

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

In these terms:

us, we, our means The Australian Wine Research Institute Ltd including but not limited to AWRI Commercial Services, AWRI Winemaking and Extension Services, WIC Winemaking Services and AWRI- 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 to whom we are providing *the services*.

order means an order for services by *you* from *us*, and includes but is not limited to in-kind services requested through the AWRI Winemaking and Extension Services.

services means the services ordered by *you* from *us* from time to time and includes any services described on a quotation received from *us* and/or that *you* have indicated as being required on any AWRI pre-printed order form *you* have submitted with samples and/or otherwise communicated to *us*.

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* purchase 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 AWRI's 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, 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 paragraph 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 paragraph 13, GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cwth) 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 30 day 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 use your best endeavours to pay our invoices for services provided within 30 days of the invoice date 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 have to make prepayments for any services to be provided unless otherwise agreed to by us;
- 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 commercial services provided, plus any applicable goods and service tax *without any deduction, withholding or set-off for any reason*, within 30 days of the date of *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 commercial 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 changing cycle) as published by the Commonwealth Bank of Australia plus 5% on 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. 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;
- 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;

20. 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;

21. 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*;

22. *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 unreasonably 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;

23. *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. 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 paragraph and *you* fully indemnify *us* for any claim suffered or incurred by *us* arising out of or relating to such a breach;

24. subject to paragraphs 22 and 23 *you* may reference a *report* in *your* business communications, in order to support statements made in those communications;

25. *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;

26. 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;

27. subject to paragraph 28, if *you* pay a fee nominated by *us* for the delivery of the *services* all intellectual property developed from the carrying out of the *services* will be *yours* and *we* will not, except as otherwise agreed, have any legal or equitable claim or right to any part of that intellectual property;

28. *you* grant to *us* a non-exclusive royalty free 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;

29. 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*;

30. *you* allow us to retain all analytical and other data provided and/or generated in the work undertaken in providing the services and acknowledge that such data will be confidentially stored in various data bases and aggregated with other data as part of various calibrations or studies for variety, region, style, fault and any other attribute;
31. for the purposes of paragraphs 28 to 29, "*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;
32. *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*;
33. *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;
34. if *you* comprise more than 1 person, these terms bind *you* jointly and severally;
35. *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*;
36. these terms will not be construed against *us* merely because *we* prepared them or rely on them;
37. these terms set out the whole agreement between *you* and *us* relating to the *services* and are governed by South Australian law; and
38. *you* submit to the non-exclusive jurisdiction of South Australian courts for any proceedings arising out of these terms.