



Australian Competition & Consumer Commission

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Our Ref : CR 97/98, CR 98/103
Your Ref : TM0024, TM0048

24 December 1998

The Registrar of Trade Marks
IP Australia
PO Box 200
WODEN ACT 2606

Dear Sir

**Certification Trade Mark Nos. 721034, 721035, and 747553 to 747555
(inclusive) – Benchmark Certification Pty Ltd.**

The Commission, in accordance with the requirements of Section 175(2) of the Trade Marks Act 1995, has completed its final assessment of Certification Trade Mark Nos. 721034, 721035, and 747553 to 747555 (inclusive) lodged by Benchmark Certification Pty Ltd.

A certificate detailing the Commission's assessment, and a certified copy of the rules, are attached.

Yours faithfully

J P O'Neill
Senior Assistant Commissioner
Adjudication Branch

IP Australia
Documents received on:

30 DEC 1998

Batch No:

8522

Prop&Svcs



Commonwealth of Australia

**Final Assessment issued by the
Australian Competition & Consumer Commission**

in regard to

**Certification Trade Mark Application
Nos. 721034, 721035, and 747553 to 747555 (inclusive) -
Benchmark Certification Pty Ltd.**

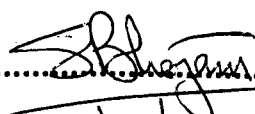
Decision

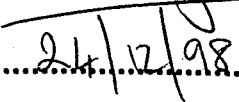
The Australian Competition and Consumer Commission (the Commission), in accordance with the requirements of Section 175(2) of the Trade Marks Act 1995 makes the following decision in regard to Certification Trade Mark Nos.721034, 721035, and 747553 to 747555 (inclusive) lodged by Benchmark Certification Pty Ltd.

The Commission is satisfied that :

- (a) The approved certifiers are competent to certify; and
- (b) The rules are not detrimental to the public, having regard to the :
 - the principles relating to restrictive trade practices set out in Part IV of the Trade Practices Act 1974 (the Act);
 - the principles relating to unconscionable conduct set out in Part IVA of the Act ;
 - the principles relating to unfair practices, product safety and product information set out in Part V of the Act.

The Commission declares that the attached copy of the rules is a certified copy.

Signed.......... (Commissioner)

Date..........



benchmark

CERTIFICATION

INFORMATION TO CLIENTS

CERTIFIED TRUE COPY

James for Kee
24/12/98

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Note: This document is subject to revisions.
This copy will not be updated

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ACN: 059 126 751

QUALITY
It's about people

PART 1: DEFINITIONS

The Standard: ISO 9000, ISO 14000 series of standards, QS 9000 or another Standard stipulated in our proposal (Certification against which may not be Accredited).

Supplier: The Organisation seeking Certification.

JAS-ANZ: Joint Accreditation System for Australia and New Zealand, (based in Canberra).

Certification/Registration: Procedure by which a third party gives written assurance that a product, service or system conforms to specified requirements.

Certification/Registration Body: A Body which conducts Certifications of conformity to management system standards. Benchmark Certification is a Certification Body.

Small Business Scheme: Businesses of less than twenty-five (25) staff, seeking Certification to ISO 9002 (less than fifteen (15) if AS 9001), operating one shift, in once location, providing "simple" processes or services.

Note: Should the business grow above the above staffing levels, it will no longer qualify as a Small Business.

Throughout the document Certification should be read as Certification or Registration (used in some countries).

PART 2: YOUR QUESTIONS ANSWERED

Q Who can apply?

A Membership of and Certification to the Benchmark's Scheme is available to any Supplier of goods and/or services.

Membership entitles the Supplier to receive our Certificate of Membership and a copy of the Benchmark Certification guides. Prior to the Certification Audit taking place, members of the Scheme will also be invited to attend a free lecture on "Preparing for Certification". These lectures are run regularly in major capital cities (for ISO 9000 only).

Certification entitles the Supplier to receive and publish our Certificate of Approval and unique Mark. This Mark and Certificate may be used for marketing purposes as outlined in Part 5 of this document. The Supplier will also be listed in Benchmark Certification's Directory of Approved Suppliers.

Q Why have Third Party Certification

A Competitive market forces are increasing the demand for Suppliers to operate in accordance with recognised standards. The requirements of the European market, and government and private sector purchasing policies have intensified this need thus increasing opportunities for those companies who can comply with international standards.

Many purchasing organisations are reluctant to accept a statement by Suppliers that their systems conform to these standards and often require more

objective evidence. Approval by an independent Third Party provides this assurance to a Purchaser thus reducing the need for the Purchaser to send in an audit team or inspectors. This will present a cost effective solution to the Purchaser, and enable the Supplier to be entered on the approved Suppliers list with the minimum of delay.

Q What is the difference between Certification and Accreditation?

A Certification is the formal recognition that a Supplier has a management system in place which meets the requirements of Standard. Certification is the means by which a customer can have confidence in a Supplier. This confidence or assurance is higher when the Certification has been granted by a reputable Certification Body.

Accreditation is a means by which a Supplier can have confidence in a Certification Body and is most effective when awarded by a National Accreditation Body such as the Joint Accreditation System of Australia and New Zealand (JAS-ANZ). Accreditation is the formal recognition that a Certification Body has in place systems that meet certain requirements.

Certification by an Accredited Body offers the best available assurance that the Certification process has been conducted by qualified and competent staff working to an approved system.

In simple terms, Accreditation is for us what Certification is for you.

Q What is JAS-ANZ?

A JAS-ANZ, the Joint Accreditation System of Australia and New Zealand, was created in order to provide a minimum level of consistency between the Certification Bodies. This is aimed at gaining recognition in Australia, New Zealand and overseas for those Australian Suppliers that have received Certification. JAS-ANZ is authorised by a Treaty Agreement between the Governments of Australia and New Zealand.

JAS-ANZ's Accreditation is performed to EN 45012 (General criteria for certification bodies operating quality system certification). The Certification Body is subject to regular audit and review to ensure services provided are maintained to a specified level.

Q What recognition does Benchmark Certification have in Australia, New Zealand and overseas?

A Benchmark Certification Pty Ltd is an Australian based Certification Body. Benchmark Certification is accredited by JAS-ANZ under Accreditation No S1351093AS. Accreditation by JAS-ANZ also implies that Suppliers approved by Benchmark Certification are recognised and accepted in each country where JAS-ANZ has signed a Memorandum of Understanding with other National Accreditation Boards.

All Certificates issued by Benchmark Certification will also reference the applicable Standard which is

now recognised and used in over fifty countries throughout the world (for ISO 9000 and 14000).

Q Will confidentiality be maintained?

A Absolutely. All our staff and subcontractors have signed contracts which include the strictest requirements on maintaining confidentiality. This document also contains the Terms of Agreement between the Supplier and Benchmark Certification which contains a clause on Confidentiality.

Q What if we disagree?

A Firstly, let's hope it won't happen. Our approach to Certification is that it is a long term close working relationship, which will always be best served if it is based on respect and trust. All our staff and subcontractors have been trained and instructed to listen so that the Supplier can explain all facets of any problem which may occur.

However, should a difference of understanding occur, a simple and effective Appeals Procedure is in place. It allows for a democratic and impartial review of all facts of the dispute in order to make a final decision. All Suppliers, who are Clients of Benchmark Certification, can use the Appeals Procedure.

Q Charges. How much and when?

A After the initial contact and, if necessary, a visit to the Supplier's premises, a quotation or schedule of fees is provided. The cost of Certification will vary depending upon the size, location and scope of activities of the Supplier. As a result, individual quotations will be prepared for each Application. The quotation includes all fees excluding Audit follow-ups, which will be needed if significant problems have been found. The Application/Membership Fee, which is a once off expense, is payable when the Supplier wishes to join the Benchmark's Scheme. The other fees are charged only after a service is provided. Once Certification has been recommended the yearly maintenance fee is payable in advance. Fees are subject to ongoing review and the Supplier will be advised of any proposed increase in writing.

The Supplier may from time to time need additional services such as Awareness Training or Pre-Certification Reviews. These are not a necessary part of the Certification process, and therefore would be charged on a daily or hourly rate, if and when required.

Q What if we move, restructure or change ownership?

A In such cases, it is best to notify Benchmark Certification in advance and to have discussions on the consequences of the change.

If the change occurs prior to Certification being granted, the consequences with respect to the Certification process will be minimal.

If the change occurs once Certification has been granted, it may be necessary to perform another audit, or advance or postpone a surveillance audit. In all

cases, liaison with Benchmark Certification will be necessary to avoid complications and ensure a smooth transfer from one condition to another. Benchmark Certification may also be in a position to make useful comments, and provide guidance and advice on this matter.

Q Why select Benchmark Certification?

A The selection of your Certification Body is entirely your decision. In making a selection, one should obviously review the fees involved, interview the staff and, if possible, the auditor who will undertake the audit. Specific questions should be asked in order to establish how easy or difficult it is to communicate with the organisation and its auditors. One should also seek and contact some references, and establish service availability by asking "How quickly can you come to see us" or "How often can we ask questions"?

All audit personnel of Benchmark Certification have been selected for their knowledge of management systems and experience in industry. It is a mandatory requirement of our system that, when performing a Certification Audit (not necessarily for other audits), there will be an Audit Team containing personnel with experience in the industry being audited and a Lead Auditor (both roles, may in some cases be fulfilled by the same person). This requirement ensures that the specific conditions existing in a particular industry are understood and acknowledged. (The ANZSIC Codes classification is used for identifying industry field for both Clients and Audit Team members).

Our Auditors do not look for problems, but wish to satisfy themselves that your system is in place and working. They are bringing a "second set of eyes", and new ideas which will be conveyed in a constructive and friendly manner.

You will find that our method is based on independent, impartial, strict, but fair and friendly audits.

PART 3: PROCEDURE FOR CERTIFICATION

1. Application/Membership

- 1.1 *The Application fee is payable upon acceptance of our quotation and covers administration costs up to the date of the certification audit.*
- 1.2 *It includes a Certificate of Membership of the Benchmark Certification Scheme indicating that the Supplier has commenced the development of its management system and has entered into an agreement with Benchmark Certification. It is not to be used to imply that Certification has been granted.*
- 1.3 *There is a free attendance for two of the Supplier's personnel at a three to four hour question and answer session on "Preparing for Certification" (for ISO 9000) held at regular intervals, in major capital cities*

2. Document Appraisal

- 2.1 *This activity covers the mandatory review of the outline or Policy Manual and an optional review of all or selected system procedures and instructions against the requirements of the Standard.*
- 2.2 *This review may be a desk top review or an on-site review or a combination of both dependent upon the Supplier requirements and agreement with Benchmark Certification. (It may be performed during the Certification Audit under the SBS).*

3. Pre-Certification Review(s) (optional for ISO9000)

This activity is an on-site visits for the purpose of reviewing documentation in use and undertaking preliminary brief audits to identify major weaknesses in the system and provide counselling, as required, up to the time of the certification audit.

For ISO14001 Clients the Review will also cover the Application Form and will start the Audit Planning Process included expected fees.

4. Certification Audit

- 4.1 *This audit is carried out to determine whether the implemented management system of the Supplier conforms with the Standard and the approved documented procedures and instructions.*
- 4.2 *Fees incurred in this stage are related to the on-site certification audit, planning and reporting requirements.*
- 4.3 *The Lead Auditor will complete an Audit Report and Audit Findings prior to the completion of the final audit day where time permits. The report will include comments indicating the degree of compliance with the Standard.*

4.4 *However, the scope of the audit may be such that a detailed report may be difficult to complete before the close of the final audit day as audit time is dependent upon the extent of problems detected, and that is an unknown quantity. If this is the case then the formal Audit Report, including Audit Findings, will be completed and presented within ten working days of audit completion.*

4.5 *If the audit shows that the Supplier has a satisfactory management system in place at the time of audit and no Nonconformities are identified then the Supplier will be advised of a satisfactory result on completion. The Lead Auditor will recommend Certification to the General Manager of Benchmark Certification (or the review team) who will review the file and, if satisfactory, will endorse the Certificate of Approval. The Supplier will then receive the Certificate upon payment of the Post Certification Fee.*

4.6 *Minor deficiencies, covered by Improvement Requests, should not preclude the issue of the Certificate of Approval as long as adequate corrective action is proposed.*

4.7 *If the audit shows that the Supplier has not developed and/or implemented a satisfactory management system at the time of audit, and Nonconformities are identified, then the Supplier will receive a formal Audit Report which will address the current status of the system and reference each adverse Audit Finding.*

4.8 *The following indicates the classification system proposed to cover the deficiencies identified during audits.*

- Nonconformity

Applies where there is a total absence or significant absence of the criteria for conformance with the requirement clause of the Standard. Nonconformities have to be closed out or downgraded to Improvement Requests no later than three months after being raised.

- Improvement Request

Applies where minor nonconformance(s) are observed in a particular requirement clause of the Standard. It may indicate inadequate implementation of a procedure(s) or the breakdown of a procedure(s). Certification can be recommended or maintained if adequate and timely corrective action is proposed by the Supplier.

- Observation

Applies where there is a deficiency in the procedure outside of the scope of the Standard or where a potential deficiency in the system exists.

5. Audit Follow-up(s)

Audit follow-up is only necessary if nonconformities or a large number of Improvement Requests have been raised as Audit Findings during the Certification Audit, Post Certification Audits or Follow-up Audits, and where it is determined that the Audit Findings need to be closed out by Benchmark Certification prior to the recommendation for Certification or the next routine audit.

Note: Special surveillance audits may be undertaken should circumstances exist which extend the scope of certification, relate to an adverse incident, a third party complaint made directly to Benchmark Certification, or a change of personnel, facilities or internal organisation.

6. Post Certification Audits

6.1 *The Annual fee (which in some instances is charged quarterly) includes routine surveillance audits, performed at set intervals after certification, and also reporting and administrative activities associated with these audits.*

Notes: • The six months can be extended to nine, and twelve months if the system is well maintained, or reduced if system is not well maintained.

- Accreditation Body levy or fee per Certificate is payable at cost.

6.2 *The fee is payable upon recommendation of Certification and prior to issue of the Certificate of Approval and annually (or quarterly in some instances) in advance thereafter.*

7. Re-Certification Audit

This audit is incurred every three years after the initial certification and the fee covers a comprehensive audit plus planning, reporting and administration costs associated with the audit.

8. Special Surveillance Audits

Special surveillance audits may be undertaken by Benchmark Certification should circumstances exist:

- which extend the scope of Certification,
- relate to an adverse incident
- relate to a third party complaint made directly to Benchmark Certification
- change of personnel facilities or internal organisation, or
- when a large number of Improvement Requests have been raised and are still outstanding (as the closing down of the IR's would affect the planned Post Certification activities).

The Client will be given advice and notified of time and duration of such audits. Fees will be charged at applicable daily or hourly rate.

9. Suspension, withdrawal or cancellation

9.1 Benchmark Certification shall have the right to suspend, withdraw or cancel the Certificate of Approval at any time. The Certificate may be suspended should the Supplier:

- fail to complete corrective actions within the agreed time scale
- be found in any way to misuse the Benchmark Certification Mark
- fail to comply with the financial requirements of the Agreement entered into with Benchmark Certification
- bring Benchmark Certification into disrepute in any way.

9.2 Benchmark Certification will assist the Supplier to take appropriate remedial action following suspension of the Certificate of Approval but should the Supplier fail to do so within a reasonable time scale the Certificate of Approval shall be withdrawn.

9.3 Benchmark Certification reserves the right to publish the withdrawal of a Supplier's Certificate of Approval in whatever way it sees fit.

Notes:

- Thereafter activities are performed as per sections 6, 7 and if necessary 5 above.
- The Supplier shall be required to maintain a procedure for recording, documenting and taking appropriate actions on all complaints.
- The supplier shall be required to maintain a procedure for maintaining any appropriate Standards and Codes up to date.
- Should the Supplier's application and subsequent Certification cover only a part of the Supplier's locations/sites/plants, products or services, then the Supplier shall be required to establish and maintain a procedure for notifying purchasers or potential purchasers that goods or services produced or provided from these locations/sites/plants are not covered by the Benchmark Certification Certificate of Approval or relevant Accreditation.
- The Supplier shall be required to consider the present document as a Controlled Document to be issued to all sites/locations/plants seeking Certification.
- Should the Certification Standard be changed or superseded, Benchmark Certification will notify you in writing of the change together with the implementation timetable.

10. Small Business Scheme (TM)
additional Conditions)

QS 9000 requires that all Non Conformities and Improvement Requests be closed out prior to Recommending Certification.

10.1 Quotations issued under the Small Business Scheme assure that the sequence of Post Certification Audits will be at intervals of 6, 9, 9 months (12 months after the 1st Certification cycle).

11.7 Management Consultants/Advisers

Management Consultants attending Audits, is under QS 9000 acceptable, only if he/she acts as an observer.

10.2 Should one or more Non Conformity, or more than three (3) Improvement Request be raised, a Special Surveillance Audit shall be performed, at additional costs.

11.8 Code of Conduct

In addition to Benchmark's Management Policy and Code of Conduct, approved by our Board of Directors, we commit our organisation and its representatives to also comply with the QS 9000 Code of Practice.

11. QS 9000 Additional Requirements

This section only applies to QS 9000 applicants, whom must comply with the following clauses.

11.9 Additional Documents to Control

11.1 Design Element

If a supplier is considered as Design Responsible (ie involved in the design of products or services for a car/truck manufacture), it can only be certified to QS 9000, once the design activities have been successfully audited. The Design Center(s) must be audited every year.

QS 9000 Applicants, should also ensure that Business Plans, QS 9000 and relevant Sanctioned Interpretations be considered as Controlled Documents, and that there are in place documented procedures to maintain Interpretations up-to-date, and that the management system is kept in continued compliance with Interpretations.

11.2 Management Review

The Supplier's Management Review process shall include the review of the system's suitability and effectiveness in meeting QS 9000.

12. ISO14001 Additional Requirements

11.3 Internal Departments under the same Company

A complete internal audit must be performed by the Supplier before the Certification Audit

A internal department will only be accepted as a Supplier to the QS 9000 Applicant, if there is a formalised two party contract between the two departments. If not, both departments will need to be audited to QS 9000.

12.1 Whist a company must apply, Certification shall only be granted on a site per site basis.

12.2 Rules are in place to cover organisation with multiple sites.

12.3 The legal/statutory name of the entity seeking Certification shall be recorded on the Application form and subsequent Certificate.

12.4 Benchmark Certification can only offer services once the original Application and Declaration Form has been received.

11.4 IASG Sanctioned Interpretations

These are regularly issued/revised and may affect your Certification. It is expected that compliance will be maintained for all IASG Sanctioned Interpretations. A procedure should also be in place to review the Interpretations and maintain compliance (this may involve changes to your management system).

11.5 Audit Duration and Time Frames

The audit duration is indicated in our proposal. Also, it is a QS 9000 requirement, that the auditing process not exceed a total period for three months; this excludes Document Appraisals, Pre-Certification Reviews, and Follow-ups if any (it however includes an ISO 9000 audit followed by a QS 9000 upgrade audit for example).

11.6 Close out of Audit Findings

PART 4: APPEALS PROCEDURE

1. General

1.1 Any Supplier (Client or Third Party) has the right to appeal against decisions of Benchmark Certification on the following grounds:

- Refusal of an application for Certification
- Refusal to recommend Certification
- Withdrawal or suspension of Certification
- Non acceptance of the scope, or part of the scope, of Certification of the Supplier.
- Third Party appeal against Benchmark Certification's decision to grant Certification to a Supplier.

1.2 The appeal shall at all stages be treated by all parties as strictly confidential.

1.3 The cost of the appeal shall be borne by the Appellant should the appeal fail.

2. Preliminary Actions

2.1 An Appellant shall convey the appeal in writing to the General Manager of Benchmark Certification. Such an appeal shall explain all reasons and be supported by all available documented evidence. It shall be signed by the Appellant's Management Representative.

2.2 Upon receipt, the General Manager shall acknowledge receipt in writing, and seek written explanations from the Benchmark Certification Lead Auditor or Officer involved. These explanations should provide all reasons and be supported if possible by all available documents. It shall also be signed by the Lead Auditor or Officer involved.

2.3 Upon receipt, the General Manager shall pass the submissions to an independent Area Manager who shall review both submissions and decide on whether the appeal is justified or not. His/her decision shall be conveyed in writing to the General Manager.

- Should the appeal be successful (ie in favour of the Appellant) the General Manager shall confirm in writing that the Appeal has been successful. The letter shall explain reasons why the appeal was successful. A copy of the letter shall be sent to the Lead Auditor or Officer involved. The General Manager shall also ensure that internal corrective action is taken.
- Should the appeal be unjustified (ie in favour of Benchmark Certification) the Appellant shall be informed in writing and given the opportunity to pursue the matter further via the Appeals Committee. The Appellant shall convey his/her decision in writing to the General Manager.

2.4 The Appellant shall be afforded the right to withdraw the appeal at any stage of the appeal process.

3. Subsequent Actions

3.1 Constitution of the Appeals Committee

The Appeals Committee shall be constituted as follows:

- Chairman of the Committee: A Director of Benchmark Certification.
- Three members (minimum) independent from Benchmark Certification and having no interest past or present with the Appellant. Committee members shall be required to sign Confidentiality Statements.
- Appeals Committee Members shall always be independent from the Appellant. Should this not be the case an independent Member or Chairperson shall be appointed.

3.2 The Chairman shall be responsible for the selection of the Appeals Committee members and the constitution of an Appeals Committee.

3.3 The Appellant shall be informed of the constitution of the committee, and has the right to reject any chosen member on the basis of conflict of interest only, in which case, an independent replacement shall be agreed between Benchmark Certification and the Appellant.

3.4 Copies of the submissions shall be presented to the Members who shall vote. The Members shall be offered the right to consult specialists in the relevant field. Submissions and voting may be provided and undertaken by correspondence.

3.5 The decision of the Appeals Committee shall be unanimous and final. It shall be communicated to the Appellant in writing with all supporting evidence attached.

Note: If the General Manager was the Auditor involved with the Appellant, his/her involvement in the above procedure shall be fully substituted by an independent Area Manager.

**PART 5: CONDITIONS OF USE OF MARK
AND CERTIFICATE OF APPROVAL**

General

- 1.1 Variations in the use of the Certificate and Mark may be granted in writing by Benchmark Certification upon receipt of a written request from the Supplier.
- 1.2 The Certificate and Mark shall remain the property of Benchmark Certification although the Supplier is charged for the cost of production of duplicates. Permission to continue using Certificates and Mark may be withdrawn in which case it is agreed that the Supplier shall return them when requested.
- 1.3 Certificate, Mark, or reference to Benchmark Certification shall only be used or made during the Certification period.
- 1.4 The issuance by Benchmark Certification in no way exempts the Supplier from his obligations by law with respect to the supply of goods or services.
- 1.5 Certification by Benchmark Certification does not imply and shall not be used in any instance by the Supplier as Certification of a product or service by Benchmark Certification, the Accreditation Council or the appropriate Australian or New Zealand Government Ministers. The Supplier shall not be permitted to do so in any advertising, promotional material or other documentation used by the Supplier.

2. Use of the Certificate of Approval

- 2.1 The Certificate may be reproduced entirely in original colours or in black and white, ensuring that all details are clearly legible.
- 2.2 Reference to a Certificate shall always be made with mention of the Standard against which certification was granted.

Example: Supplier XYZ has been approved by Benchmark Certification (ISO 9002).

- 2.3 The Supplier shall be entitled to display the Certificate at his place of work or in any promotional or advertising material.

3. Use of Benchmark Certification and for JAS-ANZ Marks

Notes: This clause only applies to Marks covered by Benchmark Certification's Accredited activities. Please check with our office if you are in doubt.

- 3.1 Suppliers having achieved Certification may use either the:
 - Benchmark Certification's Mark or
 - Benchmark Certification and the JAS-ANZ Marks

Should both, Marks be used, the Marks shall remain adjacent to one another, identically proportional to the artwork supplied.

The Supplier's name or its own mark shall be visible whenever the either of the Mark is used.

3.2 Certification Mark(s):

- may be used on stationery, literature or other publicity material
- shall not be used on a product, or in any way that may be interpreted as denoting product environmental conformity, performance, or quality level
- may be placed on product packaging, on labels and affixed to the product providing the label contains the following text in a manner that makes it obvious that the text and Mark(s) are linked; *'manufactured under a management system certified as complying with <<Standard>>.'*

*Notes: 1. There will be borderline cases where there is reasonable doubt as to what activities an ordinary consumer would understand by the word "manufactured". In such cases, rather than use the word "manufactured", a more explicit term, appropriate to the process, could be used to describe the activities covered by the Certification eg: assembled, packaged, bottled, blended etc.
2. Reference to labels include documents relating to the product that accompany or are attached to the product. The means of attachment should be temporary in nature.
3. In some cases it may be appropriate to add words to the effect that the certification does not relate to any technical requirements.*

- 3.3 Marks shall be reproduced in their entirety (including the Standard to which certification is granted) and shall not be changed in any way without written consent of the General Manager of Benchmark Certification.

4. Colours

The Benchmark Certification and JASANZ (when appropriate) Marks shall only be printed using either of the following colour codes:

Any colour for monocolour version supplied or,

ISO 9000
PMS Reflex Blue and PMS 485 Red as per Benchmark Certification's stationary (letter heads) for coloured version.

ISO 14000 Environmental Mark
PMS 3292 for the "world" symbol and the text.
PMS 485 for the rest.

OH & S & Benchmark in Safety Mark
PMS 485 for the Mark, Reflex Blue for the text

Note: The artwork will be supplied when the Certificate of Approval is issued.

**PART 6: CERTIFICATION AGREEMENT
TERMS AND CONDITIONS**

1. Responsibilities

- 1.1 *As a party to this Agreement, the Supplier shall provide Benchmark Certification with all documents, information and facilities as necessary to enable Benchmark Certification to provide the services under this Agreement.*
- 1.2 *As a party to this Agreement, Benchmark Certification shall provide reviews, audits and, if satisfactory, Certification in accordance with Benchmark Certification Procedures. Please note that, in pursuit of its policy of constant improvement, Benchmark Certification reserves the right to modify its Procedures.*
- 1.3 *The Supplier hereby warrants and covenants with Benchmark Certification that it will at all times during the life of the Agreement comply with all reasonable requirements necessary for the issuance of the Certificate including (but without prejudice to the generality thereof) all statutes, rules, regulations issued by any statutory or other competent authority all recommendations, codes or similar matters issued by any authority pursuant to which in compliance of which or for the purpose of which Certification is issued or such other reasonable requirements of Benchmark Certification as are necessary to enable Certification to be issued and maintained.*
- 1.4 *The Supplier hereby warrants the completeness and accuracy of all documents and information supplied to Benchmark Certification for the purposes of this Agreement. The Supplier also undertakes to notify Benchmark Certification in writing of any conditions which would or could affect Benchmark Certification's decision to issue Certification.*
- 1.5 *Benchmark Certification shall not be liable in any respect should it be prevented from discharging such obligations as a result of any matter beyond its control which could not be reasonably foreseen.*
- 1.6 *If any of the terms and conditions of this Agreement are determined to be invalid or unenforceable by any court such determination and consequential severance (if any) shall not invalidate the rest of the Agreement which shall remain in full force and effect as if such terms and provision had not been made a part thereof.*
- 1.7 *Should any clause of this Agreement conflict with any requirement of the Trade Practices Act, Fair Trading Act or other as applicable, then that clause should be severed from the Agreement but the remainder of the Agreement shall remain in force.*

2. Terms of Payment

- 2.1 *All fees are defined, or referred to, in the 'Application Form and Certification Agreement' signed by both parties. It indicates the basic charges for the services requested on the assumption that the information supplied by the Supplier was accurate and complete. Any service supplied beyond those set out in the form shall be charged at current rates.*
- 2.2 *Benchmark Certification reserves the right to increase these charges which will be reviewed on a regular basis. The Supplier will be given prior written notice of any proposed increase.*
- 2.3 *Special Surveillance Audits will be charged at the rate applicable at that time.*
- 2.4 *Travel costs and expenses, unless agreed otherwise, are inclusive of transport within Sydney, Melbourne, Brisbane, Adelaide and Perth metropolitan areas. Other travel costs and expenses will be charged at cost.*
- 2.5 *Should the Supplier postpone or cancel mutually agreed arrangements, Benchmark Certification shall reserve the right to charge a fee equivalent to 15% of the total of the fee chargeable for the agreed arrangement. This sum may not be discounted off future chargeable amounts.*

The Application/Membership and Post Certification fees (which are charged in advance) are not refundable.

- 2.6 *Payment becomes due within 14 days of the date of invoice. Thereafter, the outstanding unpaid amount may accrue interest at the rate of 4% above the official current Short Term Rate.*

Please note that the Certificate(s) of Approval cannot be released until all due payments have been received.

3. Termination of the Agreement

- 3.1 *Either party may terminate this Agreement by giving three months written notice to the other party.*
- 3.2 *Termination may also be by default*
 - *Immediately upon either party being notified by the other of any material breach of this Agreement.*
 - *If either party goes into liquidation or a receiver or administrator is appointed for all or part of the undertaking thereof. The receiver or administrator should notify Benchmark Certification of its intentions not to terminate the Agreement.*
 - *If either party ceases to trade whether in whole or in part.*
- 3.3 *In the event of this Agreement being terminated the Certificate of Approval and Mark issued*

pursuant hereto shall forthwith become invalid and the Supplier shall cease to use the same and return to Benchmark Certification all documentation and other matters issued pursuant thereto or bearing an indication of such Certification.

4. Liability

- 4.1 Except in the case of deliberate neglect on the part of Benchmark Certification, its employees, servants or agents, Benchmark Certification shall not be liable for any loss or damage sustained by any person due to any act of omission or error whatsoever or howsoever caused during the performance of its reviews, audits and certification or other services.
- 4.2 In the case of neglect as aforesaid the limit of any loss, damage or otherwise for which Benchmark Certification shall be liable will be limited to an amount not exceeding the maximum fee (if any) charged by Benchmark Certification for the particular service in respect of which the neglect arose. While the restrictions on liability herein contained are considered by the parties to be reasonable in all the circumstances, if such restrictions taken together or any one of them shall be judged to be unlawful or unenforceable then the said restriction shall apply with such words deleted or amended or added.
- 4.3 The provision of this clause shall not apply to any death or personal injury but the Supplier shall maintain at all times adequate insurance sufficient to cover all liability that may arise as a result of any matter done pursuant to this Agreement.
- 4.4 Benchmark Certification shall not be liable for any other warranties other than those expressly set out in the Agreement.

5. Indemnity

- 5.1 The Supplier shall fully and effectually indemnify Benchmark Certification against all costs, claims, actions and demands arising from:
- the services provided by Benchmark Certification save to the extent only that such claims arise from the neglect of Benchmark Certification, its employees or agents.
 - the use or misuse by the Supplier of any Certificate, licence, mark of conformity provided by Benchmark Certification in accordance with this Agreement.
 - any breach of this Agreement.

6. Confidentiality

Except as may be required by Law, Benchmark Certification and the Supplier will treat as strictly confidential and will not disclose to any third party without prior written consent of the other,

any information which comes into their possession, the possession of their employees, agents or others by virtue of this Agreement.

7. Law

This Agreement is governed by the Laws of the Commonwealth of Australia and the parties submit to the jurisdiction of the High Court of Australia and all notices and proceedings served will be deemed to be duly served if sent by pre-paid registered mail to the address of the party as herein above appearing or as may be subsequently notified by the other.

8. Arbitration

Any disputes or differences arising between the parties other than as to the payment of fees should be referred to the Australian Commercial Disputes Centre.

In the event of the parties being unable to resolve the dispute within 90 days of it being referred to the Australian Commercial Disputes Centre, or within such longer period as may be agreed between parties, then the matter shall be referred to arbitration for resolution.

Arbitration shall be effected by an arbitrator:

- agreed upon in writing by the parties within twenty eight days after a notice is received by Benchmark Certification requesting arbitration;
- or
- appointed in accordance with the provisions of the Commercial Arbitration Act.