

## FEEDTEST SERVICE TERMS & CONDITIONS FOR ANALYSIS OF SAMPLES

### 1. Application

These Terms and Conditions apply to the supply by Australian Wool Testing Authority Ltd ("**AWTA Ltd**") trading as Agrifood Technology (ABN 43 006 014 106) ("**we**" or "**us**") of the **FeedTest** service ("**Services**") to the Customer ("**you**") (an "**agreement**").

### 2. Acceptance

By submitting a sample collected in accordance with the FeedTest Sampling Instructions ("Sample") and the Sample Information Sheet to us, you will be deemed to have accepted these Terms and Conditions ("**Terms**").

### 3. Offer

You acknowledge and agree that:

- (a) submission of a Sample constitutes an offer to us to analyse the Sample, which we are free to either accept or reject; and
- (b) you have obtained and submitted the Sample in accordance with the instructions contained in the sample kit and online at [www.feedtest.com.au](http://www.feedtest.com.au).

### 4. Entire Agreement

- 4.1 Clause 4.2 shall not apply to a Consumer as defined in the Australian Consumer Law (ACL) or as defined where the ACL is applied as a law of a State or Territory.
- 4.2 Unless agreed in writing, these are the only Terms that apply to each agreement between us for the provision of Services.
- 4.3 These Terms supersede and exclude all prior and other discussions, representations and arrangements relating to the Services.
- 4.4 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;
  - (b) referring to the amendments and/or printing the amended Terms in a newsletter, Fees List, quotation or test request form; or
  - (c) posting the amended Terms on our website ([www.awta.com.au](http://www.awta.com.au)).

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

### 5. Warranties, Guarantees and Liability

- 5.1 (i) Where you are a Consumer as defined by the ACL, our Services come with guarantees that cannot be excluded under the ACL. For major failures with the 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.
- 5.2 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.

- 5.3 Other than the guarantees and warranties contained in clause 5.1, 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 Services, are expressly excluded.
- 5.4 To the full extent permitted by law and notwithstanding anything else contained in these Terms, we exclude all liability to you whatsoever and howsoever caused 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, loss from the use or sale of fodder or plants or products derived from fodder or plants which are the subject of the analyses, loss from the use of any results from any analytical analyses or advice or interpretation provided by **FeedTest**, 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 and howsoever arising.
- 5.5 In the event of any finding of liability against us by a court of competent jurisdiction for damages incurred by you where clause 5.4 is held not to apply, you agree to the full extent permitted by law, to limit any award for damages, in law or equity, to the fee charged to you or claimed by us for the provision of the Services.

## 6. Prices and Payment

- 6.1 We will calculate the prices for the Services (**Prices**) according to one of the following:
- (a) the then current FeedTest Fees List; or
  - (b) an agreed fee or quotation for the Services.
- 6.2 Unless clause 6.3 applies, payment is required prior to the provision of the test report after we have first issued our invoice for the relevant amount.
- 6.3 If you have been granted a credit account with AWTA Ltd, you must pay the Prices within 30 days of the end of the month in which our invoice is issued for the credit account to remain open.
- 6.4 All payments must be made in Australian dollars.
- 6.5 If you exceed our payment terms we may refuse to conduct further Services for you and any related party until payment in full is made or alternative payment methods are arranged and agreed between us.

## 7. Taxes

Unless otherwise specified, the Prices do not include GST, sales, value added or any other applicable government tax or duty, which will be added to the Prices and will be additionally payable by you at the same time payment of the Prices is due. In the case of GST, we agree to ensure that our invoice delivered to you in accordance with clause 6 constitutes a "tax invoice" for the purposes of applicable GST legislation.

## 8. Testing Material

- 8.1 You are responsible for ensuring that all Sample material is properly representative.
- 8.2 Results provided by us relate only to the Sample submitted. Due to the many scientific variables involved in conducting the 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 us or a third party. You acknowledge that the Services (depending on the method) may involve an element of subjective judgement.
- 8.3 Sample material remaining after performance of the Services becomes our property to deal with as we choose.

## 9. Service Time

- 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 the Services or any part thereof.
- 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 Sample by us.

## 10. Acknowledgements

- 10.1 You acknowledge (subject to any limitation imposed by the ACL) that you rely on all results, advice, opinions or interpretations provided by us in connection with the Services at your own risk. You acknowledge that we have not made and you have not relied on any statement or other representations not expressly stated in these Terms.

## 11. 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 and expenses together with interest or 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 these Terms; or
- (b) incurred by those indemnified in enforcing any rights under these Terms against you.

## 12. Claims

- 12.1 Due to the organic nature of the material tested, you agree that no Claim in respect to the supply of the Services may be made unless we receive a substantiated written Claim at the address provided in clause 22 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 and shall include all relevant supporting material. You are responsible for your expenses in making any Claim.
- 12.2 "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 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.

## 13. Force Majeure

- 13.1 The 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.
- 13.2 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.
- 13.3 We shall not incur any liability to you in respect of such suspension.

## 14. Copyright and Intellectual Property

- 14.1 We retain copyright in all written material produced in the provision of the Services.
- 14.2 We retain any intellectual property rights incorporated or comprised in any material created by us or on our behalf in the course of providing the Services and may use such material for any purposes.

## 15. Termination

- 15.1 We may, without affecting any other rights we may have, terminate or suspend any Services 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.
- 15.2 If we exercise our rights pursuant to clause 15.1 above 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.

- 15.3 If at any time after requesting provision of the Services you purport to terminate and/or repudiate or cancel the Services, 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 Services, 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 Prices to be paid under this clause is conclusive evidence of the amount payable by you.

## **16. Dispute Resolution**

- 16.1 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.

- 16.2 If the matter is referred to mediation under clause 16.1, 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.

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 6 months from the completion of the supply of the Services.

## **17. General**

- 17.1 If part or all of any provision of these Terms or their application to any person or circumstance is held to be illegal, unenforceable, ineffective, void or voidable, the provision will be interpreted so as to ensure it is not illegal, unenforceable, ineffective, void or voidable. 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 shall be read and construed for all purposes as if that provision or part were not contained therein.

- 17.2 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. Sub-contracting**

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

## **19. Use of Information**

- 19.1 We reserve the right to use and disseminate the analytical results and information derived from the Services howsoever we see fit, save that we will ensure that it does not identify you or the relationship between you and the analytical results.

- 19.2 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 FeedTest business or as may be required by law.

We are committed to protecting information provided in accordance with the principles of the Information Privacy Act 2000.

## **20. 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.

## **21. Where you are involved in Litigation**

- 21.1 You agree to reimburse us on demand for all costs and expenses incurred by us, including the monetary value of time spent by our officers and employees, in the event we are required to respond in any manner to any legal process of any nature in which you are involved with a third party.

- 21.2 You agree to pay for all time and costs expended by us in accordance with our then current hourly rates. Such time and costs shall include attendance as witness in any proceedings and in the production of any documents or records or the provision of any witness or expert statements.

**22. Contact Details**

Address: 260 Princes Highway, Werribee, VIC 3030  
Telephone: 1800 801 312  
Email: [lab.vic@agrifood.com.au](mailto:lab.vic@agrifood.com.au)