

Terms and conditions

1 Definitions

In these Terms and Conditions (**Terms**), the words below have the following meanings:

Account Application means the form approved by Micador and completed by the Customer for an account with Micador for the provision of Goods and/or Services.

Agreement means each Offer accepted by Micador under clause 2.4.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in Victoria.

Confidential Information means all information and other content disclosed by Micador to the Customer and includes these Terms and the prices of the Goods or Services but excludes information that:

- (a) is public knowledge or becomes available to the Customer from a source other than Micador (otherwise than as a result of a breach of confidentiality); or
- (b) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.

Consequential Loss means:

- (a) any form of indirect, special or consequential loss, including loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (b) any loss beyond the normal measure of damages.

Customer means the entity or person named in the Account Application or who has otherwise agreed to be bound by these Terms and who requested that Goods and/or Services be supplied to it by Micador.

Customer Specifications has the meaning given to it in clause 12.1.

Delivery Fee means:

- (a) for delivery of Goods to an address which is in a metropolitan area of an Australian capital city (excluding Darwin) as determined by Micador, \$0; or
- (b) for delivery of Goods to an address which is outside of a metropolitan area of an Australian capital city or to Darwin:
 - (i) the costs of Micador delivering the Goods to the Customer from the nearest Australian capital city; or
 - (ii) if the Customer nominates delivery to a preferred carrier of Micador to an address which is in a metropolitan area of an Australian capital city (excluding Darwin), \$0.

Force Majeure Event means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party.

Goods means the goods to be supplied by Micador to the Customer under an Agreement.

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and right to protect trade secrets and know how, throughout the world for the full period of the rights and renewals and extensions.

Invoice has the meaning provided to it in clause 3.4.

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

Micador means Micador Australia Pty Ltd (ABN 98 004 509 880).

Offer has the meaning provided to it in clause 2.1.

Order means any order or other request by or for the Customer to Micador to supply to the Customer any Goods or provide it with any Services (or both), whether the order or request is written (including through the Website), verbal or implied in the circumstances and which may have been given in response to a Quote.

PDH Goods or Services means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Purchase Price has the meaning given to it in clause 3.1.

Quotation or Quote means a quote or proposal, if any, provided by Micador to the Customer in respect of the Goods and/or Services.

Services means the services to be supplied by Micador to the Customer under an Agreement.

Shareable IP means Intellectual Property Rights of Micador (such as logos, images, videos and activities) which Micador makes available on the Website from time to time for use by the Customer.

Specifications means any physical, qualitative, technical or descriptive specifications, dimensions, weights or other particulars of the Goods or Services or photographs or illustrations of the Goods which are supplied by Micador or which may be available on the internet, including as provided in any Quote, Order, price list, catalogue, brochure or other document which describes the Goods or Services.

Trading Limit means the value of any trading account facility granted by Micador to the Customer pursuant to any account created under the Account Application.

Use Guidelines means the use guidelines in respect of the Shareable IP as determined by Micador from time to time and made available on the Website.

Website means the website located at <https://micador.com.au>.

2 Ordering and formation of Agreement

- 2.1 The Customer acknowledges and agrees that by submitting an Order to Micador the Customer makes an irrevocable offer to Micador for Micador to supply it with the Goods and/or provide it with the Services on the terms of these Terms, the Order, and the Quote (if any) (**Offer**).
- 2.2 An Offer submitted by the Customer must be for Goods:
 - (a) with a total Purchase Price (less any Delivery Fee) of:
 - (i) at least \$300 (ex GST) if the Order is submitted through the Website; or
 - (ii) at least \$550 (ex GST) if the Order is not submitted through the Website; and
 - (b) equal to any minimum purchase units for the Goods notified by Micador from time to time (**Minimum Purchase Unit**).
- 2.3 The Customer acknowledges and agrees that Micador may only sell Goods in quantities equal to the Minimum Purchase Unit for those Goods and, if the quantities ordered by the Customer are not a multiple of a the relevant Minimum Purchase Unit, Micador may round up the number of Goods ordered by the Customer to the nearest Minimum Purchase Unit.
- 2.4 A contract will be formed between Micador and the Customer in respect of each Offer upon the earlier of Micador:
 - (a) notifying the Customer that it accepts the Customer's Offer;
 - (b) accepting, in full or part, payment from the Customer for any Goods or Services the subject of the Offer;
 - (c) making delivery of the Goods the subject of the Offer to the Customer; or
 - (d) performing the Services the subject of the Offer.
- 2.5 An Agreement formed under clause 2.4 will comprise these Terms, any Account Application, the Order (only to the extent that any additional terms in the Order are accepted by Micador in writing), the Quote (if any) and the Invoice.
- 2.6 Micador is not bound to accept any Offer and may not accept any Offer for any reason and in the sole discretion of Micador.

3 Price and payment

- 3.1 Unless otherwise agreed by the parties, the price the Customer must pay for the Goods and/or Services under each Agreement will be:
 - (a) the price for the Goods and/or Services specified in the Quote or, if there is no Quote, in the Order; plus
 - (b) the Delivery Fee,(**Purchase Price**).
- 3.2 The Customer acknowledges and agrees that if the Customer wishes to pay for the Purchase Price using a credit card, Micador may charge the Customer a credit card fee of 1% on the relevant amount of the Purchase Price which the Customer intends to pay using a credit card. If payment is received after the Due Date then the amount of the credit card fee charged may be increased to 2.5% to cover bank financing charges.
- 3.3 Subject to clause 13.2, unless otherwise expressly specified by Micador or in these Terms, all prices stated are stated exclusive of

- any tax, levy, duty, charge, impost, fee, deduction or withholding (including any interest, fine, penalty, fee or any other amount imposed on or in respect of any of those amounts) (**Taxes**) and the Customer is solely responsible for the payment of all Taxes levied or payable in respect of the Goods and/or Services.
- 3.4 Micador may invoice the Customer for the Purchase Price at any time following formation of the relevant Agreement (**Invoice**).
- 3.5 If requested by the Customer, Micador may accept forward orders or requests for delivery of the Goods on a future date and will Invoice the Customer for those Goods at a time Micador deems appropriate having regard to the proposed delivery date and payment terms (but before the proposed delivery date).
- 3.6 Any dispute that the Customer may have in respect of the Invoice and any Purchase Price set out in the Invoice must be notified to Micador in writing within 14 days of the date of the Invoice.
- 3.7 Micador may set off any amount owing by the Customer to Micador, whether or not due for payment, against any money due for payment by Micador to the Customer under any agreement, understanding or arrangement between Micador and the Customer.
- 3.8 Subject to clause 3.9, unless otherwise agreed in writing between the Customer and Micador the due date for payment by the Customer to Micador of the Purchase Price (**Due Date**) is:
- the due date agreed by Micador when accepting the Account Application but only if the value of the Invoice, combined with any outstanding amounts owed by the Customer to Micador, does not exceed any approved Trading Limit; or
 - if the conditions set out in paragraph (a) are not satisfied, prior to the scheduled date of delivery for the relevant Goods or provision of the Services.
- 3.9 If:
- the Customer has previously failed to make any payment to Micador by the due date for that payment; or
 - the creditworthiness of the Customer is, in Micador's sole opinion, unsatisfactory,
- Micador may require payment of the Purchase Price in full prior to Micador delivering the relevant Goods or providing the Services.
- 3.10 If the Customer fails to make any payment by the Due Date, breaches any term of an Agreement or is the subject of an insolvency event, then, without prejudice to any other right or remedy available to Micador and to the extent permitted by law, Micador may do any one or more of the following:
- suspend further deliveries to the Customer;
 - cancel any Agreement in respect of any Goods or Services not yet supplied or provided to the Customer;
 - enter the property of the Customer or any third party where the Goods are stored in order to repossess the Goods and the Customer grants Micador and its agents an irrevocable licence to do so;
 - dismantle any other goods into which the Goods have been installed or incorporated and remove the Goods from those goods;
 - charge the Customer interest (both before and after any judgement) on the unpaid amount at the interest rate which is fixed from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic), which interest will accrue and be chargeable from the first day on which an amount becomes overdue until Micador receives payment of all amounts (including all interest) by way of cleared funds;
 - cancel any Trading Limit or account facilities previously granted to the Customer by Micador and require payment for all future Orders to be made on placement of the Order; and
 - exercise any rights which Micador may have under law, including the *Personal Property Securities Act 2009* (Cth).
- 3.11 The Customer may not set off or combine any amount owing by Micador to the Customer, whether or not due for payment, against any money due for payment by the Customer to Micador under an Agreement.
- 4 Delivery of Goods and provision of Services**
- 4.1 Micador will deliver the Goods to the Customer in the manner:
- determined by Micador; or
 - as otherwise agreed between Micador and the Customer.
- 4.2 If Micador does not currently stock any Goods and the Customer is entitled to deferred payment terms, then:
- Micador may, unless the Customer has notified Micador that they do not accept back orders, place the Goods on back order and deliver the Goods once Micador has restocked those Goods;
 - Micador may identify on the Invoice which Goods have been placed on back order; and
 - the Customer may cancel its order for Goods placed on back order if it provides notice to Micador in writing within 7 days of the date of the Invoice.
- 4.3 Micador will endeavour, but is not obliged, to deliver Goods or make the Goods available for collection and provide the Services between the hours of 9.00 am and 5.00 pm Monday to Friday at the place of delivery or service provision (excluding on any public holiday at the place of delivery or service provision).
- 4.4 The Customer expressly authorises and grants Micador and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party in order for Micador to deliver the Goods or provide the Services.
- 4.5 If the Customer is required to collect the Goods or the parties have agreed that the Customer will collect the Goods, then the Customer must collect those Goods within three Business Days of being notified by Micador that the Goods are ready to be collected.
- 4.6 There must be a representative of the Customer present at the delivery location at the time delivery is made of the Goods and such person must confirm that the number of Goods delivered and identified in any consignment note equals the number of Goods which are to be delivered under the Agreement.
- 4.7 The Customer must, prior to taking possession of the Goods, inspect the Goods and immediately (and in any event within 48 hours) notify Micador in writing if the Goods are not fit for any purpose for which the Customer intends to use the Goods, are less than the number meant to be delivered under the Agreement, have any defect or otherwise do not meet any Specifications.
- 4.8 In the event of the Customer returning or failing to accept any delivery of the Goods (including failure to collect the Goods), Micador will be entitled to:
- payment for those Goods;
 - treat the obligation to supply the remainder of the Goods (if any) as cancelled by the Customer; and
 - at the risk and cost of the Customer and without limiting any other rights Micador may have, store any Goods which the Customer refuses to take delivery of or fails to collect.
- 4.9 Micador will use its reasonable endeavours to deliver the Goods and provide the Services on any date specified or estimated by Micador or set out in a Quote or Order, however the Customer acknowledges that:
- these dates are estimates only;
 - if Micador does not currently stock a Good, then there may be a delay in the supply of that Good until Micador has restocked that Good; and
 - order marked 'Indent only' means the Goods are ordered especially for the Customer and may take up to 6 months to come into stock.
- 4.10 Without limiting clause 4.9, Micador may deliver or provide a portion of the Goods or Services and may invoice or otherwise charge the Customer for that portion.
- 4.11 If there are multiple Agreements in place at any one time, then Micador may, in its absolute discretion, determine in which order it satisfies the delivery of the Goods and provision of Services under the Agreements.
- 5 Return of Goods**
- 5.1 The terms of this clause 5 are subject to clause 8 and, if a Good is not of acceptable quality, faulty, defective or damaged, the Customer may have rights under the Australian Consumer Law which are not affected by this clause 5.
- 5.2 If the Customer wishes to return any Goods they must, within 14 days of the date of the Invoice, complete, sign and provide to Micador the Goods Return Authorisation Form, as amended from time to time, which is published by Micador on the Website. If the

return is authorised by Micador then Micador will provide the Customer with a Goods Return Number (**GRN**).

- 5.3 Goods may only be returned to Micador if:
- (a) the Goods meet the conditions for return as set out in Micador's return policy, as amended from time to time, which is published by Micador on the Website; and
 - (b) a GRN has been issued by Micador and is clearly displayed by the Customer on the packaging of the Goods.
- 5.4 If a GRN has been issued then Micador will arrange for the Goods to be returned to Micador and all Goods returned to Micador must be returned in the state that they were received by the Customer.
- 5.5 If Goods are returned to Micador but a GRN has not been issued by Micador then the Goods will be returned to the Customer and the Customer must pay the costs of Micador incurred in returning the Goods to the Customer.
- 5.6 If any Goods are being returned for a reason other than because the Goods are defective, do not meet the Specifications for the Goods or are additional to the Goods which were ordered by the Customer, the Customer must pay to Micador:
- (a) the cost of returning the Goods to Micador; and
 - (b) restocking fee equal to 25% of the Purchase Price of the Goods being returned.

6 Title and risk of Goods

- 6.1 Title to, and property in any Goods supplied under an Agreement remain with Micador and will only pass to the Customer once all moneys owing by the Customer to Micador in respect of the Agreement or any other agreement or arrangement between the Customer and Micador have been paid in full.
- 6.2 Risk in the Goods passes to the Customer upon the earlier of:
- (a) the Goods being delivered to the Customer or collected by the Customer; and
 - (b) if the Goods are to be collected by the Customer, on the date which is three Business Days after the date on which Micador notified the Customer that the Goods are ready to be collected.
- 6.3 The Customer is responsible for arranging, and taking out in its own name and its own cost, any insurance in respect of the Goods from the time risk passes to the Customer under this clause and Micador is not obliged to give the Customer a notice referred to in section 35(3) of the *Sale of Goods Act 1923* (NSW) (or any equivalent legislation).
- 6.4 The Customer indemnifies Micador against any Loss or damage to the Goods, however caused, occurring after risk in the Goods passes to the Customer.
- 6.5 In the event that the Customer is required to return any Goods to Micador, risk in the Goods passes to Micador on confirmation of receipt of the Goods by Micador.
- 6.6 Until full title, property and ownership of the Goods passes to the Customer in accordance with clause 6.1:
- (a) subject to clause 6.8, the Customer must hold the Goods as Micador's fiduciary agent and bailee and must not sell, lease, dispose of or otherwise deal with the Goods in any way without Micador's prior written consent;
 - (b) the Customer must keep and maintain the Goods in good and substantial repair and condition;
 - (c) the Customer must insure the Goods for their full replacement value (which must not be less than the Purchase Price) and must store the relevant Goods separately from any other goods and in a way that enables the Goods to be clearly identified as Micador's and referable to a particular Invoice;
 - (d) Micador may enter the premises of the Customer or any third party where the Goods are stored to inspect the Goods;
 - (e) the Customer must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Goods; and
 - (f) the Customer must not remove, deface, alter, obliterate or cover up any names, marks, designs, numbers, code or writing on the Goods.
- 6.7 For the purposes of Micador exercising its rights under clauses 3.10(c), 6.6(d) and 15.2(b), the Customer:
- (a) expressly authorises and grants Micador and its agents an express, irrevocable licence to enter the premises of the

Customer or relevant third party to inspect the Goods or to remove or arrange for the removal of the Goods; and

- (b) the Customer indemnifies Micador against any Loss that may be incurred or sustained by Micador, its employees or agents, as a result of the entry of those premises.
- 6.8 Notwithstanding that title to the Goods has not passed to the Customer under clause 6.1, the Customer may, subject to obtaining Micador's prior written approval, resell the Goods or any part of them in the name of the Customer but only as agent for Micador and may deliver any Goods so sold to the buyer of those Goods but only in the ordinary course of its business and on terms which will not prejudice Micador's ability to obtain any amount paid or due to be paid by the buyer of Goods (**Sale Proceeds**) and:
- (a) any Sale Proceeds must be held by the Customer on trust for Micador and banked in a separate bank account relating only to the Sale Proceeds and must be forwarded as soon as possible to Micador in satisfaction of any amount owed by the Customer in respect of the Goods;
 - (b) the Customer must keep and maintain separate records in relation to the Sale Proceeds received and held by the Customer and must provide those records to Micador immediately upon request by Micador; and
 - (c) if and when the full amount due to Micador in respect of the Goods has been received by Micador, any further Sale Proceeds may be retained by the Customer.
- 6.9 The Customer must immediately cease the resale of any Goods under clause 6.8 if:
- (a) Micador revokes any consent it has given to the Customer to resell the Goods under clause 6.8; or
 - (b) the Customer fails to make any payment under an Agreement by the relevant Due Date.
- 6.10 If an insolvency event occurs in respect of the Customer then, without the need for notice or demand by Micador, the Customer acknowledges that any sale or purported sale of the Goods will not be in the ordinary course of the Customer's business and the proceeds of any Goods sold in those circumstances will, to the extent of any money owing by the Customer to Micador, be held on trust for Micador by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.

7 PPSA

- 7.1 Words and expressions used in this clause 7 which are not defined in these Terms but are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the meaning given to them in the PPSA.
- 7.2 Unless a Customer has paid for Goods in respect of an Agreement before they are delivered to the Customer, each Customer acknowledges that:
- (a) the Agreement for the supply of Goods created under these Terms is a security agreement for the purposes of the PPSA, under which the Customer grants Micador a security interest in the Goods and over any amount owed to the Customer in respect of the Goods (Account) to secure all monies owing by the Customer to Micador from time to time;
 - (b) where Micador has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and
 - (c) Micador is not obliged to act in any way to dispose of or to retain any Goods which have been seized by Micador or any person nominated by Micador under its rights under the PPSA.
- 7.3 Without limiting anything else in these Terms, the Customer consents to Micador effecting a registration on the register in relation to any security interest created by or arising in connection with, or contemplated by an Agreement or these Terms, including in relation to the Goods and any Account. The Customer agrees to promptly do all things necessary to ensure that any security interest created under these Terms is perfected and remains continuously perfected, Micador's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
- 7.4 The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by Micador for that purpose

in relation to the Goods or the Account). Without limiting the foregoing, the Customer must:

- (a) register a security interest in relation to the Goods where the Customer on sells the Goods to a third party or incorporates the Goods into another good or product;
- (b) where appropriate, take reasonable steps to identify security interests in relation to the Goods in the Customer's favour and to perfect and protect them, with the highest priority reasonably available; and
- (c) not register a financing change statement in relation to any registration made under paragraphs (a) or (b) without Micador's prior written consent.

- 7.5 The Customer must indemnify, and on demand reimburse, Micador for all expenses incurred in registering a financing statement or financing change statement on the register, and for the enforcement of any rights arising out of any of Micador's security interests.
- 7.6 The Customer must not change its name, address or contact details without providing prior written notice to Micador.
- 7.7 To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
- 7.8 The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if Micador has given prior written consent.

8 Liability

- 8.1 If the Customer is a Consumer (as defined in section 3 of the Australian Consumer Law) (**Consumer**) and Micador supplies PDH Goods or Services to the Customer, Micador acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the guarantees provided under Division 1 of Part 3-2 of the Australian Consumer Law (**Consumer Guarantees**) as they apply to the PDH Goods or Services supplied by Micador and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of those rights.
- 8.2 If the Customer is a Consumer and any goods or services supplied by Micador to the Customer are non PDH Goods or Services, Micador's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at Micador's discretion) to:
 - (a) in the case of Goods:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the Goods repaired; and
 - (b) in the case of Services:
 - (i) the supplying the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.
- 8.3 If the Customer makes a claim against Micador which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, Micador expressly excludes all liability in respect of the Goods or Services supplied by Micador to the Customer.
- 8.4 In relation to the supply of Goods which are non PDH Goods or Services, if Micador is liable to indemnify the Customer under section 274 of the Australian Consumer Law, Micador's liability to the Customer is limited to an amount equal to the lower of:
 - (a) the cost of replacing the Goods;
 - (b) the cost of obtaining equivalent Goods; or
 - (c) the cost of having the Goods repaired.
- 8.5 Subject to the rest of this clause 8, the aggregate liability of Micador to the Customer arising out of or in connection with the

Agreement will in no event exceed an amount equal to the amount of the Purchase Price received by Micador under the relevant Agreement.

9 Notification of claims

- 9.1 The Customer must notify Micador immediately if it becomes aware of any claim or any death, serious injury or serious illness, in respect of, or caused by, the Goods and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.
- 9.2 If Goods are sold by the Customer to a third party for commercial use by that third party, the Customer must impose on the third party an obligation to notify the Customer immediately if the third party becomes aware of any claim or any death, serious injury or serious illness, in respect of the Goods and to take all reasonable steps to mitigate Loss arising as a consequence of the claim, death, serious injury or serious illness.
- 9.3 The Customer must, and must impose on any third party to whom it sells the Goods an obligation to:
 - (a) not, without Micador's express written consent, make any representation to any Consumer regarding the purpose, performance or durability of the Goods, which is in breach of the Australian Consumer Law;
 - (b) take all steps and do all things necessary to promptly pass on to Micador any claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must, at the Customer's expense, assist Micador to comply with its obligations under the Australian Consumer Law;
 - (c) not, other than in respect of any warranties or guarantees which cannot be excluded by law, make on behalf of Micador any undertaking, assertion, statement, warranty, admission or other representation in respect of the Goods which is inconsistent with the Agreement under which the Goods are supplied; and
 - (d) not agree to settle any claim made by a Consumer without the prior written consent of Micador.

10 Intellectual Property

- 10.1 The parties acknowledge and agree that, unless otherwise agreed in writing, as between Micador and the Customer all Intellectual Property Rights in the Goods, the Shareable IP and any material created as part of the Services vests in and exclusively belongs to and are irrevocably assigned to Micador and the Customer agrees that it must not:
 - (a) infringe or use the Intellectual Property Rights of Micador which exist in the Goods or materials created as part of the Services without the prior written consent of Micador; and
 - (b) infringe the Intellectual Property Rights of Micador which exist in the Shareable IP and only use the Intellectual Property Rights in any Shareable IP strictly in accordance with the Use Guidelines.
- 10.2 The Customer must not do anything to infringe, or encourage or permit any infringement of, any of the Intellectual Property Rights in the Goods or Shareable IP or do anything which may prejudice Micador's ownership of such Intellectual Property Rights.
- 10.3 The Customer must not modify, adapt, vary, reverse engineer, disassemble or copy all or any part of any Good or the Shareable IP without the prior written consent of Micador.
- 10.4 The Customer must not remove, deface, change, distort, delete or cover up any mark on the Goods or packaging of the Goods which indicates that Micador is the owner of the Goods.
- 10.5 The Customer must only sell or promote the Goods using any trade mark, name or brand which is approved in writing by Micador (including any use which are approved under the Use Guidelines).
- 10.6 The Customer must not make available for purchase, sell or promote any:
 - (a) good which is a copy or imitation, in whole or in part, of any Good; or
 - (b) Good which has been modified or varied.

11 Indemnity

The Customer indemnifies Micador and holds Micador harmless from and against all Losses (including all legal costs, and any other associated fees and costs) for which Micador incurs as a direct or indirect result of:

- (a) recovering any amounts the Customer owes to Micador (including any fees paid to a debt collector or similar);
 - (b) any death, injury or illness or damage to property arising from the Customer's unloading, storage or handling of the Goods;
 - (c) any breach of an Agreement by the Customer;
 - (d) the use of, or reliance on, any Customer Specifications; and
 - (e) any negligent or wilful act or omission by the Customer, the Customer's employees, agents, servants, contractors or others for whom the Customer is legally responsible.
- (b) the Customer is the subject of an insolvency event;
- (c) the Customer has breached any term of the relevant Agreement (including these Terms) and, if the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied; or
- (d) Micador is prevented or delayed in performing its obligations under an Agreement due to a Force Majeure Event.

12 Specifications

- 12.1 If an Offer has been accepted by Micador, the Customer acknowledges that the Offer was accepted by Micador on the basis of, and in reliance upon, any information, drawings, specifications, data, representations, statements and documents provided by the Customer, set out in an Order or otherwise approved by the Customer (**Customer Specifications**).
- 12.2 Where any Customer Specifications are required before Micador can proceed with or complete the provision of the Goods or Services, those Customer Specifications must be supplied by the Customer to Micador within a reasonable time so as to enable Micador to deliver the Goods or Services within any agreed time frame.
- 12.3 The Specifications are approximate only and Micador makes no representation or warranty as to the completeness or accuracy of the Specifications and the Customer is responsible for making its own enquiries in relation to the completeness and accuracy of the Specifications provided.
- 12.4 Micador may make changes to the specifications, dimensions, weights or other particulars of the Goods as may be required from time to time by law or any safety or manufacturing requirements.

13 Confidentiality

- 13.1 The Customer:
- (a) may use Confidential Information solely for the purposes of the relevant Agreement;
 - (b) must keep confidential all Confidential Information; and
 - (c) may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by Micador; (ii) as required by law or securities exchange regulation; or (iii) with the prior written consent of Micador.
- 13.2 The Customer must notify Micador immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

14 GST

- 14.1 In this clause, words and expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended, varied or replaced from time to time) have the same meaning given to them by that Act.
- 14.2 Unless otherwise expressly stated in writing in an Agreement, all amounts payable by the Customer in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by Micador under these Terms, the Customer must pay to Micador, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by these Terms to reimburse or indemnify Micador for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that Micador will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by Micador in respect of the reimbursement or payment.

15 Termination

- 15.1 Without limiting Micador's other rights under these Terms, and to the extent permitted by law, Micador may terminate any and all Agreements and any account facility under an Account Application with immediate effect by written notice to the Customer if:
- (a) the Customer fails to make any payment under the Agreement to Micador by the due date for that payment;

15.2 On termination of an Agreement:

- (a) the Customer must not sell or part with possession (other than as required under clause 15.2(b)) any Goods the subject of the Agreement (unless the Goods have been paid for);
- (b) the Customer must, at its cost, immediately return to Micador all Goods the subject of the Agreement (unless the Goods have been paid for) and any displays and other promotional and advertising materials in relation to the Goods; and
- (c) all money owed by the Customer to Micador will become immediately due and payable.

- 15.3 Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

16 Cancellation

- 16.1 Micador may cancel or suspend any Agreement effective immediately upon providing the Customer with written notice of cancellation or suspension where Micador believes (for any reason) that it will be unable to supply the relevant Goods or provide the Services to the Customer, provided that Micador will refund to the Customer any amounts already paid by the Customer for the Goods or Services subject to the cancellation and which are not provided to the Customer. The refund of any amounts will be the Customer's sole remedy against Micador in respect of any cancellation under this clause 16.1.
- 16.2 Neither an Agreement nor any Offer that has been submitted can be cancelled by the Customer except with the prior written consent of Micador or in accordance with clause 4.2(c).

17 Inconsistency

- 17.1 Unless otherwise specified in these Terms, in the event of an inconsistency between any of the documents listed in clause 2.5, the following order of precedence will apply to the extent of the inconsistency (1) the prices and quantity of Goods and/or Services set out in the Quote or, if there is no Quote, in the Order (2) these Terms; (3) the Account Application; (4) any other terms of the Quote (if applicable); (5) the Invoice; and (6) without limiting clause 17.2, any terms in the Order which are accepted by Micador in writing.
- 17.2 These Terms will prevail over any Customer terms and conditions, except to the extent specifically agreed by Micador in writing and any terms or conditions included in an Order or other document provided or issued by the Customer will only be binding on Micador if expressly agreed by Micador in writing.

18 Miscellaneous

- 18.1 In these Terms:
- (a) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example' or 'such as' or similar expressions;
 - (b) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and permitted assigns;
 - (c) no provision will be construed to the disadvantage of a party because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and
 - (d) unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.
- 18.2 Micador will not be liable for any failure to perform or delay in performing its obligations under an Agreement if that failure or delay is due to a Force Majeure Event.
- 18.3 Any price list, goods lists or other similar documents or catalogues issued by or on behalf of Micador do not constitute an offer by Micador to supply Goods appearing in those lists or catalogues or an offer by Micador to supply Goods at the prices set out in those lists or catalogues. Micador's price lists and catalogues may be changed by Micador at any time without notice.

- 18.4 The Customer must maintain and keep current and complete records of the Goods which Micador has supplied to the Customer (in sufficient detail so as to be readily identified as goods supplied by Micador), including any Goods which are sold by the Customer to a third party and must, immediately upon written request from Micador, provide Micador with access to, or copies of, those records.
- 18.5 The Customer must not assign or otherwise deal with any of its rights or obligations under these Terms without Micador's prior written consent. Micador may, to the extent permitted by law, assign, subcontract or deal with any of its rights or obligations under these Terms at any time in circumstances where, in the opinion of Micador acting reasonably, the assignment will not adversely affect the rights of the Customer.
- 18.6 Micador may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective as soon as Micador provides the Customer notice of the variation (**Variation Date**). Any variation to these Terms will only apply to any Offer made after the Variation Date and the parties acknowledge that nothing in these Terms requires the Customer to make any further Offers after the Variation Date.
- 18.7 A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any rights under these Terms must be in writing.
- 18.8 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.
- 18.9 The termination or expiry of these Terms or any Agreement does not operate to terminate any rights or obligations that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 5, 6, 7, 8, 9, 10, 11, 13.2, 15, 17 and 18.
- 18.10 Each party must:
- (a) do all acts necessary or desirable to give full effect to an Agreement; and
 - (b) refrain from doing anything which might prevent full effect being given to an Agreement.
- 18.11 The relationship between the parties is and will remain that of independent contractors, and nothing in these Terms or an Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.
- 18.12 Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party specified in the Account Application or, if none are specified, in any other part of the Agreement. Notices will be deemed to have been received: by hand upon delivery; by post within six Business Days of sending; and by email one hour after the email is sent (unless the sender knows that email has failed to send).
- 18.13 These Terms are governed by the laws in force in Victoria, and the Customer and Micador submit to the non-exclusive jurisdiction of the courts of Victoria.
- 18.14 The *United Nations Convention on Contracts for the International Sale of Goods (1980)* (**The Vienna Convention**) and any acts or regulations enacting The Vienna Convention will not apply to these Terms or any Agreement and are excluded.