

185835

AUSTRALIAN WOOL
RESEARCH AND PROMOTION ORGANISATION

RULES FOR

WOOLMARK SCHEME

COMMONWEALTH of AUSTRALIA

TRADE MARKS ACT 1955

IN THE MATTER of CERTIFICATION TRADE
MARK REGISTRATIONS NOS.
C185835, C185836, C185837,
C185838, C185839, C185840,
C185841, C185842, C328924,
C328925, C328926 and C471915
IN THE NAME OF
AUSTRALIAN WOOL
RESEARCH AND PROMOTION
ORGANISATION

RULES GOVERNING THE USE OF THE CERTIFICATION MARK

1. The Certification Mark is to be used to indicate that Goods bearing the Certification Mark have been certified by the Proprietor or a person authorised by the Proprietor with respect to their origin, material content, mode of manufacture, treatment, quality, technical performance, style or other characteristics specified by the Proprietor.

- 2.(a) In these Rules :
"Application Fee" means the fee charged by the Proprietor pursuant to Rule 6(b) for considering an application for a Licence.
"Appeal" means an appeal to the Registrar of Trade Marks as provided by Rule 21.

"**Authorised User**" means any person authorised under these Rules to use the Certification Mark.

"**Certification Mark**" means the mark a representation of which is contained in the Appendix hereto.

"**Commission Manufacturer**" means a person who enters into a written contract with the Authorised User for the manufacture of Goods to which the Certification Mark is to be applied.

"**Goods**" means products made wholly of wool or partly of wool and other fibres whether natural or otherwise where the minimum wool content of such goods is 95% (or such other percentage as may be prescribed by the Proprietor from time to time) of pure new wool.

"**Label**" means any label, tag, ticket, transfer or any other item bearing the Certification Mark which is intended to be used on or in relation to the Goods when offered for sale.

"**Licence**" means a licence to use the Certification Mark given by the Proprietor in accordance with these Rules.

"**Licence Fee**" means the fee charged by the Proprietor pursuant to Rule 12 for a Licence.

"**the Proprietor**" means the Australian Wool Research and Promotion Organisation of 369 Royal Parade, Parkville, Victoria, Australia, or the person otherwise registered from time to time as the Proprietor of the Certification Mark in Australia and where not repugnant to the context includes the officers, servants, agents or attorneys of such person.

"**the Registrar**" means the Registrar of Trade Marks.

"**the Rules**" means the rules herein provided and includes any amendments hereto and any further rules made from time to time in accordance with the *Trade Marks Act 1955 (Cth)* (as amended) or other applicable laws and the provisions contained herein.

"**Standards**" means the technical or other standards and specifications prescribed from time to time by the Proprietor in accordance with these Rules.

"Wool" means the fibre so defined by the *Commerce (Trade Descriptions) Act 1905* and Regulations made thereunder or any other applicable statutory provision or law being the natural fibre from the fleece of any variety of domestic sheep or lamb.

- 2.(b) In these Rules where the context so permits or requires words in the singular shall include the plural and vice versa.
3. The Certification Mark is the absolute property of the Proprietor in Australia and shall not be used by any person except strictly in accordance with these Rules and any Licence, or otherwise by express consent of the Proprietor.
- 4.(a) The Proprietor shall prescribe from time to time standards and testing specifications and other guidelines and directions for the use of the Certification Mark and the Certification Mark may be used only upon or in relation to Goods which comply with such Standards and otherwise in accordance with any guidelines or directions issued by the Proprietor. In cases where no standards and specifications have been prescribed the Proprietor on request will devise suitable standards and specifications appropriate to the particular goods and such standards and specifications thereafter shall become the Standards.
- 4.(b) The Standards as prescribed and in force from time to time shall at all reasonable times be available for inspection at the office of the Proprietor.
- 5.(a) To determine whether or not Goods comply with the applicable Standards, the Proprietor or another person authorised by the Proprietor shall test the Goods in accordance with the tests set out in the Standards. The cost of all such tests shall be borne absolutely by the person or company whose Goods are being tested.

- 5.(b) In determining whether or not Goods comply with the said Standards or achieve any level or standard of performance the tests employed by or on behalf of an Authorised User shall be in accordance with the methods for the time being approved by the Proprietor.
- 6.(a) A person wishing to use the Certification Mark either itself or through a Commission Manufacturer must apply to the Proprietor for a licence to do so.
- 6.(b) The Proprietor may charge an Application Fee. The Application Fee shall be in the amount as prescribed by the Proprietor from time to time and the Proprietor shall be under no obligation to consider any application unless and until the Application Fee has been paid.
7. Every applicant for a Licence shall provide to the Proprietor such information as the Proprietor may request. Without limiting the generality of the foregoing, every applicant shall provide to the Proprietor:
- (i) details of the Goods in respect of which the applicant desires to use the Certification Mark;
 - (ii) details of the manner in which it is proposed that the Certification Mark will be used;
 - (iii) details of how the applicant proposes to ensure that the standards and testing specifications prescribed by the Proprietor for use of the Certification Mark and any requirements relating to the use of the Labels are complied with at all times.

8. The Proprietor shall supply to each applicant for a Licence copies of such Standards as are relevant to the Goods in relation to which the applicant proposes to use the Certification Mark.

9.(1) Every applicant for a Licence shall show to the reasonable satisfaction of the Proprietor that -

(a) the applicant is competent and experienced in the applicant's type of business and of good repute and of good financial standing; and

(b) the applicant has property, premises, plant, personnel, equipment, stock (including livestock) or other facilities considered by the Proprietor to be necessary for achieving and maintaining the Standards laid down by the Proprietor and that the applicant is willing and able to achieve and maintain those Standards; and

(c) the applicant has testing facilities suitable for carrying out any tests required by the Proprietor to be carried out and that the applicant is capable of correctly and accurately carrying out those tests,

or

the applicant undertakes to permit and have carried out from time to time at its own expense such tests as the Proprietor prescribes and by a person authorised or approved by the Proprietor; and

(d) the applicant has complied or will comply with all of the requirements for the time being laid down by the Proprietor as conditions precedent to the grant of a licence to persons engaged in the applicant's particular branch of trade or industry.

10. If :-

(a) After testing such samples of the applicant's Goods as the Proprietor requires, the Proprietor is satisfied that the Goods upon and in relation to

which the applicant proposes to use the Certification Mark will conform to the aforesaid Standards; and

(b) After inspection of the system of control and inspection to which the applicant proposes to subject such goods, the Proprietor is satisfied that the said system will enable the applicant to be satisfied at all times that the said goods conform to the said Standards,

the Proprietor will invite the applicant to enter into a licence agreement for the use of the Mark.

11. If the applicant does not provide to the Proprietor such information as may be required pursuant to Rule 7 or if the Proprietor is not satisfied as to the matters set out in Rule 9(1) hereof or if after testing and inspection as aforesaid the Proprietor is not satisfied both that the goods upon and in relation to which the applicant proposes to use the Certification Mark will conform to the aforesaid Standards and that such system is adequate as aforesaid it shall so inform the applicant and subject to an Appeal, the application for a licence to use the Certification mark shall be refused. Nothing contained in this Rule shall prevent the applicant from submitting further samples for testing and/or altering the system of control and making one or more further applications to the Proprietor for a Licence.
12. The Proprietor may impose a Licence Fee. The frequency of payment and the amount of the Licence Fee shall be as prescribed by the Proprietor from time to time.
13. Upon execution by both the Proprietor and the applicant of a licence agreement as aforesaid and upon payment by the applicant of the applicable Licence Fee the applicant shall become entitled to use the Certification Mark in accordance with these Rules and the terms and conditions of such licence agreement and

shall subject to the provisions of the Rules remain so entitled during the subsistence of such licence agreement. There shall be no Licence until such time as the licence agreement is executed by the Proprietor and the Proprietor shall be under no obligation to execute the licence agreement until the applicant has executed the licence agreement and paid any Licence Fee as prescribed by the Proprietor.

14. The Certification Mark shall only be applied to Goods by either the Authorised User (in accordance with its Licence) or its Commission Manufacturer (if any) (and provided the appointment of a Commission Manufacturer by an Authorised User is authorised under and in accordance with the terms of its Licence). Without limiting the generality of the foregoing, all Goods to which the Certification Mark is to be applied shall be manufactured in conformity with any Standards prescribed by the Proprietor for such manufacture.

15. If at any time while a Licence is in force:

(a) the Proprietor is of the opinion that any Goods upon or in relation to which an Authorised User has used or proposes to use the Certification Mark do not conform to the Standards the Proprietor shall so inform the Authorised User and subject to an appeal to the Registrar the Authorised User shall forthwith cease to use the Certification Mark upon or in relation to any such Goods; or

(b) if notice to cease use of the Certification Mark has been given by the Proprietor to the Authorised User under the licence agreement, the Authorised User shall forthwith cease to use the Certification Mark upon or in relation to any Goods; or

(c) the Authorised User fails to pay any Licence Fee by the date specified by the Proprietor, the Licence shall automatically and forthwith cease

in the event that such Licence Fee is not paid within one (1) month after a written demand from the Proprietor to pay.

16. The Proprietor may at any time make application to vary or alter the Rules in accordance with the applicable statutory procedure but no proposed alteration to the Rules shall have effect until the Registrar has made such alteration in accordance with the provisions of Section 87 of the *Trade Marks Act 1955* or such other applicable statutory provision.
- 17.(a) The Proprietor may alter the Standards from time to time.
- 17.(b) The Proprietor shall give notice in writing to all Authorised Users affected by such alteration and specifying a date from which it is proposed that the alterations shall have effect.
- 17.(c) Such written notice of alteration shall be forwarded by the Proprietor to each Authorised User in duplicate and shall set out the alteration and the date on which it is proposed to become effective. On receipt of such notice the Authorised User shall promptly return to the Proprietor one copy of the notice together with an acknowledgment thereon signed by or on behalf of the Authorised User stating whether such alteration is accepted by the Authorised User with effect from the date specified in the notice.
- 17.(d) Unless all such Authorised Users shall accept such alteration from the date so specified then such alteration shall take effect as from a date being twelve months from the date on which such notice was given.
- 17.(e) The aforesaid requirement as to notice shall in the case of any person who becomes an Authorised User during the year preceding the proposed effective date for such alteration be satisfied if the Proprietor (on or before signing such

licence) informs the Authorised User in writing that notice of such alteration has already been given to all other Authorised Users and indicates the date when such notice was given.

- 18.(a) The Certification Mark comprises a logo, the copyright in which is owned in Australia by the Proprietor. It is of the utmost importance to the Proprietor and to the protection of the Certification Mark that all reproductions of the Certification Mark be consistent and of the highest quality. Nothing in these Rules or in the Licence is intended to confer on an Authorised User or a Commission Manufacturer the right to reproduce the Certification Mark in any form. The right to reproduce the Certification Mark in any form can only be conferred by an express written licence from the Proprietor. All Labels to be applied to Goods by or on behalf of an Authorised User or Commission Manufacturer shall be obtained only from suppliers who are approved by the Proprietor from time to time. Nothing shall preclude an Authorised User seeking the Proprietor's approval of an additional supplier.
- 18.(b) An Authorised User shall forthwith send to the Proprietor a copy of all orders placed for Labels, and particulars of the persons who will be manufacturing and supplying the Labels, before the order is fulfilled.
- 19.(a) The Proprietor shall maintain records which contain:-
- (i) the name, address and trade description of each Authorised User; and
 - (ii) the date of all licence agreements and the registration number allotted to each Authorised User.
- 19.(b) The Proprietor may if it so desires from time to time specify additional particulars for incorporation in the records

20. The Proprietor shall keep at its principal office a copy of the Rules and of all of the Standards aforesaid and of any amendments thereof and the said copies shall be open to public inspection during the normal business hours of the said principal office.
- 21.(a) In any event where the Proprietor does or refuses to do any act or exercises a discretion under any of these Rules which in the opinion of a person who is an applicant for a Licence or an Authorised User is contrary to the interests of that person that person may within 21 days after the act, refusal or exercise or within such further time as the Registrar may allow appeal to the Registrar. An appeal to the Registrar shall be in writing and a copy of the notice of appeal shall be served on the Proprietor within such time as the Registrar provides.
- 21.(b) After considering such evidence as the applicant or Authorised User, as the case may be, and the Proprietor may submit including any evidence asked for by the Registrar and after the applicant or Authorised User and the Proprietor have had an opportunity of being heard, the Registrar shall decide the matter.
22. The provisions of these Rules shall prevail over any inconsistent provisions contained in any Licence agreement issued by the Proprietor.

APPENDIX

Certification Mark

