



## Terms & Condition

These terms and conditions (**Terms**) govern the supply of any goods or services (**Products**) to any person or firm (**Customer**) by Wine Grenade Limited (trading as Accuro Limited), a company incorporated in New Zealand, or its duly appointed distributor (**WGL**).

For the purpose of these Terms, Products includes, without limitation:

- Micro-oxygenation devices (**Devices**)
- Disposable High Pressure Oxygen Cartridges (**Cartridges**)
- Oxy-release Permeable Membrane (**Membrane**)

These Terms apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

An order for Products (**Order**) constitutes an offer by the Customer to purchase Products in accordance with these Terms. A contract for the sale and purchase of Products (**Agreement**) is formed when WGL accepts the Order in writing. A quotation for the supply of Products given by WGL is not an offer.

Any samples, drawings, descriptive matter, or advertising produced by WGL and any descriptions or illustrations contained in WGL's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Agreement or have any contractual force.

### 1. Order Fulfilment

1.1 WGL shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after WGL notifies the Customer that the Products are ready.

1.2 The risk in the Products shall pass to the Customer on delivery. Title to the Products shall not pass to the Customer until WGL has received payment in full for the Products.

### 2. Price and Payment

2.1 The price of the Products shall be either the price quoted by WGL to the Customer or, if no price is quoted, the price set out in WGL's published price list in force as at the date of delivery.

2.2 The price of the Products is exclusive of any goods and services tax, value added tax or equivalent tax payable under any applicable law, the costs and charges of packaging, insurance and transport of the Products, which shall be invoiced to the Customer.

2.3 Unless otherwise agreed, WGL may invoice the Customer for the Products on or at any time after the completion of delivery. The Customer shall pay the invoice in full and in cleared funds by the twentieth (20th) day of the month following the

month the invoice was dated. Payment shall be made to the bank account nominated in writing by WGL.

2.4 Without prejudice to any of WGL's other rights or remedies, in the event of late payment or non-payment or any other breach of these terms by the Customer, WGL may charge interest to the Customer at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by the Bank of New Zealand as at the due date plus 2% per annum on any monies outstanding, both before and after judgment, from the due date until the date of payment and recover from the Customer all costs incurred by WGL arising from such breach (including legal costs and costs of recovery of unpaid amounts).

2.5 The Customer shall pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against WGL in order to justify withholding payment of any such amount in whole or in part. WGL may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by WGL to the Customer.

### 3 Security Interest

3.1 The Customer grants to WGL a security interest in the Products as security for payment of all amount due under the Agreement, and for the performance by the Customer of all the Customer's other obligations from time to time to WGL, (together the **Customer's Indebtedness and Obligations**).

3.2 The Customer agrees to do anything that WGL requires to ensure that WGL has a perfected security interest and (if applicable) a purchase money security interest in the Products.

3.3 While the Products continue to secure the Customer's Indebtedness and Obligations, the Customer must store the Products separately and clearly identify the Products as being subject to WGL's security interest.

3.4 If the Customer is incorporated or resident in New Zealand, the Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the Personal Property Securities Act 1999 (PPSA) shall apply to this Agreement, or the security under this Agreement, and waives the Customer's rights: (a) under sections 121, 125, 129, 131 and 132 of the PPSA; and (b) to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this Agreement.

### 4. Customer Obligations

4.1 The Customer will:



- (a) Allow reasonable access to WGL's personnel to carry out its duties and rights under the Agreement or any agreement with the Customer;
- (b) Ensure that the Products are not misused in any manner, use the Products in accordance with industry standards or practices and in accordance with any instructions provided by WGL;
- (c) Ensure that all works and materials for which the Customer is responsible comply with industry standards and all legal and statutory requirements provided by WGL;
- (d) Obtain all necessary consents and comply with all legal obligations in connection with installation or use of the Products;
- (e) Not remove or deface any identification marks or notices on the Products;
- (f) Not tamper with, or disassemble, the Devices or allow unauthorised repairs to be carried out by any person;
- (g) Only allow Cartridges and Membranes supplied to the Customer by WGL to be used with the Device
- (h) Ensure that the Devices are continuously connected to a wifi network or cellular network whilst in use;
- (i) Where requested by WGL, undertake regular sensorial analysis of wine being treated with the Products and provide this information to WGL; and
- (j) Where requested by WGL, take samples of wine at the beginning, middle and on completion of an ageing programme in a method to be specified, for supply to a laboratory for chemical analysis, at the expense of WGL.

**5. Confidential Information and Intellectual Property**

- 5.1 The Customer acknowledges and agrees that any and all of the trademarks, trade names, patents, copyright and other intellectual property rights embodied in or in connection with the Products and any information, documentation, parts or software relating to the Products (**Intellectual Property**) are the property of WGL or such other manufacturer/supplier of any such rights.
- 5.2 The Customer also acknowledges and agrees that the Intellectual Property is only used by the Customer with the consent of WGL or other manufacturer/supplier during the continuation of this Agreement and such consent extends only to use essential for the direct purposes of this Agreement. Upon expiry or termination of this Agreement the Customer shall discontinue such use, without receipt of compensation for such discontinuation, and the Customer acknowledges that upon expiry or termination of this Agreement any licence of intellectual property rights in software created or implied hereby will immediately cease.
- 5.3 The Customer will comply with the terms of any licence agreement applicable to any part of the Products and the Customer shall not copy, reproduce, reverse-engineer, decompile, disassemble, the Products in whole or in part.
- 5.4 WGL has imparted and may from time to time impart to the Customer certain confidential information and documentation relating to the Products, their marketing, use, maintenance, operation and software including technical specifications (**Confidential Information**) and the Customer agrees that it shall use such Confidential Information solely for the purposes of this Agreement and that during the operation of this Agreement or after expiry or termination it shall not disclose, whether directly or indirectly, to any third party such Confidential

Information other than is required to carry out the purposes of this Agreement.

- 5.5 In the event that disclosure is necessary, the Customer will obtain from such third parties binding Agreements to maintain in confidence the Confidential Information.

- 5.6 The Customer agrees that immediately on expiry or termination of this Agreement it shall cease to use and shall return or destroy (as WGL may instruct) such Confidential Information and documentation and shall not itself or through any subsidiary, agent or other party sell, market, distribute, manufacture or otherwise deal with the Products or have Products manufactured for it based on any Confidential Information supplied to it by WGL.

**6. Privacy**

- 6.1 WGL acknowledges it has obligations arising from applicable privacy statutes. Information will be collected, used and disposed of in accordance with any applicable privacy policy in place from time to time as set out on WGL's website. The Customer consents to the collection, storage and use of information by WGL and to the provision of information to third parties. Such information may be used by WGL to provide, improve and develop Products, to develop new services and to communicate with the Customer. Where information is shared with third parties who support the supply of the Products or WGL's business, WGL will ensure that confidentiality obligations are incorporated into the agreements with them. Where information is shared with other third parties, WGL will ensure that the information is aggregated so that it does not personally identify the Customer.

**7. Default**

- 7.1 If the Customer:
  - (a) fails to pay any moneys due to WGL on the due date for payment; or
  - (b) fails to perform any of the Customer's other obligations under these Terms; or
  - (c) commits any act of bankruptcy or enters any composition or arrangement with WGL's creditors; or
  - (d) (if a company) does any act which would make it liable to be liquidated or if a resolution is passed or proceedings are commenced for its liquidation; or
  - (e) has a receiver appointed over all or any of the Customer's assets, or
  - (f) there is a risk that the Products will be destroyed, damaged, endangered, disassembled, removed, concealed, sold, or otherwise disposed of,

without prejudice to any other rights or remedies:

  - (a) WGL may prevent Devices from being used by the Customer;
  - (b) WGL may terminate this Agreement;
  - (c) payment for the Products delivered up to the date of termination and any other moneys payable to WGL shall immediately become due and payable.
- 7.2 If the Customer is in breach of its obligations under clauses 4.1 (e) - (g) then the Customer acknowledges and agrees that:
  - (a) WGL may prevent Devices from being used by the Customer; and



- (b) title in the Device shall pass to WGL and the Customer shall return the Device to WGL or allow reasonable access to WGL's personnel to enable the Device to be repossessed.

## 8. Limitation of Liability

- 8.1 To the extent permissible by law, WGL shall not be liable to the Customer for any loss, damage, cost or expense of an indirect or consequential nature (including any economic loss or other loss of turnover, profits, business or goodwill) arising out of or in connection with this Agreement or the subject matter of these Terms.

- 8.2 Notwithstanding any other provision in these Terms, WGL's maximum liability to the Customer shall be limited at WGL's option to: (a) replacing the Products; or (b) refunding the price for the Products paid by the Customer.

- 8.3 The Customer acknowledges and agrees that all Products supplied pursuant to these Terms are for the purposes of a business and that the consumer protection legislation does not apply to the supply of any Product pursuant to this Agreement.

- 8.4 The Customer indemnifies WGL against any loss, damage or claims arising for WGL's presence on the Customer's site except to the extent caused by the negligence of WGL.

- 8.5 To the maximum extent permitted by law:

- (a) WGL's warranties are limited to those set out in any generally released documentation relating to the Products (if any), as updated by WGL from time to time, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to the price for the Products paid by the Customer; and
- (b) WGL does not promise that the Products will operate without error or interruption.

## 9. General

- 9.1 **Entire agreement:** This Agreement contains all of the terms, representations and warranties relating to the matters dealt with in this Agreement and supersedes and cancels all prior discussions and agreements covering the subject matter of this Agreement. The Customer has not relied on any representation, warranty or agreement relating to the subject matter of this Agreement that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect from the date of this Agreement.

- 9.2 **Amendment:** These Terms may only be amended by agreement of WGL and the Customer in writing.

- 9.3 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy will constitute a waiver by WGL of that or any other right or remedy available to it.

- 9.4 **Partial invalidity:** If any provision of this Agreement becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

- 9.5 **Force Majeure:** No Party is liable for any delay or non-performance directly or indirectly arising from, or attributable to fire, flood, explosion, lightning, windstorm, earthquake, subsistence of soil, court order, government interference, civil commotion, riot, war, strikes, labour disturbances, natural genetic variations of any living matter, or any cause of like or unlike nature beyond the reasonable control and without the fault or negligence of either party (a **Force Majeure Event**) provided each Party has used its best endeavours to prevent any such delay or non-performance.

- 9.6 **Governing law and jurisdiction:** This Agreement is governed by New Zealand law, and the Parties submit to the non-exclusive jurisdiction of the New Zealand courts.

- 9.7 **Construction:** In these Terms, the following rules apply:

- (a) Headings are for convenience only and do not affect interpretation.
- (b) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (c) A reference to the Customer or WGL includes its personal representatives, successors or permitted assigns.
- (d) Reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (e) Any phrase introduced by the Terms including "include" in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (f) A reference to writing or written includes e-mails.