

SEI Manufacturer's Agreement: NOCSAE Athletic Equipment Certification Program

This agreement made this ____ day of _____, 20____, by and between Safety Equipment Institute, 4701 Cox Road, Suite 285, Glenn Allen, VA 23060, a Virginia corporation, which with its successors and assigns is hereinafter called "SEI", and _____,
(name)

a _____ corporation, _____
(state/ country) (address)

which with its successors is hereinafter called "Manufacturer".

Whereas, SEI sponsors a certification program for safety and protective equipment and is the owner of a certification mark which may be used on certified products as set forth herein; and

Whereas, Manufacturer desires to obtain SEI certification for some or all of its safety and protective equipment and desires to obtain the right to use SEI's certification mark in connection with the marketing and promotion of said products;

Now, therefore, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1) Operation of Certification Program

- a. SEI certification shall be available to Manufacturer for product models in the categories set forth in Schedule A attached hereto.
- b. For each product model as to which it seeks SEI certification, Manufacturer shall comply with all requirements and procedures of the SEI certification program as set forth in the Certification Program Manual which is attached hereto and incorporated by reference to this Agreement. Manufacturer shall comply with the duly adopted amendments to the Manual prospectively, upon receiving not less than 90 days advance notice from SEI through controlled copy distribution.
- c. The standard for certification of each product category for which Manufacturer seeks certification shall be the one set forth in Schedule A, unless SEI informs Manufacturer that another standard has been designated for that category.
- d. The independent testing laboratories named in Schedule A (hereinafter "testing laboratory") will perform the testing in accordance with the appropriate product standard(s) at their respective testing facilities as provided for in the Certification Program Manual.
- e. The independent Quality Assurance Auditor assigned by SEI in accordance with the Certification Program Manual (hereinafter "Quality Assurance Auditor") will ascertain

whether Manufacturer complies with the quality assurance requirements as provided for in the Certification Program Manual and product standard as applicable.

- f. SEI shall collect fees and charges from Manufacturer as per the current fee schedule set forth in the Certification Program Manual. SEI reserves the right to amend such fee schedule upon sixty (60) days' notice to Manufacturer, but such fees will not be increased more than once annually and in no event will an increase be made in excess of the percentage change in the Consumer Price Index for the same period. Manufacturer shall make full payment of all properly assessed and undisputed fees and charges no later than forty-five (45) days from the date on which the statement was received from SEI.
- g. Following its internal evaluation, review and certification decision procedures in accordance with ISO 17065 requirements, SEI shall certify Manufacturer's product(s) and grant the right to use the SEI certification mark when:
 - 1. The applicable testing laboratory has reported to SEI that each product model submitted and tested successfully meets the product standard
 - 2. The Quality Assurance Auditor has reported to SEI Manufacturer complies with applicable quality assurance requirements
 - 3. Manufacturer has paid all properly assessed and undisputed fees
 - 4. Insurance requirements, specified herein, are met.
- h. SEI will maintain the secrecy of confidential information received from Manufacturer and will not (i) disclose such information to any third party, or (ii) use such information other than as necessary to certify manufacturer's product, without prior written approval of Manufacturer; except that in response to a subpoena or court order, SEI will give Manufacturer at least ten (10) days advance written notice before releasing such information to any third party, and will not release such information in the event Manufacturer interposes a timely objection to such request unless and until that objection is finally resolved in favor of the third-party requesting such information.

2) Use of Certification mark

- a. Manufacturer shall affix the SEI certification mark only to those products actually conforming to models that have been found by the testing laboratory to meet the applicable product standard(s) and which also conform to models found by the Quality Assurance Auditor to meet SEI and product standard quality assurance requirements.
- b. In the event of decertification of Manufacturer's product model(s) pursuant to the Certification Program Manual, Manufacturer shall forfeit the right to use the SEI certification mark as to such model(s), effective immediately upon receipt of notice from SEI.

- c. Whenever SEI, the testing laboratory or Quality Assurance Auditor, has reason to believe that Manufacturer is using the SEI certification mark on or in connection with any product that is a Critical or Major A nonconformance or quality system departure requiring "Correction Mandatory" as defined in the Certification Program Manual, SEI shall request that Manufacturer cease and desist all use of the SEI certification mark with respect to the affected product(s) and institute such actions as determined by SEI and the Manufacturer.
- d. In the event the Manufacturer initiates a recall or learns of a potential hazard for any product bearing or using the SEI certification mark, Manufacturer shall provide adequate notice to SEI immediately, per the requirements and procedures in *Section 17: Use of the Mark* and *Section 15: Nonconformance/ Departure or Potential Hazard* sections of the Certification Program Manual.
- e. Manufacturer shall use the SEI certification mark and the SEI name, abbreviation, design or symbol, or any other form of reference which may be interpreted to mean Safety Equipment Institute only in such form or manner as is specified in the Certification Program Manual or is otherwise expressly authorized by SEI.

3) Product Testing and Quality Assurance Audits

- a. Manufacturer shall on reasonable advance notice and at a mutually convenient date and time admit duly authorized representatives of the testing laboratory or Quality Assurance Auditor* on its manufacturing premises, during regular business hours, who shall make such periodic tests and inspections to the extent necessary to ensure that the applicable product standard(s) and quality assurance requirements are being met by Manufacturer, as provided for in the Certification Program Manual.
- b. In the event Manufacturer disputes the findings or conclusions of the testing laboratory or quality Assurance Auditor which result in denial of certification, decertification or an SEI-requested recall, Manufacturer shall be entitled to utilize the appeal process as set forth in the Certification Program Manual.
- c. Should the dispute be taken to the appeal level of the American Arbitration Association (AAA) as set forth in the Certification Program Manual, Manufacturer and SEI shall accept the decision of the Appeals Board as final and binding on both parties and enforceable at law, subject to the Manufacturer's right to seek judicial review as described in the following sentence. In the event of an adverse decision of the Appeals board, by filing an action within 10 days, the Manufacturer shall be permitted to seek judicial review in Fairfax County, Virginia Circuit Court or the United States District Court

*For certain NOCSAE standards, on-site quality audits are not required.

for the Eastern District of Virginia, Alexandria Division, which review shall be conducted on a “de novo” basis. The non-prevailing party in such proceeding shall pay all costs of the proceedings, including without limitation all of the prevailing party's expenses and attorneys' fees. Further appeal to any appellate court is prohibited.

- a. SEI or its authorized agent may conduct field testing of Manufacturer's products bearing the SEI certification mark to ascertain that the applicable standards are being met. In the event such testing discloses non-compliance with applicable standards, SEI and Manufacturer shall follow the procedures and requirements set forth in the Certification Program Manual.

4) Indemnification and Insurance

- a. Manufacturer hereby holds SEI, its officers, directors and staff harmless and indemnifies them against any loss, expense, liability or damage, including attorney's fees, arising from any and all claims with respect to:
 1. Manufacturer's certified product(s)
 2. Manufacturer's reference to SEI
 3. Manufacturer's reference to the SEI Certification Program
 4. Manufacturer's use of the SEI certification mark or
 5. Any violation by Manufacturer of the terms and conditions of this Agreement.
- b. Manufacturer shall hold harmless each testing laboratory named in Schedule A and shall indemnify each of them and their respective officers, directors, employees and agents for any and all claims, losses, liability or expenses arising from product liability claims involving Manufacturer's product bearing the SEI mark, provided acts and/ or representations of such testing laboratory(ies) involving Manufacturer's use of the SEI mark on such product are not occasioned by misconduct, negligence or errors and omissions by such testing laboratory(ies) and its officers, directors, employees or agents.
- c. Manufacturer shall hold harmless the Quality Assurance Auditor assigned by SEI and shall indemnify it, its officers, directors, employees and agents for any and all claims, losses, liability or expenses arising from product liability claims involving Manufacturer's product bearing the SEI mark, provided acts and/ or representations of such Quality Assurance Auditor involving Manufacturer's use of the SEI mark on such product are not occasioned by misconduct, negligence or errors and omissions by the Quality Assurance Auditor, its officers, directors, employees or agents.
- d. Manufacturer shall maintain in full force and effect occurrence type product liability insurance that provides minimum coverage of \$2,000,000 in the United States and names Safety Equipment Institute, its officers, directors and staff as insured parties for completed operations in the contractor category on ISO form CG 20 37 or equivalent. Prior to certification, Manufacturer shall provide to SEI a certificate of insurance

evidencing the above coverage and a copy of that portion of the policy naming Safety Equipment Institute, its officers, directors and staff as insured parties, and shall, upon demand, provide to SEI evidence satisfactory to SEI that such insurance or its equivalent remains in force. Such insurance shall remain in force so long as Manufacturer's products certified by SEI are in use. Manufacturer shall submit copies to SEI of any and all changes of its insurance policy that may affect the status of SEI as an insured party or the limits of liability.

- e. Notwithstanding the foregoing, nothing herein shall require or be deemed to require, Manufacturer to indemnify, defend or hold harmless SEI, the testing laboratory, or a Quality Assurance auditor from, or with respect to their own negligence, intentional misconduct, violation of applicable law, rule or regulation or any violation of this Agreement or the procedures outlined in the Certification Program Manual.

5) Assignment

Neither Manufacturer nor SEI shall assign this Agreement in whole or in part without the written approval of the other party, which approval will not be unreasonably withheld.

6) Termination

- a. SEI or Manufacturer may terminate this Agreement upon sixty (60) days written notice to the other party, provided, however, that SEI shall not exercise this right of termination without cause and prior approval of its Board of Directors. Non-payment of undisputed fees and charges within sixty (60) days of the date on which the statement is received from SEI, that is not cured within ten (10) days following written notice of such failure, or other material breach that is not cured within thirty (30) days following written notice from the non-breaching party, shall constitute cause for termination. In the event Manufacturer disputes any fees and charges, it shall notify SEI of such dispute, in writing, and within sixty (60) days following the receipt of SEI's billing statement. The failure to timely dispute any such billing from SEI, shall be deemed a waiver of any such dispute.
- b. Termination of this Agreement shall not relieve Manufacturer of the obligation of maintaining the insurance and indemnification with respect to any of its products, as provided in Item 4 above, or of instituting product recalls, as provided in Item 2(d) above.
- c. Termination of this Agreement shall not relieve the Manufacturer of the obligation to pay fees or other charges properly assessed which remain left unpaid as of the date of termination.
- d. Upon termination of this Agreement, Manufacturer shall discontinue at once all use of the SEI certification mark, provided however, Manufacturer shall be permitted to sell

any products in its possession or control, other than those that are subject to final determination under 2C above, that bear the SEI certification mark and properly conform to the applicable product standards and quality assurance requirements, provided such mark was affixed prior to the effective date of termination. In such case, within fifteen (15) business days after the effective date of termination, Manufacturer shall notify SEI in writing as to the remaining volume and models of product(s) bearing the SEI mark which it intends to sell. For a reasonable length of time, SEI shall, at its option, have access upon advance reasonable notice to Manufacturer’s premises and records to the extent necessary to verify this information and to ensure that Manufacturer does not use the SEI certification mark on any product other than identified above.

7) Construction

This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

8) Duration

This Agreement shall continue in effect for a period of one year from the date first written above and shall automatically be renewed thereafter for periods of one year, unless the termination rights provided for in this Agreement are exercised.

Accepted and Agreed to by:

(Company)

(Printed Name)

(Signature)

(Title)

(Date)

(Company)

(Printed Name)

(Signature)

(Title)

(Date)