

Terms of Use for "Ermes" Application

Before accessing and use the Services available on the "Ermes" Platform by the App (as defined below) please read these Terms of Use carefully.

Access to the "Ermes" Platform by the App is subject to the acceptance of these Terms of Use, which shall take place as follows.

By clicking "ACCEPT" and by the use of the App, the User (as defined below) accepts these Terms of Use. If the User does not accept the Terms of Use, the User must refrain from clicking "Accept" and downloading, accessing or otherwise using the App.

These Terms of Use can be viewed at any time on the website of the Company at the following [link](#).

1. License. Subject to the acceptance of these Terms of Use and to the completion of the relevant registration process by the User, the Company herewith grants the Client a limited, revocable, personal, non-exclusive, non-transferable, and not sub-licensable right to use the App in accordance with the conditions and terms set forth in these Terms of Use.

2. Registration. The use of the App is subject to the completion of the registration process, at the end of which the necessary login credentials will be provided. The login credentials shall be kept confidential and the User and the Client shall be liable for any activity carried out with the User's credentials on behalf of the Client. Such login credentials, as amended (if any) are individual and strictly confidential information. The User shall keep her/his login credentials secret and shall not disclose such credentials to any third parties. The Company shall not be held liable for disclosure of such login credentials to third parties or use of the login credentials by a third party.

3. Definitions. For the purpose of these Terms of Use, the following terms shall have the respective meanings set forth as follows:

"**App**" means the Company's software in the form of a website or smartphone/tablet application, to be used on IOS or Android system, enabling the Client to access the Platform by which it will be possible to use the Services.

"**Client**" means the owner/user or individual who has the title to use the Device (to be identified in the form that will be completed at the end of the registration process and prior to the use of the App) and who will create login credentials for authorized Users or identify to the Company the authorized Users for creation of login credentials for such Users, and (c) for whom such authorized Users will access and use the App. For more information about the processing of personal data relating to the Client, please refer to our Privacy Policy available at this [link](#).

"**Company**" means Velp Scientifica S.r.l., a company incorporated under the law of Italy with registered office in Usmate-Velate (MB), via della Stazione, 16, registered at the Companies' Register of Monza Brianza with the registration number 06955700155. The Company is the manager of the App and supplier of the Service.

"**Contents**" means the interfaces, graphics, colors, schemes, tools, fonts and design of the Platform and/or the App, as well as any content made available on the Platform and/or the App (including, but not limited to, diagrams, layout, graphic composition, colors, logos, trademarks, texts, methods, processes, functions and software that are part of the App).

"Damages" means any damage, cost, burden, loss, liabilities, contingent liabilities, capital losses, or expenses (including attorneys' fees, legal fees, or consultants' fees of any kind).

"Data" means all information not related to identified and identifiable individuals including tool settings and analysis history, arising from the Device and accessible to the User on the Platform by the App.

"Device" means the analysis tool manufactured by, or on behalf of company, which is able to connect *online* to the Platform. The specific Device is identified by, among other elements, the product code and the serial number, which are listed on the Platform.

"Platform" means the Company's software known as "Ermes" which collects, saves and processes the Data.

"Services" / "Service" means all the functions made available through the connection of the Device to the Platform made accessible to the User by the App, including without limitation, by way of example:

- Remote control of the status of the Device and of the respective operating parameters;
- Sending of notifications following specific events; and
- Display of recent analyses performed, with details of settings, parameters and results.

The Company reserves the right to amend the scope of the Services in the Company's sole discretion by specifically communicating such amendment directly to the Client.

"User" means the single subject, employee or person (a) for whom the Client has created associated login credentials, and (b) who completes the registration process for the App. For more information about the processing of personal data relating to the Client, please refer to our Privacy Policy available at the following [link](#).

4. Use of the App. The Service will be accessible via the App. The Company will make any reasonable efforts to ensure the maximum quality and standard of the Services. However, such quality and standards are necessarily subject to, among other factors, the quality of the data connection, the operating system, and the browser used, all of which are outside the control of the Company. In this sense, upon the registration on the App, the User will receive information regarding system requirements including, without limitation, which browser is recommended and compatible with the App.

5. Restrictions of the License. It is forbidden to (i) cede, rent, lease, sub-license, sell, distribute, make available or otherwise transfer, in whole or in part, the App to third parties or in any way allow third parties to use, under license or otherwise; (ii) modify, alter, separate the App and its codes, or create other utilities arising from or based on the licensed App or on any part of it; (iii) change the structure of the software or the App, or ask third parties to make changes to create derivative works; (iv) modify, adapt, translate, transmit, publish, transcode, decompile or disassemble the App, in whole or in part, or otherwise submit the App to other processes of analysis of its code and its logical structure ("*Reverse engineering*"), except as expressly provided for by mandatory laws or regulations; (v) use the App, the software and its codes in breach of any applicable provision of law, and in any case, for purposes other than those provided herein.

Neither the ownership of the code nor, in general, any of the intellectual property rights relevant, connected to and/or in any case used for the development, implementation and/or management of the App are transferred to the User or to the Client or, in general, to any third party. The Company, therefore, grants the Client a simple license to use the App for the subscription duration selected and paid for by the Client as specified herein, it being understood that such license shall be granted only and exclusively for the purposes connected to the Services. The Client will be solely and exclusively responsible to procure, at her/his own cost and expense, the hardware, systems and software necessary to access and use the App.

In the event of a failure by the Client or User to comply with these Terms of Use, the license and rights granted herein shall automatically terminate without any notice, and the Company will be authorized to undertake any action suitable to protect its interests.

6. Intellectual property rights. Company owns all right, title, and interest in and to the App, any improvement and/or amendment and/or updated version, as well as all contents thereof, in any available format, including (by way of example and not limited to) the Contents, codes, information and materials available or obtained from the Platform or the App, and all copyright and other intellectual property rights embodied therein and/or connected thereto.

The Client has no right or title to the App and/or on the Contents, with the exception of the license expressly granted under article 1, which shall remain subject to the full and proper compliance with these Terms of Use

Any reproduction, distribution, publication and/or commercial use of the App and in general of the Contents by the User, alone or on behalf of Client, in any form, in whole or in part, without the prior written consent of the Company, is expressly forbidden.

7. Warranty exclusion. The App is provided on an "as is" and "as available" basis, as agreed and signed by accepting these Terms of Use, without any warranty or explicit or implicit condition of any kind. Except as provided for by mandatory provisions of law, the Company does not provide or grant any guarantee regarding original or unexpected defects and does not provide any promise of quality, good operation or suitability for a particular purpose or result in connection with the App, nor does the Company provide a guarantee regarding the compliance of the App with what is described in the documentation provided or made available relating to the App itself.

8. Limitation of liability and indemnity. The Company cannot be held liable towards the Client, the User or third parties for Damages of any kind, (including, but not limited to, in the event such Damages arise from the impossibility to use the App, or to access to the Data normally available by the App, as well as damages affecting hardware and/or software, products, customers, profits and/or interruption of the work cycle or similar events), caused by, or in any case connected to, the use or the impossibility to use (in whole or in part) the App and/or the Service, with the exception of Damages arising from gross negligence and willful misconduct of the Company. In the same way, the Company is not liable for any malfunction, slowing down and/or unavailability of the Platform, App and/or Service that are caused, even partially, by the data connection, the operating system, and the browser used and by any factor not depending on to the Company. In any case, in no way can the Company be held liable for Damages caused by the negligence of the User and/or the Client in the use of the App and in the conservation of the login credentials or use of the App not suitable and/or not in compliance with the App's intended purpose as contemplated by the Company.

The use of the App may be subject to interruptions and/or slowdowns, depending on various factors and the Company will not, in any case, be held liable for any loss of performance, interruption, or delay arising therefrom. In addition, the Company will not be held liable for failure and/or reduced availability and/or running of the App and/or the service at any time, being it agreed and understood that the Client can still rely on the monitoring/operation tools of

the Device provided during the purchase and/or set-up of the Device itself (or afterwards, as the case may be). In any case, the Company's maximum liability for any type of damages shall be limited to Euro 100. If the Client is dissatisfied with the App, or with any of these Terms of Use, then the Client's sole and exclusive remedy is to discontinue using the App and terminate the Client's account.

The Client expressly agrees to hold harmless and to keep the Company indemnified from any request of damage or claim which may be advanced at any title (including compensation for Damages) from third parties, based on the use of the App.

9. Client's Obligations and Acceptable Use. The Client is required to ensure that Users who have access to the App on its behalf shall comply with these Terms of Use. If the Client becomes aware that such use of the App and/or the connected software by any person made not in compliance with the provisions of these Terms of Use, the Client shall immediately inform the Company and to the extent reasonably practicable, without delay shall discontinue such use or procure that such use is discontinued.

If, at any time, the Client revokes access for one or more Users to use the App, the Client shall be exclusively responsible to ensure that the login credentials associated with the relevant User or Users are rendered not operative or amended.

The Company will make commercially reasonable efforts to make the Data available on the Platform to the Client during the period of use of the Services. Despite these efforts, the Company does not guarantee that such Data will be maintained and made available on a permanent basis. In particular, the Company will have the right (and the Client waives any exception in relation to this right) to delete, cancel and/or prevent or limit access to the Data on the basis of the number of analyses viewable on the Platform under the circumstances and, in any case, starting from the 30th calendar day following the date on which such Data was first made available on the Platform. Therefore, it is a Client's specific obligation to carry out, if it so wishes, any manual or autonomous Data saving operations including, for example, saving such Data on offline tools, back up and/or print out. The Company shall not be responsible or liable for any potential failure by the Client or User to access the Data after the Data Availability Period.

10. Consideration. Without prejudice to the right of the Company, at its sole discretion, to supply the Services on a free basis for a free trial period, the Service is provided against a consideration. Such consideration for the provision of the Service (the "**Consideration**") is chosen by the Client, among those available as part of the subscription choices, and depends on the chosen duration. The Consideration will be paid by the Client in a single payment at the time of the subscription purchase, by charging the amount on the credit card or coupon, and covers the supply of the Services for the entire duration chosen. The Consideration is non-refundable (except as set forth in section 11) and, therefore, the Client will have nothing to claim if, after the subscription purchase, the Client decides for any reason not to use (in whole or in part) the Services in the chosen subscription period.

11. Withdrawal and express termination clause. The Company has the right to withdraw from this contract relating to the use of the Service and the App at any time, informing the Client by giving proper reasoning, with a 14-day prior notice. In this case, the Client will only have the right to access the contents through the App and the Data available at the date of the communication of the withdrawal, as well as those that will have been generated on the Platform and the App from that date until the date in which the withdrawal becomes effective, in order to independently produce a copy of the Data.

If the Company decides to terminate these Terms of Use, the Client will only be entitled to the reimbursement of the amount of the Consideration already paid and attributable to the residual duration of the Contract (the "**Refund**"). This Refund will be paid by the Company to the Client

through the payment modality mutually agreed upon between the parties, within 60 days from the effective date of termination.

The Client hereby expressly and irrevocably waives any claim and/or action in relation to any termination by the Company, acknowledging the right to the above Refund as the sole and exclusive remedy for such termination.

In any case, the obligations assumed by the Client/User pursuant to articles 5, 6 and 9 of these Terms of Use must be considered essential. Consequently, the violation of even just one of these obligations, will determine the immediate termination of the contract pursuant to art.1456 of the Italian Civil Code, without the need for any refund and notice and as a result of the simple communication of the Company in this sense, without prejudice to the right of the Company itself to take legal action for the compensation of further damages and the protection of its rights.

12. Use of Data. Only the Client will be considered the exclusive owner of the Data; this notwithstanding, the Client declares to acknowledge that such Data will be available for viewing also to the Company and undertakes to, by accepting these Terms of Use, not to include in the Platform personal data allowing the identification, direct or indirect, of individuals, with particular reference of (i) common identification data (such as name and surname, identification number, data relating to the domicile, online identifications); (ii) special category of personal data (also known as "sensitive data", that is revealing racial or ethnics origin, political opinions, religious or philosophical convictions, union membership, genetic data, biometric data aimed to unambiguously identify an individual, health or sexual life/orientation data); or (iii) judicial data. In addition, by accepting these Terms of Use and completing the registration process, the Client expressly authorizes the Company, and, if any, person entrusted by the same (i.e. third party consultants), to display the Data and to use it, exclusively for the purpose of aggregating such Data and providing a more personalized experience of the Device and the Service to the benefit of the Client itself, as well as the improvement of the specifics, the functionality of the Services and the Devices, to the benefit of the generality of the clients.

13 Amendments. The Company reserves the right to modify, update and in general amend, at its sole discretion, these Terms of Use (in whole or in part) in any part thereof and at any time, if it deems it necessary and/or appropriate for any reason, including legal or technical reasons, or even as a result of changes in the Service. The Company will be required to communicate with specific notice these amendments, with a prior notice of 30 days. Following this communication, and following the 30-day term from the same, the use of the App will constitute complete acceptance by the Client and the User of the amendments themselves, without prejudice to the other possibilities of withdrawal. Otherwise, in the aforementioned 30-day term, the Client could inform the Company, by written notice, of its intention to withdraw from the Contract, it being understood that in this case the second and third paragraphs of the previous Article 11 will apply.

14. Applicable law and jurisdiction. The Terms of Use are governed by Italian law. Any dispute relating to and/or connected to the interpretation, execution and termination of these Terms of Use, as well as in general to the use of the App and the use of the Service, will be exclusively settled by the Court of Monza.

15. Personal Data Protection. The Company may collect personal data relating to the Client and the User that are necessary to the registration process, the use of the App and the supply of the Service. The data and information processed as a result of the use of the App and the use of the Service will be treated in accordance with the Privacy Policy available at the following [link](#). The Client is hereby invited to review the information notice pursuant to art. 13 of the General Data Protection Regulation (GDPR) RE 679/16 and the his consent to the processing of personal data

16. Authority. By accepting these Terms of Use, the User declares to have been duly authorized by the Client to such acceptance and to the registration based on the creation of login credentials to the App and to the use of the Service by such App, and declares to have the capacity to enter into these Terms of Use and the authority to represent the Client and make the Client undertake the obligations set forth herein. The User, therefore, declares, with reference to the use of the App, not to be a "consumer" pursuant to and for the purposes of Legislative Decree no. 206/2005 ("**Consumer Code**") and to use the App and the Service exclusively on behalf of the Client. In addition, the Client declares from now to authorize the Company, at the request of the Client itself, to view the Data on the Platform in order to analyze and resolve any problems arising from or identified in the use of the same.

17. Contacts. If you have any questions about these Terms of Use, including Our Privacy Policy, please contact Us at:

Email: velpitalia@velp.com

Address: VELP Scientifica Srl, Via Stazione, 16 - 20865 Usmate (MB) - Italy

Phone: +39 039 628811

Last Updated: 04/07/2018

[Necessary to provide for a second acceptance of the unfair clauses - acceptance procedures to be discussed]

Pursuant to and for the purposes of Articles 1341 and 1342 of the Italian Civil Code, the following clauses are expressly approved: 4 (Use of the App), 5 (Restrictions of the License), 7 (Warranty Exclusion), 8 (Limitation of liability and indemnity), 9 (Clients' Obligations and Acceptable Use), 11 (Withdrawal and express termination clause), 13 (Amendments) and 14 (Applicable law and jurisdiction)