

**< CEN NATIONAL MEMBER BODY / CEN AFFILIATE >**

as Transferor

**< CERTIFICATION BODY >**

as Transferee

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**TRANSFER AGREEMENT**

RELATING TO

THE KEYMARK



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**< DATE >**

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### **Schedule**

1. List of referenced documents
2. European Standards
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4. CEN-documents relating to requirements to be complied with by Certification Bodies in the framework of the Keymark System

### **Annexes**

Certificate of accreditation

Certificate of empowerment

**THIS TRANSFER AGREEMENT** is made on **< date >**

**BETWEEN**

1.- **< full identification of the CEN National Member or CEN Affiliate >**,

for the purposes of this Agreement represented by **< name >**,

hereinafter referred to as ***“the Transferor”***

and

2.- **< full identification of the Certification Body >**,

for the purposes of this Agreement represented by **< name >**,

hereinafter referred to as ***“the Transferee”***

**WHEREAS**

- (A) The European Committee for Standardization (***“CEN”***) contributes to the implementation of European Systems for conformity assessment to Standards.
- (B) CEN offers a Certification System for manufacturers or suppliers to demonstrate compliance of their products with European Standards by using a European Standards conformity mark for product marking, called ***“the Keymark”***, with the following design :



- (C) The Keymark is a certification collective trade mark, the equally shared property of CEN and CENELEC, the European Committee for Electrotechnical Standardization, both with registered office at 1050 Brussels, Rue de Stassart 35.
- (D) The Keymark is legally protected in the name of CEN and CENELEC through international and national registrations where such registration is necessary to assure legal protection.
- (E) The Keymark is operated by Certification Bodies empowered by CEN for granting to manufacturers or suppliers the right to use the Keymark on their products, such right being called ***“European Mark Licence”***.
- (F) Any application for empowerment as a Certification Body being authorised to grant European Mark Licences is filed with the CEN Certification Board through the Transferor, responsible for promoting and protecting the Keymark on national level, on the basis of an assignment of rights by CEN.

- (G) The Transferor has entered into an assignment agreement with CEN on **< date >** (***“the Assignment Agreement”***)
- (H) The granting of European Mark Licences by each empowered Certification Body is governed by a separate agreement entered into by each such empowered Certification Body and the Transferor, as well as by all documents incorporated therein by reference.

**NOW THEREFORE**, the parties agree as follows

**1.- DEFINITIONS**

Unless the context requires otherwise, words and expressions defined in the documents listed in Schedule 1 hereto shall have the same meaning in this Agreement.

**2.- TRANSFER**

The Transferor hereby grants to the Transferee, who accepts, for the term of this Agreement, a right to use the Keymark exclusively for the purpose set out in clause 3, such right not being transferable to any other third party, directly or indirectly, in whole or in part.

**3.- PURPOSE OF TRANSFER**

- 3.1. By virtue of this Agreement, the Transferee is authorised to grant to manufacturers and to suppliers the right to use the Keymark (***“European Mark Licences”***) for products which comply with the European Standards listed in Schedule 2 hereto, as amended from time to time, and which are certified in accordance with the provisions of the European Mark Scheme and the CEN Keymark Scheme Rules.
- 3.2. The transfer of such right does not affect, in any way whatsoever, the property rights of CEN and CENELEC with the sole exception of the restrictions entailed by this Agreement.

**4.- FEES**

- 4.1. The fees for the use of the Keymark are fixed by the CEN Certification Board and listed in Schedule 3 hereto, as amended from time to time. Such fees are levied by the Transferee.
- 4.2. The fees collected by the Transferee are transferred to the Transferor within the first quarter of the year following collection on the basis of the recorded number of European Mark Licences granted in the preceding year.
- 4.3. Fees for testing, certification and inspection of the products concerned are independent from the European Mark Licences fees. Such fees are fixed and invoiced in accordance with Clause 6 of the CEN Keymark Scheme Rules.

## 5.- TERM

This Agreement is entered into for an indefinite term, effective on **< date >**.

## 6.- TERMINATION

- 6.1. This Agreement may be terminated by either party upon six (6) months written notice to the other party.
- 6.2. This Agreement shall be terminated as from right in case of a material breach of this Agreement by the Transferee and / or upon the occurrence of one or more of the following events ("**Termination Events**") :
- (i) the termination of the certification activities of the Transferee in the framework of the European Certification Mark System;
  - (ii) the withdrawal of all European Standards and Specifications on which the European Certification Mark Scheme is based;
  - (iii) the failure of the Transferee to comply with the CEN Keymark Scheme Rules;
  - (iv) the non-compliance of the Transferee with the Requirements for Certification Bodies operating the CEN Keymark Scheme Rules, including, without limitation, the accreditation as provided therein;
  - (v) the bankruptcy and / or dissolution of the Transferee,
- unless, in case of a material breach, the Transferee resolves the failure within one (1) month after formal notice by registered mail from the Transferor.
- 6.3. The Transferee agrees that, upon termination of this Agreement, all right, title and interest in and to the Keymark shall revert to the Transferor without indemnification to the Transferee.
- 6.4. Should this Agreement be terminated, the transfer of the right to use the Keymark shall immediately terminate and the Transferee shall immediately cease using the Keymark.
- 6.5. Termination upon the occurrence of a Termination Event shall be without prejudice to any rights of the Transferor to claim damages from the Transferee.

## 7.- REPRESENTATIONS AND WARRANTIES

(a) *by the Transferor*

- 7.1. The execution of this Agreement by the Transferor and the performance by it of any obligation hereunder does not and shall not violate or be in conflict with any agreement, commitment, obligation or understanding by which the Transferor is bound.

In particular, it does not infringe any provision of the Assignment Agreement entered into between the Transferor and CEN.

(b) *by the Transferee*

- 7.2. The Transferee shall use its best endeavours to contribute to the promotion and the legal protection of the Keymark, in accordance with the rules set out by CEN.
- 7.3. The Transferee shall not develop nor promote any European certification mark system which would compete with the Keymark System.
- 7.4. The Transferee shall use the Keymark for the exclusive purpose set out in clause 3 and in conformity with the provisions of the documents listed in Schedule 1 hereto, as amended from time to time.
- 7.5. The Transferee has obtained all required approvals, if any, for entering into this Agreement.
- 7.6. The Transferee fully complies with the Requirements for Certification Bodies operating the CEN Keymark Scheme Rules and the documents listed in Schedule 4 hereto, as amended from time to time.

The evidence of accreditation and of the empowerment of the Transferee is attached as Annexes to this Agreement.

- 7.7. The Transferee shall strictly observe, and, to the extent applicable, procure that any manufacturer or supplier observes the provisions laid down in the CEN Keymark Scheme Rules, in particular, without limitation, Clauses 5, 6, 7, 8 and 10 thereof.

The applicable provisions shall be laid down or referred to in the agreement which the Transferee shall execute with each manufacturer or supplier to whom it grants a European Mark Licence.

- 7.8. The Transferee shall submit to the Transferor a yearly report on its activities pursuant to this Agreement.

## **8.- LEGAL PROTECTION OF THE KEYMARK**

- 8.1. In the event of any infringement of the Keymark or other rights of CEN and / or the Transferor described herein, the Transferee shall promptly notify the Transferor in writing of any such infringement of which it becomes aware.
- 8.2. The Transferor shall inform the Transferee of the decision taken by CEN on any legal action to be taken for the protection of the Keymark.

If a legal action has to be conducted against any third party, CEN shall decide in whose name such legal action shall be conducted.

- 8.3. Any such legal action shall be conducted through attorneys approved by CEN.

Costs for legal actions shall be paid for by CEN, except when attributable to acts or omissions of the Transferee, in which case such costs shall be paid for by the Transferee.

## **9.- NOTICES**

- 9.1. Any notice or other communication or document to be made or delivered under this Agreement shall be made or delivered by fax or otherwise in writing.
- 9.2. Each notice, communication or other document to be delivered to any party to this Agreement shall be made or delivered to that person at the address or fax number as set out below :

(a) the Transferor

**< address + fax number >**

(b) the Transferee

**< address + fax number >**

Any notice shall be deemed to be received, except other evidence :

- (i) when delivered by fax, at the time of dispatch,
- (ii) when delivered by registered mail, at the confirmation of delivery,
- (iii) when delivered by unregistered mail, seven days after the sending date.

## **10.- SEVERABILITY**

In case any provision of this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

## **11.- GOVERNING LAW AND JURISDICTION**

- 11.1. This Agreement is to be interpreted and construed in accordance with Belgian law.
- 11.2. The parties hereto declare and recognise that any and all disputes relating to the execution and / or the performance of this Agreement shall be finally and definitively settled by the CEN Certification Board.
- 11.3 Failing settlement by the CEN Certification Board, the parties hereto agree to settle the disputes in accordance with the CEPANI (\*) arbitration rules.

(\*) CEPANI = Belgian Centre for Arbitration and Mediation (<http://www.cepani.be>)

**12.- COUNTERPARTS**

This Agreement is executed in **< number >** counterparts, each of which is deemed to be an original and any party recognising to have received one counterpart.

**IN WITNESS WHEREOF** this Agreement has been executed by the parties hereto and is hereby delivered on the date first before written.

For the Transferor,

\_\_\_\_\_

\_\_\_\_\_

For the Transferee,

\_\_\_\_\_

\_\_\_\_\_

## **SCHEDULE 1**

### **List of referenced documents**

1. The CEN Certification Board Internal Regulations
2. CEN/CENELEC European Certification Mark System – Keymark System – CEN Keymark Scheme Rules
3. Requirements for Certification Bodies operating the CEN Keymark Scheme Rules

## SCHEDULE 2

### European Standards

#### < list of the European standards for which the empowerment applies >

e.g.:

- EN 13162 Thermal insulation products for buildings – Factory made mineral wool (MW) products – Specification
- EN 13163 Thermal insulation products for buildings – Factory made products of expanded polystyrene (EPS) - Specification
- EN 13164 Thermal insulation products for buildings – Factory made products of extruded polystyrene foam (XPS) - Specification
- EN 13165 Thermal insulation products for buildings – Factory made rigid polyurethane foam (PUR) products - Specification
- EN 13166 Thermal insulation products for buildings – Factory made products of phenolic foam (PF) - Specification
- EN 13167 Thermal insulation products for buildings – Factory made cellular glass (CG) products - Specification
- EN 13168 Thermal insulation products for buildings – Factory made wood wool (WW) products - Specification
- EN 13169 Thermal insulation products for buildings – Factory made products of expanded perlite (EPB) - Specification
- EN 13170 Thermal insulation products for buildings – Factory made products of expanded cork (ICB) - Specification
- EN 13171 Thermal insulation products for buildings – Factory made wood fibre (WF) products – Specification

### SCHEDULE 3

#### Fees for the use of the Keymark (European Mark Licences)

- 1 The licence fee is a flat-rate annual fee for the use of the Keymark. It serves to cover the costs of operating, promoting and protecting the Keymark system and is collected by the certification body on behalf of the CEN National Member Body (CEN NMB) and CEN.
- 2 Annual licence fee:

per product and type and production site	€ 300,-
per subtype/design variant	€ 60,-
- 3 The CEN NMB, or its appointed representative, remits (20 %) of the licence fees collected to CEN/CMC.
- 4 Settlement with the CEN Management Centre is effected within 4 weeks after receipt of the licence fees by the CEN NMB.
- 5 On the basis of the national certification scheme, certification bodies implementing the Keymark scheme will decide how to specify a product within the scheme.

## **SCHEDULE 4**

**CEN-documents relating to requirements to be complied with by Certification Bodies  
in the framework of the Keymark System**

**< text >**