



NZWTA TERMS FOR TEXTILE TESTING AND CONSULTING SERVICES

1. Application of these Terms

- 1.1 These terms apply to each agreement (an “**agreement**”) for the provision of a textile testing service or consulting service.
- 1.2 The parties to each agreement are New Zealand Wool Testing Authority Ltd (“**NZWTA**” 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 term.

2. Samples

- 2.1 You warrant the suitability of the samples for the purpose of the testing service and the accuracy of your description of the samples.
- 2.2 You must ensure that each package containing samples is accompanied by a completed Textile Test Request form (which can be downloaded from our website (www.nzwta.co.nz) or suitable alternative document clearly outlining testing requirements.
- 2.3 You must organise and pay the costs of transport of samples to and from NZWTA and must bear all risk of loss or damage of, or alteration to, samples while in transit or at NZWTA. We accept no responsibility for alteration of samples while in transit.

Where you require the return of any submitted sample, an extra charge will be payable by you.

- 2.4 You acknowledge that samples may be altered, damaged or destroyed during the conduct of the testing service.
- 2.5 All articles and samples 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. Unless requested to be returned to you, all articles and sample material may be disposed of after this time, as NZWTA sees fit.

3. NZWTA’s Duty of Care

- 3.1 We will carry out the testing service with due professional care and skill and in accordance with our IANZ (International Accreditation New Zealand) accreditation where applicable.

4. Test Results

- 4.1 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 sampled material.
- 4.2 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 filenote), on the following:
 - (a) the quality or characteristic which you wish us to test; and
 - (b) the end use intended for the sampled material.
- 4.3 We are not liable for any loss you suffer (including where we have recommended a test) 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, where that failure arises from incorrect, misleading or incomplete instructions on your part.
- 4.4 We do not warrant that the test results will meet or exceed any specifications hoped for by you.
- 4.5
 - (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 NZWTA or a third party.
 - (c) You acknowledge that the tests may involve an element of subjective judgment.

5. Consulting Services

- 5.1 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.

6. Fees

- 6.1 We will calculate the fee according to one of the following:
- (a) the NZWTA Textile Testing Fees List in force from time to time; or
 - (b) an agreed fee or quotation for the particular testing service, letters of opinion or consulting service.
- 6.2 Unless you are a credit customer, payment is required prior to the provision of the test report, letter of opinion or consulting report, after we have issued our invoice for the relevant amount.
- 6.3 For credit approved customers, you must pay the fees by the 20th of the month following the date of invoice, unless we have agreed in writing to some other arrangement. We may charge interest on overdue invoices at a rate being 2% above the Bank of New Zealand's 30 day Bank bill rate. NZWTA shall be entitled to recover any costs incurred in the collection of overdue accounts.
- 6.4 All payments must be made in New Zealand dollars unless otherwise agreed. We do not accept credit card payment of statements. Any bank transfer fees shall be paid by the client.
- 6.5 Retests are charged at the same rate as the original test(s).
- 6.6 Urgent requests will incur a surcharge of 30%. Please note that the service time will remain dependent on the actual testing regime utilised.
- 6.7 Any freight costs incurred by NZWTA will be recharged to you at cost.

7. Taxes

- 7.1 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.

8. Delays

- 8.1 While we make all reasonable endeavours to complete testing services and consulting services promptly, we are not liable for any loss arising from delay in carrying out a testing service or consulting service or producing a test report or letter of opinion.

9. Liability

- 9.1 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.
- 9.2 Subject to clause 10, we are not liable for any loss or damage whatsoever (including loss of profits or other consequential loss) arising in connection with an agreement (including because of negligence by us).

10. Implied Terms

- 10.1 Unless precluded by law, any condition or warranty which would otherwise be implied in an agreement is excluded.

11. Test Reports and Letters of Opinion

- 11.1 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.

12. Abstracts and Advertising

- 12.1 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, and the name NZWTA may be used in advertising, providing the content and format of the advertisement have been approved in advance by the Chief Executive of NZWTA.

13. Copyright

13.1 We retain copyright in all written material produced under an agreement.

14. Confidential Information

14.1 “Confidential Information”:

- (a) means 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.

14.2 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.

15. Governing Law

15.1 Each agreement is governed solely by the law of New Zealand.

16. Early Termination by the Client

16.1 If at any time after placing an order for a testing service you purport to terminate and/or repudiate or cancel the agreement entered into with us, then, and 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 authorized officer stating the proportion of the fee to be paid under this clause is conclusive evidence of the amount payable by you.

17. Dispute Resolution

17.1 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 LEADR-NZ Association of Dispute Resolvers in accordance with its guidelines for commercial mediation. Each of us must bear our own costs of the mediation.

17.2 Should the matter be referred to mediation under clause 17.1, 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.

18. Severance

18.1 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.

19. Indemnities

19.1 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 an agreement; or
- (b) incurred by those indemnified in enforcing any rights under an agreement with you.

20. Termination

20.1 Without limiting the generality of any other clause in these terms, we have the right, without incurring any liability to you or any third party, to cease to fulfill work in progress or refuse to commence new work for you if you are in breach of any term of an agreement.

21. Amendment of these Terms

- 21.1 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 or attached to 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 and conditions on our internet site (www.nzwta.co.nz).
- 21.2 Your continued use of the testing services or consulting services after such notice will constitute acceptance of the variation.

22. Force Majeure

- 22.1 Non-performance by either of the parties of any obligation required by an agreement as a result of force majeure will be excused during the time and to the extent that such performance is prevented, wholly or in part, by force majeure.
- 22.2 Force majeure means a circumstance beyond the reasonable control of one of the parties which results in one of the parties being unable to observe or perform on time an obligation under the agreement. Such circumstances include, but are not limited to, acts of God, explosions, fires, and strikes.

23. Sub-Contracting to External Laboratories

- 23.1 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 testing services sub-contracted as if we had performed all of the testing services ourselves.

24. Waiver

- 24.1 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.