- (i) Contractual penalty amounting to CZK 10,000 in every case of its breach of the obligation to duly keep records of the EEE POM by the Participant.

- (ii) Contractual penalty amounting to CZK 10,000 in case of the second and any subsequent breach in the respective calendar year of the obligation to provide Ekolamp with a Monthly Report, or in case of the breach of the obligation to provide Ekolamp with an Annual Report or to insert the Report on Audit Findings.
- (iii) Contractual penalty amounting to CZK 10,000 in every case of breach of the obligation to properly carry out the Update of Recorded Matters (the obligation to register it in the IS or to duly inform Ekolamp, or the obligation to provide Ekolamp with all the related documents).
- (iv) Contractual penalty amounting to CZK 10,000 in every case of breach of the obligation to provide Ekolamp with cooperation which can be justly required from the Participant during the performance of an audit of fulfilment of its obligations. The contractual penalty can be claimed repeatedly within the context of one audit.

The right to claim a contractual penalty is without prejudice to the right to claim damages. Ekolamp can claim the right to the contractual penalty under point (i) above especially in case of a wilful distortion of information on the amount of EEE POM reported by the Participant in the Monthly Report or Annual Report or generally in case of a finding of any discrepancy between the amount of EEE POM and the amount reported in the respective Monthly Report or Annual Report, without regard to fault of the Participant. Ekolamp can claim the right to the contractual penalty under point (ii) above especially in case of a late provision of the respective report. In case one Party breaches its obligation in the GTP, the other Party is exempted from liability for non-fulfilment of its related obligations (e.g., the Participant is not liable for not duly providing the respective report during the time the IS is out of order, and Ekolamp is not liable for not providing the Ministry of the Environment with the annual report on the fulfilment of the Participant's statutory obligations in case of non-fulfilment of the Participant's obligation to properly provide Ekolamp with the respective reports or carry out the Update of Recorded Matters).

#### **4. DURATION OF AND CHANGES TO THE PARTICIPATION AGREEMENT, PROROGATION OF JURISDICTION**

##### **4.1 Duration of the Participation Agreement**

The Participation Agreement is concluded for an indefinite period of time. Each of the Parties is entitled to terminate the Agreement in compliance with Article 1998 *et seq.* of the Civil Code, by the end of a calendar quarter by a written notice submitted at least three months in advance. In accordance with Articles 2001 *et seq.* of the Civil Code each of the Contractual Parties is entitled in case of a breach of counterparty's contractual obligation to withdraw from the Participation Agreement. A breach of contractual obligation in substantial manner is, e.g., a breach of such contractual obligation which entitles the counterparty to claim a contractual penalty according to the GTP or a breach of the Participant's obligation to pay the recycling contribution in case of default payment for a period longer than 30 days from the due date of the invoice. In connection to Article 2004 (3) of the Civil Code, the Contractual Parties expressly stipulate that performances provided based on the Participation Agreement are of value to the respective creditor and therefore the Contractual Parties shall not return to each other the performances provided before potential withdrawal from the Participation Agreement. Ekolamp shall notify the Ministry of the

Environment of the termination of the Participation Agreement without undue delay upon the termination.

#### **4.2 Changes to the Participation Agreement**

Changes to the Participation Agreement, including changes to the GTP, can only be made by means of a written agreement between the Parties, with the exception of changes related to changes of relevant generally binding legal regulations, especially WEEE legislation, changes to the recycling fee amount, frequency of POM reporting, invoice issuance and length of invoicing period, the amount of the advance on the costs of an audit of fulfilment of another Collective System participant's obligations, as well as other reasonably necessary and adequate changes, which Ekolamp is entitled to make unilaterally in accordance with Article 1752 of the Civil Code. Such changes shall be effective as of the beginning of year quarter and shall be announced to the Participant in writing at least three months in advance. Article 4.1 of GTP shall apply accordingly in case the Participant decides to terminate his participation in the Collective System in connection with such a change.

#### **4.3 Prorogation of jurisdiction**

Possible disputes arising from the Participation Agreement shall be settled exclusively by a court for the place of the current seat of Ekolamp.

October 2014, EKOLAMP s.r.o.  
after the amendment No. 184/2014 Coll. to the Act on Waste