

Contracts and dispute resolution

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Introduction

It is important to firstly recognise the purpose of a contract – what it is and how it should be used. A wool trading contract should be seen as an instrument through which to *facilitate* a business transaction – not as a legal document with which to threaten or ‘beat up’ your contracting partner.

Proper use of a contract should be an essential element in any business arrangement and should contain those matters directly relevant to the goods or services being transacted.

What is a contract?

A contract is ‘*a business agreement for supply of goods or performance of work at a fixed price and enforceable by law*’.

What should the contract define?

- **Product/service specification:** An accurate description of the goods or services being supplied.
- **General terms and conditions:** Details of documentation, delivery and payment.
- **Dispute resolution:** What happens when things go wrong.

Contracts in the wool industry

Individual firms generally have their own forms of contract, which, while likely to be similar in many respects, may contain significant differences in certain aspects.

Special attention therefore, should be given to those elements within the contract dealing with:

- specification of the wool to be delivered –
 - that is, wool specifications based on objective measurements
- price basis –
 - shipment quantity
 - price per kilogram (including yield basis – for example, IWTO scoured 16%)
 - currency
 - whether CIF, C&F, FAS, FOB
- payment arrangements –
 - Method of payment (e.g. documentary credit [whether irrevocable, whether irrevocable and confirmed], whether provides for sight or deferred payment, maturity date, electronic transfer, telegraphic transfer, currency). *These aspects are described in detail in the publication issued with this course ‘Finance of International Trade’ by the National Australia Bank*
- documentary requirements –
 - bill of lading

- letter of credit or other financial instruments relating to payment
- certificate of origin
- quarantine or health certificate
- packing list
- test certificates
- insurance certificates
- shipping/delivery details –
 - delivery date
 - delivery destination (whether to port or to mill)
 - is transhipment via a second or third port allowed?
 - shipping density (whether high density or superdensity to maximum container utilisation allowed)
- claims procedure
- dispute resolution procedure (whether via arbitration or courts and applicable jurisdiction in each case)
- applicable law (which country or jurisdiction).

The role of the International Wool Textile Organisation (IWTO) in international wool trade contracts

Most wool trading contracts are governed by rules and regulations administered by the IWTO.

IWTO is the international body representing the interests of the world's wool-textile trade and industry. IWTO membership covers wool growers, traders, primary processors, spinners, weavers, garment makers and retailers of wool and allied fibres in its member countries, as well as all kind of organisations related to wool products and the wool business in general.

IWTO International Agreements (as specified in the IWTO Blue Book) apply to international contracts covering transactions in all products of the wool textile industry including:

- greasy, scoured, carbonised or skin wool, and fine and coarse animal hairs
- tops and carded sliver of wool and/or other fibres
- woollen, worsted, semi-worsted yarns, of wool and/or other fibres
- fabrics of wool and/or other fibres; blankets
- noils, wastes and other by-products of the manufacture of the above products.

Sellers, intending to sell under the conditions of the IWTO International Agreements must advise their buyers to that effect. If both agree to make their contract subject to the International Agreements, IWTO recommends that this be stipulated in writing, as part of the contract.

International Wool Textile Arbitration Agreement

The International Agreements are also intended to apply in case of dispute between the parties and/or when the contract is imprecise or silent on such matters.

The International Agreement shall serve as a basis for Arbitration conducted under the rules of IWTO unless modified by other conditions arranged between buyer and seller. The provisions of these arrangements may apply to transactions between contracting parties in the same country but it is not intended that they shall apply in preference to any national agreements covering transactions in these products made between organisations representing companies trading in these products within the confines of their own national boundaries.

Those interested in more details about the IWTO Arbitration Agreement should consult the IWTO Blue Book for more details, including the complete list of articles relating to dispute resolution. However, the first two articles are reproduced below to provide more background to IWTO's role regarding Arbitration.

Article I

The member organisations of the IWTO hereby agree formally to recommend their respective members to submit all disputes to arbitration with the object of avoiding, as far as possible, the intervention of the courts of law, and of establishing closer relations between members of the IWTO.

Article II

The member organisations of the IWTO hereby agree formally to recommend their respective members to stipulate in their contracts that all disputes be submitted to international arbitration, in accordance with this agreement.

Where no arbitration clause is formally recommended by the National Committee so as to conform to national law, the following clause or a clause of similar effect must be included in all contracts, if contracting parties wish to ensure their legal right to have disputes resolved through the provisions of the Arbitration Agreement:

“Any dispute or difference arising out of this contract shall be settled by arbitration in accordance with the IWTO Arbitration Agreement and the competent body to conduct the arbitration pursuant to its Arbitration Regulations shall be . . . (X).”

Note: ‘X’ involves insertion of the name of the IWTO National Committee, Chamber of Commerce or other competent body of the country of the *seller* entrusted with the task of carrying out the provisions of Article IV of the abovementioned Arbitration Agreement.

It is important to refer to the remaining articles relating to IWTO arbitration arrangements (Articles III, IV and V, together with supplements outlined in the Blue Book).

Other forms of contract – model contracts

As mentioned, there are many different forms of contract used by international wool traders. These should address the elements mentioned above, although different terms and conditions might be specified and the applicable legal jurisdiction may differ between supplier and buyer countries.

It is important, however, to pay special attention to the content of the contracts to ensure that you are fully aware of the obligations specified, and of the risks in case of failure to perform!

There are however, ‘model contracts’ which provide for ‘special cases’ and also provide a template for developing a contract format which can be considered to conform to ‘best practice’.

Two such examples are provided.

1. The Australia New Zealand China Model Wool Contract

Background

Particular difficulties were experienced in contracting with Chinese parties during the mid to late 90s. This resulted in a joint industry and government initiative involving Australian, New Zealand and Chinese representatives to review contractual arrangements and consider the development of a ‘model’ framework, which could address a number of deficiencies with existing contracts. This action was also brought about because of China’s non-membership of IWTO (in the mid 90s) and lack of recognition of IWTO terms and conditions (including the dispute resolution provisions). Problems were compounded because of the lack of recognition of IWTO test certificates in describing the goods being supplied as ‘final’. In other words, in case of disputes regarding the quality of wool being delivered, Chinese buyers reserved the right to determine quality parameters on the basis of domestic testing standards. Associated with this was the fact that wool imports were subject to mandatory inspection by domestic Chinese authorities which again, relied on domestic sampling and testing procedures. (It should be noted that even with subsequent membership of IWTO by China, there remains a problem in getting Chinese buyers to accept IWTO as a basis for contracting.)

Other problems involved delays in opening documentary credits, which often led to shipping delays; inconsistencies between details contained in contracts and letters of credit, which resulted in defaults, cancellations and renegotiation. It should be stressed that this was not always the fault of the buyer as a number of international trading banks pointed out at the time, a degree of tardiness on the part of some exporters in terms of their documentation and particularly, discrepancies between contracts and financial instruments contributing to disputes.

Claims procedures relied upon by Chinese buyers were often at odds with international wool trade practice.

One other factor about which exporters were largely ignorant was the need to ensure that the contracts were signed by the legally authorised representative of the buying organisation. If this was not the case and a dispute arose, the subsequent claim by the exporter would be considered null and void under Chinese law. As a consequence, the development of a model contract was seen as an important step in ‘normalising’ wool trading between major supplier countries and China.

The subsequent development of a Model Contract involved negotiations over a three-year period and a copy of the final product agreed in 2000 is attached for reference (Attachment 1).

The Model Contract is essentially made up of two parts:

- a. **the contract document** (two pages), with provision for specification of the goods, delivery options (whether FOB, CIF etc), payment options (whether sight documentary credit, usance documentary credit, documents against payment, documents against acceptance, remittance etc), shipment, claims, and arbitration procedures. Importantly, the contract has equal validity in English and Chinese and includes reference to dispute resolution procedures as a basis of the contract. Only the contract would be exchanged between parties with the following being the **reference** material.

- b. **general terms and conditions** for sale based on 'Incoterms'2000 (see later International Chamber of Commerce ICC), specifying definitions, documents, terms of payment, terms of delivery, insurance, warranty, test certificates, inspection and re-inspection, claims, liabilities for delay (delivery and payment), force majeure, termination, arbitration, applicable law, notices and miscellaneous provisions.

Wool specifications (based on objective measurements and IWTO test methods) for greasy, scoured, carbonised wool and wool tops for both Australia and New Zealand.

Arbitration: the Model Contract was governed by an arbitration arrangement developed with the China International Economic Trade Arbitration Commission (CIETAC Beijing) providing arbitration based on an 'expert' panel of IWTO - approved Chinese and international arbitrators.

However, it should be noted that irrespective of how good the arbitration arrangement might be, and it is important to have a satisfactory arrangement in place. This should be seen as a last resort after all other negotiating options have been exhausted. Not only can arbitration and court processes be expensive and time consuming but the need to consider ongoing customer/supplier relations is important to longer-term business. Nevertheless, occasions will arise where negotiation is unlikely to yield a satisfactory result and arbitration is preferred to dealing through the courts.

A final word on arbitration is that a decision in your favour may not be the end of the case as the arbitration award must be enforced. This will usually be the case but in areas such as China, where the contract and the arbitration might be subject to a provincial jurisdiction (or court), an award could prove difficult to achieve and even more difficult to enforce!

Before leaving the subject of the Model Contract with China, I would make some comments about specifying the wool (or the goods) in the contract. Emphasis is placed on the importance of correct specification of the wool as this is often an area where buyers will attempt to refute a contract. Correct specification is of paramount importance.

As mentioned earlier in this course, it is important that in the case of wool trading, specifications and description of the wool to be supplied should be comprehensive and accurate. These should be detailed sufficiently to ensure that any issues relating to claims that the wool is 'not what I ordered' or is of 'incorrect quality' can be minimised, if not eliminated. From the buyer's point of view, it is necessary to correctly specify the technical and quality aspects of the wool consignment to meet processing expectations and requirements and thereby avoid product quality problems or poor processing performance.

At the same time, it is important not to 'over specify' the wool consignment by including objective measurements that are unduly 'tight' as this will limit the range of wool types that can be purchased initially by the wool buyer to make up the consignment. The consequence of this will be to pay higher prices for the wool in that consignment beyond that which is ultimately required by the processor to meet their production requirements or their customer's order.

Therefore, correct specification of the materials being supplied and purchased deserves particular attention if subsequent claims or disputes are to be avoided. Correct specification in contracts can benefit both suppliers and mill purchasers.

(Refer to Attachment 1: 'Guide to Australian and New Zealand Wool Specifications 2000'. These specifications are also incorporated in the model contract.)

2. The International Chamber of Commerce (ICC)

The ICC was established in 1919 and the ICC International Court of Arbitration created in 1923. Originally the ICC represented the private sectors of Belgium, Britain, France, Italy and the US; it has since expanded to include more than 130 countries. Members include many of the world's most influential companies and represent every major industrial and service centre.

The ICC provides 16 commissions of experts from the private sector covering every specialised field of concern to international business, ranging from banking to financial services and taxation, competition law, intellectual property rights, telecommunications and IT, air and maritime transport to international investment regimes and trade policy.

Among its services are:

- the International Court of Arbitration. This court is the world's leading body for resolving international commercial disputes by arbitration
- the Uniform Customs and Practice for Documentary Credits (UCP). The latest version, UCP 500, came into effect in 1994. These rules are used by banks throughout the world. The eUCP (covering electronic documents) was added in 2002. (Note: ICC recently advised that it will shortly be advising new rules for documentary credits when dealing with China).

Incoterms covers standard definitions of universally employed terms such as CIF and FOB. The latest version, Incoterms 2000, was introduced in 2000 (it should be noted that these form the basis for the Australia China Model Wool Contract)

- World Chambers Federation (WCF). This is a collaborative program for international chambers of commerce. The WCF administers the ATA Carnet system for temporary duty-free imports.

ICC arbitration

The ICC provides for arbitration to be 'tailored' to meet specific trade needs.

The decision to use arbitration should be made long before there is any hint of a dispute, preferably when the parties are still negotiating the terms of an international contract. The following standard clause is suggested, subject to adjustment to fit national law and the special needs of the transaction:

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

Parties may stipulate the law governing the contract, the number of arbitrators and the place and language of arbitration. All are matters of choice for the parties themselves – and if they cannot agree, the ICC arbitration system will provide a solution in the interest of convenience and efficiency.

Failure to include an ICC arbitration clause in the original contract does not rule out ICC arbitration. That choice can be made at any time but obviously, inclusion of the clause in the contract is advisable because it provides a sure path in case of dispute.

ICC model contracts

The ICC also offers model contracts covering different forms of business activity (commodities, agencies, services etc). These provide a set of uniform contractual rules that incorporate the prevailing practice in international trade. These strive to establish a fair balance between the interests of the supplier and those of the importer. The model form does not favour the position of one of the parties but aims at protecting and balancing the legitimate interests of both.

Attachment 1

China–Australia–New Zealand

Standard Wool Contract

2000 version

**CHINA-AUSTRALIA-NEW ZEALAND
STANDARD WOOL CONTRACT 2000**

PART 1 – CONTRACT

CONTRACT NUMBER:

DATE OF CONTRACT:/...../.....

PARTIES:

Buyer:
with its registered office at

.....
Tel: Fax:

Seller:
with its registered office at

.....
Tel: Fax:

After business negotiations between the Buyer and the Seller, the Seller wishes to sell and the Buyer wishes to buy the Goods (as described in clause 1 of this Part 1) in accordance with the terms and conditions set out in this Contract.

This Contract comprises:

- (a) this Part 1; and
- (b) Part 2 – “*The 2000 China–Australia–New Zealand General Terms and Conditions for the Sale of Raw Wool and Wooltops.*”

The parties agree that the terms and conditions in Part 2 apply to and form part of the Contract notwithstanding that they might not be attached to the Contract.

1. GOODS

- 1.1 The Goods sold by the Seller and bought by the Buyer under this Contract are:

.....
.....

- 1.2 The quantity of the Goods is:

.....
.....

- 1.3 Variation in quantity permitted: +.....% , -.....%

2. SPECIFICATIONS

(Refer to the guidelines contained in Attachment 1 of Part 2, “A Guide to Australian & New Zealand Wool Specifications 2000”, which the Buyer and the Seller have agreed will apply to the Goods.)

.....
.....
.....
.....

3. PRICE

- 3.1 The unit price of the Goods is: per kilogram
[select from delivery options listed below].

Delivery Options

(Complete whichever is applicable)

- [] FOB Free on Board
named port of shipment
- [] CFR Cost and Freight
named port of destination
- [] CIF Cost Insurance and Freight
named port of destination
- [] CIP Carriage and Insurance Paid to
named port of destination

3.2 Total amount payable for the Goods is:

4. PAYMENT**Payment Options** (Complete whichever is applicable)**(a) Sight Documentary Credit**

The Buyer shall:

- *[] at least (.....) days prior to the Time of Shipment specified in this Contract,
- *[] within (.....) days after the execution of this Contract.

(*tick and complete whichever is applicable), establish in favour of the Seller an irrevocable documentary credit (D/C) payable at sight issued by (bank name) Bank, Branch by *[] tested telex, or *[] SWIFT. (*tick whichever is applicable) the contents of which shall be in conformity with the terms of this Contract, and must not include any additional terms or changes unless agreed in writing by both the Buyer and the Seller after this Contract comes into effect. The documentary credit shall not expire until (....) days after the latest day of shipment specified in the documentary credit. The documentary credit shall contain the statement "This credit is subject to Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500".

(b) Usance Documentary Credit

The Buyer shall:

- *[] at least (.....) days prior to the Time of Shipment specified in this Contract,
- *[] within (.....) days after the execution of this Contract,

(*tick and complete whichever is applicable) establish in favour of the Seller an irrevocable documentary credit (D/C) payable (.....) days after issued by (bank name) Bank, Branch by *[] tested telex, or *[] SWIFT, (*tick whichever is applicable), the contents of which shall be in conformity with the terms of this Contract, and must not include any additional terms or changes unless agreed in writing by both the Buyer and the Seller after this Contract comes into effect. The documentary credit shall not expire until (.....) days after the latest day of shipment specified in the documentary credit. The documentary credit shall contain the statement "This credit is subject to Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500".

(c) Documents Against Payment (D/P)

After shipment, the Seller shall deliver sight bill(s) of exchange drawn on the Buyer together with the required documents as specified in clause 2 of Part 2 to the Buyer through (bank name) Bank, Branch. The Buyer shall effect the payment upon the first presentation of the bill(s) of exchange and the required documents.

(d) Documents Against Acceptance (D/A)

After shipment, the Seller shall deliver bill(s) of exchange drawn on the Buyer, payable (.....) days after together with the required documents as specified in clause 2 of Part 2 to the Buyer through (bank name) Bank, Branch for acceptance. The Buyer shall accept the bill(s) of exchange upon the first presentation of the bill(s) of exchange and the required documents and shall effect the payment upon the maturity date of the bill(s) of exchange.

(e) Remittance

The Buyer shall:

- *[] within (.....) days after the receipt of the required documents as specified in clause 2 of Part 2,
- *[] within (.....) days after the date of the bill of lading,

(**tick and complete whichever is applicable*) pay the invoice value of the Goods to the Seller's account with a bank, designated by the Seller by means of T/T (Telegraph Transfer).

5. COUNTRY OF ORIGIN OF THE GOODS

The country of origin of the Goods is: Australia/New Zealand (*delete whichever is inapplicable*).

6. SHIPMENT

Time of Shipment (at the last port of loading of the Goods in the Seller's country):
.....

Partial shipments allowed/not allowed (*delete whichever is not applicable*).

The port of final destination is:

7. CLAIMS

Claims under this Contract shall be settled according to the terms in clause 9 of Part 2.

8. ARBITRATION

All disputes arising out of this Contract shall be submitted to arbitration in accordance with the terms set out in clause 13 of Part 2.

9. ADDITIONAL TERMS

(Insert additional terms here)

.....
.....
.....

10. EXECUTION OF THE CONTRACT

10.1 Each party warrants that the person signing this Contract on its behalf is authorised to bind that party in accordance with the law of the country of that party. If requested by the other party, a party shall as soon as possible provide evidence to show that the person signing this contract is authorised by that party.

10.2 The Contract may be written in Chinese and/or English. It is equally valid in whichever language it is written. It becomes effective when it is signed by both parties.

EXECUTED AS AN AGREEMENT

SIGNED FOR AND ON BEHALF)
OF THE SELLER BY:
)

)
.....
.....

(Print Name)
(Signature)

SIGNED FOR AND ON BEHALF)
OF THE BUYER BY:
)

)
.....
.....

(Print Name)
(Signature)

Part 2: 2000 General terms and conditions for the sale of raw wool and wool tops

1. DEFINITIONS

“Business Day” means a day on which commercial banks are open for general banking business in both the country of the Buyer and the country of the Seller;

“day” means a calendar day;

“Documentary Credit” has the same meaning as set out in UCP 500, Article 2;

“Goods” means the goods described in clause 1 of Part 1;

“IWTO” means the International Wool Textile Organisation;

“Incoterms” means international rules for the interpretation of trade terms 2000, published by the International Chamber of Commerce as “Incoterms 2000”;

“Raw Wool” has the same meaning as set out in the IWTO Blue Book 1994; (a) greasy wool; (b) wool which has been scoured, carbonised, washed or solvent-degreased; (c) scoured skin wools, (d) washed skin wools; and (e) slipe wool. It consists of wool fibre together with variable amounts of vegetable matter and extraneous alkali-insoluble impurities, mineral matter, wool waxes, suint and moisture.

Sub-definitions

“Greasy Wool” means wool as shorn from the sheep and which therefore has not been washed or otherwise cleaned.

“Scoured Wool” means wool which has been scoured. The scouring process is the treatment of wool in aqueous or other solutions to remove natural fats, waxes, proteins, dirt, oil and other impurities.

“Carbonised Wool” means wool which has been carbonised. Carbonising is a chemical process for eliminating cellulosic matter (vegetable matter) from wool by degrading the cellulosic material to an easily removable condition.

“Wool Tops” means a continuous sliver of untwisted wool fibres from which noils have been removed by combing.

“Broken Top” means a non-continuous sliver of untwisted wool fibres from which noils have been removed by combing.

“Open Top” means untwisted wool fibres from which noils have been removed by combing.

“Noils” means short, tangled and broken fibres, removed from wool during combing. Noils may contain vegetable matter.

“Card Waste” means short fibre which may contain vegetable matter, removed during the carding process.

“Slipe Wool” also referred to as fellmongered wool: means wool removed from slaughtered or dead sheep. There are three common methods of removal:

- (a) lime-steeping
- (b) sweating; and
- (c) painting with, for example, sodium sulphide (sometimes combined with (a)).

“Test Certificate” means a certificate presented by the Seller and,

- (a) in the case of greasy wool, an IWTO certificate; and
- (b) in the case of other wools, an IWTO certificate or a certificate produced as a result of testing carried out in accordance with relevant IWTO test methods and regulations as agreed between the Buyer and Seller,

accompanying the Goods which states the results of testing the Goods in accordance with relevant IWTO test method(s) and regulations for each measured characteristic stipulated in the Contract.

2. DOCUMENTS

2.1 In the case of payment by Documentary Credit, the Seller shall prepare and present to the bank:

- (a) full set of three originals and three copies of clean, on-board ocean bills of lading or multimodal transport documents, made out to order, blank endorsed, marked freight pre-paid/freight to collect, notifying Buyer;
- (b) manually signed commercial invoice in four originals and three copies indicating contract number, Documentary Credit number and name of vessel;
- (c) Test Certificate(s) in two originals and two copies;
- (d) combined weight memo and packing list in two originals and two copies;
- (e) certificate of origin in one original and two copies;
- (f) one original and two copies of a declaration and certificate to accompany shipments of skins, hides and wool which provides health and veterinary certification;
- (g) one original and two copies of the insurance policy or insurance certificate as specified in clause 5;
- (h) one copy of beneficiary's shipping advice of telex/facsimile to applicant within 48 hours of the date of shipment, advising Documentary Credit number, name of vessel, date, quantity, weight and value of shipment;
- (i) in the case of CIF, CIP or CFR, a copy of the notification (if any) by the Buyer to the Seller approving the vessel; and
- (j) one original of the Seller's certificate stating that one set of copy documents as provided in clause 2.2 has been forwarded by courier to the Buyer within 7 days of the date of shipment.

2.2 In the case of payment by Documentary Credit, the Seller must send by courier either to the Buyer or the consignee appointed by the Buyer (as notified to the Seller), within 7 days of the date of shipment, non-negotiable copies of the following documents:

- (a) bill of lading;
- (b) commercial invoice;
- (c) Test Certificate(s) (including pre-sale test certificates if required by the Buyer);
- (d) health certificate;
- (e) combined weight memo and packing list; and
- (f) certificate of origin.

2.3 In the case of payment by telegraphic transfer, the Seller must send to the Buyer all documents specified in clause 2.1.

3. TERMS OF PAYMENT

- 3.1 Payment can be made by Documentary Credit, collection (D/P, D/A) or remittance. Details of payment are set out in clause 4 of Part 1.
- 3.2 Documents to be presented to a bank in Australia or New Zealand must comply with those required under the Documentary Credit.
- 3.3 The Buyer shall be liable to make payment for the Goods delivered in accordance with the terms of this Contract.
- 3.4 If the Buyer fails, due to reasons within its responsibility, to establish the documentary credit in accordance Clause 4 of Part 1 then (unless a period of grace has been agreed by the Parties in writing) the Buyer shall pay to the Seller 2.5% of the total amount payable for the Goods. If the Seller fails, due to reasons within its responsibility, to comply with the Time of Shipment as set out in Clause 6 of Part 1 then (unless a period of grace has been agreed by the Parties in writing), the Seller shall pay to the Buyer 5% of the total amount payable for the Goods. To determine whether the Seller has complied with the Time of Shipment, the Parties will rely on the date of the bill of lading. If the Buyer delays in establishing the documentary credit or the Seller fails to comply with the Time of Shipment and in either case the delay extends beyond 30 days, the Party not causing the delay may, at its option, terminate this Contract.
- 3.5 Without prejudice to the Parties' rights under Clause 11, the payments for delay provided for in Clause 3.4 shall be the sole compensation for the damage caused by such delays.

4. TERMS OF DELIVERY

- 4.1 Packing
 - 4.1.1 The Seller must press and pack the Goods in seaworthy nylon or high density polyethylene bags or as otherwise agreed by the Buyer and Seller. The Seller shall be liable for any damage and loss of the Goods attributable to inadequate or improper packing.
 - 4.1.2 The packing charges shall be included in the unit price.
- 4.2 Shipping Marks /Countermarking
 - 4.2.1 The Seller must clearly mark on each bale:
 - (a) the Contract number;
 - (b) the port of destination; and
 - (c) the re-number (commencing at 1),unless otherwise agreed by the parties.
 - 4.2.2 The re-numbering must conform to those on the packing list.
 - 4.2.3 The Seller must ensure that all countermarks are legible with additional details concerning the countermarks as instructed by the Buyer.
 - 4.2.4 If, upon arrival at the port of destination, the Goods have no marks, the wrong marks or marks not in conformity with the Contract, the Seller shall be responsible for any losses due to tallying charges incurred by the Buyer.
- 4.3 Shipment
 - 4.3.1 The Buyer and the Seller shall arrange shipment according to Incoterms.
 - 4.3.2 If the Contract is in terms of FOB:

- (a) The Buyer shall book shipping space in accordance with the Time of Shipment stipulated in this Contract.
- (b) The Buyer shall, at least 15 days before the estimated date of arrival of the vessel at the port of shipment, advise the Seller of the:
 - (i) name of the vessel;
 - (ii) estimated arrival date; and
 - (iii) Contract number.
- (c) The Seller shall, at least 10 days before the estimated date of shipment, advise the Buyer by facsimile or telex of the:
 - (i) Contract number;
 - (ii) quantity;
 - (iii) total amount;
 - (iv) total number of bales;
 - (v) total invoice weight; and
 - (vi) date when the Goods should be ready for shipment at the port of shipment.
- (d) Should the vessel or the date of arrival of the vessel at the port of shipment have to be changed, the Buyer or its shipping agent shall advise the Seller in time to make necessary arrangements.
- (e) Should the vessel fail to arrive at the port of shipment within 15 days of the arrival date advised by the Buyer, the Buyer shall bear the actual expenses incurred by the Seller, including storage expenses and interest, calculated from the 16th day after the advised arrival date of the vessel at the port of shipment.
- (f) If the carrying vessel has arrived at the port of shipment as advised, the Seller shall be liable for any dead freight or port charges, should the Seller fail to have the quantity of the Goods ready for loading in time as stipulated.

4.3.3 If the Contract is in terms of CIF, CIP or CFR:

- (a) The Seller shall not later than 15 days before the estimated date of shipment, inform the Buyer by fax or telex of the name, nationality, age and other details of the carrying vessel as well as the Seller's Contract number.
- (b) The Seller shall seek the written consent of the Buyer to the acceptability of the vessel. Should the Buyer fail to advise the Seller of its consent to the vessel within 5 Business Days of the Seller notifying the Buyer of the vessel, the Buyer is deemed to have accepted the vessel and the Seller may ship the Goods on that vessel. The Buyer may only reject a vessel on reasonable grounds.
- (c) If the Buyer rejects the vessel within the time set out in paragraph (b), the Seller must then nominate another vessel at the earliest opportunity and advise the Buyer of revised shipment details listed in paragraph 4.3.3(a).
- (d) The Seller must ensure that a clean shipped on board or a combined transport multimodal bill of lading is issued with each shipment.

- (e) If the Buyer requires alterations to shipping instructions, it must notify the Seller in writing within a reasonable time prior to the estimated time of arrival of the vessel at the port of unloading. The Buyer shall bear any additional costs incurred as a result of alterations to shipping instructions.
- (f) The Seller shall, within 48 hours of completion of the loading of the Goods, provide the Buyer or the consignee appointed by the Buyer (as notified to the Seller), with notice of shipment by facsimile or telex. The notice shall include the:
 - (i) Contract number;
 - (ii) description of the Goods;
 - (iii) quantity;
 - (iv) weight memo, packing list and shipping mark;
 - (v) invoiced value;
 - (vi) documentary Credit number;
 - (vii) sailing date; and
 - (viii) estimated date of arrival at the port of unloading.

5. INSURANCE

- 5.1 If shipment is made under the term of FOB or CFR, insurance shall be procured by the Buyer. The Seller shall, no later than two Business Days after the completion of the loading of Goods, provide the Buyer and/or the consignee appointed by the Buyer with notice of shipment as specified in clause 4.3.3 by facsimile or telex. Should the Seller fail to provide the shipping notice to the Buyer and/or the consignee appointed by the Buyer within the said time limit, and as a result the Buyer cannot procure insurance in time, the Seller shall be responsible for any damage to and/or loss of the Goods incurred in the course of transport.
- 5.2 If shipment is made under the term of CIF or CIP, insurance shall be procured by the Seller. The Seller shall prepare and send to the Buyer one original and two copies of insurance policy or certificate for 110% of the invoice value, showing payable in China, in currency of the draft, blank endorsed covering all risks.

6. WARRANTY

- 6.1 The Seller warrants that the quality of the Goods conforms to the specifications and the quantity and packing of the Goods conform to the terms of this Contract.
- 6.2 If the Goods are found to be in breach of the warranties in clause 6.1 and the cause of such breach is attributable to the Seller, the Buyer has the right to lodge a claim against the Seller in accordance with clause 9. The Buyer's rights and the Seller's obligations under the warranties shall be settled in accordance with clause 12.

7. TEST CERTIFICATES

- 7.1 Before shipment, Test Certificates shall be issued. Such certificates shall be part of the documents to be presented to a bank in Australia or New Zealand. The fee for the Test Certificates shall be borne by the Seller.
- 7.2 The Buyer and the Seller acknowledge and agree that:

- (a) the Test Certificate relates solely to the whole of the consignment delivered under this Contract; and
- (b) when any part of the consignment (other than the entire consignment) is on-sold or otherwise dealt with by the Buyer, the Test Certificate is invalid and must not be used by the Buyer in such circumstances.

8. INSPECTION AND RE-INSPECTION

- 8.1 Upon the arrival of Goods at the port of destination, such Goods shall be inspected by the China Inspection and Quarantine Authorities (CIQ).
- 8.2 If the quantity, specifications, conditioned weight or packing of the Goods is not in conformity with this Contract, the Buyer shall have the right to lodge a claim against the Seller with an inspection certificate issued by CIQ.
- 8.3 If either party disagrees with the inspection results in the CIQ certificate, it may resolve the issue by taking any of the following measures :-
 - (a) by consultation with the other party to reach a settlement; or
 - (b) directly going to arbitration; or
 - (c) by submitting an application to CIQ for re-inspection according to CIQ "Re-inspection Regulation of Import and Export Commodities". CIQ will decide whether or not to accept the application. If CIQ accepts the application, then within a further 10 days, CIQ will appoint in China a re-inspection panel consisting of experts from China and the Seller's country, including if possible, an equal number of experts from China and the Seller's country, from a list of experts to be established by CIQ. The experts are from China and the Seller's country recommended by the Buyer and the Seller. The panel of experts shall be impartial, independent and shall not act as advocates for either of the parties. The panel shall complete the re-inspection no later than 60 days from the date of acceptance of the application in accordance with the relevant IWTO test methods and regulations. The re-inspection panel may make suggestions to the parties to settle their dispute. If the result of re-inspection is acceptable to the parties, it shall be final and binding. The parties may subsequently submit the dispute to arbitration. The parties may not commence arbitration until the re-inspection procedure is completed.

9. CLAIMS

- 9.1 If:
 - (a) the quality of the Goods does not conform to the specifications; or
 - (b) the quantity, conditioned weight or packing of the Goods is not in conformity with this Contract,the Buyer shall have the right to lodge a claim against the Seller.
- 9.2 The Buyer shall give a written notice of a claim to the Seller with all supporting documentation relating to the claim. The Buyer shall lodge claims no later than:
 - (a) in the case of greasy wool, 5 months from the date of arrival of the Goods at the port of destination; and
 - (b) in the case of scoured wool, carbonised wool and wooltops, 4 months from the date of arrival of the Goods at the port of destination.

The Buyer shall not be entitled to bring a claim against the Seller beyond these time limits except as may be agreed between the Buyer and the Seller.

- 9.3 Upon receipt of the notice and/or the inspection certificate within the time limit set out in clause 9.2:
- (a) the Seller shall acknowledge the Buyer's notice within 3 Business Days; and
 - (b) the Seller must respond to the Buyer's claim within 10 Business Days of receipt of the notice and/or the inspection certificate. If the Seller fails to respond within the 10 Business Day period, the claim shall be regarded as having been accepted by the Seller.
- 9.4 If the Buyer makes a claim against the Seller, the Buyer must not distribute, process or allow to be processed that part of the Goods which are the subject of the claim until the Seller or the Seller's agent checks that part of the Goods which is the subject of the claim. In the case of greasy wool, the Buyer must not distribute, process or allow to be processed:
- (a) in the case of characteristics tested and specified in accordance with this Contract, the component lot which is the subject of the claim; and
 - (b) in the case of non-objectively measured characteristics, the bales which are the subject of the claim.

The Seller or the Seller's agent must carry out the check within 15 Business Days of receiving written notice of the claim from the Buyer under clause 9.2. Thereafter the Buyer and the Seller shall resolve the claim. If the Buyer fails to comply with this clause, the Seller is not required to compensate the Buyer for any loss suffered. If the Seller or the Seller's agent fails to carry out the check within 15 Business Days of receiving the written notice of claim from the Buyer, the Buyer shall be entitled to dispose of that part of the Goods or the component lot which is the subject of the claim and maintain the right to claim against the Seller.

10. LIABILITY FOR DELAY

- 10.1 If the Buyer fails, due to reasons within its responsibility, to establish the Documentary Credit in accordance with Clause 4 of Part 1 then (unless a period of grace has been agreed by the Parties in writing) the Buyer shall pay to the Seller 2.5% of the total amount payable for the Goods. To determine whether the Buyer has established the Documentary Credit in accordance with the terms of this Contract, the time of the establishment of the Documentary Credit will be the issuance date embodied in an authenticated instrument as dispatched by the issuing bank (by tested telex or SWIFT). If the Seller fails, due to reasons within its responsibility, to deliver the Goods in accordance with the Time of Shipment as set out in Clause 6 of Part 1 then (unless a period of grace has been agreed by the Parties in writing), the Seller shall pay to the Buyer 5% of the total amount payable for the Goods. To determine whether the Seller has delivered the Goods in accordance with the Time of Shipment, the Parties will rely on the date of the bill of lading. If the Buyer delays in establishing the Documentary Credit or the Seller fails to deliver the Goods in accordance with the Time of Shipment and in either case the delay extends beyond 30 days, unless another period is agreed upon by the parties in writing, the Party not causing the delay may, at its option, terminate this Contract.
- 10.2 Without prejudice to the Parties' rights under Clause 12, the payments for delay provided for in Clause 10.1 shall be the sole compensation for the damage caused by such delays.

11. FORCE MAJEURE

- 11.1 Neither Party shall be held responsible for failure or delay to perform all or any part of this Contract due to flood, fire, earthquake, snowstorm, drought, hailstorm, hurricane, or any other events that are beyond the control of the

affected Party and could not reasonably be expected at the time of conclusion of this Contract or have been avoided or overcome by such party. However, the Party whose performance is affected by the event of Force Majeure shall give a notice to the other party of its occurrence as soon as possible and a certificate or a document of the occurrence of the Force Majeure event issued by the relative authority or an independent Third Party shall be sent to the other Party not later than 14 days after its occurrence.

- 11.2 If the event of Force Majeure continues for more than 30 days, both Parties shall negotiate the performance or the termination of this Contract. If within 120 days after the occurrence of the event of Force Majeure both Parties cannot reach an agreement, either Party has the right to terminate this Contract. In the case of such a termination either Party shall bear its own costs. Further claims for compensation in connection with the termination shall be excluded.

12. TERMINATION

- 12.1 Except as provided elsewhere, this Contract may be terminated in either of the following cases:
- (a) by the written agreement of both Parties; or
 - (b) if a Party, through its own fault, fails to perform its obligations within the time limit agreed upon in this Contract and fails to eliminate or remedy such breach within a reasonable period specified by the non-breaching Party after receipt of written notice from the non-breaching party. Termination of the Contract shall be effected by the non-breaching Party giving a written notice to the other Party.
- 12.2 Termination does not affect any right of the terminating Party, including but not limited to, its right to claim compensation for damages resulting from the other Party's default.

13. ARBITRATION

- 13.1 The Buyer and the Seller will use their best endeavours to settle any disputes arising from or in connection with this Contract or its execution amicably through negotiation.
- 13.2 In case no settlement can be reached, the dispute shall be submitted to China International Economic and Trade Arbitration Commission ("CIETAC") for arbitration which shall be conducted in Beijing in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration ("CIETAC Rules"). The arbitral award is final and binding upon both Parties.
- 13.3 Arbitrator(s) shall be appointed from the CIETAC panel of arbitrators, who shall be accredited by the IWTO and approved by CIETAC as having experience in the resolution of disputes in the wool industry and so designated in the list of arbitrators published by CIETAC from time to time.
- 13.4 The Parties shall agree on whether English or Chinese is to be used as the language of the arbitration. If the parties cannot agree on the language, the decision shall be made by the presiding arbitrator or in the case of arbitration by a single arbitrator, by that arbitrator.
- 13.5 An award by CIETAC may be enforced or relied upon in any jurisdiction where the Party against whom enforcement is sought carries on business and neither Party shall make any objection as to the right of the other Party to enforce, in accordance with the law of the relevant jurisdiction, any such award.

14. APPLICATION OF LAW

- 14.1 The Parties agree that the *United Nations Convention on Contracts for the International Sale of Goods* ("Vienna Convention") applies to this Contract.

14.2 Where any doubt arises as to the meaning or interpretation of any provision of this Contract or where the Contract is silent on any subject, the Parties agree that the relevant provision in the Vienna Convention applies.

15. NOTICE

15.1 A notice to be given by a Party to another Party under this Contract must be:

- (a) in writing;
- (b) directed to the recipient's address specified in this Contract or as varied by written notice; and
- (c) sent by prepaid registered post, hand delivery, telex or facsimile to that address

and will be deemed

- (d) on the day of delivery provided delivery occurs before 5pm on a Business Day at the place of receipt of the notice otherwise at 9am on the next Business Day; or
- (e) if sent by telex or facsimile, when the answerback or message confirmation is received,

as the case may be.

15.2 Notices transmitted by facsimile shall have the same legal effect as the original would have upon delivery.

16. MISCELLANEOUS

16.1 Specifications

The specifications for the Goods are set out in Attachment 1 of Part 2 of this Contract.

16.2 Amendment of the Contract

This Contract may only be altered by agreement in writing by both Parties.

16.3 Effective Date of Contract

This Contract shall become effective upon signing by both Parties.

16.4 Terms of the Contract

This contract consists only of the written terms. Terms used in one part of this Contract will have the same meaning when used in another part unless the context expressly provides otherwise.

16.5 Quota and Import Licence

The Buyer is responsible for ensuring that it obtains an allocation of quota or an import licence if this is necessary for the Buyer to fulfil its obligations under the Contract. Failure by the Buyer to obtain an import licence will not relieve the Buyer from its obligations under the Contract.

16.6 Execution of the Contract

Each Party warrants that the person signing this Contract on its behalf is duly authorised to sign and bind that Party and it will not make any claim in future that the Contract is void or otherwise unenforceable on the grounds that the person who signed the Contract did not have authority to bind that Party.

A GUIDE TO AUSTRALIAN AND NEW ZEALAND WOOL SPECIFICATIONS 2000

1. AUSTRALIAN GREASY WOOL SPECIFICATION

REFERENCE	UNIT
MEAN FIBRE DIAMETER	Micron
(IWTO-28 for wool tested prior to 1 July 2000 and IWTO-12 for wool tested on or after that date) ¹ :	
Maximum for any component lot:	Micron
VEGETABLE MATTER BASE (IWTO-19):	%
Maximum for any component lot:	%
MEAN STAPLE LENGTH (IWTO-7, 30):	mm
Minimum for any component lot:	mm
MEAN STAPLE STRENGTH (IWTO-7, 30):	N/ktex
Minimum for any component lot:	N/ktex

All component lots shall be tested as per IWTO testing standards and regulations for yield (IWTO 16%), micron, vegetable matter, staple length and staple strength. IWTO Certificates (combination certificates and if requested prior to entering the Contract certificates for component lots) shall be supplied for the above characteristics.

ADDITIONAL REQUIREMENTS (Example):

Fleece	%
Interlots	%
OML	% (Objectively Matched Lots)
Skirtings	%
Bulk Class	%
Maximum no. of non-farm lots	
Colour	
VM Type	

DEFINITIONS APPLICABLE TO GREASY WOOL BUYING SPECIFICATION

Mean Fibre Diameter (Maximum)

Maximum for any component lot:

The “Mean Fibre Diameter (Maximum)” refers to the mean fibre diameter (micron) for the consignment. The Mean Fibre Diameter must be equal to or less than the amount specified.

“Maximum for the component lots” refers to the upper micron limit allowable for individual component lots within the consignment.

Vegetable Matter Base (Maximum)

Maximum for any component lot:

The “Vegetable Matter Base (Maximum)” refers to the vegetable matter base (%) content for the consignment. The Vegetable Matter Base must be equal to or less than the amount specified.

The “Maximum Content” in any Component lot refers to the upper limit of Vegetable Matter for any component lot within the consignment.

Mean Staple Length (Minimum):

Minimum for any component lot:

**Note: Staple strength measurements are not available on wools shorter than 55 mm.*

The “Mean Staple Length (Minimum)” refers to the mean greasy staple length (millimetres) for the consignment. The Mean Staple Length must be equal to or greater than the amount specified. The “Minimum for any component lot” refers to the lower length limit for any component lot within the consignment.

Mean Staple Strength (Minimum):

Minimum for any component lot:

**Note: Staple strength measurements are not available on wools shorter than 55 mm.*

The “Mean Staple Strength (Minimum)” refers to the mean greasy staple strength (Newtons/kilotex) for the consignment. The “Mean Staple Strength” must be equal to or greater than the amount specified.

The “Minimum for any component lot” refers to the lower strength limit for any component lot within the consignment.

Additional Requirements:

Refer to any guidelines for non-measured characteristics of the consignment and/or other special requirements.

Note: ¹ In July 2000, the standard certification service changed from IWTO-28 (Airflow) to IWTO-12 (LASERSCAN). The test house will provide separate IWTO Combined Test Certificates for Airflow and/or LASERSCAN, plus a Combined Calculation document if the delivery contains both Airflow-tested and LASERSCAN-tested parts.

2. AUSTRALIAN SCOURED WOOL SPECIFICATION

REFERENCE	UNIT
FIBRE DIAMETER (Maximum)*	Micron
FIBRE LENGTH	As per sample
VEGETABLE MATTER BASE (Maximum)*	%
RESIDUAL GREASE (Maximum)*	%
REGAIN (Maximum)* ¹	%
ASH CONTENT (Maximum)*	%
COLOUR	As per sample

Packing – Seaworthy nylon or high density polyethylene packs or as otherwise agreed by the Buyer and Seller.

Test Certificates issued in accordance with the relevant IWTO test methods and regulations are required for:

(List of parameters)

ADDITIONAL REQUIREMENTS (Example):

% Coefficient of Variation of Diameter (CVD)*	%
Length after Carding (LAC) Report*	mm
Colour Test*	
Moisture Content (maximum)	%

*Note: If specified in the Contract, the method of testing must be listed.

¹ Conditioned weight at 16% regain is the basis for invoice purposes.

3. AUSTRALIAN CARBONISED WOOL SPECIFICATION

REFERENCE	UNIT
FIBRE DIAMETER (Maximum)*	Micron
FIBRE LENGTH	As per sample
REGAIN (Maximum)* ¹	%
ASH CONTENT (Maximum)*	%
COLOUR	As per sample

Packing – Seaworthy nylon or high density polyethylene packs or as otherwise agreed by the Buyer and Seller.

Test Certificates issued in accordance with the relevant IWTO test methods and regulations are required for:

(List of parameters)

ADDITIONAL REQUIREMENTS (Example):

% Coefficient Variation of Diameter (CVD)*	%
Length after Carding (LAC) Report*	mm Barbe
pH	
Colour Test *	
Moisture Content (maximum)	%

*Note: If specified in the Contract, the method of testing must be listed.

¹ Conditioned weight at 16% regain is the basis for invoice purposes.

4. AUSTRALIAN WOOLTOPS SPECIFICATION

REFERENCE	UNIT
FIBRE DIAMETER (Maximum)*	Micron
MEAN FIBRE LENGTH (HAUTEUR OR BARBE) (Minimum) ¹	Millimetres
COEFFICIENT OF VARIATION OF HAUTEUR OR BARBE	%
RESIDUAL GREASE*	%
REGAIN (Maximum)* ²	%
SLIVER WEIGHT (per metre)	GMS
COEFFICIENT OF VARIATION OF SLIVER EVENNESS*	%
COLOUR	As per sample
SHORT FIBRE CONTENT	No more than ...% fibres shorter than ...mm
NEP* ³	per 100g
VM & STRAW* ³	per 100g
DARK & COLOURED FIBRES* ³	Per 100g

Packing – Tops to be packed in high density seaworthy packs.

Test Certificates issued in accordance with the relevant IWTO test methods and regulations are required for :

(List parameters)

ADDITIONAL REQUIREMENTS (Example):

% Coefficient Variation of Diameter (CVD)	%
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***Note:** If specified in the Contract, the method of testing must be listed.

- 1 If Fibre Length is specified, the method of testing and agreed limits for fibre length and coefficient of variation of fibre length must be listed.
- 2 As per the Standards of Regain provisions in the IWTO Blue Book 1994 at page 6, Conditioned Weight at 18.25% regain is the basis for invoice purposes.
- 3 These specifications are to be agreed between the Buyer and the Seller and test methods to be agreed by both parties.

5. NEW ZEALAND GREASY WOOL SPECIFICATIONS

Basic Specifications

Mean Fibre Diameter (IWTO-28) Micron
 (Maximum)
Maximum for any component lot Micron
 Vegetable Matter Base (IWTO-19) % (Maximum)
Maximum for any component lot %

All component lots shall be tested as per IWTO testing standards and regulations for yield, micron and vegetable matter and appropriate IWTO Combination Test Certificates shall be supplied for the above characteristics.

Packaging

Seaworthy nylon or high density polyethylene packs or as otherwise agreed by the Buyer and Seller.

Examples of Additional Specifications

Colour Y-Z (Maximum)
Length	(a) inches, indicated by a general range, e.g. 4 to 6 inches (b) 24 Micron and Finer, Length and Strength by objective measurement (Atlas or SB2)

6. NEW ZEALAND SCOURED WOOL SPECIFICATION

Basic Specifications

All deliveries shall have IWTO Test Certificates for Mean Fibre Diameter, Vegetable Matter Base and Conditioned Weight.

Mean Fibre Diameter (IWTO-28) Micron (Maximum)
Vegetable Matter Base (IWTO-19) % (Maximum)
Regain (IWTO-33) 16 %
Colour (DTM 56) Y-Z (Maximum)
Residual Grease (IWTO-10) % (Maximum)

Packaging

Seaworthy nylon or high density polyethylene packs or as otherwise agreed by the Buyer and Seller.

Examples of Additional Specifications

Length Either mm Barbe (Minimum), measured by Length After Carding
Or : inches, indicated by a general range, e.g. 4 to 6 inches