

Contract for Waste Batteries Treatment Operator

Waste Batteries Recycling Center

Contract nº. _____

Between the Companies:

First Party: Ecopilhas – Sociedade Gestora de Resíduos de Pilhas e acumuladores, L^{da}, with a capital of 60.000 € domiciled at Rua Padre Américo, nº. 19, letra D, Escritório D, 1600-548 Lisboa, Portugal, registered at the Commercial Registry Office of Lisbon and Tax Number 505772213, and represented by Eurico da Costa Cordeiro, hereinafter referred to as “Ecopilhas”;

and

Second Party: (...), with a capital of (...)€ domiciled at (...), registered with VAT no. (...), and represented by (...) and (...), hereinafter referred to as “(...)”;

Whereas:

1. The Portuguese Decree-Law no. 6/2009, of January 6th, has established the system for the batteries in the market and the system for waste batteries collection, treatment, recycling and disposal, and afterward was amended by the Portuguese Decree-Law no. 266/2009, of September 29th, no. 79/2011, of June 17th, and no. 173/2015, of August 25th;
2. The Portuguese Decree-Law no. 152-D/2017, of December 11th (hereinafter referred to as “DL 152-D/2017”) came into force from January 1st, which established the new legal regime to the management of certain specific waste stream, among which include the waste batteries stream, repealing the Portuguese Decree-Law no. 6/2009;
3. By the Portuguese Dispatch no. 11275-B/2017, of December 19th, 2017, issued by the Secretary of the Environment, published in Diário da República 2nd Series, no. 245, dated at December 22nd, 2017, a new license was granted to Ecopilhas with the aim of carrying the waste management of portable batteries and industrial batteries, which is valid from January 1st, 2018, until December 31st, 2021;

4. In pursuit of its corporate object, Ecopilhas encourages various entities in order to promote an appropriate final destination to waste batteries. Thereafter, Ecopilhas provides containers for the waste collection, which are subsequently collected by Ecopilhas, through transporters companies or other waste manager operators to whom Ecopilhas is responsible for storing and sorting the waste batteries and deliver for its final destination.
5. The Second Party as an authorized operator for the reception and development of recycling and disposal/recovery of waste batteries, that is interested in being part of the waste collection and treatment network managed by Ecopilhas.
6. The Second Party performs recycling processes of the following chemical systems:
 - a. Alkaline and Zinc Carbon Batteries ☐
 - b. Lithium Batteries ☐
 - c. Button Batteries ☐
 - d. Lithium ion Batteries ☐
 - e. NiMH Batteries ☐
 - f. NiCd Batteries ☐
 - g. Lead Acid Batteries ☐
7. The Second Party must provide an appropriate treatment for each chemical system referred in Recital 6 as foreseen in the legislation in force.
8. The waste batteries treatment is under the framework of the requirements of Article 18 of Regulation (EC) no. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipment of waste.

It's agreed:

Clause 1

(Definitions)

Unless otherwise stipulated herein, the definitions contained in this Contract shall bear the meaning given to them under Article 3 of DL 152-D/2017 and Article 2 of Regulation (EC) no. 1013/2006 of the European Parliament and of the Council of 14th of June of 2006 on shipment of waste, hereinafter the "Regulation (EC) no. 1013/2006".

Clause 2

(Object)

1. By virtue of the present Contract, the Second Party is enforcing to provide the services related to the waste batteries treatment and recycling to Ecopilhas.
2. Any waste battery not detached or removed from the object of the present Contract can be accepted, if the Parties agree and negotiate the terms and conditions of the treatment procedures for these waste batteries. Subsequently, shall be made a specific agreement for the chemical systems not covered.
3. Ecopilhas shall be responsible for the operations of preparation for waste batteries recycling, according to the legislation of Transport of Dangerous Goods by Road.
4. The Second Party shall comply with other obligations foreseen in the law.

Clause 3

(Quantity)

1. Ecopilhas has the right to require the processing of _____ tons of *chemical system* per year, of _____ tons of *chemical system* per year and of _____ tons of *chemical system* per year.

Clause 4

(Quality)

1. The Second Party is authorized to receive and treat the *chemical system, chemical system and chemical system* batteries.
2. The Second Party is obliged to send to Ecopilhas a quantitative and qualitative reception document for the products received at the latest 30 (thirty) days after waste batteries delivery. If nonconformities are found among the waste batteries, the Second Party shall rapidly inform Ecopilhas.
3. For each delivery and each type of product received, the maximum of nonconformities acceptable by the Second Party must not be more than 1% (one percent). Not complying with this condition leads to an additional cost of _____ €/kg, to Ecopilhas.
4. After Ecopilhas receives the waste batteries quantitative and qualitative information (point 2 of Clause 4) Ecopilhas is obliged to select one of the following solution within 15 (fifteen) days:
 - a. The Second Party makes these products available for Ecopilhas to collect as soon as possible, at the own expenses of Ecopilhas;
 - b. The Second Party is authorized to process theses nonconformities and to invoices Ecopilhas for all treatment related costs;

If the Second Party chooses the subparagraph b), this Party shall provide an additional cost plan to Ecopilhas, and Ecopilhas will have 5 (five) working days to accept or decline the proposal.

5. The treatment costs are the following:

Type of nonconformity	Treatment cost (€/kg)
Alkaline and Carbon Zinc Batteries	
NiCd Batteries	
NiMH Batteries	
Lead Acid Batteries	
Primary Lithium Batteries (packs)	
Primary Lithium Batteries (cells)	
Mercury Batteries	
Button Batteries	
Capacitors	
Soiled Water	
Other nonconformities	

6. In case of Ecopilhas fail to reply within the 15 (fifteen) day limit, the Second Party can select option b) of point 4.

Clause 5

(Waste Batteries Transport and Packaging)

1. Ecopilhas is responsible for supplying the adequate packaging for waste batteries, accordingly with the Transportation of Dangerous Goods legislation in force.
2. Ecopilhas is obliged to put the waste batteries in the containers referred in the previous point.
3. If the packaging and storage conditions set up by Ecopilhas is not complying with the legislation in force, Ecopilhas shall bear the costs and fees that may result there from, in particular the return shipment to the point of departure.
4. Each package shall be labelled with the following information, if applicable:
 - a. The designation of the waste product (e.g. chemical system);
 - b. A label of danger;
 - c. The EWC Code;
 - d. The UN and Class Number;
 - e. Other requirements under the law;
5. Ecopilhas is responsible to contract the transport companies with the aim of transporting the waste batteries to the premises of the Second Party and is also obliged to ensure the compliance with the legislation in force.
6. Ecopilhas shall verify if the transport of the waste batteries has the proper information: the documentation at Annex VII or Annex IA and IB of Regulation (EC) no. 1013/2006 and the dispatch

declaration of the transport which specifies the waste batteries quantity sent to the installations of the Second Party.

7. The Second Party offers to Ecopilhas to store the packaging units for a period of _____ days, without any costs applied during this period. Once the deadline has expired, Ecopilhas will be charged with a storage cost of _____ € per packaging and per month.
8. Once packaging units are emptied, the Second Party informs Ecopilhas in order to organize the takeback of it. If the packaging units have not been picked up within _____ days, the Second Party may choose one of the four following alternatives:
 - a. The Second Party send the packaging units to Ecopilhas, at the own expenses of Ecopilhas;
 - b. The packaging units are destroyed by the Second Party, at the own expenses of Ecopilhas;
 - c. The packaging units become the property of the Second Party;
 - d. The Second Party invoices Ecopilhas for a storage cost.
9. The Second Party is obliged to inform to Ecopilhas the selected alternative in point 8 of this Clause.

Clause 6

(Recycling Process)

1. The treatment and recycling processes must comply with the General Regime of Waste Management (GRWM), approved by the Decree-Law no. 178/2006 of September 5th, in its current version (hereinafter referred to as "GRWM") and with other applicable legislation. The recycling center must comply with the minimum requirements referred to in Article 76 of DL 152-D/2017, namely the extraction of all fluids and acids, carried out in facilities, including the temporary storage facilities with suitable impermeable surfaces or cover or in suitable containers, and ensure the compliance with the minimum recycling goals, as set forth in Clause 7.
2. Ecopilhas has the right to audit the recycling processes of waste batteries enforced by the Second Party on the following terms:
 - a. Ecopilhas shall inform the Second Party about the audit, at least 15 (fifteen) calendar days before its starting date;
 - b. The cost of the audit shall be borne entirely by Ecopilhas.

Clause 7

(Recycling Efficiency)

1. According to Article 76 of DL 152-D/2017, Ecopilhas must achieve the following recycling goals:
 - a. Recycling of at least 65 % in mass of Lead Acid Waste Batteries;
 - b. Recycling of at least 75 % in mass of NiCd Waste Batteries;

- c. Recycling of at least 50 % in mass of other types of the collected waste batteries such as Alkaline and Zinc Carbon Waste Batteries.
- 2. The Second Party is obliged to comply with the recycling efficiency for each chemical system, as defined in the previous point, using the method set out in Annex I of the Regulation (UE) no. 493/2012, of the Commission, of June 11th of 2012, to calculate the recycling income of the waste batteries.
- 3. If the recycling goals of waste batteries have been changed by the law or by the competent administrative authority, Ecopilhas shall inform the Second Party of the new requirements to be fulfilled and subsequently, the Second Party is obliged to comply with the new objectives.
- 4. In case the Second Party foresees the non-fulfillment of those objectives, it shall inform Ecopilhas in due time and shall take all necessary measures to remedy the situation, including sending the waste batteries delivered by Ecopilhas to another authorized recycling plant, which can ensure the compliance of such recycling goals. In that case, the Second Party shall bear the extra costs.
- 5. The Second Party must subscribe and maintain in force until the termination of the Contract an insurance policy that covers its liability for additional costs incurred with the remedy measures mentioned in paragraph 4.
- 6. If the Second Party is not able to remedy the situation as set forth in paragraph 4 of this Clause, Ecopilhas will reevaluate the conservation of the present Contract.
- 7. The Second Party is obliged to send to Ecopilhas an annual certificate of Recycling Efficiency and an annual certification of the recycled amounts, until the 15th of February of the following year.
- 8. Without prejudice to the obligation set forth under the previous paragraph, the Second Party is obliged to send to Ecopilhas a quarterly report with the following information:
 - a. The quantities of waste received from Ecopilhas;
 - b. The percentage of waste batteries sent by Ecopilhas, per chemical system, that are not Alkaline or Zinc Carbon;
 - c. The quantities treated;
 - d. The rates of Recycling Efficiency achieved.

Clause 8

(Invoicing and payment conditions)

The price agreed for the treatment of the selected waste batteries is attached to a specific agreement between the Parties.

Clause 9

(Duration)

- 1. The present Contract shall enter into force on *Day Month Year*.

2. This Contract shall be valid for one year from the date of its signing and shall be automatically renewed for equal periods if it is not terminated by any Party by the means of a notice given at least 60 (sixty) days before the expiration date of the Contract or of the ongoing renovation.
3. The present Contract expires automatically in case of withdrawal, suspension, cancellation, revocation or non-renewal of Ecopilhas license.

Clause 10

(Termination of the Contract)

1. In the event that any Party incurs in serious default of the obligations contained in this Contract, the non-breaching Party shall be entitled to declare in writing and be sent by registered letter, the breach of the Contract, requesting to the defaulting Party to comply with the obligations herein in a reasonable time, however, not less than 15 (fifteen) days from receipt of the communication.
2. After the period referred in point 1, if the breach is not fully remedied, the Contract shall be deemed to be terminated with a registered letter with acknowledgement of receipt.
3. The resolution of the Contract shall automatically occur on the receipt date of the communication provided in the preceding paragraph, which lead to the termination of any rights or obligations assumed before the resolution date by the Parties, without prejudice to the obligation of the defaulting Party to indemnify or compensating.

Clause 11

(Confidentiality and Information Property)

1. Both Parties are committed not to disclose, dispose or use any information concerning the other (including confidential information, trade secrets, exclusive systems, computer software, designs, models or processes and technical or commercial knowledges) even if the information has been transmitted by the other Party or has become aware of it under the present Contract, unless this information has become public knowledge without prejudice the Party seeking to disclose it. Both Parties are obliged to ensure the compliance with the provision of this paragraph by their representatives, agents, staff members, suppliers, subcontractors or consultants.
2. Each Party is liable for any kind or nature of damages that may be caused to the other by the disclosure of the information mentioned by the Party, its representative or its staff member, as by the agents, suppliers, subcontractors or consultants of the defaulting Party.

Clause 12

(Notices and Communications)

1. All notices or communications between the Parties due under this Contract shall be made by registered letter with acknowledgement of receipt, by fax or by electronic mail with deliverance-receipt.

2. The notifications and communications shall be made:

- a) On the date of signature of the acknowledgment, in the case of a letter;
- b) On the date of receipt on the receiving fax, in the case of a fax;
- c) After confirmation of the receipt or on the next business day, in the case of an electronic email.

However, if the referred signatures or receipts does not take place on a business day or after 5 (five) p.m. (Lisbon local time), it will only be made on the first subsequent business day.

3. For the purpose of communications and notices between the Parties under the terms of this Contract, the contacts of each Party are the following:

- For **Ecopilhas**:

Att: Eurico Cordeiro

Address: Rua Padre Américo, 19D – Escritório D, 1600-548, Lisboa

Fax: +351 21 725 20 19

E-mail: geral@ecopilhas.pt

- For (...):

Att: (...)

Address: (...)

Fax: (...)

E-mail: (...)

4. Any Party can change the address, fax and/or electronic mail by notice from the other Party.

Clause 13

(Integral Agreement and Document Hierarchy)

The present Contract represent the entire agreement and understanding between the Parties which replace any agreements about the same subject matter previously signed by the Parties.

Clause 14

(Various Provisions)

- 1. The omission in the exercise of any rights of the Parties under this Contract shall not constitute a loss or neither be interpreted as a renouncing of the subsequent exercise of such rights.
- 2. The total or partial invalidity of any Clause of the present Contract shall not affect the remaining validity, unless one of the Parties demonstrates that would not have concluded the Contract under these conditions. The Parties are obliged, as far as possible, to use their best efforts to agree and implement a solution to remedy or mitigate the effects of such invalidity.

3. Unless expressly agreed to the contrary, this Contract may not be amended, altered or modified except by written agreement signed by both Parties.

Clause 15

(Conflict Resolutions)

In the event of a dispute arising out of this Contract, whether regarding its interpretation or its application and execution, which can not be resolved by the Parties, it shall be settled by the Lisbon Court of Justice, with the express waiver of any other dispute.

Clause 16

(Applicable Law)

The Parties hereby accept that the present Contract in all its provisions shall be subject to Portuguese law.

Concluded at City, on Day Month Year, in two original copies and each copy is with one Party.

Ecopilhas

Second Party

(Eurico Cordeiro)

(...)