

TERMS & CONDITIONS FOR PRODUCT TESTING AND CONSULTING SERVICES

1. Application of these Terms and Conditions

- 1.1 Subject to clause 2, these conditions apply to the supply by Australian Wool Testing Authority Ltd (**AWTA Ltd**) trading as AWTA Product Testing / Textile Quality Research Trademark Management (**TQRTM**) (ABN 43 006 014 106) (**we or us**) of the various testing, sampling, consulting, analysis and/or related services (**Services**) provided by us which may be more particularly described in a quotation (**Quotation**) or Test Request provided to or provided by the customer identified in the Quotation or Test Request (**you**).
- 1.2 You will be deemed to have accepted any Quotation and these conditions (**Contract Terms**) and we will each be deemed to be bound by the Contract Terms if you request us to undertake any Services for you.

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 Contract 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 Services. For the avoidance of doubt, 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 Contract Terms supersede and exclude all prior and other discussions, representations and arrangements relating to the Services.
- 2.4 We may amend these Contract Terms at any time by notifying you, including in any one or more of the following ways:
 - (a) printing the amended Contract Terms and supplying them to you;
 - (b) referring to the amendments and/or printing the amended Contract Terms in a newsletter, Fees List, Quotation or Test Request form; or
 - (c) posting the amended Contract Terms on our website (www.awta.com.au).

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

3. Warranties, Guarantees and Liability

- 3.1 (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.
- 3.1 (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.
- 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 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 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 Contract 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 Contract Terms or relating to the 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 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 Contract 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 Contract Terms for any failure to perform its obligations under the Contract Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Contract Terms, or by the wilful act, omission or negligence of the other party.

4. Testing Material

- 4.1 You warrant the suitability of the goods and/or material supplied (**Testing Material**) for the purpose of the Services and the accuracy of your description of the Testing Material.
- 4.2 You must ensure that all Testing Material is accompanied by a completed Test Request form.
- 4.3 You must organize and pay the costs of transport of Testing Material to and from AWTA Ltd, and must bear all risk of loss or damage of, or alteration to, Testing Material while in transit or at AWTA Ltd. We accept no responsibility for alteration or loss of Testing Material while in transit.
- 4.4 You acknowledge that Testing Material may be altered, damaged or destroyed during the conduct of the Services.
- 4.5 All Testing Material remaining after testing becomes our property. Where practicable we will retain such Testing Material not consumed in the Services for a period of at least 1 month and will dispose of it after this time.
- 4.6 You are responsible for ensuring that all Testing Material is properly representative of the whole 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 submitted Testing 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 Testing Material, whether in writing or orally (as evidenced by our file notes), on the following:
- (a) the quality or characteristic which you wish us to test; and
 - (b) the end use intended for the goods or material represented by the Testing Material.
- 5.3 Where clause 5.2 applies, we will use the most appropriate testing method having regard to your instructions and descriptions but will not be held liable for any loss you suffer due to any misdescription, error or omission on your part.
- 5.4 We do not warrant that the test results will meet or exceed any specifications hoped for by you.
- 5.5 The test results relate only to the submitted Testing Material.
- 5.6 Due to the many scientific variables involved in carrying out the Services, we do not warrant that any test results will be identical or substantially similar to test results previously derived from similar Testing Material, using the same testing methodology, by us or a third party.
- 5.7 You acknowledge that the tests we perform (depending on the method) 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. Acknowledgement

You acknowledge (subject to any limitation imposed by the ACL) 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 Contract Terms which has induced you to enter into the Services.

8. Copyright and Intellectual Property

We retain copyright in all written material produced in the provision of the Services. 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.

9. Test Reports and Letters of Opinion

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

10. 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, TQTRM and AWTA Ltd may be used in advertising, provided that the content and format of the advertisement have received prior written approval by AWTA Ltd.

11. Confidential Information

11.1 "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; and

(b) the information in test results, test reports, letters of opinion and consulting reports;

but does not include information to the extent that the information is:

(c) independently developed or known by us (including because it is in the public domain);

(d) independently known to a third party who contacts us about the information; or

(e) required to be disclosed by law.

11.2 We shall not disclose Confidential Information without your prior written consent, except to our officers, employees, contractors and agents where necessary to perform the Services.

12. Prices and Payment

12.1 We will calculate the prices for the Services (**Prices**) according to one of the following:

(a) the then current AWTA Product Testing or TQTRM Fees List (published or notified by us); or

(b) an agreed fee or Quotation for the particular Services (including letters of opinion).

12.2 Unless clause 12.3 applies, payment is required prior to the provision of the test report, letter of opinion or consulting report, after we have first issued our invoice for the relevant amount.

12.3 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.

12.4 All payments must be made in Australian dollars.

12.5 If you do not comply with our payment terms in accordance with this Clause 12, 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 you and us.

13. 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 12 constitutes a "tax invoice" for the purposes of applicable GST legislation.

14. Completion time

- 14.1 If we specify a time for completion of the supply of particular Services (**Completion Time**), we agree to use all reasonable endeavours to complete the relevant Services within the Completion Time. You acknowledge that the Completion Time will not commence to run until the business day after the day you deliver the relevant Testing Material to our premises. You must only deliver Testing Material to us during business hours. If on a particular business day you deliver Testing Material outside business hours and we accept that delivery, the Testing Material will be deemed to have been delivered on the next business day.
- 14.2 While we will make all reasonable endeavours to complete the Services promptly, we are not liable for any loss arising from delay in carryout out the Services.
- 14.3 Where a Completion Time is not specified by us, we will complete the Services within a reasonable time from the receipt of the Testing Material by us.

15. Sub-Contracting to External Laboratories

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

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.
- 16.3 Both parties 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.

17. Termination

- 17.1 Without affecting any other rights of a party, either party may, by notice in writing to the other party, immediately terminate the Contract Terms if the other party:
- (a) breaches any provision of the Contract 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.
- 17.2 Without limiting the generality of any other clause in these Contract Terms, we may suspend the Services if you are in breach of any term of the Contract Terms and we have given written notice of that breach which specifies what conduct we require from you to remedy the breach.
- 17.3 If we exercise our rights pursuant to clause 17.1 or 17.2 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.
- 17.4 Termination does not affect either party's rights and obligations that accrued before that termination, including the payment of fees to us.
- 17.5 Clauses of these Contract Terms which, by their nature, are intended to survive termination will continue in force.
- #### 18. Force Majeure
- 18.1 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 Contract Terms will be suspended to the extent that they can't be complied with because of the Uncontrollable Event.

- 18.2 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.
- 18.3 Without limiting clause 18.1, if we are the Affected Party 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 as a result of an Uncontrollable Event or where such testing, delivery or supply is rendered materially more expensive by such circumstances.
- 18.4 In this Clause 18, "**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.
- 18.5 Neither party shall not incur any liability to the other in respect of such suspension of Services under this Clause 18.

19. Claims

- 19.1 Due to the nature of the Services 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 23 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.
- 19.2 "**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.

20. Governing Law

These Contract 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.

21. General

- 21.1 If part or all of any provision of these Contract 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 Contract Terms and the remaining provisions continue in force.
- 21.2 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.
- 21.3 A reference in these Contract Terms to a "business day" is a reference to a day other than a Saturday, Sunday or public holiday in the State the 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.
- 21.4 Our failure to act with respect to a breach of these Contract Terms by you or others does not waive our right to act with respect to subsequent or similar breaches.

22. Where you are involved in Litigation

- 22.1 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.
- 22.2 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.

23. Contact Details

Address: 191 Racecourse Road, Flemington, VIC 3031
Telephone: (03) 9371 2400
Email: producttesting@awta.com.au