

These terms and conditions govern the supply of goods and/or services by Thoughtpool Pty Ltd (“**the Seller**”) to you, (“**the Customer**”). Unless otherwise specifically agreed in writing by the Seller, all orders placed by the Customer with the Seller for supply of the Products will be on the following terms and conditions:

1. DEFINITIONS

- 1.1. **Claim** means any action, claim, suit, demand of any nature whatsoever.
- 1.2. **Confidential Information** means all confidential non-public or proprietary information, regardless of how the information is stored, which is delivered to the Customer, relating to the Products supplied by the Seller or the business, technology or other affairs of the Seller, including any data (including Product Data), vintage/grape maturity profiles, predictions and projections, viticulture asset analyses and tools, indices, programmes and algorithms.
- 1.3. **Customer Materials** means any and all data, information, content, photographs and other materials provided or that may be supplied to the Seller by the Customer (or otherwise obtained by the Seller from the Customer), directly or indirectly, from time to time.
- 1.4. **Excluded Information** means Confidential Information which:
 - (a) is in or becomes part of the public domain other than through breach of these terms and conditions or an obligation of confidence owed to the Seller;
 - (b) the Customer can prove, by contemporaneous written documentation, was already known to it at the time of disclosure by the Seller (unless such knowledge arose from disclosure and information in breach of an obligation of confidentiality); or
 - (c) the Customer acquires from a source other than the Seller where such source is entitled to disclose it.
- 1.5. **Intellectual Property Rights** means any and all industrial and intellectual property rights of any kind both in Australia and throughout the world.
- 1.6. **Loss** means any liability, cost, expense, loss or damage and in relation to a Claim, includes amounts payable on a Claim (whether or not the Claim is successful) and legal costs and expenses on a solicitor and own client basis.
- 1.7. **Product Data** means any data or results, including any vintage grape maturation profiles, factual analysis of viticulture assets, vintage/grape maturation projections and predictions, analyses, models and tools, contained within or provided through the Products.
- 1.8. **Products** means all goods and/or services supplied by the Seller to the Customer comprising information services and/or products providing management data to the wine industry.
- 1.9. **Related Body Corporate** has the same meaning as defined in the Corporations Act (Cth) 2001.

2. PRICING & PAYMENT TERMS

- 2.1. Unless otherwise indicated, all prices quoted by the Seller are exclusive of GST.
- 2.2. If GST is payable by the Seller in respect of the supply of the Products to the Customer, the price for the Products shown in any quotation, invoice or other document (“**the Original Amount**”) is to be increased so that the Seller receives an

amount (“**Increased Amount**”) which after subtracting the GST liability of the Seller arising from the supply of the Products, results in the Seller retaining the Original Amount.

- 2.3. The Seller will do all things reasonably available to it to assist the Customer to claim, on a timely basis, any input tax credits (if any) the Customer may be entitled to claim for the acquisition of the Products from the Seller. This includes the Seller maintaining its registered status for GST purposes, and issuing tax invoices for the Products delivered to the Customer.
- 2.4. Enterprise Subscription
 - (a) Unless otherwise indicated, where the quoted price is for preparation of (1 x) terroir profiling report it will be limited to:
 - (i) covering 12 consecutive calendar months;
 - (ii) one country only; and
 - (iii) incorporating analysis of up to a maximum of 10 years of historical Customer Materials
 - (iv) for up to fifteen wineries; and
 - (v) up to three thousand blocks.
 - (b) Unless otherwise indicated, the quoted price for annual vintage planning for an enterprise subscription will apply to:
 - (i) one country only; and
 - (ii) fifteen wineries; and
 - (iii) three thousand blocks.
 - (c) For the initial profiling study, the Customer must pay 50% of the quoted price upon acceptance prior to commencement of work, and the balance of 50% of the quoted price within 7 days of the date of delivery of the Product.
 - (d) For the annual vintage planning, the Seller will invoice the quoted price in 4 equal instalments commencing from the month grape sampling starts, with invoices on the last day of each of the 4 months, payable within 7 days of invoice.
- 2.5. Individual Subscription
 - (a) Unless otherwise indicated, the quoted price for annual vintage planning for an individual subscription will apply to:
 - (i) one country only; and
 - (ii) one winery; and
 - (iii) fifty blocks.
 - (b) Quoted individual subscription fees are payable on application, with renewal due on the anniversary of the initial application.
- 2.6. If the Customer makes a default in any payment or commits a default pursuant to clause 2.7, then the date for payment of all monies owing and outstanding to the Seller, irrespective of whether the due date for payment has passed, will accelerate and become due and payable immediately. In such event, the Seller may without prejudice to any other rights it may have, suspend further work and deliveries, require payment in advance for all such further work and deliveries or terminate any contract forthwith by written notice to the Customer.
- 2.7. Notwithstanding clause 2.6, payment for the Products and/or the value of the work carried out (in the case of incomplete contracts) will become immediately due upon the Customer committing any act of bankruptcy (if a natural person) or (being a company) appointing an administrator or liquidator, or committing an act which entitles a third party to wind up, appoint a receiver or receiver and manager to the Customer, or has a controller appointed to its property, ceases conducting business in the normal course, or is subject to any arrangement to protect itself from creditors or dissolves or is unable to pay its debts as they fall due.
- 2.8. The Customer will pay interest on all overdue payments at the rate of 1.5% per month from the due date for payment until the date that payment is actually made.

3. QUOTATIONS, ACCEPTANCE & CANCELLATION

- 3.1. The Seller's quotations are only open for acceptance within 30 days after their date.
- 3.2. Quotations will become binding on the Seller only upon receipt of an unconditional written acceptance/purchase order in such form as the Seller may require.
- 3.3. If there is no quotation, a purchase order will be deemed to be accepted by the submission of an invoice for the first instalment of the quoted price payable in accordance with clause 2.5.
- 3.4. The Customer may not cancel a contract after acceptance of the Seller's quotation or acceptance of the Customer's purchase order except with the prior written consent of the Seller and on terms which will indemnify the Seller against all Loss.

4. DELIVERY

- 4.1. The Seller will make all reasonable efforts to deliver the Products to the Customer on the date agreed between the parties as the delivery date, but will be under no liability to the Customer if delivery is not made on the agreed delivery date.
- 4.2. Delivery of the Product may be in either hard copy or soft copy form, as directed by the Customer by notice in writing to the Seller. The Customer is responsible for providing accurate and up to date delivery details to the Seller.

5. LICENCE & RESTRICTIONS

- 5.1. Subject to these terms and conditions and the Customer's performance of its obligations, the Seller grants to the Customer a non-exclusive, non-transferrable, non-sublicensable limited licence to use the Products and the Product Data within the Customer's enterprise only and solely for the Customer's internal business purposes.
- 5.2. Other than as set out in clause 5.1, the Customer is not licensed to use the Products or the Product Data and undertakes not to do so.
- 5.3. Except as expressly permitted under these terms and conditions, the Customer and its officers, employees and representatives will not or encourage any person or entity to:
 - (a) distribute, resell, disclose, market, rent, lease, assign, incorporate into any database, sublicense or otherwise transfer any Product or Product Data to any third party or use the Products or the Product Data on behalf of or for the benefit of any third party;
 - (b) incorporate any portion of the Products or the Product Data into any other materials, products or services that are not intended for the Customer's internal business use; or
 - (c) use or offer to use, the Products or any Product Data for or in connection with any direct marketing activities.
- 5.4. The Seller owns all Intellectual Property Rights, including without limitation the copyright in the Products and the Product Data.
- 5.5. If any use is made of the Products or the Product Data by any person or entity other than the Customer and such use is attributed to the act or default of the Customer, then without prejudice to the Seller's other rights and remedies, the Customer will immediately be liable to pay to the Seller an amount equal to the charges/fees which such person or entity would have been obliged to pay had the Company

granted a licence to the unauthorised user at the beginning of the period of the authorised use.

6. CUSTOMER MATERIALS

- 6.1. In order to supply the Products, the Customer must make available to the Seller up to 10 years of historical Customer Materials relevant to the Customer's enterprise, the minimum quantity and content of such Customer Materials to be advised by the Seller.
 - 6.2. The Customer acknowledges that the utility and specificity of the Products is dependant upon and subject to the age, accuracy, content and volume of relevant Contract Materials that the Customer makes available.
 - 6.3. In preparing the Products, the Seller will:
 - (a) analyse the Customer Materials provided;
 - (b) clean the Customer Materials provided to enable them to be used in connection with the modelling software used by the Seller and to remove any subjective identifying indicia of the Customer used in its enterprise, resulting in objective and quantitative natural data ("**Clean Customer Materials**"); and
 - (c) build a data model unique to the Customer using the Customer Materials and the Clean Customer Materials received by the Seller from other customers of the Seller.
 - 6.4. The Customer grants to the Seller and its Related Bodies Corporate, a worldwide royalty-free perpetual, irrevocable non-exclusive right and license to use, reproduce, distribute, transmit, display (public or otherwise), adapt and make derivative works of and otherwise commercialise and exploit the Clean Customer Materials. To avoid doubt, the Seller and its Related Bodies Corporate may add and use the Clean Customer Materials to a communal pool of data for common use in connection with other customers and business and educational partners of the Seller.
 - 6.5. All Customer Materials received by the Seller are provided at the risk of the Customer. The Seller will not be liable for any Loss or damage to any of the said Customer Materials whilst in the custody and/or control of the Seller.
 - 6.6. The Customer represents and warrants to the Seller and its Related Bodies Corporate that it has the right to grant the licence in clause 6.4 and that the Customer Materials do not and will not infringe upon or misappropriate any rights, including without limitation, Intellectual Property Rights of any third parties and that the Customer Materials are free of worms, viruses, Trojan horses and other disabling code.
 - 6.7. The Customer indemnifies the Seller against all Claims and Loss suffered or incurred by the Seller that any Customer Materials or anything else provided by the Customer to the Seller in connection with the Products infringes the Intellectual Property Rights of any third party.
- 7. LIMITED WARRANTY & DISCLAIMERS**
- 7.1. The Customer has the benefit of the conditions and warranties implied by the Trade Practices Act and similar State and Territory legislation. Nothing herein excludes, limits, restricts or modifies any statutory obligation of the Seller or any rights, entitlements and remedies conferred upon the Customer if that cannot lawfully be effected.
 - 7.2. The Customer's sole remedy for breach of implied conditions and warranties which cannot be excluded is limited at the option of the Seller to the following:
 - (a) in the case of services supplied by the Seller, the supply of the services again or the payment of the cost of having the services supplied again; and

(b) in the case of goods supplied by the Seller, the replacement of the goods or the supply of equivalent of goods, the repair of goods or the payment of the cost of replacing the goods or the payment of the cost of having the goods repaired.

7.3. Except to the extent that liability may not by statute be lawfully excluded, any statement, condition or warranty expressed or implied, statutory or otherwise as to the quality, merchantability or suitability or fitness for any particular purpose of the Products and Product Data is hereby excluded and the Seller will not be liable to the Customer or any other persons for any Loss or damage (whether direct or consequential including loss of profits, loss of business, loss of production, loss of goodwill or loss of opportunity) arising directly or indirectly out of or in connection with the Products and Product Data and the use of the Products and the Product Data. The Customer assumes the risk in using the Products and the Product Data.

7.4. The Products do not constitute any warranty or representation in relation to:
(a) the date on which the grapes used by the Customer will actually mature, be ready for harvest or will be at peak value for harvesting;
(b) the volume of grapes available for harvest.
The accuracy of the methodology used to develop the Product Data generated by and included in the Products and the accuracy of the predicted and projected grape maturation dates are estimates only, based on available data and are not guaranteed or warranted.

7.5. The Customer acknowledges and agrees that:
(a) the Products and Product Data constitute planning tools only;
(b) the Products and Product Data should not and cannot take the place of the Customer's own inspections, testing and analysis of the grapes used by the Customer in its enterprise;
(c) all Product Data generated does not include a physical inspection of the Customer's vineyards or a physical inspection or analysis of the grapes used by the Customer;
(d) the Customer is solely responsible for carrying out its own inspections, testing and analysis of the grapes used by the Customer and forming its own view about the optimum time to harvest those grapes; and
(e) some of the information which will be used by the Seller to produce the Product Data and the Products, will be obtained from third parties such as the Bureau of Meteorology, and none of that information or any other information obtained from third parties will be independently verified.

7.6. To the maximum extent permitted by law, in no event will the Seller and its Related Bodies Corporate's aggregate liability to the Customer exceed the lesser of \$10,000 and the amount of fees actually paid by the Customer to the Seller.

7.7. The Customer indemnifies the Seller and will hold the Seller harmless from all Claims and Loss in connection with or arising directly or indirectly out of the use of any Products or Product Data.

8. GOOGLE EARTH/GIS SYSTEMS

8.1. The Products may incorporate Google Maps software and/or Google Earth software provided by Google Inc or such other GIS system software as used by the Seller from time to time. Where such software is incorporated into the Products, the Customer agrees to be bound by the terms and conditions of use of such software published by the owners of such software. The Seller will notify the Customer of the owner of such software however, it will be the Customer's responsibility to ascertain and comply with the terms of use of such software.

9. MISCELLANEOUS

9.1. These terms and conditions are incorporated by implication into all contracts between the Seller to supply the Customer with Products.

9.2. Unless expressed in writing to the Customer, the failure or delay by the Seller in exercising any right, power or privilege available to it will not operate as a waiver or variation thereof nor will the exercise by the Seller of any other right, power or privilege prevent the Seller from exercising any other rights, powers or privileges available to it.

9.3. These terms and conditions are governed by the laws in force in NSW. Each party submits to the jurisdiction of the Courts of that State and all courts of appeal therefrom.

9.4. If any part of these terms and conditions is held to be void or unlawful, these terms and conditions will be read and enforced as if the void or unlawful provisions have been deleted.

9.5. Nothing in these terms and conditions is intended to create an agency or joint venture relationship between the Seller and Customer. Neither party has any authority to bind the other to any obligation to any third party unless otherwise agreed in writing.

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