



## TERMS & CONDITIONS FOR SALE OF SAMPLE WOOL

### 1. Application of these terms

- 1.1 These terms and conditions ("**Terms**") apply to each agreement (an "**Agreement**") for the sale of wool.
- 1.2 The parties to each Agreement are Australian Wool Testing Authority Ltd ("**AWTA Ltd**" or "**we**") and you ("**Customer/you**").
- 1.3 Any order which you place with us or acceptance of quote or invoice for the sale of wool from us after receiving notice of these Terms constitutes acceptance of these 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 sale of wool. 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;
  - (b) referring to the amendments and/or printing the amended Terms in a newsletter, Fees List or quotation; or
  - (c) posting the amended Terms on our website ([www.awta.com.au](http://www.awta.com.au)).
- 2.5 The amended Terms will apply to any wool sold to you after the notification date.

### 3. Warranties, Guarantees and Liability

- 3.1 Due to the nature of wool, it is sold with all faults, and subject to clause 3.2, AWTA Ltd makes no warranty as to the absence of contamination or other fault in the wool and is not liable in any way for any contamination or fault that may be present in the wool.
- 3.2 (i) Where you are a Consumer as defined by the ACL, our Agreement comes with guarantees that cannot be excluded under the ACL. For major failures with the wool, you are entitled to:
  - (a) a refund; or
  - (b) replacement of the goods by us.
- (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 wool rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unretained portion of the wool.
- 3.3 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
- 3.4 Other than the guarantees and warranties contained in clause 3.2, 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 sale of wool, are expressly excluded.
- 3.5 Subject to the Non-Excludable Rights and clause 3.6, 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.

- 3.6 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 3.5 is held not to apply, the maximum liability of a party under or in connection with the Terms or relating to the sale of wool, whether in law or equity, is an amount equal to the total charged to you or claimed by us for the sale and handling of wool.
- 3.7 The parties agree that clause 3.6 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.
- 3.8 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. Payment

- 4.1 AWTA Ltd will invoice the Customer for the wool and any Quality and the Handling Fee ("**Price**").
- 4.2 The Customer must pay the invoice amount in full within 14 days of the date of invoice. Title and ownership of the wool shall remain with AWTA Ltd until payment has been received in full and AWTA Ltd shall not deliver the wool to the Customer or any third party until it receives payment in full.
- 4.3 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.
- 4.4 All payments must be made in Australian dollars unless otherwise agreed.

#### 5. Taxes

You must pay any tax, levy or impost imposed on the wool provided under an Agreement, including but not limited to any goods and services tax, in addition to our Price at the same time that you pay the Price.

#### 6. Sub-contracting

We may, after notifying you, sub-contract the storage of wool to a third party.

#### 7. Delivery of Wool

- 7.1 The Customer is responsible for the arrangement of and the collection of the wool from AWTA Ltd's or an external storage operator's premises, as the case may be. AWTA Ltd is not responsible for the delivery of the wool to the Customer or any third party.
- 7.2 The Customer bears the cost of collection and removal of the wool from AWTA Ltd's premises or the premises of an external storage operator.
- 7.3 Where the wool is stored at AWTA Ltd's premises, the Customer must provide AWTA Ltd with delivery instructions setting out the date of delivery, the lot number and other identifiers of the wool and the name and contact details of the transport contractor (if any) which will be collecting the wool ("**delivery instructions**"). Delivery instructions may be provided in electronic form.
- 7.4 AWTA Ltd will deliver the wool to any party who presents at AWTA Ltd's premises on the date set out in the delivery instructions, appears to our reasonable satisfaction to be employed by the Customer or the transport contractor named in the delivery instructions and produces to AWTA Ltd a copy of the delivery instructions. AWTA Ltd is not obliged to make any other enquiry as to the identity or authority of the party requesting delivery and shall not be held liable for any loss whatsoever suffered by the Customer or any third party claiming through the Customer, for making delivery in accordance with this sub-section.
- 7.5 Where the wool is stored in premises other than AWTA Ltd's, we shall be deemed to have made delivery of the wool to the Customer when, after receiving payment of the Price, we authorise the operator of the external storage facility to release the wool to the Customer. The Customer is responsible for arranging collection of the wool from the external storage facility and AWTA Ltd shall not be held liable for any act or omission of the external storage operator after AWTA Ltd has authorised release of the wool.

7.6 If the Customer has not collected the wool within 21 days of the date of invoice, AWTA Ltd may charge the Customer a storage fee irrespective of whether the wool is stored on AWTA Ltd or external premises. The storage fee will be charged from the date of invoice at the rate of \$2.10 per bale per week or part of a week. A week is deemed to be Monday to Friday.

## 8. Dispute Resolution

8.1 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.

8.2 Should the matter be referred to mediation under clause 8.1, 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.

## 9. Termination

Without limiting the generality of any other clause in this Agreement, we may cease to fulfil delivery or storage of wool or to process further orders from you if you are in breach of any term of this Agreement.

## 10. Force Majeure

10.1 The delivery or collections of the wool may be wholly or partially suspended during any period in which a party is prevented from complying with its obligations to due to any Uncontrollable Event.

10.2 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.

10.3 AWTA Ltd shall not incur any liability to the Customer in respect of such suspension.

10.4 If a failure or delay in performance as a result of the Uncontrollable Event exceeds 60 days, either party may immediately terminate the Agreement by written notice to the other.

10.5 In this Clause 10, "**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.

## 11. Indemnity

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

- (a) a breach by you of this Agreement; or
- (b) incurred by those indemnified in enforcing any rights under this Agreement with you.

## 12. Consent to Electronic Communications

You agree that we may provide you in electronic form any information or other communications regarding our provision of goods or services. These communications may be provided through our website, e-mail, text message or another website/electronic platform. When you visit our website, use our services, purchase wool from us or communicate with us electronically, you consent to receive communications from us electronically.

**13. 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.

**14. General**

- 14.1 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.
- 14.2 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.
- 14.3 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.

**15. Contact Details**Melbourne Laboratory

Address: 24 Robertson Street, Kensington, VIC 3031  
Telephone: (03) 9371 2100  
Email: [lab.mel@awta.com.au](mailto: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](mailto:lab.fre@awta.com.au)