

THE AUSTRALIAN WINE RESEARCH INSTITUTE LTD
STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

In these terms:

deliverables mean the deliverables, outcomes or results requested through *our electronic platforms*, set out in a quotation you received from *us*, or that you have indicated as being required on any order form *you* have submitted with samples and/or otherwise communicated to *us*.

electronic platforms mean the AWRI's online platforms (including but not limited to websites) and online or standalone software applications which provide information or *services*.

information means all confidential information and all other information of any nature, knowledge, technology, ideas, technical data, concepts, techniques, processes, formulas, expertise, computer programs, trade secrets, samples, specimens, inventions, discoveries, designs, methods, know-how and data whether recorded or not, and, where relevant, in whatever form they are recorded, embodied or encoded.

order means an order for services by *you* from *us*, and includes but is not limited to *services* requested through *our electronic platforms* and in-kind *services* requested through the AWRI helpdesk.

report means any written document provided to *you* by *us* that includes interpretative commentary of data or results prepared by *us*

services means the *services* ordered by *you* from *us* from time to time and includes any *services* requested through *our electronic platforms* and/or any *services* described on a quotation received from *us* and/or that *you* have indicated as being required on any order form *you* have submitted with samples and/or otherwise communicated to *us*.

us, we, our means The Australian Wine Research Institute Ltd including but not limited to Affinity Labs, AWRI Helpdesk, WIC Winemaking Services and the AWRI node of Metabolomics Australia and its related bodies corporate or associates (within the meaning of the *Corporations Act 2001*).

you, your means the person(s) or organisation(s) to which we are providing the *services*.

You acknowledge/agree that:

1. *you* need to provide *us* with certain details about *your* business to enable *us* to provide services to *you*;
2. by placing an order with *us* or accepting provision of *services* from *us*, *you* accept these terms;
3. any quotation given by *us* is an invitation to treat and *we* reserve the right to accept *your* order or not;
4. *you* cannot cancel an order or assign *your* interests under these terms without *our* written consent;
5. *your* order for carrying out the *services* is both confirmation of and comprises:
 - a. acceptance of *our* quotation (if one was provided), such acceptance having taken place in Australia;
 - b. *your* acknowledgement that in the event of any inconsistency between these terms and any terms and conditions associated with issuing *your* order, then these terms will prevail to the extent of any inconsistency;
 - c. provision and delivery of any of *your* samples or materials required by *us* to perform the *services* as specified in *our* quotation or *your* order, at a fitness for purpose standard appropriate for the delivery of the *services*, acceptance of which will be at *our* discretion;

- d. *your* acknowledgement that any samples or materials provided by *you* are representative of the product to be analysed and that *you* have retained any duplicate or control samples that *you* may require;
 - e. whilst reasonable care will be taken with any samples provided by *you*, *your* acceptance of the inherent risks associated with storage and use of *your* samples including but not limited to *services* provided on the premises of the Hickinbotham Roseworthy Wine Science Laboratory where student teaching and/or other activities outside of *our* control are undertaken;
 - f. *your* acceptance that *we* will not be responsible for any samples that are altered, damaged, or destroyed during the performance of the *services* and that at *our* discretion *we* may analyse, store and/or destroy any samples or materials at the conclusion of the *services* unless agreed otherwise in writing; and
 - g. *your* acceptance that any compensation for losses incurred as a result of loss or damage of samples or materials agreed to by *us* will be limited to *your* prime cost of the material and specifically exclude any consequential losses howsoever derived;
6. *you* acknowledge that any time period quoted by *us* for carrying out the *services* is an estimate only;
 7. when providing samples to *us*, *you* must give written notice of all known safety or health hazards and special procedures relevant to the handling, testing, storage, transport and disposal of samples. *We* reserve the right to refuse to conduct any aspect of the *services* where such *services* may pose a health or safety hazard and/or where adequate information relating to safety or health hazards has not been provided;
 8. *we* are at liberty to provide *services* answering the description of the *services* notwithstanding the fact that these terms are to be deemed to be a contract for the supply of specific *services* and, without limiting the generality of the foregoing, *services* provided in accordance with these terms may incorporate such design alterations or modifications to any proposed methodology as are from time to time made by *us*;
 9. subject to clause 10, to the extent permitted by law, *we* make no representation, warranty or undertaking regarding the character, quality, workmanship, condition, suitability or fitness for purpose of the *services* and, to the extent permitted by law, all implied terms as to those matters are excluded;
 10. unless expressly prohibited by any applicable law, *we* are not liable (whether in contract, tort, under any statute or otherwise) for loss or damage of any kind (including direct, indirect and consequential loss and damage of business revenue, loss of profits, failure to realise expected profits or savings or other commercial or economic loss of any kind), however caused arising out of or in any way related to the *services*, or failure or delay in the performance of the *services*. In any event, to the extent the law allows, *our* liability will be limited, at *our* option, to:
 - a. the resupply of the *services* or equivalent *services*; or
 - b. the payment of the cost of having the *services* resupplied;
 11. the price for *services* is that which applies when *you* are invoiced for the *services* and must be paid for in Australian dollars (A\$) unless other arrangements have been agreed to in writing;
 12. *we* may revise any prices specified in respect of any *services* yet to be provided by giving *you* written notice thereof. If *you* are unwilling to accept the revised price or prices, *you* must notify *us* in writing prior to the date on which such *services* are provided, otherwise *you* will be deemed to have agreed to such revision. In the event *you* do notify *us*, *we* have the option to perform the contract at the original order prices or to cancel the contract;
 13.
 - a. in this clause 13, GST Law means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and terms defined in the GST Law bear their defined meanings;
 - b. if GST is payable on a taxable supply made under this contract, the party providing the consideration for that supply must also pay, at the same time as the consideration for the

- supply, an additional amount on account of GST equal to the consideration payable for the taxable supply multiplied by the prevailing GST rate;
- c. where there is an adjustment relating to the taxable supply, the supplier of the taxable supply will deliver an adjustment note to the recipient of the taxable supply as required by the GST Law;
14. should *you* make application to us for the provision of a commercial credit account:
- a. *you* agree to *us* seeking *information* including personal information about *you* from a credit reporting agency for the purposes of assessing *your* application in accordance with item 3 of the table in section 20F of the *Privacy Act* 1988;
 - b. *you* agree to *us* seeking personal information about *you* from other credit providers for the purposes of assessing *your* application in accordance with section 21J(1) and (2) of the *Privacy Act* 1988;
 - c. *you* agree to pay *our* invoices for *services* provided within the timeframe specified on the invoice unless otherwise agreed to in writing;
 - d. *you* acknowledge that credit facilities may be withdrawn without notice should *you* be in breach of *our* payment terms;
 - e. *you* acknowledge that until *your* application for commercial credit is accepted *you* will be required to make pre-payments for any *services* to be provided unless otherwise agreed to by *us*; and
 - f. *you* acknowledge that *you* have read, acknowledged and consented to the collection, use, storage or disclosure of *your* personal information by *us* in accordance with *our* Credit Information Management Policy (available on *our* website) and the *Privacy Act* 1988 (as amended);
15. if *we* have approved *your* application for commercial credit *you* must pay the invoiced price for any *services* provided, plus any applicable goods and service tax without any deduction, withholding or set-off for any reason, within the timeframe specified on *our* tax invoice for the services unless *we* have agreed in writing to alternative arrangements.
16. should *you* not apply for commercial credit, *you* will need to pre-pay for any *services* *you* require unless otherwise agreed in writing by *us*;
17. if *you* do not pay on time, then *we* may charge *you* interest at the "Overdraft Index rate" (monthly charging cycle) as published by the Commonwealth Bank of Australia plus 5% per annum from the day the debt became overdue. *We* may engage a collection agency and disclose all necessary *information* relating to *your* account to this agency. *You* will also be liable for all costs relating to the collection of monies including without limitation collection agency fees and legal costs;
18. *we* reserve the right to perform the *services* in instalments, and all such instalments shall be separately invoiced and paid for when due without regard to subsequent provision of *services*;
19. *we* may alter or suspend credit or refuse to provide *services* or cancel unfulfilled orders when, in *our* opinion, *your* financial condition or account warrants such action. *We* may terminate this agreement immediately if *you* become insolvent or an insolvent under administration, within the meaning of section 9 of the *Corporations Act* 2001;
20. if the *services* are to be provided at a site owned, leased or otherwise occupied by *you* (**site**):
- a. *you* grant to *us* a non-exclusive licence to enter on and remain at the *site* to perform the *services*;
 - b. *you* undertake to ensure at all times that the *site* is maintained with due care so that the *site* is easily accessible by *us*, is safe and complies with all relevant Work, Health and Safety laws and regulations; and
 - c. *we* shall not be responsible for any damage or destruction to property located at the *site*, except for such damage or destruction that occurs due to *our* gross negligence or wilful

- misconduct, and *you* release and indemnify *us* from and against all claims of any kind in respect of such damage or destruction;
- d. in the event of a dispute *you* allow *us* to enter *your* premises and take back any of *our* materials and/or equipment pending resolution of the dispute;
21. unless stipulated otherwise in any quotation provided by *us* title to any materials used in the supply of *services (materials)* passes to *you* when *your* full payment for the *services* has been credited in *our* nominated bank account;
22. until title passes, *you* hold the *materials* as fiduciary and bailee, must store the *materials* separately from all other property, keep them in the same condition and must not sell or part with possession of the *materials* without *our* prior written consent. If *you* do sell the *materials* to a third party either in contravention of this clause or with *our* consent, *you* shall be deemed to have assigned all *your* rights against that third party and must hold the purchase price received from the third party on trust for *us*;
23. when *you* access *our services* including *our electronic platforms* *you* acknowledge that:
- a. data entered by *you* may be viewed, evaluated, and used by *us* for purposes which include:
- i. analysing and investigating issues and trends relevant to the grape and wine sector;
- ii. identifying opportunities for research, development and extension;
- iii. identifying data that may have been entered in error by *you*; and
- iv. ensuring robustness and accuracy of output.
24. *we* may conduct research or development on, or publish work containing data entered into *our electronic platforms* by *you* or provided to *us* by *you* during *our* provision of the *services*, although any such data will be published only in an aggregated or anonymised form. *We* will not publish or provide data to any third party in a manner which identifies *you* or *your* business, without *your* prior consent.
25. copyright in data or material generated by *our electronic platforms* is owned by the AWRI.
26. whilst every effort is made to ensure the accuracy and integrity of the information on *our electronic platforms*, the accuracy of data, information or material generated by or obtained, depends on data entered by users. Data, *information* or material generated by or obtained from *our electronic platforms* should not be taken to constitute an accurate or complete reflection or representation of the position, conditions or attitudes of the wine industry with respect to a certain matter. The inclusion within *our electronic platforms* of data provided by a particular user does not constitute an approval, endorsement or recommendation of that data by *us*.
27. *you* may reproduce in any form any *report, information*, direct analytical data, research results, or publication provided to *you* by *us* relating to the *services* including data or material generated by *our electronic platforms* for the internal purposes of *your* business provided that such reproduction is a fulsome and accurate representation of such materials and acknowledges *our* involvement in providing the *services*.
28. direct analytical data or results provided by *us* to *you* on a fee for service basis are owned by *you*. *You* may reproduce in any form such direct analytical data or results provided to *you* by *us* relating to the *services* for purposes external to your business provided that such reproduction is a fulsome and accurate representation of the direct analytical data or results.
29. *you* must not reproduce in any form any *report* provided to *you* by *us* relating to the *services* including data or material generated by *our electronic platforms* for purposes external to *your* business, including but not limited to media releases, publications, communications to third parties or to commercialise the *information* without *our* prior written consent, such consent not to be unreasonably withheld. Any such reproduction must be a fulsome and accurate representation of the *reports* and contain an acknowledgment of *our* involvement in providing the *services* and the development of the *report*, to *our* absolute satisfaction;

30. *you* must not present, use or refer to any *report*, direct analytical data or results in a misleading, deceptive or inaccurate manner, including, without limitation, in partial form or in order to imply that *we* have endorsed a product or service. When the *services* relate to products or services, any opinions expressed by *us* in no way infer endorsement or otherwise of those products or services. Further, such opinions, whether supplied in writing or otherwise, shall not be used by *you* to advertise or promote those products or services. *We* will not be liable for any claim arising from or relating to a breach by *you* of this clause and *you* fully indemnify *us* for any claim suffered or incurred by *us* arising out of or relating to such a breach;
31. subject to clauses 27, 29 and 30 *you* may reference a *report* in *your* business communications, in order to support statements made in those communications;
32. *you* acknowledge that *you* use the *report* and the *materials* and any advice, opinions or information supplied by *us* in respect of the *services* at *your* own risk;
33. in the course of provision of the *services* confidential information may be exchanged between *you* and *us*. *You* and *we* agree to keep any confidential information received from the other party secret and confidential and to not directly or indirectly disclose or allow to be disclosed such confidential information to any third parties, except to party representatives who have a need to know the confidential information for the purposes of performing the *services* and/or as expressly permitted by the other party or as required by law to do so (for the avoidance of doubt, this includes but is not limited to, mandatory reporting requirements). Unless otherwise agreed between *you* and *us* the *services* themselves will not constitute confidential information and *we* may conduct research or development on, or publish work containing data generated in performance of the *services*, although any such data will be published only in an aggregated or anonymised form. *We* will not publish or provide data to any third party in a manner which identifies *you* or *your* business, without *your* prior consent. Subject to clauses 35 and 37 *our* use of such data will not infringe *your* intellectual property rights;
34. subject to clause 35 and any written agreement between us, if *you* pay a fee nominated by *us* for the delivery of the *services* any intellectual property created by the stated *deliverables* of the *services* will be *yours* and *we* will not, except as otherwise set forth herein and as otherwise agreed in writing, have any legal or equitable claim or right to any part of that intellectual property, however *we* will retain the copyright in the *report* itself. *We* grant to *you* a non-exclusive royalty free perpetual licence to use any background intellectual property used to achieve the deliverables if necessary for you to exploit the results of the deliverables;
35. *you* grant to *us* a non-exclusive royalty free perpetual licence to use the intellectual property created by the stated deliverables if owned by you in the circumstances set forth in clause 34. *You* acknowledge that:
 - a. *we* may exploit that licence to conduct other activities which may produce results that are similar to those produced by the *services* so long as those activities have been conducted outside of this contract; and
 - b. *you* will not have any entitlements to intellectual property rights arising from those activities;
36. even if *you* pay a fee for the delivery of the services, and save as otherwise agreed between *us* in writing, we will own all know-how, methodologies and other information developed or generated by us in carrying out the services, save to the extent they are *deliverables* and owned by *you* as set forth in clause 34;
37. if *we* provide the *services* without charging *you* a fee, *we* will own all intellectual property, know-how methodologies and other *information* developed by *us*, including without limitation any *report*, in the course of providing the *services*;
37. *you* allow us to retain all *information* provided and/or generated in the work undertaken in providing the services and acknowledge that such data will be confidentially stored in various databases and aggregated with other data as part of various calibrations or studies for variety, region, style, fault and any other attribute. *You* will not be able to be identified in any aggregate data. For further information on how *we* deal with personal information refer to *our* Privacy Policy (available on the AWRI website);

38. *we* may engage or sub-contract any person to provide the *services*, and may assign *our* rights or interests under these terms, in *our* absolute discretion;
39. without prejudice to any other rights *we* may have, if *you* breach these terms:
 - a. all amounts which *you* owe *us* become immediately payable;
 - b. *we* may retain any deposit paid by *you* on account of the *services* fee;
 - c. *we* and *our* employees and agents may enter *your* premises or the *site* to recover *materials* unpaid for and any equipment left by *us* at *your* premises or the *site* and *we* will not be liable for any damage caused to the *site* or *your* premises or property in retaking possession of the *materials*;
 - d. *you* must indemnify *us* against all costs and expenses incurred by *us* in retaking possession of the *materials*;
 - e. *we* may cease to provide the *services* to *you* and may withhold any *reports* or *information* that *we* have previously agreed to provide to *you* until *you* have rectified the breach to *our* satisfaction; and
 - f. if *you* do not rectify the breach in a reasonable time to our satisfaction, *we* may terminate this agreement immediately;
40. if *you* comprise more than 1 person, these terms bind *you* jointly and severally;
41. unless otherwise agreed in writing by *us* and *you*, *you* may not amend or vary these terms. No course of prior dealings or usage of trade will be used to supplement or explain these terms. *We* may amend or replace these terms at any time by notice to *you*;
42. these terms will not be construed against *us* merely because *we* prepared them or rely on them;
43. these terms and any written agreement between *us*, including but not limited to a written quotation, set out the whole agreement between *you* and *us* relating to the *services* and are governed by South Australian law; and
44. *you* submit to the non-exclusive jurisdiction of South Australian courts for any proceedings arising out of these terms.