

## CERTIFICATION TRADE MARKS RULES



**ASPCERTIFIED**

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**AUSTRALIAN SUSTAINABLE  
PRODUCTS**

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## 1 INTRODUCTION

- 1.1 Southern Cross Agricultural Exports Pty Ltd ABN 161 69 225 496 owns the certification trade mark known as the Certification Mark (the **Mark**) registered under the *Trade Marks Act 1995* (Cth) (the **Act**) as Trade Mark No. 1757219 and set out in Schedule 2.
- 1.2 Subject to these Rules, an Applicant may be granted a non-exclusive Licence to use the Mark on a Product (as defined in these Rules) where Southern Cross Agricultural Exports Pty Ltd ABN 161 69 225 496 (**Certifier**) certifies that the Product conforms to the ASP Standard (the **Standard**).
- 1.3 Use of the Mark is not limited to Products provided or originating in Australia. Subject to these Rules, the Mark may be used on Products that are manufactured or distributed outside Australia.
- 1.4 Southern Cross Agricultural Exports Pty Ltd has filed a copy of these Rules with the Trade Marks Office in accordance with s173 of the Act.

## 2 DEFINITIONS

The Dictionary in Schedule 1 defines some of the terms used in these Rules.

## 3 INTERPRETATION

In these Rules, unless the contrary Intention appears:

- (a) a reference to a rule or subrule is a reference to a rule or subrule of these Rules;
- (b) a reference to a rule is a reference to all its subrules;
- (c) a reference to a schedule is a reference to a schedule of these Rules;
- (d) words in the singular include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (g) a reference to using the Mark “on a Product” is deemed a reference to displaying the Mark on the Product itself or on packaging used for delivering the Product or on any drawings, designs, reports, brochures or advertising associated with the Product.

#### 4 AUTHORISED CERTIFIER

- 4.1 Within the meaning of s173(2)(a) of the Act, Southern Cross Agricultural Exports Pty Ltd is to act as a Certifier and to grant Licences allowing Licensees to use the Mark in accordance with the Licence Terms.

#### 5 ADMINISTRATION OF CERTIFICATION SCHEME

- 5.1 The Certifier must administer a Certification Scheme that:
- (a) provides Certification that a Person provides Products conforming to the requirements of one or more Recognised Product Standards;
  - (b) includes procedures for initial inspection and testing of the Products proposed for Certification;
  - (a) is promoted and conducted in a manner that complies with the *Competition and Consumer Act 2010 (Cth)*;
  - (d) does not mislead or deceive third parties as to the nature, scope or extent of Certification offered under the Certification Scheme.
- 5.2 The Certifier must maintain contemporaneous documentation that describes the processes and procedures used to administer its Certification Scheme and must make such documentation available to any Person requesting it.
- 5.3 The Certifier must:
- (a) maintain written contractual terms (**Certifier's Terms**) consistent with these Rules and under which the Certifier contracts with Persons for the provision of Certification and the granting of Licences to use the mark; and
- 5.4 If there is any inconsistency between the Certifier's Terms and these Rules, then these Rules will prevail.
- 5.5 The Certifier must keep detailed records in relation to:
- (a) each Applicant requesting a Licence to use the Mark;
  - (b) the Licensees granted a Licence to use the Mark, the Certification undertaken to grant each such Licence, the Terms under which the Licence was granted and any restrictions on the Licence;
  - (c) those Applicants refused a Licence to use the Mark; and
  - (d) any renewal, revocation, alteration, suspension, termination, surrender or restoration of a Licence to use the Mark.

#### 6 CERTIFICATION

6.1 Certification Assessment

6.1.1 Within a reasonable time of receiving an application from an Applicant, the Certifier must assess the Applicant's Products, processing and services.

6.1.2 If the Certifier is satisfied that:

(a) the Applicant meets the requirements for Certification in accordance with the Certifier's Certification Scheme; and

(b) the Applicant is not in breach of the Licence Terms (including payment of certification and/or licensing fees);

then the Certifier must:

(a) grant the Certification and Licence to use the Mark; and

(b) provide documentation (a **Certificate**) to the Licensee as evidence that the Licensee has been granted both Certification and the Licence to use the Mark.

6.1.3 If the Certifier is not satisfied that the Certification is appropriate, the Certifier must advise the Applicant promptly in writing, settling out the grounds for not granting Certification.

6.1.4 The Certificate must set out the date on which Certification and the Licence expire and must include any special conditions, qualifications or restrictions in respect of the Licensee's Certification and Licence.

6.2 Co-operation and Access

6.2.1 The Applicant must co-operate with the Certifier (and with its employees, agents and contractors) and must provide the information and access that the Certifier requires to assess the Applicant's Products for Certification.

6.2.2 The co-operation provided by the Applicant under subrule 7.2.1 must include reasonable access to the premises, facilities, documents and records of the Applicant and access to the Applicant's contractors and agents.

6.2.3 Once a Licence has been granted, the Licensee must continue to co-operate with the Certifier and to provide any information and access that the Certifier requires to re-assess the Licensee's Products for Certification.

6.2.4 The Applicant must promptly comply with any reasonable request of the Certifier relating to the assessment and Certification of the Applicant's Products.

6.3 Terms of Certification

- 6.3.1 The Licensee must maintain its Products at the standard required for Certification and must comply with all reasonable requirements that the Certifier considers necessary to ensure that Certification continues to be appropriate in accordance with the Licence Terms.
- 6.3.2 The Licensee must promptly inform the Certifier of any change in its Products that may affect the appropriateness of the Certification, including:
- (a) any significant change or modification to the Products covered by the Certification;
  - (b) any change in the Site at which any assessed Product is produced; and
  - (c) any change of ownership or control of the Licensee.
- 6.3.3 The Licensee must not:
- (a) engage in conduct likely to mislead, deceive or confuse any person in relation to the Licensee's Certification; or
  - (b) otherwise misrepresent the nature, status, scope or effect of the Certification.
- 6.3.4 The Licensee must promptly comply with any directions given by the Certifier to correct any conduct or representation that the Certifier considers to be in breach of subrule 7.3.3.
- 6.3.5 The Licensee must pay within 30 days from the date of invoice:
- (a) any fees set by the Certifier in relation to administering the Licence and in relation to any services provided in assessment, auditing, supervising, inspecting or testing;
  - (b) the royalties set by the Certifier for use of the Mark;
  - (c) the costs of additional or unscheduled visits including the costs of special visits requested or those associated with a breach or potential breach of the Licence.
- 6.3.6 The Licensee will not be entitled to any refund of fees paid or costs incurred in the event of any relinquishment, revocation, alteration or suspension of the Licence.
- 6.3.7 Upon the termination of the Licence (however the Licence is terminated) the Licensee must immediately discontinue all use of the Mark and all advertising material, packaging and other matter which contains the Mark or any reference to it. Any Products not already disposed of by the Licensee which bear the Mark must, if the Certifier so requires, be dealt with at the Licensee's expense so as to erase the Mark.

6.3.8 The Certificate remains the property of the Certifier and:

- (a) must be promptly returned on reasonable request of the Certifier or on expiry or cancellation of the Certification; and
- (b) must not be altered, modified, defaced or destroyed without the Certifier's permission.

6.4 Restriction on Use of Mark

A Licensee must only use the Mark or claim by implication an entitlement to use the Mark in relation to the Products which are covered by the Licence and which comply with the ASP Standard.

6.5 Relinquishment of Licence

A Licensee may relinquish a Licence at any time by notice in writing to the Certifier and by the return of the Licence. The Licence (including any Schedules) will remain the property of the Certifier and must be returned to the Certifier in the event of its being relinquished, revoked, altered or suspended.

## **7 RECONSIDERATION OF CERTIFIER DECISIONS**

7.1 An Applicant or Licensee (**Claimant**) may apply for review of a decision by the Certifier under subrule 7.1 (the **Decision**) by written request (the **Request**) to the Chief Executive of the Certifier (the **Chief Executive**). The Request must:

- (a) be made within 21 days of receipt of the Decision; and
- (b) include all the grounds on which review of the Decision is sought.

7.2 Within 21 days of receipt of the Request and unless the Certifier has amended the Decision to the satisfaction of the Claimant, the Chief Executive or the Chief Executive's delegate must:

- (a) consider the Request, and, in doing so, may refer to or appoint any other person as the Chief Executive sees fit to assist the Chief Executive in reviewing the Decision;
- (b) make a determination on whether the Decision is substantially correct or whether the Decision should be changed pursuant to the Request (the **Determination**); and
- (c) record the Determination in writing including the reasons for the Determination.

7.3 Within 7 days of making the Determination, the Chief Executive (or the Chief Executive's delegate) must provide a copy of the Determination and the reasons for the Determination to the Certifier and the Claimant.

7.4 Subject to Rule 9 below and within 21 days of receipt of the Determination, the Certifier must take the necessary steps to implement the Determination and must inform the Claimant of the steps taken to implement the Determination.

## **8 MEDIATION AND ARBITRATION**

- 8.1 If the Determination confirms the Decision and the Claimant is not satisfied with the Determination, the Claimant may apply for independent mediation (**Mediation**) of the matter by written notice to the Certifier (the **Mediation Request**) within 14 days of receipt of the Determination by the Claimant.
- 8.2 If the Claimant has made a Mediation Request the Claimant and the Certifier will use their best endeavours to resolve the dispute by Mediation. Any agreement reached by Mediation will be final and binding on the parties.
- 8.3 The Claimant and the Certifier will nominate a mediator by agreement. If the Claimant and the Certifier do not agree on a mediator within 14 days of the Mediation Request, the mediator will be chosen by the Australian Commercial Disputes Centre (**ACDC**).
- 8.4 The mediator will establish the procedure governing the Mediation.
- 8.5 The Certifier and the Claimant will each bear their own costs of the Mediation and will pay an equal share of any of the mediator and any other costs of the Mediation.
- 8.6 Nothing done or not done by the mediator during any Mediation under this Rule 9 will be admissible in any subsequent court proceedings as evidence of partiality or bias or a breach by the mediator of the rules of nature justice.
- 8.7 If the dispute is not settled within 30 days of the commencement of Mediation (unless such period is extended by agreement of the parties), it must be submitted to arbitration under the Rules for the Conduct of Commercial Arbitrations published by the Institute of Arbitrators & Mediators Australia.
- 8.8 Nothing in this Rule 9 will prevent the Claimant and the Certifier from proceeding directly to arbitration or adopting all alternative form of dispute resolution acceptable to both parties.

## **9 AMENDMENT OF RULES**

- 9.1 Southern Cross Agricultural Exports Pty Ltd may apply for variation of these Rules (**Variation**).
- 9.2 Any amendment of the Rules will become effective when the Regulator approves the Variation.

## 10 NOTICES

10.1 A party giving notice or notifying under these Rules must do so in legible writing and in English:

- (a) directed to the recipient's address for correspondence (being a street address, facsimile number or email address) as nominated in accordance with the Certifier's Terms or varied by any notice; and
- (b) hand delivered or sent by prepaid post, facsimile or email to that address.

10.2 A notice given in accordance with clause 11.1 is taken to be received:

- (a) if hand delivered, on delivery of the notice to the addressee or on delivery to an offer, employee or agent of the addressee;
- (b) if sent by prepaid post, three business days from and including the date of posting;
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice; or
- (d) if sent by email, when the sender receives an email receipt notice acknowledging delivery of the email to the addressee,

subject to any receipt on a day which is not a Business Day or which occurs after 4:00 pm (addressee's time) being deemed to be received at 9:00 am on the next Business Day.

## SCHEDULE 1

### DICTIONARY

In these Rules, unless contrary intention appears:

**Act** means the *Trade Marks Act 1995 (Cth)*.

**Applicant** means a Person that applies to a Certifier requesting a Licence to use the Mark.

**Business Day** means a day other than a Saturday or Sunday or an Australian public holiday.

**Certificate** means the documentation issued to the Licensee under the Certifier's Certification Scheme as evidence that the Licensee has been granted both Certification and the Licence to use the Mark.

**Certification Scheme** means a service or Certification administered by the Certifier and accepted by ASP for the purpose of licensing the Mark.

**Certifier** means Southern Cross Agricultural Exports Pty Ltd under which Applicants may be granted Licences to use the Mark.

**Certifier's Terms** has the meaning given in subrule 5.3.

**Chief Executive** means the natural person or persons designated by Southern Cross Agricultural Exports Pty Ltd from time to time to perform the functions of a Chief Executive under Rule 8.

**Claimant** has the meaning given in Rule 8.

**Licence** means a licence allowing a Person to use the Mark in accordance with the Licence Terms.

**Licence Terms** means all terms and conditions under which a Person is permitted to use the Mark and includes these Rules (as amended from time to time), the Certifier's Terms and any special condition, qualification or restriction set out in the Certificate.

**Licensee** means a Person that is granted a Licence to use the Mark in accordance with the Licence Terms.

**Mark** means the trade mark set out in Schedule 2.

**Person** includes a body of persons whether incorporated or not.

**Product** means goods or services or a combination of goods and services provided or dealt with by a Person in the course of trade.

**Standard** means a Standard meeting the criteria set out in subrule 6.1.

**Regulator** means the Australian Competition and Consumer Commission (ACCC) and any successor thereto having the exercise of powers to approve rules governing the use of certification trade marks registered under the Act.

**Rules** means these rules governing the use of the Mark.

**Sign** means a sign as defined in the *Trade Marks Act 1995 (Cth)*.

**Site** means the location from which a **Product** is provided.

**SCHEDULE 2**  
**THE TRADE MARK**

