Terms and conditions

The following terms and conditions apply to and govern the agreement between Micromelon and the Customer in relation to the supply of Goods, Services or Software (as applicable).

1. Definitions and interpretation

1.1 The meaning of the terms used in these terms and conditions are set out below:

Term	Meaning
ACL	the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth))
Customer	a person whose order or request for the supply of Goods, Services or Software is accepted by Micromelon
Goods	any goods which are requested by the Customer and agreed to be supplied by Micromelon
GST	has the same meaning as in the GST Act
GST Act	*A New Tax System (Goods and Services Tax) Act 1999* (Cth)
Intellectual Property Rights	all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, rights in computer software, design rights, know-how, trade marks, trade secrets, semi-conductor or circuit layout rights, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration
Maintenance Releases	a release of Software that corrects faults, adds functionality or otherwise amends or upgrades the Software
Micromelon	Micromelon Pty Ltd ACN 623 302 296
Order	means an order placed by a Customer for the supply of Goods, Services or Software and accepted in accordance with clause 2
Pre-existing IP Rights	Intellectual Property Rights owned by the Customer or Micromelon independent of these terms and conditions
Price	the amount payable by the Customer for the supply of Goods, Services or Software

Term	Meaning
Related Body Corporate	has the meaning given in section 9 of the *Corporations Act 2001* (Cth)
Scope of Services	has the meaning given in clause 4.2
Scope of Software	has the meaning given in clause 5.2
Services	any services which are requested by the Customer and agreed to be supplied by Micromelon
Software	any computer programs which are requested by the Customer and agreed to be licensed by Micromelon and any Maintenance Release which is licensed by the Customer during the subsistence of the licence under clause 5
Taxable Supply	has the same meaning as in the GST Act
Tax Invoice	has the same meaning as in the GST Act
Website	Micromelon's website at: https://www.micromelon.com.au/ and as updated from time to time

1.2 In these terms and conditions:

(a) words importing the singular include the plural and vice versa;

(b) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

(c) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;

(d) references to any document (including these terms and conditions) include references to the document as amended, consolidated, supplemented, novated or replaced;

(e) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations;

(f) the Order and any Scope of Services or Scope of Software form part of these terms and conditions; and

(g) headings are included for convenience only and do not affect interpretation of these terms and conditions.

2. Order and acceptance

No contract for the supply of Goods, Services or Software shall exist between Micromelon and the Customer until a Customer's order for the supply of Goods, Services or Software has been accepted by Micromelon (such acceptance of Customer's orders may be made and communicated by Micromelon in writing or by overt act of acceptance on the part of Micromelon) (**Order**). Micromelon may accept or refuse any order for the supply of Goods, Services or Software in its absolute discretion.

3. Delivery of Goods

3.1 This clause 3 applies if the Order includes Goods.

3.2 Unless otherwise agreed in writing, the Goods will be delivered or deemed to be delivered at the time Micromelon provides notice to the Customer that the Goods are ready for collection at Micromelon's premises.

3.3 If the Order provides for the Goods to be delivered to the Customer, the Goods will be deemed to have been delivered automatically upon delivery of the Goods to the nominated delivery address.

3.4 The risk of loss of, or damage to, the Goods will pass to the Customer on delivery.

3.5 The Customer shall pay to Micromelon packing (other than the standard packing of Micromelon), crating and delivery charges in accordance with Micromelon's current rates, as at the date of dispatch. If there is no current rate then Micromelon may charge a reasonable amount to the Customer. Micromelon reserves the right to make a reasonable charge for storage if the Customer has not collected the Goods within five business days from the notice provided in accordance with clause 3.2.

3.6 Micromelon will use all reasonable endeavours to meet the times quoted for delivery, however, these are estimates only and Micromelon will not be responsible for any failure to deliver or for delay in delivery of Goods in circumstances beyond the control of Micromelon.

3.7 The Customer shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.

4. Delivery of Services

4.1 This clause 4 applies if the Order includes Services.

4.2 The Customer agrees (as applicable):

(a) to provide Micromelon with all necessary information and specifications relating to requirements of the Customer in respect of the Services; or

(b) that Micromelon will supply the Services in accordance with the specification provided to the Customer as at the date of the Order,

(**Scope of Services**).

4.3 The nature and extent of the Services will be determined on the basis of the Scope of Services. If the Scope of Services is amended, Micromelon will be entitled to review the Price and the Customer agrees to pay any

additional costs associated with such amendments as is agreed in writing.

4.4 If applicable, the Customer must provide Micromelon with access to any relevant premises in order for Micromelon to provide the Services. The Customer must ensure that such premises in respect of the Services is:

(a) a safe working environment; and

(b) accessible and prepared for the provision of Services in accordance with the Scope of Services.

4.5 Micromelon will use all reasonable endeavours to meet any performance dates specified in the Scope of Services, but will not be responsible for delays or rescheduling in circumstances beyond the control of Micromelon.

5. Licence of Software

5.1 This clause 5 applies if the Order includes Software.

5.2 The Customer agrees to provide Micromelon with the number of subscriptions and all other necessary information relating to the requirements of the Customer in respect of the Software (**Scope of Software**).

5.3 The nature and extent of the Software provided will be determined on the basis of the Scope of Software. If the Scope of Software is amended, Micromelon will be entitled to review the Price and the Customer agrees to pay any additional costs associated with such amendments as is agreed in writing.

5.4 The Software will be deemed to be delivered when Micromelon has made the Software available for download by the Customer. Risk in the Software passes to the Customer on delivery.

5.5 In consideration of the Price paid by the Customer to Micromelon, Micromelon grants to the Customer a non-transferable and non-exclusive licence to use the Software for the full period set out in the Scope of Software commencing on and including the date Micromelon accepts the Order and in accordance with the following terms:

(a) use of the Software will be restricted to use of the Software in the normal business or educational practices of the Customer (which will not include allowing the use of the Software by, or for the benefit for, any person other than an employee or student of the Customer);

(b) the Customer may not use the Software other than as specified in clause 5.5(a) without the prior written consent of Micromelon; and

(c) except as expressly stated in these terms and conditions, the Customer has no right (and will not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part.

6. Customer obligations

6.1 The Customer must:

(a) ensure the terms of the Order are complete and accurate;

(b) cooperate with Micromelon in all matters relating to the supply of Goods, Services or Software;

(c) provide Micromelon with such information and materials it may reasonably require in order to supply Goods, Services or Software, and ensure that such information is complete and accurate in all material respects;

(d) obtain and maintain all necessary licences, permissions and consents which may be required for Goods, Services or Software;

(e) not do anything which might affect the reputation of Micromelon or Micromelon's Related Bodies Corporate; and

(f) comply with all applicable laws and regulations.

7. Price and payment terms

7.1 In consideration of Micromelon supplying Goods, Services or Software, the Customer must pay the Price as set out in the Order or on the Website (as applicable).

7.2 The Customer shall pay the Price without any offset or deduction whatsoever, unless agreed otherwise in writing, within 30 days of receiving an invoice from Micromelon.

7.3 If the Customer does not pay Micromelon by the due date, Micromelon reserves the right to charge the Customer interest on monies due, charged on a daily rate at 2% per month from the due date of payment until the actual date of payment.

8. Return of Goods

8.1 This clause 8 applies if the Order includes Goods.

8.2 Subject to clause 16, and unless agreed in writing by Micromelon, Micromelon will not accept the return of Goods. If Micromelon agrees to accept the return of Goods (at its absolute discretion) the Customer may be charged to recover restocking and repackaging costs. The amount of this charge will be determined by Micromelon and shall be deducted from the amount of the credit allowed for the return.

8.3 All claims for Micromelon's failure to comply with the Customer's Order (whether due to shortfall, defect, incorrect delivery or otherwise) must be made by giving written notice to Micromelon within 14 days from the date of delivery. If the Customer fails to provide such notice, then the Customer shall be deemed to have accepted the Goods.

9. Title to Goods

9.1 This clause 9 applies if the Order includes Goods.

9.2 Title to any Goods delivered to the Customer will not pass to the Customer until the Customer has paid all amounts that it owes to Micromelon in full.

9.3 Until title has passed to the Customer in accordance with clause 9.2, unless expressly permitted by these terms and conditions, the Customer must not grant any security interest in respect of accounts owed to it in relation to the Goods, without Micromelon's prior written consent.

9.4 If the Customer sells or disposes of any Goods, the Customer will hold the proceeds of sale or disposal on trust for Micromelon to secure payment of any amounts the Customer owes Micromelon for the Goods.

10. Intellectual Property Rights

Pre-existing IP Rights

10.1 The Pre-existing IP Rights of each party remain the sole property of that party.

10.2 The Customer grants Micromelon a non-exclusive, royalty-free, non-transferable licence to use the Pre-existing IP Rights owned by it for the sole purpose of supplying Goods, Services or Software.

Intellectual Property Rights in Goods and Services

10.3 Clause 10.4 applies if the Order includes Goods or Services.

10.4 The supply to, and purchase by, the Customer of Goods or Services does not confer on the Customer any licence to the Intellectual Property Rights of Micromelon.

Intellectual Property Rights in Software

10.5 Clause 10.6 applies if the Order includes Software.

10.6 The Customer acknowledges that all Intellectual Property Rights in the Software and any Maintenance Releases belong and will belong to Micromelon, and the Customer will have no rights in or to the Software other than the right to use it in accordance with the terms of the licence in clause 5.

11. Confidentiality

11.1 Each party (**Recipient**) must keep secret and confidential and not disclose any information relating to another party or its business (which is or has been disclosed to the Recipient by the other party, its representatives or advisers) or these terms and conditions, except:

(a) where the information is in the public domain as at the date of these terms and conditions (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the Recipient);

(b) if the Recipient is required to disclose the information by applicable law or the rules of any recognised stock exchange or other document with statutory content requirements, provided that the Recipient has, to the extent practicable having regard to those obligations and the required timing of the disclosure, consulted with the provider of the information as to the form and content of the disclosure;

(c) where the disclosure is expressly permitted under these terms and conditions;

(d) if disclosure is made to its officers, employees and professional advisers to the extent necessary to enable the Recipient to properly perform its obligations under these terms and conditions or to conduct their business generally, in which case the Recipient must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;

(e) where the disclosure is required for use in legal proceedings regarding these terms and conditions; or

(f) if the party to whom the information relates has consented in writing before the disclosure.

11.2 Each Recipient must ensure that its directors, officers, employees, agents, representatives and Related Bodies Corporate comply in all respects with the Recipient's obligations under this clause 11.

12. Personal information

12.1 Micromelon will handle any personal information of the Customer in accordance with its Privacy Policy, available at: https://micromelon.com.au/data/micromelon-privacy-policy-and-collection-statement.pdf.

12.2 The Customer may contact Micromelon to request access to, update or correct any of its personal information.

13. Warranty

13.1 Micromelon warrants that any Goods, Services or Software supplied under these terms and conditions will:

(a) be in accordance with any relevant specifications contained in the Order;

(b) be of merchantable quality and fit for any purpose specified in the Order (if applicable);

(c) be provided using reasonable care and skill (if applicable); and

(d) comply with all applicable statutory and regulatory requirements.

13.2 Other than those expressly set out in clause 13.1, Micromelon excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms, whether implied, statutory or otherwise, in relation to Goods, Services and Software to the maximum extent permitted by law.

14. Default and termination

14.1 If:

(a) the Customer fails to pay any undisputed amount due under these terms and conditions on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

(b) the Customer commits a material breach of any other term and that breach is irremediable or (if

that breach is remediable) the Customer fails to remedy that breach within a period of 14 days after being notified in writing to do so;

(c) a liquidator or provisional liquidator is appointed in respect of the Customer;

(d) a receiver, receiver and manager or controller is appointed in respect of any assets or group of assets of the Customer;

(e) the Customer goes into bankruptcy or is wound up; or

(f) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due,

then all monies payable by the Customer to Micromelon shall at Micromelon's election become immediately due and payable notwithstanding the due date for payment, and Micromelon may, without affecting any of Micromelon's other rights, do any or all of the following:

(g) withhold any further deliveries of Goods, suspend the performance of any Services and revoke any licence in respect of Software;

(h) recover from the Customer the cost of materials in connection with the supply of Goods, Services or Software; and

(i) terminate these terms and conditions with immediate effect by giving written notice to the Customer.

14.2 Termination of these terms and conditions does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the contract that existed at or before the date of termination.

14.3 Any provision of these terms and conditions that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

15. Force majeure

15.1 Micromelon will not be liable to the Customer for any loss incurred by the Customer as a direct result of Micromelon failing or being prevented, hindered or delayed in the performance of its obligations under these terms and conditions where such prevention, hindrance or delay results from events, circumstances or causes beyond Micromelon's control (**Force Majeure Event**).

15.2 If a Force Majeure Event occurs, Micromelon must take all reasonable steps to minimise the effect of the Force Majeure Event and must notify the Customer in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.

15.3 On providing the notice in clause 15.2 Micromelon will be entitled to a reasonable extension of time for performing its obligations under these terms and conditions, however, it must continue to use all reasonable endeavours to perform those obligations.

15.4 The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.

15.5 If the delay due to the Force Majeure Event continues for 30 days, the Customer may terminate these terms and conditions immediately on providing written notice to Micromelon. If the Customer terminates in accordance with this clause 15.5, Micromelon must refund the Price paid by the Customer, less the charges reasonably and actually incurred by Micromelon in performing its obligations under these terms and conditions up to the date of the Force Majeure Event.

16. Liability

16.1 Nothing in these terms and conditions limits or excludes a party's liability:

    (a) for death or personal injury caused by its negligence or wilful misconduct or that of its employees, as applicable;

    (b) for fraud or fraudulent misrepresentation by it or its employees, as applicable;

    (c) for breaches of confidentiality or Intellectual Property Rights; or

    (d) where liability cannot be limited or excluded by applicable law.

16.2 Subject to the other terms of this clause 16, each party excludes any liability to the other, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with these terms and conditions, including any:

    (a) loss of profits;

    (b) loss of sales or business;

    (c) loss of production;

    (d) loss of agreements or contracts;

    (e) loss of business opportunity;

    (f) loss of anticipated savings;

    (g) loss of or damage to goodwill;

    (h) loss of reputation; or

    (i) loss of use or corruption of software, data or information.

16.3 Subject to the other terms of this clause 16, the maximum aggregate liability of Micromelon to the Customer for any loss or damage or injury arising out of or in connection with these terms and conditions, including any breach by Micromelon of these terms and conditions however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the Price received by Micromelon from the Customer in the 12-month period immediately preceding the date of the relevant claim (or series of connected claims).

16.4 Nothing in these terms and conditions is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of the ACL, or the exercise of a right conferred by such a provision, or any liability of Micromelon in relation to a failure to comply with a guarantee that applies under the ACL to a supply of goods or services.

16.5 If Micromelon is liable to the Customer in relation to a failure to comply with a guarantee that applies under the ACL that cannot be excluded, Micromelon's total liability to the Customer for that failure is limited to, at Micromelon's option, the resupply of the goods or services or the payment of the cost of resupply.

17. Notice

17.1 All notices given under these terms and conditions must be in writing and may be delivered in person or by mail or by the medium specified in the address for service stated on the Order.

17.2 A party may change its particulars for service by notice in writing to the other parties.

17.3 A notice sent by post will be deemed:

    (a) given on the day it is posted; and

    (b) received six days after posting.

17.4 A notice sent by email will be deemed received at the time and on the date that it is sent, unless the sender receives notification that the delivery of the email was unsuccessful, in which case the email will not be deemed to have been received.

17.5 For the purposes of clause 17.4, 'delivery' of an email means the time that an email reaches the recipient's server.

18. GST

18.1 Unless expressly stated otherwise, the consideration for any supply under or in connection with these terms and conditions has been fixed without regard to the impact of GST.

18.2 If GST is or becomes payable on a Taxable Supply made under or in connection with these terms and conditions, the party providing consideration for that Taxable Supply must pay an additional amount equal to the GST payable on the Taxable Supply.

18.3 The additional amount payable under clause 18.2 must be paid at the same time as the consideration for the Taxable Supply or on the date on which the party making the supply delivers a Tax Invoice (whichever is later).

19. General

References to and calculations of time

19.1 Where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

19.2 Where something is done or received after 5.00 pm on any day, it will be taken to have been done or received on the following day.

19.3   Where a provision in this agreement requires anything to be done on a Saturday, Sunday or public holiday, that matter or thing may be done or will be taken to have been done on the next succeeding day that is not a Saturday, Sunday or public holiday.

Governing law

19.4   These terms and conditions will be construed in accordance with the laws in force in Queensland and the parties submit to the exclusive jurisdiction of the courts of Queensland.

Reference to a party

19.5   Any reference to a party in these terms and conditions includes, and any obligation or benefit under these terms and conditions will bind or take effect for the benefit of, that party's executors, administrators, successors in title and assigns.

Entire agreement

19.6   These terms and conditions represent the entire agreement between the parties in respect of their subject matter and supersede all prior representations, agreements, statements and understandings between the parties in respect of their subject matter.

Severability

19.7   If any part of these terms and conditions is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and these terms and conditions will remain otherwise in full force.

Amendments to be in writing

19.8   Micromelon may change these terms and conditions by notice in writing to the Customer. The Customer agrees that placing an order for the supply of Goods, Services or Software after the date of a notice of a change will be deemed to be an acceptance of such changed terms and conditions.

Waiver

19.9   The failure of a party to these terms and conditions to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the party at a later time to enforce the provision.

Assignment

19.10   Micromelon may assign its rights and obligations under these terms and conditions to any person provided Micromelon notifies the Customer in writing.

19.11   The Customer may not assign, novate, transfer, charge or deal in any other manner with any or all of its rights or obligations under these terms and conditions without the prior written consent of Micromelon.

Relationship of the parties

19.12   Nothing in these terms and conditions gives a party authority to bind any other party in any way.

19.13   Nothing in these terms and conditions imposes any fiduciary duties on a party in relation to any other party.

Announcements

19.14   No party will make, or permit any person to:

(a)   make any public announcement statement, press release or other publicity or marketing materials concerning the existence, subject matter or terms of these terms and conditions, the wider transactions contemplated by them, or the relationship between the parties; or

(b)   use the other party's trade marks, service marks, trade names, logos, symbols or brand names, in each case;

without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed, 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.

Remedies cumulative

19.15   Except as provided in these terms and conditions and permitted by law, the rights, powers and remedies provided in these terms and conditions are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of these terms and conditions.

No reliance

19.16   The Customer has not relied on any statement, representation, assurance or warranty made or given by Micromelon, except as expressly set out in these terms and conditions.

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