

## COMMERCIAL SERVICES TERMS AND CONDITIONS

In these terms:

*us, we, our* means **The Australian Wine Research Institute Ltd** ABN 83 007 558 296 of Hartley Grove, Urrbrae, South Australia 5064 and its related bodies corporate or associates (within the meaning of the *Corporations Act 2001*).

*you, your* means the person purchasing *goods* or *services* from us.

*services* means the services ordered by *you* from *us* from time to time and includes any services described on the order form attached to these terms.

*You* and *we* agree that:

1. These terms and the terms and conditions of use of the Tannin portal tool and associated privacy statement and disclaimer apply to this contract entered into by *us* with *you* unless otherwise agreed in writing.
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. *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*;
6. Subject to clause 7, to the extent permitted by law, *we* make no representation, warranty or undertaking regarding the character, quality, workmanship, condition, suitability or fitness of the *services* and, to the extent permitted by law, all implied terms as to those matters are excluded;
7. 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 saving 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;
8. The price for services is that which applies when *you* are invoiced for the *services*;
9. *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;
10. Unless otherwise provided by *us* in writing *you* must pay the price for the services, plus any applicable goods and services tax without any deduction, withholding or set-off, within 30 days of the date of our tax invoice for the services;
11. If *you* do not pay on time, then *we* may charge *you* interest at *our* overdraft rate plus 2% unless *you* are a natural person acquiring the *services* for reasons other than predominantly for business or investment purposes;
12. In this clause 12, GST Law means *A New Tax System (Good and Services Tax) Act 1999 (Cth)* and terms defined in the GST Law bear their defined meanings.
  - a. 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.
  - b. 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;
13. *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*;
14. 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* must ensure at all times that the *site* is maintained with due care so that the *site* is easily accessible by *us* and is safe; 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;
15. Title to any materials used in the supply of *services (materials)* passes to *you* when *you* pay for the *services* and, if *you* pay by cheque, payment occurs when we are credited with the full amount of that cheque;
16. 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 paragraph 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*;
17. 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 price;
  - 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*, and
  - 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.
18. *You* must not reproduce in any form any report, information, data, research results, or publication (*reports*) provided to *you* by *us* relating to the *services* without *our* prior written consent, such consent not to be unreasonable withheld. Any such reproduction must be a full reproduction and contain an acknowledgment of *our* involvement in providing the *services* and the development of the *report*, to *our* absolute satisfaction;
19. *You* must not present, use or refer to any *report* 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. *We* will not be liable for any claim arising from or relating to a breach by *you* of this paragraph and *you* fully indemnify *us* for any claim suffered or incurred by *us* arising out of or relating to such a breach;
20. Subject to clauses 18 and 19 *you* may reference a *report* in *your* business communications, in order to support statements made in those communications;
21. All intellectual property developed from the carrying out of the *services* will be *your* absolute property and *we* will not, except as otherwise agreed, have any legal or equitable claim or right to any part of that intellectual property;
22. *You* grant to *us* a non-exclusive perpetual licence to use all know how, methodologies and other *information* developed or generated by *us* in carrying out the *services*. *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;
23. For the purposes of the preceding paragraph, '*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 if needed, in whatever form they are recorded, embodied or encoded;
24. 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* breach any part of these terms or if *you* become insolvent or an insolvent under administration, within the meaning of section 9 of the *Corporations Act 2001*;
25. 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;
26. If *you* comprise more than one (1) person, these terms bind *you* jointly and severally;
27. *You* may not amend or vary these terms and these terms prevail over any terms *you* seek to impose on the order for *services*. 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*;
28. These terms will not be construed against *us* merely because *we* prepared them or rely on them;
29. These terms set out the whole agreement between *you* and *us* relating to the *services* and are governed by South Australian law; and

30. *You* submit to the non-exclusive jurisdiction of South Australian courts for any proceedings arising out of these terms.