

**PARTICIPATION AGREEMENT FOR ONLINE CLIENTS ON AN ANNUAL BASIS** between  
**Landbell AG für Rückhol-Systeme**, Rheinstraße 4 L, 55116 Mainz, hereinafter referred to as "Landbell" and



**Company:** NICE B.V. NICE Fruchteis  
**Address:** Weesperzijde 80-G 1091 EJ Amsterdam  
**Customer number:** 4209460  
hereinafter referred to as "Client".

### **Preliminary remarks**

The system operated by Landbell for the collection and recycling of sales packaging has been classified as a system pursuant to § 6 (5) VerpackV (Verpackungsverordnung, German Packaging Ordinance) in all German federal states. Landbell is the owner of the internationally registered "Landbell-Baum" brand, which all participating sales packaging can be labelled with. The Client is the manufacturer / distributor of sales packaging and obligated to accept the return of and to recycle such packaging pursuant to § 6 (1) VerpackV. It plans to be completely released from this obligation through participation in the Landbell system (hereinafter referred to in short as: System). Its fee payable to Landbell shall not exceed an anticipated amount of € 2.500.00 (net) per calendar year. Said party is not a customer participating in another system nor does said party participate in any industry solution. With this in mind, the parties conclude the following agreement:

### **§ 1 Contractual obligations**

(1) The Client participates in the system with the sales packaging it distributes in the amount specified in § 2 of this agreement. Sales packaging with filling materials containing harmful substances in the sense of § 3 (7) VerpackV is not the object of this agreement. Landbell shall confirm its participation in the system to the Client as prescribed by § 2 (4).

(2) It is, however, entitled but not obligated to use the "Landbell-Baum" logo mark registered with the Harmonisierungsamt für den Binnenmarkt (Office for Harmonisation in the Internal Market) on 24.05.2007 under no. 004932232 and/or the "Landbell" word mark registered at the same office on 18.12.2000 under no. 001345719 as they appear on the top right as prescribed by § 3.

(3) Landbell shall assume the collection and recycling of the sales packaging of the Client allocated to its system as prescribed by § 2 (3) to (5) pursuant to the provisions of VerpackV such that its participation obligations are fulfilled as a result. Landbell may engage third parties in order to fulfil its obligations. The Client may not commission any third parties with the performance of its obligations towards Landbell.

### **§ 2 Scope**

(1) Landbell's work for the Client covers all federal states of the Federal Republic of Germany.

(2) The types and quantities of sales packaging distributed per year as specified or presumed within the Federal Republic of Germany in **the annual declaration as per § 2 (3)** are regulated by the provisions of this agreement as prescribed by § 2 (3) and (4).

(3) The Client shall report the type and quantities of the sales packaging actually participating in the system during the calendar year to Landbell **on an annual basis, no later than 15 February of the following year** using the **input screen provided on the website [www.landbelleasy-shop.de](http://www.landbelleasy-shop.de)**. The Client must confirm in a legally binding manner the completeness and accuracy of the data it provides in the declaration. Landbell is entitled, in connection with the declaration or subsequently, to require the Client to forward a signed duplicate of the annual declaration it has generated within the period of one week.

(4) Landbell shall provide the Client with an annual confirmation of participation certifying its compliance with the system by 31 March. The confirmation of participation for a sales packaging quantity not exceeding the fee of € 25.00 (net) as well as the participation of greater quantities in the system are contingent upon the payment, which may not be back posted, of the € 25.00 (net) p.a. by the Client for the additional sales packaging quantity in connection with the declaration as per § 2 (3) by bank transfer, credit card payment or PayPal. If the declaration is not fulfilled pursuant to § 2 (3) within the required period or if the prerequisites as per Clause 2 have not been met, the confirmation of participation will generally be issued for a sales packaging quantity of 150 kg paper / cardboard / paperboard per year of the contractual term; in such cases, the Client does not have any right to have the confirmation of participation adjusted.

(5) The Client confirms that, with regard to the types and volumes of sales packaging that are stated in the annual report according to § 2 (3) and in so far are presumed, Landbell basically can make an allocation of the concrete volumes to types of packaging other than sales packaging subject to system participation (cf. § 6 (1) Packaging Ordinance (VerpackV)) (so-called volume assignments). Such volume assignments may include a partial assignment to transport packaging (cf. § 4 Packaging Ordinance), outer packaging (cf. § 5 Packaging Ordinance) and/or sales packaging not subject to system participation (cf. § 7 Packaging Ordinance). Within the scope of the report according to § 2 (3), the Client will confirm in writing that it agrees to the volume assignments respectively made by Landbell in terms of content and amount. If no report according to § 2 (3) is given, the consent and the written confirmation according to sentence 3 are regarded as given.

### § 3 Use of the logo mark

(1) The right of the Client to use the "Landbell-Baum" logo mark and the "Landbell" word mark is limited to the term of this agreement and the sales packaging regulated by this agreement as per § 1 (2).

(2) The Client is not entitled, without the prior written consent of Landbell, to dispose of its right to use the logo and word marks or to transfer this right in full or in part to third parties.

(3) The Client shall assume all costs and other expenditures for the use of the licensed mark.

(4) Landbell is not liable for trademark infringements committed by third parties.

### § 4 Performance of packaging disposal

(1) Landbell shall perform the disposal, in particular the recycling, of the Client's packaging regulated by this agreement in compliance with legal requirements, in particular the VerpackV, and shall provide the required proofs for this with respect to the confirmation of participation as prescribed by § 2 (3) to (5).

(2) On request, the Client is obligated to immediately provide Landbell with the information required to carry out the disposal of packaging as per the corresponding German Packaging Ordinance, administrative regulations or guidelines.

### § 5 Fee

(1) The minimum fee payable by the Client to Landbell amounts to **150.00 Euro (net)** for the first two contractual years and consists of cost compensation of 50.00 Euro (net) per year and a minimum turnover of the Client for the sales packaging quantities contributed to the system in the amount of 25.00 Euro (net) per year. The minimum fee payable by the Client to Landbell for the third and, if applicable, each contractual year thereafter amounts to 50.00 Euro (net) and consists of cost compensation of 25.00 Euro (net) per year and minimum turnover of the Client for the sales packaging quantities contributed to the system in the amount of 25.00 Euro (net) per year. If the additional net fee of the Client exceeds an amount of 350.00 Euro in connection with the annual declaration pursuant to § 2 (3), the cost compensation for the previous year, the subject matter of the declaration, shall be entered in the declaration as a credit benefitting the Client.

(2) In addition to the minimum fee, the Client shall pay a 25.00 Euro (net) fee for sales packaging quantities exceeding the minimum turnover as per (1) in connection with the annual declaration as per § 2 (3); the parties have agreed to the following net prices for the minimum turnover and fee:

<b>Material type of sales packaging</b>	<b>Euro pro kg</b>
Paper/board/cardboard	0.1650
Glass	0.0700
Natural materials	0.0950
Tinplate	0.6400
Aluminium	0.7000
Composite cardboard	0.7200
Other composites	0.9200
Plastic	1.2000

(3) Upon concluding the agreement, the Client must pay the minimum fee for the first two contractual years by means of a bank transfer, credit card payment or PayPal (available payment methods). The Client must pay the minimum fee for the third and, if applicable, contractual years thereafter by 15 February in connection with the declaration as per § 2 (3) for the second contractual year and if applicable for the following years, In the case of § 2 (4) sentence 3 (no or late submission of the annual declaration), the Client must pay the minimum fee by 28 February for the current contractual year, without any reminder being required (see § 286 (2) No. 1 of the German Civil Code); if payment is not made or is incomplete, the Client's claim to the fulfillment of the agreement for the applicable contractual year is forfeited until full payment is made. The Client must pay the fee as per (2) concerning the sales packaging quantity, in each case in connection with the annual declaration, per § 2 (3) by means of one of the available payment methods. The Client carries all costs of the payment method, particularly with respect to transfers from international locations.

(4) The Client shall receive an invoice from Landbell for the owed fee, which will be issued either electronically or by post in exchange for cost compensation of € 2.50 as the Client chooses and to which the Client consents. Receipt of the invoice for the third or subsequent contractual year does not constitute a condition for due payment and arrears with the annual minimum fee payable in the amount of €50.00 (net) (see in particular paragraph 3.2 and § 6 (4) above).

(5) The fees as per (1) and (2) have been agreed to for a fixed period of 24 months. Landbell may adjust its fees as of 1 January of each year with notice of 7 months for the third contractual year and following contractual years. If the Client ceases business activities during the term of this agreement, previously paid fees will not be refunded.

(6) All previous fees and prices do not include the respectively applicable statutory VAT.

(7) The Client only has set-off and retention rights to the extent its counterclaims have been legally established, are undisputed or have been acknowledged by Landbell.

#### **§ 6 Term of agreement and termination**

(1) The agreement will be initially concluded for **24 months** and takes effect on **01.01.2018**. It shall be renewed by one year in each instance if neither of the contractual parties terminates it by way of written termination issued to the other contractual party with notice of six months prior to the end of the term. This agreement is contingent upon the complete and timely payment of the fee as prescribed by § 5 (3) Clause 1; this also applies in the event of any back posting; in this case, Landbell reserves the right to assert a contractual penalty in the amount of 50.00 Euro.

(2) The right of both contractual parties to extraordinary termination of the agreement for good cause remains unaffected.

(3) If the fee payable to Landbell per calendar year exceeds the net amount of 12,000.00 Euro, the Client is obligated to promptly notify Landbell of this and Landbell is entitled to require the Client to conclude a participation agreement for monthly payers as designated by Landbell with retroactive effect for the beginning of the current calendar year. If Landbell imposes such a requirement and if, in this case, claims of Landbell to the submission of declarations and/or information are due as per the participation agreement for monthly payers, then they must be submitted within a period to be specified by Landbell.

(4) The Client is obligated to keep the user data specified in connection with registration on the website [www.landbelleasy-shop.de](http://www.landbelleasy-shop.de) continually up-to-date. If the Client can no longer be reached by e-mail or by post, this agreement shall terminate on the date that the Client's unavailability begins without a written termination by Landbell being required and Landbell is entitled to prevent further use of the website by the Client (e. g. by blocking the account).

(5) The Client is aware that it, as the initial filler of sales packaging as per § 6 (1) Clause 1 VerpackV, is legally obligated to ensure that the applicable packaging participates in one or more systems and that a legal sales ban applies for sales packaging (products) filled with the good (cf. § 6 (1) Clause 3 VerpackV) and further constitutes, in any case, the commitment of regulatory offenses (cf. § 15 no. 6 and 7 VerpackV), which are punishable with severe fines.

## **§ 7 Consequences of terminating the agreement**

(1) With the termination of this agreement, regardless of the legal grounds, the Client is no longer entitled to label and/or distribute further sales packaging with the "Landbell-Baum" logo mark and the "Landbell" word mark.

(2) The Client is, except in cases of justified extraordinary termination by Landbell, permitted to distribute sales packaging already carrying the mark for a period of up to 3 months.

## **§ 8 General provisions**

(1) The contractual parties mutually undertake not to disclose business secrets and not publicly known information to unauthorised third parties or to otherwise disclose them unless this is done for legal reasons or is absolutely necessary for the execution of this agreement. This obligation also applies beyond the term of this agreement.

(2) The agreement is subject to the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(3) The exclusive jurisdiction for all disputes in connection with this agreement is Frankfurt am Main, Germany to the extent the Client is a businessperson or public-law entity.

(4) All amendments and supplements to this agreement must be made in writing. This also applies for the amendment or cancellation of this written form requirement itself. No verbal arrangements have been made.

(5) For the event of a not unessential alteration of, addition to and/or replacement of the relevant provisions of law related to product liability for packaging, in particular the replacement of the Packaging Ordinance (VerpackV) by the Packaging Law (VerpackG) with effect on 01 January 2019, Landbell reserves the right, in derogation from Subsec. 4, to redraft individual provisions of this Agreement (including § 5) by unilateral declaration given to the Client or to replace this Agreement by a new version in order to implement the new legal situation in terms of content-related, economic and in particular editorial aspects. The adjustments are to be made respectively with effect from the point of time on which the new legal situation enters into effect. The adjustments will be notified to the Client in a written form not later than two months before they become effective. In case the Client should not agree with the adjustments, it will be given a special right of termination as per the point of time the adjustments enter into effect, which right must be exercised within a period of one month of receipt of the notification of adjustment. If the special right of termination is not exercised or not in due time, the revised versions of the contractual provisions or the new version of the Agreement, respectively, shall be regarded as having been agreed upon.

(6) Should an individual provision of this contract be declared to be invalid or unenforceable, this shall not affect the validity of the remaining content of the agreement. The parties shall mutually undertake to replace the invalid or unenforceable provision with one that comes as close as possible to the essence, purpose and economic objective of the invalid or unenforceable provision as intended by the parties without itself being invalid or unenforceable. The same applies for any gaps in the agreement.

(7) This agreement does not require signing by the contractual parties for its validity. It is sufficient to have the initial specification of the name and address of the Client, a corresponding customer number that has been properly generated, the graphical reproduction of the signatures of the Chairman of the Board and the Head of Sales of Landbell, notification provided to the Client by electronic means confirming the provision of this

Landbell AG für Rückhol-Systeme - Mainz, 19 February 2018

A handwritten signature in blue ink, consisting of stylized initials 'JP'.

Jan Patrick Schulz  
(Chairman of the Board)

A handwritten signature in blue ink, appearing to read 'E. Hitschler'.

ppa. Ellen Hitschler  
(Head of Sales)