

Terms & Conditions

1 – Defined Terms

1.1 The following terms shall have the following meanings:

“Affiliate(s)” means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

“Agreement” means the Order Form and these Terms and Conditions between Licensor and Customer;

“Business Hours” means 9am to 5pm UK time Monday to Friday;

“Citation Guidelines” means the guidelines set out at <https://www.theiwsr.com/citation-policy/>

“Content” means any of the underlying information made available in IWSR Product(s);

“Customer” means the company named on the Order Form along with any explicitly named affiliates or subsidiaries;

“Customer Data” means the personal data to be processed by the Licensor, in whatever form or medium which is supplied, or in respect of which access is granted, to Licensor under this Agreement in accordance with the Data Processing Policy;

“Data Processing Policy” means the policy available at <https://www.theiwsr.com/privacy/#10thHeader> that is incorporated into this Agreement by reference;

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“IWSR Product(s)” means the digital information services offered by the Licensor and specified on the Order Form;

“Licence Fees” means the licence fees, exclusive of VAT, for the relevant IWSR Product(s) as specified on the Order Form;

“Licensed User(s)” means the identity, location and/or number of authorised users licenced to access and use the IWSR Product(s) as specified on the Order Form;

“Licensor” means IWSR Drinks Market Analysis Limited;

“Order Date” means the date of the order, as set out in the Order Form;

“Order Form” means the order form setting out details of the product and subscription;

“Renewal Period” means any additional 1-year period after the Initial Subscription Period;

“Special Terms” means any special terms agreed between the parties as set out in the Order Form; and

“Subscription Period” means the Initial Subscription Period and any Renewal Period(s).

2 – Grant of License

2.1. Licensor grants to Customer a non-exclusive, non-transferable limited license to access and use the IWSR Product(s) for the Subscription Period solely for its internal business purpose or as provided in the Order Form.

2.2. Customer undertakes to comply with this Agreement and ensure that its Licensed Users do likewise. Customer accepts liability for any loss, damage, cost or other liability Licensor incurs as a result of a breach of this Agreement by a Licensed User.

2.3. Customer undertakes:

2.3.1. not to copy, reproduce, translate, adapt, vary or modify the IWSR Product(s) nor to communicate the same to any third party without Licensor’s prior written consent;

2.3.2. to maintain accurate and up-to-date records of the number of Licensed Users using the IWSR Product(s);

2.3.3. to supervise and control use of the IWSR Product(s) in accordance with the terms of this Agreement;

2.3.4. use all reasonable endeavours to prevent any unauthorised access to, or use of, the IWSR Product(s) and, in the event of any such unauthorised access or use, promptly notify Licensor;

2.3.5. where applicable, to reproduce and include the copyright notice of Licensor on all and any copies whether in whole or in part in any form; and

2.3.6. not to provide or otherwise make available the IWSR Product(s) or Content in whole or in part in any form to any person other than the Customer’s Licensed Users without prior written consent from Licensor.

3 – Limitation on Access

3.1. Access to the IWSR Product(s) shall only be available to Licensed User(s) and the IWSR Product(s) and any of Content may not be shared with other persons either internally or externally, (including any professional advisors or consultants of the Customer) except as expressly provided in the Order Form, as specified in the Citation Guidelines or subsequently agreed in writing by a director of the Licensor.

3.2. Customer shall comply with all laws, regulations and sanctions applicable to its access to and use of the IWSR Product(s). Licensor reserves the right to monitor Customer’s use of the IWSR Product(s) to ensure compliance with the foregoing.

3.3. Licensor shall use reasonable endeavours to make the IWSR Product(s) available and use reasonable endeavours to avoid disruptions.

4 – Passwords

4.1. Customer agrees to assume sole responsibility for the security of any passwords issued by Licensor to Licensed User(s) for accessing the IWSR Product(s), which shall be treated as confidential.

4.2. Customer shall ensure, as a principal obligation, that Licensed Users do not disclose or transfer any passwords to any third party.

4.3. Such passwords are subject to cancellation or suspension by Licensor at any time Licensor reasonably believes Customer or a Licensed User has breached this Agreement.

5 – Licence Fees and Payment

5.1. Licence Fees are payable in full not later than thirty (30) days after the date of each invoice unless otherwise specified on the Order Form.

5.2. Licensor reserves the right to charge Customer interest on any overdue payment at the rate of 4% above the Bank of England’s base rate plus a sum equal to all reasonable costs and expenses suffered or incurred by Licensor in connection with the recovery of overdue amounts from Customer.

5.3. Except as expressly provided herein, the Licence Fees are non-refundable.

Part 6 – Disclaimers

- 6.1.** Licensor warrants that it has the right to licence the IWSR Product(s) to Customer.
- 6.2.** Licensor will endeavour to keep the Content updated and accurate. Licensor does not warrant the accuracy or completeness of the Content and Customer agrees that Licensor will not be liable to Customer or any third party for any adverse consequences arising as a result of the inaccuracy or incompleteness of the Content.
- 6.3.** Licensor reserves the right at any time to alter, correct, update, upgrade or vary the technical specification of any aspect of the IWSR Product(s) and Content.
- 6.4.** Customer further agrees that Licensor will not be liable to Customer or any third party to whom Customer furnishes the Content for any trading, investment, commercial or other decisions based on or made in reliance on the Content.

7 – Intellectual Property Rights

- 7.1.** Customer will not acquire any ownership rights or Intellectual Property Rights in the IWSR Product(s), all of which belong to Licensor or its Affiliates or third party licensees. The Customer acknowledges that all Intellectual Property Rights in the IWSR Product(s) and in any upgrades, modifications or other amendments to the IWSR Product(s) that may be provided to the Customer from time to time are owned by and shall remain vested in Licensor.
- 7.2.** For the avoidance of doubt, the Customer shall have no rights in or to the IWSR Product(s) other than the right to use it in accordance with the terms of this Agreement.
- 7.3.** All Intellectual Property Rights arising in any Customer Data created by the Customer or Licensed Users shall belong to the Customer.

8 – Term

- 8.1.** This Agreement shall commence on the Subscription Start Date and shall continue in full force and effect for the Initial Subscription Period specified in the Order Form unless earlier terminated as provided herein.
- 8.2.** The Initial Subscription Period shall automatically extend for additional Renewal Periods unless either party provides written notice to the other of its intention not to renew at least thirty (30) days prior to the end of the initial Subscription Period or at any time during a Renewal Period.
- 8.3.** Any such Renewal Period shall be on the same terms and conditions contained herein except that, unless the price for extended terms is explicitly stated on the Order Form, the Licence Fees payable for the renewal period shall be the Licensor's standard published rates then in effect for the IWSR Product(s).

9 – Termination

- 9.1.** Either party may terminate this Agreement immediately upon written notice to the other if:
 - 9.1.1.** the other party is in material or persistent breach of any of the terms of this Agreement and (if such breach is capable of remedy) fails to remedy the same within fifteen (15) days of receipt of a written notice from the other party requiring it to do so (or the parties have not otherwise agreed to amend this Agreement to address such purported failure and/or deficiency); or
 - 9.1.2.** if the other party convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction), or if in the United States, similar actions shall be taken by either party under applicable US Bankruptcy laws or similar laws regarding the rights of creditors.
- 9.2.** Licensor may terminate this Agreement immediately on providing written notice to the Customer if the Customer does not make any undisputed payment(s) when due and such payment(s) remains unpaid thirty (30) days after written notice from Licensor that such payment(s) is past due.

10 – Consequences of Termination update

- 10.1.** In the event of termination arising as result of the Licensor's material breach, Licensor shall refund a pro-rated portion of the Licence Fees to Customer (which Customer acknowledges shall be the sole liability of Licensor of such material breach).
- 10.2.** In the event of termination arising as a result of the Customer's breach, Licensor shall not be required to refund any portion of the Licence Fees to Customer on account of such termination.
- 10.3.** Upon expiration or termination of this Agreement for any reason whatsoever, Customer shall;
 - 10.3.1.** Immediately cease use of the IWSR Product(s);
 - 10.3.2.** Immediately pay all outstanding unpaid invoices and interest; and
 - 10.3.3.** within ten (10) days thereafter, take such commercially reasonable action as shall be required to permanently delete the IWSR Product(s), the Content or anything derived therefrom from its information technology systems; provided that Customer may retain backup copies of IWSR Products solely to the extent necessary to comply with applicable laws and/or regulations. Customer shall, upon request, provide Licensor with written confirmation from a director of Customer that such deletion has been completed.

11 – Indemnification

- 11.1.** Customer shall indemnify Licensor against all claims, causes of actions, judgements, damages, fines or expenses (including reasonable attorneys' fees) arising from a third-party claim relating to Customer's and its Licensed User's use of the IWSR Product(s) other than in strict compliance with the terms of this Agreement and/or applicable law.

12 – Limitation of Liability

12.1. Except as expressly and specifically provided in this Agreement:

12.1.1. the Customer assumes sole responsibility for results obtained from the use of the IWSR Product(s), and for conclusions drawn from such use. Licensor shall have no liability for any damage caused by errors or omissions in the Content, or any other information or instructions provided to Licensor by the Customer in connection with the IWSR Products or any actions taken by Licensor at Customer's direction;

12.1.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

12.1.3. the IWSR Products are provided to the Customer on an "as is" basis.

12.2. Nothing in the Agreement limits or excludes either party's liability (i) in the case of fraud or intentional breach (ii) death or personal injury caused by a party's negligence; (iii) any other liability that cannot be excluded or limited as a matter of law; and (iv) with respect to any indemnification obligations herein.

12.3. Subject to clause 12.2:

12.3.1. Licensor shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, anticipated savings, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect, consequential or punitive loss, costs, damages, charges or expenses however arising out of or relating to this Agreement, the IWSR Product(s) and/or Customer's use of or inability to use the IWSR Product(s); and

12.3.2. Licensor's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Licence Fees paid by the Customer during the 12 months immediately preceding the date on which the claim arose.

13 – Confidentiality

13.1. The parties shall both, during the term of this Agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Agreement) nor without the prior written consent of the other, disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) information of a confidential nature (including trade secrets and information of commercial value) which may become known and which relates to the other or any of its affiliates, unless that information is public knowledge or already known to the relevant party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party. The parties shall each use their reasonable endeavours to prevent the unauthorised disclosure of any such information.

13.2. Neither party shall make, nor permit any person to make, any public announcement disclosing the particulars of this Agreement without the prior written consent of the other, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

13.3. For the avoidance of doubt, drawings, specifications, documents, design materials, price lists, user guides and other data relating to the IWSR Product(s) are confidential to the Licensor and the Customer must comply with Clause 13.1 in respect of such information.

13.4. Each party will ensure that each of its employees, agents and contractors will comply with the provisions contained within this Clause 13.

14 – Data Protection

14.1. The Licensor will process Customer Data in accordance with the Data Processing Policy.

15 – Miscellaneous

15.1. Any delay in performance of any obligation herein caused by conditions beyond the reasonable control of either party will not constitute a breach of this Agreement, provided that the delaying party has taken reasonable measures to notify the affected party in writing of the delay and uses commercially reasonable efforts to perform in accordance with this Agreement notwithstanding such conditions.

15.2. This Agreement is the whole agreement between the parties and supersedes any previous agreement relating to the subject hereof. The parties agree that, in entering into this Agreement, they do not rely on (and shall have no remedy in respect of) any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Agreement.

15.3. Any amendments of or waivers relating to this Agreement must be in writing signed by both parties.

15.4. This Agreement shall not be assignable by either party without the prior written consent of the other party, except that Licensor shall be permitted, without Customer's consent, to assign this Agreement to any of its affiliates or in connection with a merger or consolidation involving Licensor or a sale of all or substantially all of Licensor's assets.

15.5. This Agreement does not confer any rights on any person or party not a signatory to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

15.6. In the event of any conflict between the terms of the Order Form and these Terms & Conditions, the terms of the Order Form (including any Special Terms) shall take precedence.

15.7. If the Customer or any other company or entity that benefits from this Agreement (together the "Licensees") merges with or acquires any interest or shares of a third party or any third party merges with or acquires such an interest in any Licensee ("Transfer"):

15.7.1. the Customer shall promptly notify Licensor in writing of such Transfer;

15.7.2. this Agreement shall remain in full force and effect;

15.7.3. Licensor may offer the Customer a revised License Fee for all licensed IWSR Product(s) based on, amongst other things, the increased benefit the Customer receives from the IWSR Product(s) due to the enlarged size and nature of the Customer's business following the Transfer ("Extension Fee"); and

15.7.4. unless and until the Customer pays the Extension Fee, the Customer agrees (and shall ensure as a primary obligation) that no employee, contractor or other personnel of the relevant third party shall access, use or benefit in any way from the IWSR Product(s) or Content or shall be deemed to be Licensed User(s) under this Agreement.

16 – Governing Law and Jurisdiction

16.1. This Agreement is governed by and construed in accordance with English law. Any disputes arising out of this Agreement that cannot be resolved by the parties will be brought in the courts of England and Wales.