

## TERMS & CONDITIONS FOR PRODUCT TESTING AND CONSULTING SERVICES

### 1. Application of these Terms and Conditions

- 1.1 Subject to clause 2, these terms and conditions (“**Terms**”) apply to each agreement (an “**Agreement**”) for the provision of a product testing service (including a related sampling service) or consulting service (the “**Services**”).
- 1.2 The parties to each Agreement are Australian Wool Testing Authority Ltd (“**AWTA Ltd**”) trading as AWTA Product Testing (ABN 43 006 014 106) (“**we**” or “**us**”) 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 term.
- 1.4 You will be deemed to have accepted these Terms and we will each be deemed to be bound by them if you supply to us material for testing and/or analysis or engage us to provide you with consulting work:
  - (a) after your receipt of the Terms, subject to clause 2.2; or
  - (b) prior to your receipt of the Terms and you fail to notify us in writing of non-acceptance of the Terms within 3 business hours following your receipt of the Terms.
- 1.5 “**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.
- 1.6 “**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.

### 2. Entire Agreement

- 2.1 Clauses 2.2 and 2.3 shall not apply to a Consumer.
- 2.2 Unless agreed in writing, these are the only Terms that apply to each Agreement between us for the provision of Services.
- 2.3 These Terms supersede and exclude all prior and other discussions, representations and arrangements relating to the Services.
- 2.4 Where you are not a Consumer, these Terms will apply to the exclusion of all other terms and conditions for the provision of the Services.
- 2.5 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 Services after such notice will constitute acceptance of the amendment.

### 3. Warranties, Guarantees and Liability

- 3.1 This clause does not apply to a Consumer with the exception that clause 3.4 shall apply where the 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.
- 3.2 We will carry out the Services with due professional care and skill and in accordance with our NATA (National Association of Testing Authorities, Australia) accreditation where applicable.

- 3.3 Other than the warranties contained in clause 3.2, 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 herein would be illegal, our liability for breach of such warranty or guarantee is limited in the manner set out in clause 3.4.
- 3.4 AWTA Ltd's liability for its breach of clause 3.2 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 Services again; or
  - (b) the payment of the cost of having the Services supplied again.
- 3.5 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 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.

#### **4. Samples**

- 4.1 You warrant the suitability of the samples for the purpose of the Services and the accuracy of your description of the samples.
- 4.2 You must ensure that each package containing samples is accompanied by a completed Test Request form.
- 4.3 You must organize 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. We accept no responsibility for alteration of samples while in transit.
- 4.4 You acknowledge that samples may be altered, damaged or destroyed during the conduct of the Services.
- 4.5 All articles and sample material remaining after testing become our property. Where practicable we will retain such articles and sample material not consumed in the testing service for a period of at least 1 month. All articles and sample material will be disposed of after this time.
- 4.6 You are responsible for ensuring that all samples are properly representative and for retaining any duplicate or controlled samples.

#### **5. Test Results**

- 5.1 If you specifically request a particular test, we are not liable for any loss you suffer because we perform that test when another test would have been more suitable given the quality or characteristic which you wish us to test or the end use which you intend for the material represented by the sampled material.
- 5.2 If you do not specifically request a particular test, you are responsible for providing clear, accurate and comprehensive instructions, including descriptions of the samples, whether in writing or orally (as evidenced by our file note), on the following:
- (a) the quality or characteristic which you wish us to test; and
  - (b) the end use intended for the sampled material.
- 5.3 We are not liable for any loss you suffer because the test results fail to measure the desired quality or characteristic, and/or fail to be suitable given the end use intended for the sampled material.
- 5.4 We do not warrant that the test results will meet or exceed any specifications hoped for by you.
- 5.5
- (a) The test results relate only to the sample or samples tested.
  - (b) Due to the many scientific variables involved in carrying out our testing services, we do not warrant that any test results derived from a sample will be identical or substantially similar to test results previously derived from a similar sample, using the same testing service, by AWTA Ltd or a third party.
  - (c) You acknowledge that the tests may involve an element of subjective judgment.

## 6. Consulting Services

Where you request us to provide a consulting service, you are responsible for providing clear, accurate and comprehensive instructions (including about the objectives which you wish the consulting service to achieve) and all relevant information and assistance. We are not liable for any loss you suffer because the consulting service fails to achieve any objective.

## 7. Fees

7.1 We will calculate the fee according to one of the following:

- (a) the AWTA Product Testing Fees List in force from time to time; or
- (b) an agreed fee or quotation for the particular Services or letter of opinion.

7.2 Unless clause 7.3 applies, payment is required prior to provision of the test report, letter of opinion or consulting report, after we have issued our invoice for the relevant amount.

7.3 If you have applied for and been granted a credit account with AWTA Ltd, you must pay the fees within 30 days of the end of the month in which our invoice is issued for the credit account to remain open.

7.4 All payments must be made in Australian dollars.

7.5 If you exceed our payment terms we may refuse to conduct further testing or consulting services for you and any related party until payment in full is made or alternative payment methods are arranged and agreed between us.

## 8. Taxes

You must pay any tax, levy or impost imposed on the 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. Delays

9.1 While we make all reasonable endeavours to complete the Services promptly, we are not liable for any loss arising from delay in carrying out a Service or producing a test report or letter of opinion.

9.2 Where a completion time is not specified by us, we will make reasonable endeavours to complete the Services within a reasonable time from the receipt of the sampled material or consulting request.

## 10. Acknowledgement

You acknowledge that you rely on all conclusions reached and results advised by us in connection with our supply of the Services (including any conclusions or results detailed in any written reports produced by us) at your own risk entirely. 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 with us.

## 11. Claims

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.

## 12. Indemnity

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, expenses and interest on overdue amounts calculated pursuant to the Penalty Interest Rate Act 1983 (Victoria)) 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; or
- (b) incurred by those indemnified in enforcing any rights under an agreement with you.

## 13. Test Reports and Letters of Opinion

You must not alter or allow alteration of test reports or letters of opinion. You must not reproduce or allow the reproduction of test reports or letters of opinion except in full.

#### 14. Abstracts and Advertising

Any extract, abstract or interpretation of a test report or letter of opinion must be approved by us in writing prior to its release. A test report, letter of opinion, the names AWTA Product Testing and AWTA Ltd may be used in advertising, providing the content and format of the advertisement have been approved in advance by the Managing Director of AWTA Ltd.

#### 15. Confidential Information

##### 15.1 "Confidential information" means:

- (a) any information disclosed to us by you which you designate as confidential or which we know or ought to know is confidential;
- (b) includes the information in test results, test reports, letters of opinion and consulting reports;
- (c) does not include information to the extent that the information is:
  - (i) independently developed or known by us (including because it is in the public domain);
  - (ii) independently known to a third party who contacts us about the information; or
  - (iii) required to be disclosed by law.

15.2 We must not disclose confidential information without your prior written consent, except to our officers, employees, contractors and agents for the purpose of an Agreement with you.

#### 16. Copyright

We retain copyright in all written material produced under an Agreement.

#### 17. Governing Law

Each Agreement is governed solely by the law of the state of Victoria, Australia.

#### 18. Termination

18.1 We may, without affecting any other rights we may have, terminate or suspend any Agreement between us with immediate effect by giving notice to you if:

- (a) you breach any provision of these Terms and fail to remedy the breach within 7 days after our notice requiring you to do so;
- (b) you cease to be able to pay your debts as they become due;
- (c) you become subject to any form of insolvency administration; or
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of your assets.

18.2 If we exercise our rights pursuant to clause 18.1 above to terminate or suspend an Agreement, we will immediately be entitled to invoice you for work in progress under that Agreement at our current rates. 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.

18.3 If at any time after placing an order for an Agreement you purport to terminate and/or repudiate or cancel the Agreement entered into with us, then without prejudice to any other rights or remedies which we may have, we are entitled to recover from you such proportion of the fee as is equivalent to the proportion of work already performed to the total of the work required to complete the Agreement, together with an additional 10% of this amount, representing a "loss of bargain" component. A written statement by our authorised officer stating the proportion of the fee to be paid under this clause is conclusive evidence of the amount payable by you.

#### 19. Dispute Resolution

19.1 The parties must attempt to resolve any dispute as quickly as possible, but 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.

19.2 If the matter is referred to mediation under clause 19.1, 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.

19.3 [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.](#)

**20. Severance**

If any provision of these Terms is held to be invalid or unenforceable, such provision will be struck out and the remaining provisions will remain in force.

**21. Amendment of these Terms**

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 on our 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 internet site.

Your continued use of the Services after such notice will constitute acceptance of the variation.

**22. Force Majeure**

22.1 An Agreement 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.

22.2 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.

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

**23. Sub-Contracting to External Laboratories**

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

**24. Waiver**

Our failure to act with respect to a breach of these Terms by you or others does not waive our right to act with respect to subsequent or similar breaches.

**25. Governing Law**

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