

Rules for THE AUSTRALIAfresh

Logo Certification Trade Mark Scheme

CERTIFIED TRUE COPY

Introduction

1.1. STATUTORY CORPORATION

The Australian Horticultural Corporation ("the AHC") was established under the Australian Horticultural Corporation Act 1987 and has as one of its principal objects the role of assisting Australian horticultural industries to achieve their full potential in overseas markets. It was also an object of the AHC to assist the development of Australian horticultural industries. Under the Horticulture Marketing and Research and Development Services Act 2000 all the functions, assets and liabilities of the AHC were transferred to Horticulture Australia Limited ("the Corporation").

The functions of the Corporation are, inter alia, to improve the efficiency of Australian horticultural industries and to improve the quality and consistency of Australian horticultural products in line with consumer demands.

It is the intention of the Corporation to work towards those objects and fulfil those functions by maintaining a Certification Scheme ("AFCS") under which applicants complying with these rules may distinguish their organisation from competitors by the use of the AUSTRALIAfresh Logo certification Mark shown in Schedule 1 ("the AF Mark").

1.2. PUBLIC BENEFIT

Major national and international purchasers are increasingly demanding that suppliers of horticultural products have an approved quality management and food safety scheme and Minimum Quality Standards where applicable in place. They are looking for tangible evidence that the suppliers are participants in an internationally recognised Approved Scheme. Providing the confidence in the supplier's produce through their quality and food safety assurance scheme is an objective of the AFCS.

The AFCS has been structured so that Certificated Applicants are eligible to claim that they have been certified by the Corporation as being an active and diligent participant in a quality management and food safety scheme approved by the Corporation and that prescribed Minimum Quality Standards have been achieved where applicable. Their certification will thus be recognised by Government purchasing authorities and many commercial purchasing bodies throughout Australia and overseas. The Federal Government is continuing to develop mutual recognition agreements with overseas bodies that accredit Approved Schemes.

Approved Schemes promote the management philosophy behind quality assurance and this leads to increased productivity of Australian enterprises and improved international competitiveness of exports from Australia.

Quality assurance is a process of practical micro-economic reform at the level of the individual firm. It is vital for the future economic health and prosperity of the Australian horticultural industry.

The AF Mark is to provide industry with a clear and public demonstration that an Approved Scheme is in place with the aim of meeting the requirements of a recognised quality management and food safety scheme as approved by the Corporation. Such an Approved Scheme will entail practices and procedures for achieving effective control over an organisation's systems, operations or procedures with the aim of enhancing the consistency, quality and reputation of products supplied by organisations.

2. DEFINITIONS

In these rules, unless the contrary intention appears;

"AF Mark" means the AUSTRALIAfresh logo trade mark as featured in Schedule 1.

"AFCS" means the Corporation's AUSTRALIAfresh Certification Scheme.

"Applicant" means a person or a body of persons, whether corporate or unincorporate who is engaged in business activity relating to Australian horticultural products and/or produce for export and is capable of providing the services and meeting the requisite standards required for a licence to use the AF Mark.

"Approved Scheme" means a quality management and food safety scheme approved by the Corporation and listed in the Corporation's Register of Approved Quality Management Schemes.

"Certificated Applicant" means an Applicant for a licence under the AFCS who has been granted a licence to use the AF Mark by the Corporation.

"Corporation" means Horticulture Australia Limited.

"Horticultural Products" includes fruits, vegetables, dried fruit and nut products, nursery products, cut flowers and foliage.

"Minimum Quality Standards" means minimum product quality specifications which have been developed and implemented by industry sectors for purposes associated with the AFCS.

"Produce" includes fruit and vegetable products, dried fruit and nut products, nursery

products, flowers and foliage.

“Products” means Australian Horticultural Products and/or Produce.

3. LICENCES

The number of licences granted under the AFCS will be unlimited. Any Applicant applying for a licence, and becoming a participant in the AFCS, may be issued with a licence to use the AF Mark. An example of the licence can be found in Schedule 3. The licence will be evidence of the Applicant’s certification and grant of licence to use the AF Mark under the AFCS and in accordance with these Rules.

Applicants must be active and diligent participants in a quality management and food safety scheme acceptable to the Corporation and where applicable demonstrate that their products meet specified industry standards as regards to product quality. The Corporation shall require such documentation or other proof as it may deem necessary to satisfy itself that an Applicant is an active and diligent participant or achieved certification in an Approved Scheme, in accordance with the quality criteria of the AFCS applicable at the time and that its Products meets Minimum Quality Standards where applicable.

The Applicant becomes a Certificated Applicant by demonstrating certification to an Approved Scheme. The Certificated Applicant may use a statement directly beneath the AF Mark in the position and manner stipulated by the Corporation to the effect that the Certificated Applicant has achieved such accreditation.

Licences may be applied for on the application form which can be found in Schedule 2. A non-refundable licence fee as stipulated by the Corporation from time to time must be paid or agreed to be paid in a manner acceptable to the Corporation before any application for a licence or a renewal of a licence will be considered. A licence is for a term of one (1) year but may be renewed for subsequent terms of one (1) year each.

Applicants may apply for a licence under one or more of the following categories:

1. Exporter

This category of membership applies to Applicants, holding an applicable export licence, who wish to export Products under the AFCS and intend to source such Products from Packers who have an AFCS licence for that purpose.

2. Packer

This category of membership applies to Applicants who handle Products

under the AFCS, in particular the packing of such Products, for the purpose of its supply to an AFCS licensed exporter and have an independently audited quality management and food safety scheme in place that is acceptable under the Approved Scheme and packed to Minimum Quality Standards where applicable.

3. General

This category of membership is open to parties wishing to use the AF Mark who are not in the category of an Exporter or Packer and can demonstrate that such use will be directed to the marketing of Products of an Exporter and/or Packer and that Products will be sourced from Certificated Applicants.

If the licence to use the AF Mark so granted is terminated or suspended in accordance with these Rules, the Certificated Applicant will forthwith surrender its licence to the Corporation for cancellation or retention as the case may be and cease all use of the AF Mark and deliver to the Corporation or destroy under supervision of the Corporation all stock of labels and other materials featuring the AF Mark or making reference to the AFCS. Should the licence not be surrendered forthwith, the Corporation shall be entitled to seek an injunction to restrain its use by the Certificated Applicant and/or shall be entitled to advise the public or traders of such termination or suspension.

4. DUTIES OF THE CORPORATION

The Corporation will itself or via a component body assess an Applicant to determine whether the Applicant meets the requirements for a licence under the AFCS and no licence shall be issued unless the Applicant meets such requirements and the Corporation approves the application.

The Corporation shall have the power to access and/or require information from a Certificated Applicant and/or carry out inspections of Products or handling or processing of Products on an ongoing basis to ensure compliance with the terms and conditions of the licence and the requirements of the AFCS. Certificated Applicants are to agree to co-operate and assist in such assessments or the provision of such information and also to comply with any reasonable direction given in regard to such compliance.

The Corporation shall monitor the progress of Certificated Applicants as diligent participants in an Approved Scheme by such means as:

- i) Random assessments of compliance with an Approved Scheme of a Certificated Applicant by the Corporation or its duly appointed nominee; and

- ii) Provision of reports and information to the Corporation.

The Corporation will be responsible for the seeking of registration and maintenance of the AF Mark as a registered certification trade mark under Part C of the Trade Marks Act 1955 Australia and in such manner and in such other overseas jurisdictions as it may in its sole discretion decide.

The Corporation will at its sole discretion be responsible for the publication of advertisements for the purpose of promoting the nature, objects, functions and benefits of the AFCS, the AF Mark, and the identity of Certificated Applicants.

The Corporation will be responsible for maintaining a register of Certificated Applicants the names of which shall be set out in alphabetical order.

5. THE REGISTER

The Corporation will keep at its head office:

- i) A copy of these Rules;
- ii) A list of Approved Schemes;
- iii) A register of Certificated Applicants, past and present;

and will cause to be entered therein with respect to each:

- a) The full name and address of the Certificated Applicant;
- b) The date upon which the name of the Certificated Applicant was entered in the register;
- c) The date upon which any Certificated Applicant ceased to be a Certificated Applicant during the previous seven (7) years;
- d) The date on which any Applicant receives certification under the AFCS by demonstrating or subsequently meeting the requirements of an Approved Scheme;
- e) Dates and particulars of any changes which are required by these Rules to be entered in the register.

The Corporation will:

- i) Make the register available for inspection by the Trade Marks Office and will when requested furnish to the Trade Marks Office copies of any entries contained therein;

- ii) Advise the Trade Marks Office of any alteration, amendment, addition or deletion to or from these Rules.

Obligations of Certificated Applicants

Each Certificated Applicant will have the following obligations:

To diligently organise and supervise all operations in each of that Certificated Applicant's establishments in such manner as may be necessary to ensure that Products will be handled or processed in accordance with all the quality assurance guidelines laid down in the Approved Scheme;

To ensure that Products comply with Minimum Quality Standards where applicable;

To agree with and ensure compliance with these Rules, particularly those requirements as to the use of the AF Mark;

To permit the Corporation or its nominee on production of his/her credentials to enter immediately upon any premises occupied by the Certificated Applicant for the purpose of carrying out an assessment of the Applicant's activities or performing such other functions as may be desirable under these Rules to ensure compliance with all requirements of the AFCS and to give all information and assistance reasonably required for such purpose;

To comply promptly with any reasonable direction of the Corporation involving the AFCS, whether or not such direction is specifically authorised by these Rules.

To use the AF Mark in a manner that maintains and enhances the reputation of the AF Mark and the AFCS generally.

In addition the following obligations apply to the individual categories of Applicants as listed hereunder:

1. Exporter

To hold and maintain a current export licence where one is necessary in respect to the type of Products being exported under the AFCS.

To only source Products for export under the AFCS from a Packer who holds a current Packer's licence under the AFCS. If the Exporter also handles the preparation and packing of Products for sale, such products may be used for export under the AFCS provided that the obligations stipulated in respect of a Packer under the AFCS are also fully met.

Prior to any activity under the AFCS, a Certificated Applicant shall advise the Corporation in writing of the identity of the Packer from which Products are to be

sourced and Products shall only be sourced from Packers who have been the subject of such notification.

Prior to any activity under the AFCS, including promotional activity in respect of any Products which have not been previously notified to the Corporation, an Exporter shall advise the Corporation in writing of the nature of such Products, including any brand name or other identification used in respect thereof.

2. Packer

To only supply Products under the AFCS to an Exporter who is a Certificated Applicant for the purpose of export from Australia.

Prior to any activity under the AFCS a Certificated Applicant shall advise the Corporation in writing of the identity of the Exporter to which Products under the AFCS are to be supplied and supply shall not be made to any Exporter who has not been the subject of such prior notification to the Corporation.

3. General Member

To carry out marketing or other functions under the AFCS in respect of Products to be sourced from Packers or Exporters who have been approved by the Corporation for that purpose and to comply with any directions in respect thereto as may be stipulated by the Corporation from time to time.

Prior to sourcing supply of Products from a Packer or Exporter, the Corporation is to be advised in writing of the identity of that Packer or Exporter and the brands or names and nature of Products involved.

6. THE CERTIFICATION MARK

The AF Mark is the sole property of the Corporation and use of it by a Certificated Applicant will not give that person any claim or right to it.

Certificated Applicants shall not engage in any conduct which is likely to adversely affect the Corporation's ownership and protection of the AF Mark.

The AF Mark is not to be used other than as is authorised by these Rules.

The licence granted to an Applicant shall during the term of the licence confer upon that Applicant the right to use the AF Mark in the manner and subject to these Rules but only so long as such licence is not suspended and not cancelled.

7. USE OF THE CERTIFICATION MARK

Certificated Applicants are authorised to use the AF Mark in literature, on Products,

on stationery, in advertising and on trade and retail packaging within the bounds and scope of the certification or as may be approved by the Corporation for the purpose of indicating a standard of quality in the processing or handling (including management, supply and minimum industry standards of quality) of Australian Products.

It is to be understood that the AF Mark certifies the character of Products, namely the manner in which the Product are processed and handled (which is important to the quality and presentation of the Products in the marketplace), including the management and supply and the achieving of Minimum Quality Standards of quality where applicable. No representation is to be made that in any way connects the AF Mark with the actual quality of the Products in their unharvested form, except to the extent where industry sectors have developed and implement Minimum Quality Standards for Products associated with the AFCS, in which case a representation to that effect is permissible or as otherwise may be approved in writing by the Corporation.

Certificated Applicants will only use the AF Mark in respect of those activities and Products for which they have been certified and which are described on each licence.

Certificated Applicants will only use the AF Mark in accordance with the instructions contained in the Corporation's Trademark Usage Manual and in accordance with any directions that may be issued from time to time by the Corporation.

The Certification Mark shall not be used in such a way as to suggest that the Government of Australia has approved the activities of the Certificated Applicant, or in any other misleading manner or a manner likely to bring the AFCS into disrepute.

Certificated Applicants must be able to meet any requirements under law or regulation for the supply and/or sale of Products in Australia and for export from Australia and must comply with all laws and regulations in the markets to which the licence granted extends.

The licence granted under the AFCS is personal to the Certificated Applicant and may not be assigned. Sub-licences or the grant of other rights in respect of the AFCS, including the AF Mark by the Certificated Applicant, is strictly forbidden.

Licensees agree as part of their licence to indemnify the Corporation against any claim or action arising out of the use of the AF Mark (otherwise than in full compliance with the terms and conditions of the licence) or arising out of any breach of any Countries laws or regulations or arising out of any matter to which the licence does not apply.

8. TERMINATION

A Certificated Applicant may at any time withdraw from the AFCS upon giving the Corporation at least 30 days notice in writing of intention to do so and in such

circumstances the Applicant shall immediately commence to phase out its usage of the AF Mark as directed by the Corporation and shall ensure that no material or products feature the AF Mark at the end of the notice period.

A Certificated Applicant's licence shall be capable of termination in whole or in part by written notice from the Corporation to the certificated Applicant in the event of any of the following events:

- a) If the Certificated Applicant makes any assignment for the benefit of creditors or files a petition in bankruptcy or is made bankrupt or becomes insolvent or unable to trade or pay its debts or is placed under the control of a receiver or is otherwise liquidated or wound up;
- b) A breach by the Certificated Applicant of any of the conditions contained in the Rules which is not rectified within a period of 30 days from the date of written advice from the Corporation as to such breach, to the full satisfaction of the Corporation;
- c) The non-compliance by the Certificated Applicant of a direction issued by the Corporation which is not rectified within a period of 30 days from the date of written advice from the Corporation as to such direction, to the full satisfaction of the Corporation;
- d) The loss by the Certificated Applicant of its status as an export licence holder in circumstances where such a licence is required to export Products from Australia.

In the event of termination of the licence, the Certificated Applicant shall immediately cease all use of the AF Mark including the distribution of any stationery, literature, advertising or packaging bearing the AF Mark.

If pending further enquiry the Certificated Applicant's certification is suspended or cancelled in part only, the Certificated Applicant shall immediately cease all use of the AF Mark and any reference to the AFCS, inclusive of distribution of any stationery, literature, advertising or packaging ("the Materials") saving those which exclusively relate to activities which remain certificated and shall either deliver the Materials to the Corporation or either destroy them (or deface them so as to remove any use of the AF Mark or reference to the AFCS) under supervision of the Corporation.

If a Certificated Applicant finds itself subject to the above termination rules it shall take all reasonable steps to mitigate any loss and/or potential loss. In any event the Certificated Applicant shall not make any claim against the Corporation or any of its agents for any losses and/or costs that may be incurred as a result of the Certificated Applicant's use of the AF Mark.

9. APPEAL

An Applicant who is affected by and dissatisfied with a decision to refuse a licence of the AF mark may by notice in writing advise the Corporation of the grounds of such dissatisfaction and request the Corporation to review its decision. Within one month of receipt of such notice the Corporation shall review its decision and advise the Applicant of the results of that decision in writing.

In the event that the Corporation maintains the decision to refuse a licence, the Applicant concerned may have the decision of the Corporation reviewed and it may apply for such review to a mutually acceptable and independent body, qualified to conduct such a review.

10. GOVERNING LAW

Matters arising in relation to the Rules and licences shall be governed and determined in accordance with the laws of the State of New South Wales.