

TERMS, CONDITIONS & APPEALS PROCESS



PAS-Mark

Product Conformance



TABLE OF CONTENTS

1.0	Introduction	3
2.0	Obligations and Responsibilities.....	3
3.0	Warranties and Liabilities.....	4
4.0	Terms of Payment.....	5
4.1	Application Fee	5
4.2	Annual Fee	5
5.0	Type Test Samples	6
6.0	Indemnity	7
7.0	Confidentiality	7
8.0	Suspension and Cancellation	7
9.0	Complaints and Appeals.....	8
9.1	General.....	8
9.2	Complaints	8
9.3	Appeals	9
10.0	Termination	9
11.0	Changes to the Terms and Conditions	10
12.0	Arbitration.....	10
13.0	Notice	10
14.0	Law.....	10

AMENDMENT HISTORY	
Date	Amendment Summary
12/01/2007	Original issue, Issue 1, Revision 0.
01/10/2007	Issue 1, Revision 1, New CSI logo inserted
01/06/2011	Issue 1, Revision 2, Review of document, updated references, formatted document.
01/02/2017	Issue 1, Revision 3, Review of document



1.0 Introduction

The terms and conditions outlined in the following document regulate the supply of services by Certification Solutions International Pty Ltd (hereinafter referred to as **CSI**) to the client and take precedence over any other terms that may be communicated by the client, their agent or associate of the client. Variations to the terms and conditions of this document can only be made in writing between the parties, with full agreement of all parties involved in the contract for service.

Services provided by **CSI** will be delivered in a professional manner by an employee, subcontractor or agent of **CSI**, who at all times maintains responsibility for the scope of work/service undertaken.

This document should be read in conjunction with the other Product Assessment Scheme documents of contract – these are;

- PAS-001 Rules & Requirements.
- PAS-003 Use of Certificate & Trade Mark Logo
- PAS-004 Schedule of fees (or other written agreement on pricing reached with **CSI**).
- PASTS-000 Technical Specification General Requirements

2.0 Obligations and Responsibilities

CSI, as a party to this agreement, shall provide systematic examination (evaluation of conformity testing, document reviews, business reviews and, if satisfactory, certification and or authorisation to use the PAS-Mark logo on the product, process or service in accordance with **CSI** procedures. Please note that, in pursuit of its policy of continuous improvements, **CSI** reserves the right to modify its procedures.

The client has an obligation and responsibility to provide **CSI** with all necessary access to documentation, product samples, manufacturing and test facilities to allow **CSI** to deliver the services contracted for under this agreement. The client guarantees the completeness and accuracy of product samples, drawings, documentation given to **CSI** or an independent third party test laboratory, in compliance with the requirements of the Product Assessment Scheme and specified National or International Standard, Specification or Industry Code.

The client hereby warrants and covenants with **CSI** that it will at all times during the life of the agreement comply with all reasonable requirements necessary for the issuance of the Certificate of Compliance and associated Product Compliance Schedule, 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 **CSI** as are necessary to enable certification to be issued and maintained.

The client hereby warrants the completeness and accuracy of all documents and information supplied to **CSI** for the purposes of this agreement.

The client undertakes to notify **CSI** in writing, of any conditions, which would or could affect a decision by **CSI** to issue or maintain certification (this includes complaints relating to a certified



product's compliance with the requirements of the relevant standard and associated corrective and preventative actions, product recalls or failures). **CSI** shall also be given access to all material in relation to the above. The client shall also have in place internal procedures to assure **CSI** is kept informed at all times.

CSI 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.

If any of the terms and conditions of this agreement is 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.

3.0 Warranties and Liabilities

To the extent permitted by law, **CSI** will not be responsible in tort, contract or otherwise for any loss or damage, including for any personal injuries or death, or any consequential loss, loss of markets and pure economic loss, suffered by the client, whether or not the loss or damage occurs in the course of performance by **CSI** of this agreement or other services or in events which are in the contemplation of **CSI** and/or the client in events which are foreseeable by **CSI** and/or the client.

To the extent that liability has not been effectively excluded by the preceding clause, then at the election of **CSI**, **CSI** limits its liability to:

- The supply of the particular service again; or
- The payment of the cost of supplying the particular service again.

The warranties set out in this agreement are the sole and express warranties between the parties and the parties make no expressed, implied, oral, written or any other warranties in respect of the agreement.

The client is liable for ensuring that the product, process or service is compliant with ongoing certification procedures or requirements and the specified standard indicated on the certificate of compliance. **CSI** accepts no liabilities for the client's product, process or service when sold in the marketplace.

Upon certification of a product the design of all major and critical components and materials in the product and manufacturing, assembly and testing processes shall be reviewed, verified, documented and frozen, and cannot be changed without the written authorisation of **CSI**. In addition the;

- Location where critical components are manufactured and/or critical process are implemented and the final assembly, inspection and testing of the certified product takes place (client's premises); and
- The client's organisation or management structure

shall not be significantly changed such that the certified product would no longer comply with the nominated standard and this document.



Whilst changes and modifications are a routine part of the manufacturing environment **CSI** must be kept informed of any planned major changes and modifications. Implementation of such major changes and modifications shall only occur upon written approval from **CSI**.

Except in the case of deliberate neglect on the part of **CSI**, its employees, servants or agents, **CSI** shall not be liable for any loss or damage sustained by any person due to any act or omission or error whatsoever or howsoever caused during the performance of its evaluation of conformity inspections and tests, document reviews, business assessments, certification or other services.

The provision of this clause shall not apply to any death or personal injury. The client shall, at all times, maintain adequate insurance coverage for any liability that may arise as a result of any matter done pursuant to this agreement.

4.0 Terms of Payment

Charges associated with the provision of services by **CSI** are clearly documented in the schedule of fees. Where a client is offered a service at a rate different from the schedule of fees, the agreed rate should be documented in writing and attached to this agreement.

4.1 Application Fee

The application fees will cover the setup of project files, assignment of a dedicated account manager, assistance by the account manager during the application phase, review of type test reports and associated technical documentation relating to the product to be certified. Application fees are valid for a period of 12 months from the date of acceptance of the application by **CSI** and are non-refundable. Applications not progressed to certification within the 12 month period shall be liable for cancellation by **CSI**. Voluntary terminations of applications by clients are required to be made in writing.

Once the application process is completed, a business review will need to be completed at the manufacturing site. Upon successful completion of this business review, a certificate of conformance together with the applicable product compliance schedule shall be issued. Please note that all applicable fees and charges will need to be paid prior to the planned visit to the manufacturing site.

4.2 Annual Fee

The annual fee will cover a one day business review at the manufacturer's site including travel costs, contact with the account manager during the certification phase and use of the Trademark logo. Please note that no royalty or label fees are chargeable/payable for certified products bearing the PAS-Mark logo. The annual fee will also cover **CSI**'s participation in professional organisations, seminars, forums i.e. standards writing bodies, government, consumer and industry bodies, promotion of the Product Assessment Scheme, maintenance of the product database of certified clients.

Annual business reviews will fall due within forty two days (6 weeks) prior to the anniversary date of certification or on a mutually agreed and documented date arranged with the client.



Annual Fees invoices will be issued 42 days in advance of the anniversary date of certification. Annual fee will need to be paid in full prior to the business review taking place. Failure to make payments in full and on time may result in the suspension or cancellation of the certificate of compliance and associated product compliance schedule.

GST taxes imposed by the Australian Taxation Office will be payable by Australian based companies making payments on behalf of their clients manufacturing outside of Australia. Please refer to ATO Goods and Services Tax Ruling GSTR2000/31 for details.

International clients are required to pay **CSI** the full invoiced amount. Additional local taxes, charges and bank payment transfer fees remain the client's responsibility.

Charges relating to product type testing at a recognised third party laboratory are the responsibility of the client. Should a client request **CSI** to arrange type testing at a recognised, third party test laboratory on their behalf, a 10% administration fee on top of the actual cost of the type testing will be charged by **CSI**, payable by the client in advance of the service.

CSI reserves the right to schedule the delivery of a service to ensure the costs associated with the delivery of the service are recovered from the fees paid by the client. Where an applicant or client requires an unscheduled visit, any additional costs associated with the service provision will be the responsibility of the client.

The standard duration for a business review for one product standard is one day i.e. 7 hours. business review's for additional product standards at the same site may require an additional half-day per additional product standard.

Business review's shall be conducted once per calendar year at the client's, certified manufacturing site. Any increase in the frequency of the business review will be fully documented. All costs relating to the additional service will be paid by the client in advance.

CSI reserves the right to change or amend the Schedule of Fees, PAS-004, at any time notifying the clients in writing of the changes or amendments.

CSI reserves the right to recover any costs incurred in the provision of services. Should the client postpone or cancel a mutually agreed and documented business review or other arrangement. **CSI** reserves the right to charge part or the entire fee for the agreed arrangement to cover the costs associated with scheduling and provision of service. This sum will not be discounted off future chargeable fees and charges.

5.0 Type Test Samples

Samples submitted for type testing remain the property and the responsibility of the client at all times. **CSI** shall not be liable for any damage or loss of such items for any reason whatsoever.

The client is also solely responsible for submitting the product to the third party laboratory for evaluation and/or type testing. Payment of all associated costs and the return/disposal of such samples unless otherwise arranged with **CSI** in accordance with Clause 4.0 above, remain the responsibility of the client.



6.0 Indemnity

The client shall indemnify and deem faultless **CSI**, its officers, directors, employees and agents from and against any claim, action and demand (including reasonable solicitor fees, costs and expenses on a solicitor/client basis) by any person for personal injury or death or damage to property by whomsoever owned or financial loss suffered by any person arising from:

- The services provided by **CSI** except to the extent that such claims are caused by the neglect of **CSI**;
- The use or misuse by the client of any certificate, or trade mark such as the PAS-Mark provided by **CSI** in accordance with this document; or
- Any breach of this document or rules & requirements of the Product Assessment Scheme.

7.0 Confidentiality

Apart from what may be required by law and any accreditation requirements, **CSI** and the client will treat the agreement and working relationship between them 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 the agreement.

8.0 Suspension and Cancellation

Should **CSI** obtain documented or oral evidence in relation to a client's compliant product or manufacturing facility which places doubt on the basis of certification granted the Managing Director of **CSI** may suspend the client's certificate of conformance and associated product compliance schedule by giving written notice. Typical reasons which may initiate suspension are;

- Evidence suggesting that certified products do not comply to the requirements of the relevant standard, where direct cause and effect have not been established
- Certified Product does not comply with the relevant standard, specification or industry code.
- Non payment of **CSI** fees or charges

The client will be notified in writing as to the reason for the suspension of their certification. The client will be required to take immediate corrective actions within the specified period and notify **CSI** in writing of the corrective measures put in place to enable **CSI** review the corrective actions with a view to reversing the suspension.



In the interim, where the client's certification is under suspension, the client shall not make any misleading claims as to their certified status and cease the use of the certificate of compliance and if applicable the use of the associated trade mark i.e. the PAS-Mark logo on the products manufactured since the date of notification of suspension. **CSI** may also require the following:

- That no certified product is placed upon the market
- That potentially defective certified product is subject to corrective action including a possible product recall

The client will be notified in writing of the reversal of the suspension upon **CSI**'s approval of the corrective actions taken and appropriate corrective measures put in place.

If the above is not achieved and the client's certification remains suspended for a period more than 90 days, then the **CSI** Board will cancel the licence with immediate effect and advise the client of the cancellation in writing.

9.0 Complaints and Appeals

9.1 General

Any client or third party has the opportunity to complain or appeal against **CSI**'s decision on the following grounds:

- Refusal on the acceptance of an application for certification
- Refusal to recommend certification
- Withdrawal, suspension or cancellation of certification
- Rejection of a scope or part of a scope of certification
- Third party appeal or representation against the granting of a certificate to a client

All complaints, appeals and representations shall be treated as strictly confidential by all parties concerned.

9.2 Complaints

CSI will accept written and signed complaints via mail, email or fax and they should be traceable to the complainant, identifiable to the certified product of the client/manufacturing site involved. Complaints may also be made against a client who is in the process of being certified.

Upon receipt of a complaint, **CSI** will acknowledge in writing the receipt of the complaint, allocate a complaint ID number, review/assess the complaint, initiate appropriate action (if any). Upon completion of the appropriate action(s) required, advise the complainant the outcome/result of the investigation and the status of the complaint.



9.3 Appeals

A written, signed and dated notice of the appeal shall be served on the Managing Director of **CSI**. The appeal shall also contain all reasons as well as documented evidence.

The Managing Director shall acknowledge receipt of the appeal in writing. The appellant shall also be advised that the cost of the appeal shall be borne by the appellant should the decision of the appeals committee go against the appellant. The appellant shall be afforded the right to withdraw the appeal at any stage of the process, **CSI** reserve the right to claim costs involved in investigating the complaint to that point in time.

The Managing Director or delegate shall gather all documentation regarding the matter including the submission from the account manager involved for presentation to the Board. The Managing Director will also call a meeting of the Board to handle this matter.

The appellant shall be informed of the constitution of the Board. The appellant also has the right to reject any chosen member on the basis of conflict of interest only. If a quorum is not achieved, an independent replacement shall be nominated upon agreement between **CSI** and the appellant. Copies of the submission must be distributed to all members eligible to vote. Members will be given the right to consult specialists in the relevant field if they so desire. Electronic submission of documentation and voting may be acceptable.

The appeals committee decision shall be deemed unanimous and final. The Managing Director shall communicate the findings/decision of the appeals committee to the appellant in writing providing supporting documented evidence. A copy of this communication should be placed on the relevant file and a copy provided to the account manager involved. The Managing Director shall also ensure that appropriate corrective action (if any) is in place to eliminate future occurrences.

Note: if a Director of **CSI** is the account manager involved in any way with the appeal, his/her involvement in the above procedure and the Board shall be substituted by an alternative Director of **CSI**

10.0 Termination

This agreement is unlimited in timeframe and must be cancelled to become null and void. Either party may terminate this agreement by giving one month's (30 days) notice in writing to the other party. **CSI** will be entitled to invoice the client for the work performed and expenses incurred up to the actual date of termination of agreement.

Termination may also occur by default if;

- Either party is notified by the other party in writing of any material breach of this Agreement
- If either party goes into liquidation, receivership or if an administrator is appointed for all or part of the undertaking thereof. The receiver or administrator should notify the other party of its intention not to terminate the agreement.
- If either party ceases to trade (in part or in full).



In the event of the agreement being terminated, suspended, cancelled or expired, the certificate of compliance, product compliance schedule and the trade mark issued pursuant hereto shall with immediate effect, become invalid and the client shall cease the use of the same returning them to **CSI** along with all other documentation and other items issued pursuant thereto or bearing an indication of such certification or trade mark.

11.0 Changes to the Terms and Conditions

CSI reserves the right to change/amend the following;

- PAS-001 Rules & Requirements.
- PAS-002 Terms, Conditions & Appeals Process.
- PAS-003 Use of Certificate & Trade Mark Logo
- PAS-004 Schedule of fees (or other written agreement on pricing reached with **CSI**).
- PASTS-000 Technical Specifications General Requirements

as well as supporting technical specifications and its procedures in relation to the service delivery. The most up-to-date documents are issued to clients as part of the application process.

12.0 Arbitration

In the event of there being any dispute between the parties, the party claiming dispute must notify the other party of the dispute giving full details of the dispute. If after 28 days the dispute is not resolved the dispute shall be referred to an arbitrator within 14 days.

The arbitrator will be the nominee of the President; if he/she is unavailable, then the next most senior officer of the NSW Law Society. The parties must do all things they are reasonably able to ensure that a decision is received from the arbitrator within 21 business days of the matter being referred to arbitration.

The arbitration must be conducted in accordance with the Rules for the Conduct of Commercial Arbitrations of the Institution of Arbitrators Australia and, subject to those Rules, in accordance with the provisions of the Arbitration (Civil Actions) Act NSW 1983.

The parties will be bound by the terms of the decision of the Arbitrator and must immediately execute the documentation directed by the Arbitrator as necessary to enforce their award/decision.

13.0 Notice

Any notice or proceedings served must be in writing and will be deemed to be duly served if sent by pre-paid registered mail to the address of the party as appearing herein or as may be subsequently notified by the other.

14.0 Law

This agreement is governed by the Laws of New South Wales and the Commonwealth of Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.