



## TERMS & CONDITIONS FOR FLEECE MEASUREMENT TESTING SERVICES

### 1. Application of these Terms

- 1.1 These terms apply to each agreement (an “**agreement**”) for the provision of a fleece measurement testing service (a “**testing service**”).
- 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 constitutes notice and acceptance of these terms. We must agree in writing to any additional or different term.

### 2. Requesting a Testing Service

- 2.1 You must ensure that each sample is accompanied by a completed Fleece Measurement Service Request form. We may choose to conduct our testing service 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. Terms

- 3.1 “**Claim**” means a claim, action, suit, proceeding or demand made against us, however it arises, whether on a representation, in tort, for negligence, under a statutory provision (including The Australian Consumer Law or any corresponding provisions of any State or Territory legislation or similar provisions under any applicable law) or under a contractual term implied by statute or otherwise and whether it is present or future, fixed or unascertained, actual or contingent.
- 3.2 “**Consumer**” means:
  - (a) an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption; or
  - (b) a person acquiring goods or services at a price not exceeding \$40,000; or
  - (c) a person acquiring goods or services ordinarily acquired for personal, domestic or household use or consumption.

### 4. Entire Agreement

- 4.1 Clause 4.2 and 4.3 shall not apply to a Consumer.
- 4.2 Unless agreed in writing, these are the only terms and conditions that apply to each agreement between us for the provision of testing services.
- 4.3 These terms supersede and exclude all prior and other discussions, representations and arrangements relating to the testing services.
- 4.4 Where you are not a Consumer, these terms will apply to the exclusion of all other terms and conditions for the provision of the testing services.
- 4.5 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 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 internet site ([www.awta.com.au](http://www.awta.com.au)).

Your continued use of our testing services after such notice will constitute acceptance of the amendment.

## **5. Warranties, Guarantees and Liability**

- 5.1 This clause does not apply to a Consumer with the exception that clause 5.4 shall apply where testing services are acquired at a price not exceeding \$40,000 and are not of a kind ordinarily acquired for personal, domestic or household use or consumption.
- 5.2 We will carry out the testing services with due professional care and skill.
- 5.3 Other than the warranties contained in 5.2, to the maximum extent permitted 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 Services, are expressly excluded. Where the exclusion of any of the warranties and guarantees referred to in this sub-clause would be illegal, our liability for breach of such warranty or guarantee is limited in the manner set out in sub-clause 5.4.
- 5.4 AWTA Ltd's liability for its breach of sub-clause 5.2 or a non-excludable consumer guarantee implied into these terms by law is limited to any one of the following as determined by us:
- (a) the supplying of the testing services again; or
  - (b) the payment of the cost of having the testing services supplied again.
- 5.5 To the extent permitted by law and notwithstanding anything else contained in these terms, where you are not a Consumer, we exclude all liability whatsoever to you 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 howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort.

## **6. Testing Results**

- 6.1 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.
- 6.2 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.
- 6.3 AWTA Ltd is not liable for any claim which may arise from any person acting on information contained in the report.
- 6.4 You must not:
- (a) alter or allow alteration of reports; or
  - (b) reproduce or allow the reproduction of reports except in full.
- 6.5 We disown all responsibility, to any party, in relation to a report which has been altered.

## **7. Fees**

- 7.1 We will calculate the fee according to:
- (a) the AWTA Ltd Raw Wool Testing Fees list in force from time to time, and any additional fees set out on our Fleece Measurement Service Request form; or
  - (b) contract fees agreed with the Client for non-standard testing services.
- 7.2 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.

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

## **8. Taxes**

8.1 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.

## **9. Delay in Meeting Service Level**

9.1 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.

## **10. Liability**

10.1 You acknowledge that we have not made any statement or other representation, not expressly stated in these terms, which has induced you to enter into an agreement.

10.2 No Claim in respect to the supply of the Services may be made unless we receive a substantiated written Claim within 30 days from our completion of the supply of the Services. The Claim shall specify in detail the matter which gives rise to the Claim, the nature of the Claim, the amount claimed and how the amount is calculated.

## **11. Dispute Resolution**

11.1 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.

11.2 Should the matter be referred to mediation under clause 11.1, 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.

11.3 AWTA Ltd shall in any event be discharged from all liability whatsoever in connection with the supply of the Services unless suit is brought within six (6) months from the completion of the supply of the Services.

## **12. Indemnity**

12.1 You must at all times indemnify us and our officers, employees, contractors and agents ("those indemnified") against any loss or liability (including reasonable legal costs and expenses) arising from any proceedings or debt recovery actions against those indemnified where such loss or liability was caused by:

- (a) a breach by you of an agreement;
- (b) incurred by those indemnified in enforcing any rights under an agreement with you; or
- (c) a claim or liability arising from the possession of, or the acting upon a report by a third party.

## **13. Termination**

13.1 Without limiting the generality of any other clause in these terms, we may cease to fulfil work in progress or refuse to commence new work for you if you are in breach of any term of an agreement.

## **14. Force Majeure**

14.1 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 through any circumstances outside our reasonable control or where such testing, delivery or supply is rendered materially more expensive by such circumstances.

14.2 Circumstances beyond our reasonable control shall include without limitation, strikes, and other industrial action affecting AWTA Ltd, inability to obtain any necessary materials or inputs, equipment, facilities or services on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication facilities.

14.3 We shall not incur any liability to you in respect of such suspension.

**15. General**

- 15.1 If part or all of any provision of these conditions or its 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 conditions and the remaining provisions of these conditions continue in force.
- 15.2 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.

**16. Sub-contracting**

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

**17. Use of Information**

- 17.1 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.
- 17.2 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.

**18. Sample Material**

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

**19. Governing Law**

These Terms and Conditions 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. If any part of these Terms and Conditions are rendered ineffective, void, voidable, illegal or unenforceable, that part shall be severed therefrom and these Terms and Conditions shall be read and construed for all purposes as if that part were not contained therein.

**20. Waiver**

- 20.1 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.