



TERMS & CONDITIONS FOR FLEECE MEASUREMENT TESTING SERVICE

1. Application of these Terms

- 1.1 These terms and conditions ("**Terms**") apply to each agreement (an "**Agreement**") for the provision of a Fleece Measurement Testing Service ("**Testing Services**").
- 1.2 The parties to each Agreement are Australian Wool Testing Authority Ltd ("**AWTA Ltd**" or "**we**") and the Client ("**you**").
- 1.3 Any order which you place with us or receipt by you of test results after receiving notice of these Terms constitutes acceptance of these Terms. We must agree in writing to any additional or different Terms.

2. Requesting a Testing Service

- 2.1 You must ensure that each sample for testing ("**Sample**") is accompanied by a completed Fleece Measurement Service Request form. We may choose to conduct our Testing Services for clients who provide instructions in a manner other than by a Fleece Measurement Service Request, however, we accept no liability for any claim arising from such actions on our part.
- 2.2 You must organise and pay the costs of transport of Samples to and from AWTA Ltd, and must bear all risk of loss or damage of, or alteration to, Samples while in transit or at AWTA Ltd.
- 2.3 You are responsible for providing Samples of the appropriate weight for each test requested by you, as set out on our Fleece Measurement Service Request form. If the Sample is too small for us to perform all of the requested tests, we will select which test or tests to perform, at our discretion.

3. Entire Agreement

- 3.1 You have certain rights and remedies under the Australian Consumer Law ("**ACL**") that cannot be excluded, restricted or modified by agreement ("**Non-Excludable Rights**"). Nothing in these Terms operates to exclude, restrict or modify a Non-Excludable Right.
- 3.2 Unless agreed in writing these are the only terms and conditions that apply between us for the provision of the Testing Services. For the avoidance of doubt, this clause 3.2 shall not apply to a Consumer as defined in the ACL or as defined where the ACL is applied as a law of a State or Territory.
- 3.3 These Terms supersede and exclude all prior and other discussions, representations and arrangements relating to the Testing Services.
- 3.4 We may amend these Terms at any time by notifying you, including in any one or more of the following ways:
 - (a) printing the amended Terms and supplying them to you with a quotation;
 - (b) referring to the amendments and/or printing the amended Terms in a newsletter or Fees List; or
 - (c) posting the amended Terms on our website (www.awta.com.au).

The amended Terms will apply to any Testing Services requested by you after the notification date. Your continued use of our Testing Services after such notice will constitute acceptance of the amended Terms.

4. Warranties, Guarantees and Liability

- 4.1 (i) Where you are a Consumer as defined by the ACL, our Testing Services come with guarantees that cannot be excluded under the ACL. For major failures with the Testing Services, you are entitled:
 - (a) to cancel your Service contract with us; and
 - (b) to a refund for the unused portion, or to compensation for its reduced value.
- (ii) You are also entitled to be compensated for any other foreseeable loss or damages. If the failure does not amount to a major failure, you are entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.
- 4.2 The benefits to Consumers given by the warranty are in addition to other rights and remedies of the Consumer under a law in relation to goods or Testing Services to which the warranty relates and that cannot be excluded.
- 4.3 Other than the guarantees and warranties contained in clause 4.1, and those that cannot otherwise be excluded by law, all warranties and guarantees expressed or implied by statute, common law, equity, trade, custom or usage or otherwise in relation to the provision of the Testing Services, are expressly excluded.

- 4.4 Subject to the Non-Excludable Rights and clause 4.5, and to the extent permitted by law, we exclude all liability to you whatsoever and howsoever caused arising out of or in any way connected with, the Testing Services including without limitation, for any loss of profits, loss of business revenue, failure to realise expected profits or savings, overhead costs, loss of goodwill, loss of reputation, loss of value in any intellectual property, damages or liquidated sums payable pursuant to other agreements, other economic losses or any consequential or indirect losses of any kind.
- 4.5 Notwithstanding any provision of these Terms to the contrary or in the event of any finding of liability against us by a court of competent jurisdiction for damages incurred by you where clause 4.4 is held not to apply, the maximum liability of a party under or in connection with the Terms or relating to the Testing Services, whether in law or equity, is an amount equal to the fee charged to you or claimed by us for the provision of the Testing Services.
- 4.6 The parties agree that clause 4.5 does not apply to limit any liability you have to make payment of fees in accordance with the Terms, or liability arising from personal injury or death or fraud, wilful misconduct or negligence.
- 4.7 Neither party will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under the Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Terms, or by the wilful act, omission or negligence of the other party.

5. Testing Results

- 5.1 As we:
- (a) do not draw or supervise the drawing of the Sample, we make no warranty, implied or otherwise, as to the source of the Sample; and
 - (b) do not perform the sampling and testing in accordance with the relevant IWTO Test Method and any directly associated Regulations, we do not certify the test results.
- 5.2 You acknowledge that a test report applies only to the Sample tested, and is intended to provide you with guidance information only and not for use in commercial transactions. The following factors may affect the accuracy of the test results, and/or the extent to which the Sample is representative of the fleece as a whole:
- (a) not sealing each Sample in a plastic bag, to prevent moisture and also to keep the Samples separate from each other;
 - (b) not drawing a midside Sample; or
 - (c) providing a Sample which is smaller than the weight recommended by us for the relevant test.
- 5.3 AWTA Ltd is not liable for any claim which may arise from any person acting on information contained in the report.
- 5.4 You must not:
- (a) alter or allow alteration of reports; or
 - (b) reproduce or allow the reproduction of reports except in full.
- 5.5 We disown all responsibility, to any party, in relation to a report which has been altered.

6. Use of Information

- 6.1 We retain copyright in all material produced in the performance of the Testing Services. We reserve the right to use and disseminate the analytical results and information derived therefrom howsoever we see fit, save that we will ensure that it does not identify you or the relationship between you and the analytical results.
- 6.2 We retain any intellectual property rights incorporated or comprised in any material created by us or on our behalf in the course of providing any Testing Services and we may use such material for any purpose.
- 6.3 Information submitted to us with your Sample may be stored and used by us for the purpose of managing our business. This information will only be used in relation to the operation of the business or as may be required by law.

7. Sample Material

All Sample material remaining after testing becomes our property which we may use in any way.

8. Fees

- 8.1 We will calculate the fee according to:
- (a) the then current AWTA Ltd Raw Wool Testing Fees list, and any additional fees set out on our Fleece Measurement Service Request form as published or provided by us; or
 - (b) contract fees agreed with you for non-standard Testing Services.

8.2 You must pay the fees within 30 days of the end of the month in which our invoice is issued, unless we have agreed in writing to some other arrangement. We may charge interest on overdue invoices in the amount fixed from time to time under the *Penalty Interest Rate Act 1983* (Vic) and recover all reasonable legal costs and expenses we incur in effecting recovery of any outstanding monies.

8.3 All payments must be made in Australian dollars unless otherwise agreed.

8.4 If you do not comply with our payment terms in accordance with this Clause 6, we may refuse to conduct further testing for you and any related party until payment in full is made or alternative payment methods are arranged and agreed between you and us.

9. Taxes

You must pay any tax, levy or impost imposed on the Testing Services provided under an Agreement, including but not limited to any goods and services tax, in addition to our fees at the same time that you pay our fees.

10. Delay in Meeting Service Level

While we will make all reasonable endeavours to meet any stated service level, we cannot guarantee that we will do so. We are not liable for any loss arising from delay in meeting a service level.

11. Sub-contracting

We may, after notifying you, sub-contract all or part of the Testing Services to an external laboratory. These Terms (except this clause) apply to Testing Services sub-contracted as if we had performed all of the Testing Services ourselves

12. Dispute Resolution

12.1 The parties must attempt to resolve any dispute as quickly as possible. However, if such dispute is not resolved within 20 business days of notification by one of the parties to the other of the particulars of the dispute, before issuing proceedings at court, either one of the parties may refer the dispute to mediation, administered by the Australian Commercial Disputes Centre in accordance with its guidelines for commercial mediation. Each of us must bear our own costs of the mediation.

12.2 Should the matter be referred to mediation under clause 12.1, neither one of the parties may commence court proceedings concerning a matter in dispute unless the matter has not been resolved within 90 days of the referral.

13. Termination

13.1 Without affecting any other rights of a party, either party may, by notice in writing to the other party, immediately terminate the Terms if the other party:

- (a) breaches any provision of the Terms and the breach is not:
 - (i) remedied within 7 days after receipt of a notice from the first party requiring it to remedy the breach;
 - (ii) capable of being remedied;
- (b) ceases to be able to pay its debts as they become due; or
- (c) becomes subject to any form of insolvency administration.

13.2 Without limiting the generality of any other clause in these Terms, we may suspend the Testing Services if you are in breach of any term of the Terms and we have given written notice of that breach which specifies what conduct we require from you to remedy the breach.

13.3 If we exercise our rights pursuant to clause 13.1 or 13.2 to terminate or suspend any Testing Services, we will immediately be entitled to invoice you for work in progress at our current Prices. This clause does not limit or affect any other remedy which may be available to us including seeking compensation for any loss or damage suffered by us.

13.4 Termination does not affect either party's rights and obligations that accrued before that termination, including the payment of fees to us.

13.5 Clauses of these Terms which, by their nature, are intended to survive termination will continue in force.

14. Force Majeure

14.1 If an Uncontrollable Event occurs:

- (a) the party affected by the Uncontrollable Event ("**Affected Party**") must notify the other party as soon as practicable; and

- (b) the obligations of the Affected Party under these Terms will be suspended to the extent that they can't be complied with because of the Uncontrollable Event.

- 14.2 If a failure or delay in performance as a result of the Uncontrollable Event exceeds 60 days, either party may immediately terminate the Testing Services by written notice to the other.
- 14.3 Without limiting clause 14.1, if we are the Affected Party the Testing Services may be totally or partially suspended by us during any period in which we may be prevented or hindered from testing, delivery or supply as a result of an Uncontrollable Event or where such testing, delivery or supply is rendered materially more expensive by such circumstances.
- 14.4 In this Clause 14, "**Uncontrollable Event**" means an event beyond the reasonable control of a party, including without limitation, strikes, and other industrial action affecting a party, inability to obtain any necessary materials or inputs, equipment, facilities or Testing Services on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication facilities.
- 14.5 Neither party shall not incur any liability to the other in respect of such suspension of Testing Services under this Clause 14.

15. Claims

- 15.1 You agree that no claim in respect to any Testing Services can be made unless we receive a substantiated written Claim at the address provided in Clause 19 within 30 days from our completion of the supply of the Testing Service. The Claim shall specify in detail the matter which gave rise to the Claim and shall include all relevant supporting material. You are responsible for your expenses in making any Claim.
- 15.2 "**Claim**" means a claim, action, suit, proceedings or demand made against us, however it arises, whether on a representation, in tort, for negligence, under a statutory provision (including the ACL and where the ACL is applied as a law of a State or Territory) or under a contractual term implied by statute or otherwise and whether it is present or future, fixed or unascertained, actual or contingent.

16. Consent to Electronic Communications

You agree that we may provide you in electronic form any information or other communications regarding our Testing Services. These communications may be provided through our website, e-mail, text message or another website/electronic platform. When you visit our website, use the Testing Services, or communicate with us electronically, you consent to receive communications from us electronically.

17. Governing Law

These Terms are governed by the laws in force in Victoria, and you and us each submit to the non-exclusive jurisdiction of the courts of that State.

18. General

- 18.1 If part or all of any provision of these Terms or their application to any person or circumstance is illegal or unenforceable, the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or part of it cannot be so interpreted, the provision or part of it will be severed from these Terms and the remaining provisions of these Terms continue in force.
- 18.2 Where you comprise two or more persons, an agreement or obligation to be performed or observed by you binds those persons jointly and each of them severally.
- 18.3 A reference in these Terms to a "business day" is a reference to a day other than a Saturday, Sunday or public holiday in the State the Testing Services will be performed and a reference to "business hours" is a reference to the hours between 9.00am and 4.30pm on a business day.
- 18.4 Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.

19. Contact Details

Melbourne Laboratory

Address: 24 Robertson Street, Kensington, VIC 3031
Telephone: (03) 9371 2100
Email: lab.mel@awta.com.au

Fremantle Laboratory

Address: 38 Clark Court, Bibra Lake, WA 6163
Telephone: (08) 9418 5333
Email: lab.fre@awta.com.au