

## **PRODUCT CERTIFICATION**

## **RULES GOVERNING THE SCHEME**

**JANUARY 2006**

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**SCHEDULE 1 - DICTIONARY**

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## 1. INTRODUCTION

- 1.1 SAI Global Limited ABN 67 050 611 642 (**SAI Global**) owns the certification trade mark known as the Gas Safety Certification Mark (the **Mark**) registered under the *Trade Marks Act 1995* (Cth) (**the Act**) as Trade Mark No. XXXX 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 either SAI Global or another person authorised by SAI Global (**Certifier**) certifies that the Product conforms to a Recognised Product 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 SAI Global 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 CERTIFIERS**

4.1 Within the meaning of s173(2)(a) of the Act, SAI Global may authorise one or more Persons to act as a Certifier and to grant Licences allowing Licensees to use the Mark in accordance with the Licence Terms.

4.2 From time to time and subject to the terms of agreements with individual Certifiers, SAI Global may:

- (a) appoint additional Certifiers;
- (b) replace a Certifier with another Certifier; or
- (c) revoke its authorisation of a Certifier to grant Licences.

#### **5. ADMINISTRATION OF CERTIFICATION SCHEMES**

5.1 Each Certifier must administer a Certification Scheme that, in the opinion of SAI Global:

- (a) provides Certification that a Person provides Products conforming to the requirements of one or more Recognised Product Standards;
- (b) is conducted using processes and procedures that conform to relevant ISO/IEC Guides and Standards on conformity assessment for product Certification including:
  - (i) AS/NZS 3843 – ISO/IEC Guide 65: General requirements for bodies operating product certification systems;
  - (ii) SAA HB 18.28 – ISO/IEC Guide 28: General rules for a model third-party certification system for products; and
  - (iii) SAA HB 18.27 – ISO/IEC Guide 27: Guidelines for corrective action to be taken by a certification body in the event of misuse of its mark of conformity;

- (c) includes procedures for initial inspection and testing of the Products proposed for Certification;
- (d) includes marketplace surveillance of Products as Certified;
- (e) is promoted and conducted in a manner that complies with the *Trade Practices Act 1974 (Cth)*;
- (f) does not bring SAI Global or the Mark into disrepute; and
- (g) does not mislead or deceive third parties as to the nature, scope or extent of Certification offered under the Certification Scheme.

5.2 A 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 A 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
- (b) keep SAI Global informed of the Certifier's Terms and any changes to them.

5.4 If there is any inconsistency between the Certifier's Terms and these Rules, then these Rules will prevail.

5.5 A 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.

5.6 A Certifier may operate a Certification Scheme under which the Mark is used in combination with other Signs, subject to SAI Global in its absolute discretion having approved the Mark being used in each such combination.

## 6. RECOGNISED PRODUCT STANDARDS

6.1 **A Recognised Product Standard** means a Standard that can be applied in Certification of Products with reasonable certainty and which may include:

- (a) Australian Standards published by Standards Australia International Limited (**Standards Australia**);
- (b) Interim Australian Standards published by Standards Australia;
- (c) International Standards published by the International Organisation for Standardisation (**ISO**);
- (d) International Standards published by the International Electrotechnical Commission (**IEC**);
- (e) Standards published by international organisations other than ISO or IEC;
- (f) Standards published by national standards organisations or government authorities in countries other than Australia;
- (g) Standards used for government procurement;
- (h) Standards adopted or enforced by government authorities in regulating the supply of goods;
- (i) Company Standards;
- (j) Standards published by other Australian or foreign organisations or government authorities not otherwise categorised in this subrule.

## 6.2 SAI Global to Keep List of Applicable Standards

**6.2.1** SAI Global must keep and maintain at its Head Office a list of the applicable Standards (the **List**). SAI Global must also keep and maintain at its Head Office a library of the Standards included in the List (the **Library**). SAI Global must make the List and the Library available for inspection by any Person between the hours of 9.00am and 5.00pm on any Business Day, provided that the Person has given SAI Global reasonable notice.

**6.2.2** SAI Global must review the List, and amend it if necessary, at intervals of not more than six months.

**6.2.3** SAI Global must submit a copy of the List to the Registrar of Trade Marks, upon request.

## 7. CERTIFICATION

### 7.1 Certification Assessment

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

**7.1.2** 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 Certification and the 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.

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

7.1.4 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.

## 7.2 Co-operation and Access

7.2.1 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 Certification.

7.2.2 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.

7.2.3 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 Applicant's Certification.

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

## 7.3 Terms of Certification

7.3.1 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.

7.3.2 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.

**7.3.3** 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.

**7.3.4** 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.

**7.3.5** 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.

**7.3.6** 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.

**7.3.7** 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.

**7.3.8** 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.

#### 7.4 Restrictions 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 appropriate Recognised Product Standard.

#### 7.5 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.

### 8. RECONSIDERATION OF CERTIFIER DECISIONS

8.1 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.

8.2 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.

- 8.3 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.
- 8.4 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.

## 9. MEDIATION AND ARBITRATION

- 9.1 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.
- 9.2 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.
- 9.3 The Claimant and the Certifier will nominate a mediator by agreement. If the Claimant and the Certifier do not agree a mediator within 14 days of the Mediation Request, the mediator will be chosen by the Australian Commercial Disputes Centre (ACDC).
- 9.4 The mediator will establish the procedure governing the Mediation.
- 9.5 The Certifier and the Claimant will each bear their own costs of the Mediation and will pay an equal share of any fees of the mediator and any other costs of the Mediation.
- 9.6 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 natural justice.
- 9.7 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.

9.8 Nothing in this Rule 9 will prevent the Claimant and the Certifier from proceeding directly to arbitration or adopting an alternative form of dispute resolution acceptable to both parties.

## 10. AMENDMENT OF RULES

10.1 SAI Global may apply for variation of these Rules (**Variation**) provided that it provides all Certifiers with written notice of any proposed amendments and also allows Certifiers reasonable time to comment on proposed amendments.

10.2 Any amendment of the Rules will become effective when the Regulator approves the Variation.

## 11. NOTICES

11.1 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.

11.2 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.

- 11.3** If required by SAI Global, a Certifier must within five Business Days forward notices provided by SAI Global to any Licensee or Applicant or to any group of Licensees and/or Applicants identified by SAI Global.

## **SCHEDULE 1 - DICTIONARY**

In these Rules, unless the 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 a 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** means written confirmation that a Product, process or service has been assessed as conforming to specified requirements.

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

**Certifier** means either SAI Global or a Person authorised by SAI Global to administer a Certification Scheme 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 SAI Global 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.

**Recognised Product 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.

**Standard** means a standard as defined in *ISO/IEC Guide 2 – Standardization and related activities – General vocabulary*, namely, a document, established by consensus and approved by a recognised body, that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the optimum degree of order in a given context.

**SCHEDULE 2 - THE TRADE MARK**

<b>Trade Mark</b>	<b>Class/Goods &amp; Services</b>
 <p>TM Gas Safety Certified</p>	<p><b>Class: 11 Gas Appliances and Components</b></p>