



TERMS & CONDITIONS FOR RAW WOOL CERTIFICATE TESTING AND REPORT TESTING SERVICES

1. Application of these Terms

- 1.1 These terms and conditions ("**Terms**") apply to each agreement (an "**Agreement**") for the provision of a raw wool Certificate testing service or Report testing service (including a related sampling service and appraisal of wool type) ("**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. Entire Agreement

- 2.1 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.
- 2.2 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 2.2 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.
- 2.3 These Terms supersede and exclude all prior and other discussions, representations and arrangements relating to the Testing Services.
- 2.4 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, including via our weight notes or Test Request forms;
 - (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.

3. Warranties, Guarantees and Liability

- 3.1 (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 Testing 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.
- 3.2 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 services to which the warranty relates and that cannot be excluded.
- 3.3 Other than the guarantees and warranties contained in clause 3.1, 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.
- 3.4 Subject to the Non-Excludable Rights and clause 3.5, 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.

- 3.5 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 3.4 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.
- 3.6 The parties agree that clause 3.5 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.
- 3.7 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.

4. Certificate Testing Service

- 4.1 **"Certificate testing service"** means that we will certify that the test results are within the precision limits of the relevant IWTO Test Method.
- 4.2 We will provide a Certificate testing service where we supervise or conduct the weighing of the bales and the drawing of the samples in accordance with the relevant IWTO Test Method and any directly associated Regulations.
- 4.3 Subject to the Non-Excludable Rights, we will certify that the test results are within the precision limits of the relevant IWTO Test Method, but no other warranty is expressed or implied.
- 4.4 A Certificate will be issued, reporting the results in accordance with the relevant Test Method(s) and any directly associated Regulations. On request, AWTA Ltd will make available sampling, weighing and/or testing details to any person who appears to be a bona fide bearer or transferee of an original Certificate or an official copy. Photocopies and other reproductions are not recognised as Certificates.
- 4.5 Where you request that wool be sampled and tested, you must first sign a Declaration for IWTO Certificate Request, whereby you warrant that you will accurately describe the lot(s) by stating the relevant IWTO Wool Preparation Category/ies. We can refuse to supervise the sampling of wool or we can invalidate a Certificate unless you provide us with information that satisfies us that the wool is accurately described, and in such circumstances we are not liable for any loss you suffer if we refuse to supervise the sampling of wool or if we invalidate a Certificate.
- 4.6 Where you supply us with data relating to Mulesing Status ("**MS**") or Dark and Medullated Fibre Risk ("**DMFR**"), you warrant that the declared information is derived from a National Wool Declaration which has been signed by or on behalf of the wool producer. Where the accuracy of the declared information is disputed, we may invalidate or cancel the relevant Certificate unless we are supplied with information that confirms that the declared information is correct. Where we cancel a Certificate, we may reissue it as one where the MS or DMFR is described as not declared ("**ND**").
- 4.7 Subjective Appraisal
- (a) Where we provide a subjective appraisal of the wool type based on an assessment of the display sample taken in accordance with IWTO Standards as part of the Certificate testing service we will provide it in the form of an AWEX-ID. We will also provide you with the most current TEAM-3 processing predictions. Our Subjective Appraisal Guidelines as published by us from time-to-time apply to each such appraisal.
 - (b) We will guarantee that the AWEX-ID determined is a fair and adequate description of the non-measured wool characteristics as applied by a qualified AWEX-ID Appraiser. This guarantee does not extend to any other aspect of the service including processing quality and/or performance.
 - (c) Any queries as to the accuracy of the AWEX-ID determined by us will be dealt with in accordance with the Subjective Appraisal Guidelines as published by us from time-to-time. Where conciliation is necessary to resolve a dispute between us, it will be conducted by the Australian National Committee of IWTO. Where conciliation is unsuccessful in resolving the dispute, the matter will be referred to the Australian National Committee of IWTO Arbitration Panel and conducted under the arbitration rules specified in the IWTO Blue Book.

5. Report Testing Service

- 5.1 **"Report testing service"** means that we will not certify the test results, but will instead issue a Report.
- 5.2 We will carry out a Report testing service if any of the following circumstances apply:
- (a) We conduct a dark and/or medullated fibre test.

- (b) We do not draw or supervise the drawing of the sample (in which case we make no warranty, implied or otherwise, as to the source of the sample).
- (c) We do not perform the sampling and testing in accordance with the relevant IWTO Test Method and any directly associated Regulations, whether because:
 - (i) we use a Test Method determined by ourselves; or
 - (ii) we use a Test Method requested by you.
- (d) The Report includes test results issued by a test house other than AWTA Ltd. We cannot attest to the accuracy of the test results or to the test procedures employed, because the test results were not arrived at by sampling and testing procedures under our control or supervision.

5.3 You acknowledge that a test Report applies only to the sample tested, is intended to provide you with guidance information only and not for use in commercial transactions. No responsibility can be accepted by AWTA Ltd for any Claim which may arise from any person acting on information contained in the Report.

6. Provisions Applicable to Both Certificate Testing Service and Report Testing Service

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

6.2 Certificates and Reports are available in hard copy or electronic format.

6.3 You must not:

- (a) alter or allow alteration of Certificates or Reports; or
- (b) reproduce or allow the reproduction of Certificates or Reports except in full.

We disown all responsibility, to any party, in relation to a Certificate or Report which has been altered.

7. Copyright and Use of Test Results

7.1 We retain copyright in all test results and other written material (the “material”) produced under an agreement, and subject to the confidentiality obligation set out in clause 7.3, may use it for any purpose.

7.2 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.

7.3 We will keep the material confidential, except where:

- (a) it is already in the public domain;
- (b) we are required to disclose it by law; or
- (c) we provide all or part of the material to a person presenting a Certificate or an official copy of a Certificate, in accordance with clause 4.4.

8. Fees

8.1 We will calculate the fee according to:

- (a) the then current AWTA Ltd Raw Wool Testing Fees List 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 8, 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 Levels

- 10.1 We offer 3 levels of service for IWTO Greasy Wool Core Test Certificates and IWTO Staple Test Certificates, Normal, Fast and Express, meaning that:
- (a) Normal: all Test Certificates available within 5 business days;
 - (b) Fast: 95% of Test Certificates available within 3 business days with the residue within a further 24 hours; and
 - (c) Express: 95% of Test Certificates available the following morning with the residue within 24 hours.
- 10.2 While we will make all reasonable endeavours to meet the service level selected by you, we cannot guarantee that we will do so. We are not liable for any loss or claim whatsoever arising from delay in meeting a service level.
- 10.3 Even where a service level does not apply, we make all reasonable endeavours to complete Testing Services within a reasonable time from the receipt of the sample in the laboratory.

11. Electronic Data Interchange

- 11.1 This clause applies where you use our Electronic Data Interchange (“EDI”) system to access our database of test results and other data.
- 11.2 While we make all reasonable endeavours to ensure that our database is accurate, complete and up to date, we cannot guarantee the integrity of the telecommunications line used to transmit the data to your computing system. We are not liable for any loss arising from problems with the line, including your inability to access our system or due to loss or corruption of data provided we have used reasonable endeavours to ensure that our database is accurate, complete and up to date. You are responsible for the accuracy of any data that you transmit to us that is matched to test results.
- 11.3 All data is provided on the EDI system in accordance with the Wool Industry EDP Communications Handbook. You are responsible for ensuring that your software is compatible with this format, and that it is capable of capturing all data. We are not liable for any loss you suffer because of problems with your software or your computing system, or any other problem outside our control.

12. Client’s Responsibility for Sampling Employees’ Health and Safety

You must, as far as is reasonably practicable, ensure the health and safety of our sampling employees when they are working on premises which you own or control.

13. Sub-Contracting to External Laboratories

We may, after notifying you, sub-contract all or part of any 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.

14. Dispute Resolution

- 14.1 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.
- 14.2 Should the matter be referred to mediation under clause 14.1, 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.

15. Termination

- 15.1 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:
 - (b) remedied within 7 days after receipt of a notice from the first party requiring it to remedy the breach;
 - (i) capable of being remedied;
 - (ii) ceases to be able to pay its debts as they become due; or

(c) becomes subject to any form of insolvency administration.

- 15.2 Without limiting the generality of any other clause in these Terms, we may suspend the 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.
- 15.3 If we exercise our rights pursuant to clause 15.1 or 15.2 to terminate or suspend any 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.
- 15.4 Termination does not affect either party's rights and obligations that accrued before that termination, including the payment of fees to us.
- 15.5 Clauses of these Terms which, by their nature, are intended to survive termination will continue in force.

16. Force Majeure

- 16.1 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.
- 16.2 If a failure or delay in performance as a result of the Uncontrollable Event exceeds 60 days, either party may immediately terminate the Services by written notice to the other.
- 16.3 Without limiting clause 16.1, 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.
- 16.4 In this Clause 16, "**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 services on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication facilities.
- 16.5 Neither party shall not incur any liability to the other in respect of such suspension of Services under this Clause 16.

17. Claims

- 17.1 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 20 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.
- 17.2 "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.

18. 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.

19. General

- 19.1 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 of 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.
- 19.2 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.

- 19.3 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.
- 19.4 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.

20. 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