

## Ortesi Pty Ltd Use of Technology Terms and Conditions

### DEFINITIONS

- Ortesi:** means Ortési Pty Ltd [ABN 14 153 078 936] of 67 Indian Drive, Keysborough VIC 3173;
- Customer:** means a practitioner, person, firm or corporation, jointly and severally if there is more than one ordering, and/or receiving, and/or utilising technology from Ortési;
- Goods:** means technology supplied by Ortési to the Customer;
- Terms:** means these Ortési Pty Ltd Use of Technology Terms and Conditions
- Business Day:** means a day, on which Ortési is open for business.
- Agreement:** means the agreement formed by the Schedule of these Terms;
- GST:** means the Goods and Services Tax as defined in A New Tax System (Goods and Tax) Act 1999 as amended;
- PPS Law:** means Personal Property Securities Act 2009 (Cth)
- Intel:** means intellectual property and all copyright, patents, trademarks, designs, formulas, specifications, confidential information, manufacturing processes and all modifications, improvements and derivations (whether registerable or not) owned or licensed by Ortési in respect of the Goods.
- Recoverable Amount:** means the total, at the date of termination, of:
- a) The monthly rent payments, monthly insurance premiums, and any other monies which have fallen due but have not been paid;
  - b) Any amount payable pursuant to Clause 18;
  - c) Any enforcement expenses, including any costs incurred by Ortési in taking possession of the goods and storing them; and
  - d) If the equipment is returned to, or possession is otherwise obtained by Ortési the sale price of the goods net of sale costs, expenses and any Goods and Services Tax payable in connection with the sale, or if Ortési chooses, the value of the goods net of valuation costs and expenses; and
  - e) Any insurance money received by Ortési if the goods are stolen, lost, destroyed or damages less any Goods and Services Tax payable by Ortési in connection with the insurance payment. If the sum of the amounts referred to in paragraph (e) and (f) exceed the sum of the amount in paragraph (a) to (d) the Recoverable Amount is Nil.

### TECHNOLOGY TERMS AND CONDITIONS

These terms are used by Ortési for each agreement throughout Australia and New Zealand.

The Consumer Credit Code of the Country, State and Territory in which the customer resides will apply to this agreement if the customer is an individual and the equipment is wholly or predominantly for personal domestic or household purposes.

#### **1. Acquisition and Delivery of the Equipment**

- 1.1.1 Ortési has acquired the equipment, or will acquire it, at the request of the customer so that Ortési can enter into this agreement.
- 1.1.2 The customer must obtain delivery of the equipment and is responsible for installation and set-up. If requested by Ortési, the customer must execute an acknowledgement of delivery in a form acceptable to Ortési.
- 1.1.3 Ortési is not responsible for any delay in, or for any damage or loss arising as a result of, installation or set-up of the equipment.

#### **2. Ownership of the Equipment**

- 2.1.1 The equipment is, and will remain, the sole property of Ortési, whether or not affixed to realty and shall not become or be made to become part of any real property on which it is placed. The customer has no right to purchase the equipment.
- 2.1.2 Ortési has not given any rights or expectation, nor made any representations, to the customer regarding this agreement or the acquisition, use, operation, performance, delivery, installation

or tax treatment of the equipment (or equipment of a similar value and description) by the customer at any time.

### **3. Payments**

- 3.1.1 The customer must pay any rent and insurance premium in full, on a monthly basis, no later than thirty days from the end of the month that the tax invoice is dated. The customer must also pay any other money due under this agreement no later than thirty days from the end of the month that any tax invoice is dated.
- 3.1.2 Unless Ortesi otherwise agrees, payments must be made directly into their bank account, or online via credit card.
- 3.1.3 The customer's obligation to pay the rent, the insurance premium and other amounts due under this agreement is unconditional, even if the equipment is damaged, lost or stolen. All payments are to be made without set-off, deductions or withholding on any account.

### **4. Obligations of the Customer**

- 4.1.1 Unless otherwise agreed in writing, the customer must as its own expense:
  - a) Properly maintain and request service of the equipment and keep it in good order and repair (normal wear and tear excepted);
  - b) Have the equipment maintained and repaired only by Ortesi.
  - c) Comply with the manufacturer's instructions and recommendations relating to the equipment;
  - d) Use or keep the equipment only in a place that would normally be deemed acceptable for such equipment, or in such other place as the Ortesi approves in writing;
  - e) Produce the equipment for inspection or testing by Ortesi or its nominee at the request of the Ortesi. (subject to clause 12.3 if applicable) allow Ortesi or its nominee access to any place where the equipment is kept for any purpose relating to this agreement;
- 4.1.2 If the equipment is lost or stolen, the customer must immediately inform the police and provide Ortesi with a copy of the police report. If the customer has maintained rental payments together with the monthly insurance premium, and no rental invoice is overdue, an invoice for the insurance excess will be issued. If a rental invoice is overdue for payment, Ortesi will issue the customer with a replacement cost invoice for the equipment which will be due and payable by the customer.

### **5. Restrictions on the Customer**

- 5.1.1 The customer must not:
  - a) Modify the equipment.
  - b) Create any lien or other encumbrance over the equipment or this agreement pursuant to clause 16.1.

### **6. Insurance**

- 6.1.1 The customer must:
  - a) Accept that the equipment is insured by Ortesi and not seek alternative insurance.
  - b) Pay in full, together with the rent, the monthly insurance premium.
  - c) Accept that the insurance does not cover accessories, or any other items not supplied by Ortesi
  - d) Not do anything or permit anything to be done which might prejudice or invalidate any of the insurance policies;

### **7. Risk and Indemnities**

- 7.1.1 The customer assumes all risks and liability in relation to the equipment and the use, operation, possession, performance, maintenance, repair and storage of it (including liability for injury to any person or damage to any property, whether direct or consequential) for the period up until the equipment is returned to Ortesi.
- 7.1.2 The customer indemnifies Ortesi against all losses, liabilities and expenses incurred by the Ortesi as a result of:
  - a) Loss of, or damage to, the equipment by any causes (including lawful confiscation);
  - b) Anything done by or with the equipment;
  - c) Any other thing in relation to which the customer has assumed the risk or liability pursuant to clause 8.1; or
  - d) The occurrence of any event referred to in clause 13.1;
  - e) Any infringement of intellectual property rights in relation to the equipment. The customer must pay to the Ortesi on demand any amount payable under this indemnity.

## **8. Destruction of the Equipment**

- 8.1.1 If the equipment is lost, stolen or totally or substantially destroyed - Ortesi may terminate this agreement by notice to the customer.
- 8.1.2 Within 30 days from the end of the month an invoice is dated, the customer must pay to Ortesi the Recoverable Amount as if the customer had been deemed to have repudiated this agreement and Ortesi had terminated this agreement for that reason.

## **9. Ortesi May Take Action**

- 9.1.1 If for any reason the customer fails to comply with any of its obligations under this agreement Ortesi may in its discretion do anything necessary to make good that failure (but without affecting any other right or remedy of Ortesi as a result of that failure) and do anything (including taking any legal proceedings) which Ortesi considers desirable to protect or enforce its rights in relation to the equipment and this agreement. The customer irrevocably authorises Ortesi to use the name of the customer, and to act on its behalf, in doing any such thing. The customer is to indemnify Ortesi in respect of any payments made by Ortesi pursuant to this clause.

## **10. Termination by Customer**

- 10.1.1 The customer may terminate the agreement at any time by:
  - a) Returning the equipment to Ortesi in accordance with the requirements of clause 12.1; and
  - b) By paying to Ortesi any Recoverable Amount.

## **11. Procedure on Termination**

- 11.1.1 Upon expiry of the agreement at the end of the Term (and is not extended in accordance with clause 12.4) or it is terminated under clause 11 or clause 14, the customer must immediately return the equipment to Ortesi in good working order and in good repair (reasonable wear and tear excepted) accompanied by any related operating manuals during ordinary business hours to the place nominated in writing by Ortesi and in compliance with clause 6.2 of this agreement.
- 11.1.2 Subject to clause 12.3, if the customer does not return the equipment to Ortesi when required, Ortesi may at any time retake possession of the equipment and the customer hereby:
  - a) Authorises Ortesi to enter any premises where the equipment is located to dismantle the equipment and remove it;
  - b) Releases Ortesi from any liability which Ortesi might otherwise have for any damage or loss caused by Ortesi retaking possession of the equipment in accordance with this clause; and
  - c) Must reimburse to Ortesi on demand all costs and expenses incurred by Ortesi in retaking or attempting to retake possession of the equipment including, without limitation, costs and expenses incurred in doing anything contemplated in paragraph (a) and any money paid by Ortesi in relating any lien claimed over the equipment.
- 11.1.3 If the Code applies to this agreement:
  - a) Ortesi will not enter any part of the premises used for residential purposes for the purpose of taking possession of the equipment unless a court has authorised entry, or the occupier of the premises, after being informed in writing of their rights under the Code, has given consent in writing; and
  - b) Ortesi will give the customer 30 days written notice of their intention to exercise its rights under this agreement taking possession of the equipment (unless notice is not required under the Code).

## **12. Default Events**

- 12.1.1 For the purposes of this agreement, a "Default Event" applies to both the customer and any guarantor and occurs if:
  - a) The customer does not pay on the due date any instalment of rent or other money payable under this agreement;
  - b) The customer defaults in its obligations under clause 5, 7.1, 16.1 and 19 of this agreement;
  - c) The equipment is lost or destroyed or Ortesi forms the opinion that the equipment is so damaged as to make its repair impracticable or uneconomic, and the rental agreement is not finalised and fully paid out by the insurer or we have waived the right to claim the cost of repair or replacement of the equipment;
  - d) The customer does not comply with any of its other obligations under this agreement and if that failure to comply can be rectified it is not rectified within 7 days after Ortesi gives the customer notice requiring the customer to do so;

- e) The customer makes a composition, arrangement or compromise with, or an assignment for the benefit, of, its creditor or any class of them;
- f) If the customer is a corporation, action is taken by Ortesi, another person or the customer on the basis that the customer is insolvent or unable to pay their debts when they are due, including any application for the appointment of a liquidator, provisional liquidator, receiver or administrator;
- g) The holder of any security at any time over any of the customer's assets becomes entitled to exercise any power to enforce security;
- h) Whether the customer is an individual, the individual committing an act of bankruptcy or being made bankrupt;
- i) Distress or execution being levied against equipment and the breach within the grace period;
- j) Breach of a representation or warranty made by the customer if the customer does not remedy when requested by Ortesi.

### **13. Termination by Ortesi & Exclusion of Warranties**

- 13.1.1 The occurrence of a Default Event is a breach of a condition of this agreement.
- 13.1.2 The customer undertakes to notify Ortesi of the occurrence of default event.
- 13.1.3 If a Default Event occurs, the customer will be deemed to have repudiated the agreement and Ortesi will be entitled to terminate the agreement by written notice to the customer or by any act of repossession.
- 13.1.4 Apart from terms, conditions and warranties which are implied by law and are incapable of exclusion, Ortesi does not give condition, warranty or representation as to ownership, description, condition, merchantability, suitability or fitness of the equipment for a particular purpose, and no such term, condition or warranty will be implied.
- 13.1.5 Ortesi liability for breach of any implied term, condition or warranty which is incapable of exclusion is (where permitted by law) limited to the replacement of the equipment or the supply of the equivalent equipment, or the payment of the cost of having the equipment repaired, as determined by Ortesi at their discretion.
- 13.1.6 Except as provided for in clause 15.2, and notwithstanding any implications arising from any other clause, Ortesi will not be liability to the customer or any persons claiming under the customer in contract or in tort in respect of any direct, indirect or consequential person, arising out of or relating to the agreement, its performance, any delay in its performance or its non-performance (including, but not limited to liability due to negligence) or any error (whether negligent or not) in information supplied to the customer before or after the date of the agreement or in connection with the agreement.

### **14. Assignment to Third Parties**

- 14.1.1 The customer must not sub-let, assign, encumber, part with possession of, allow a third party to use, or otherwise dealt with the equipment or its rights under this agreement or agree or attempt to do so, without the consent of Ortesi. Ortesi may assign, encumber or otherwise deal with its rights under this agreement in any way (subject to the rights of the customer under this agreement).
- 14.1.2 The customer must notify Ortesi if the equipment or any part of it is seized or if a casualty occurs.
- 14.1.3 The customer may not object to Ortesi entering into this agreement as agent for another person (whether disclosed or not) or to that other person being the true owner of the equipment.

### **15. Amounts Payable by The Customer**

- 15.1.1 The customer must pay (or, if paid by Ortesi, reimburse Ortesi on demand) for all other costs and expenses including legal costs in an indemnity basis incurred by Ortesi in relation to this agreement or the exercise or attempted exercise of any of Ortesi's rights under it.

### **16. Customer Warranties**

- 16.1.1 In the case of a corporation, the customer represents and warrants to Ortesi that:
  - a) The customer is validly existing under the applicable law;
  - b) The customer has the power and authority to enter into this agreement;
  - c) The customer has executed this agreement on its own behalf and in its capacity as trustee of any trust including the trust specified in the schedule;
  - d) The execution and delivery by the customer of this agreement and the performance of the customer's obligations have been duly authorized by all necessary corporation agreement and do not:
    - i. contravene the provisions of or constitute a default under any contract or other instrument to which the customer is a party or by which the customer is bound; or

- ii. result in the creation of any encumbrance upon the equipment or any property of the customer;
- e) the person or persons executing this agreement on behalf of the customer is duly authorised to execute the agreement and upon the execution this agreement, the agreement will constitute the legal and binding agreement of the customer enforceable against the customer.

## **17. Miscellaneous Provisions**

- 17.1.1 This agreement may only be varied or replaced by a written document signed by Ortesi. The agreement cannot be cancelled or terminated except as provided by this agreement.
- 17.1.2 A right of Ortesi, a breach of the obligation of the customer or an event of default under this agreement can only be waived by a written instrument signed by Ortesi. No other act, omission or delay of Ortesi will constitute a waiver. A single or partial exercise or waiver by Ortesi of a right relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.
- 17.1.3 This is the only agreement between Ortesi and the customer with respect to the equipment.
- 17.1.4 Each provision of this agreement is an independent provision. Any provision which would otherwise be prohibited or unenforceable in any jurisdiction is, to the extent of the unenforceability be deemed removed without invalidating, so far as possible, the remaining provisions of the agreement.
- 17.1.5 A statement or certificate given by or on behalf of Ortesi stating the amount owed by the customer to Ortesi and/or the occurrence of any event shall be conclusive evidence of the amount or event, unless the contract is proved.
- 17.1.6 If the customer was introduced or referred to Ortesi in relation to this transaction by a third party, the customer consent to Ortesi paying commission to that third party and to the inclusion of that commission in the calculation of rent payable under this agreement.
- 17.1.7 Time is of the essence with respect to the performance of the customer's obligations under this agreement.
- 17.1.8 Whether two or more person comprise the customer, a reference to the customer includes each of them and all of them and the obligations of the customer bind them jointly and separately.
- 17.1.9 The customer allows Ortesi to complete any blank spaces in the agreement including the insertion of identification details of the equipment.
- 17.1.10 The customer shall promptly execute and deliver to Ortesi (or any assignee) such further documents and take such further action as Ortesi may require in order to more effectively carry out the intent and purpose this agreement (and any assignment by Ortesi of its rights under this agreement) and to protect the interest of Ortesi (or any assignee) in this equipment.
- 17.1.11 Unless the context otherwise requires:
  - a) Words denoting the singular include the plural and vice versa and words denoting one gender include each gender;
  - b) Words denoting a person include a corporation and vice versa;
  - c) Headings are for convenience only and do not affect the interpretation of this agreement;
  - d) A reference to a party includes its successors and permitted assignees; and
  - e) A reference to this equipment includes any parties or accessories from time to time attached to or forming part of the equipment, whether in addition to or in replacement or any part of the equipment referred to in the schedule.

## **18. Maintenance Charges**

- 18.1.1 If any maintenance charges in relation to the equipment are included in the rent set out above, the customer acknowledges that:
  - a) Those charges have been included at the request of the customer in conjunction with a direction which the customer has given to Ortesi to pay those charges to the person providing maintenance services in relation to the equipment;
  - b) Ortesi is not responsible for the maintenance of the equipment nor related to, or associated in any way with, the provider of those maintenance services; and
  - c) No failure to perform or other breach by the provider of those maintenance services will, in any way, effect the customer's obligation to pay rent and other monies payable under this agreement and to perform its other obligations under this agreement.

## **19. Personal Property Securities Register**

- 19.1.1 This clause applies to the extent that the Agreement provides for a 'security interest' for the purposes of the PPS Law.

- 19.1.2 References to PPS Law in this document include references to amended, replacement and successor provisions of it.
- 19.1.3 Ortesi is at liberty to register its security interest as a purchase money security interest under the PPS Law ("PMSI"). The customer must do anything (such as obtaining consents and signing documents) which Ortesi requires for the purposes of:
- a) ensuring that Ortesi's security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - b) enabling Ortesi to gain first priority (or any other priority agreed to Ortesi in writing) for its security interest; and
  - c) enabling Ortesi to exercise rights in connection with the security interest.
- 19.1.4 Ortesi may recover from the customer the cost of doing anything under this clause, including but not limited to registration fees.
- 19.1.5 The rights of Ortesi under these terms are in addition to and not in substitution for Ortesi's rights under any other law (including the PPS Law) and Ortesi may choose whether to exercise its rights under the PPS Law, enforce the terms of these terms, and/or under other law, as it sees fit.
- 19.1.6 To the extent that Chapter 4 of the PPS Law applies to the security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this Agreement in respect of all goods to which that section can be applied:
- a) section 95 (notice of removal of accession to the extent it requires the Company to give notice to the Renter);
  - b) section 96 (retention of accession);
  - c) section 121(4) (notice to grantor);
  - d) section 125 (obligations to dispose of or retain collateral);
  - e) section 130 (notice of disposal to the extent it requires the Company to give notice to the Renter);
  - f) section 129(2) and 129(3);
  - g) section 132(3)(d) (contents of statement of account after disposal);
  - h) section 132(4) (statement of account if no disposal);
  - i) section 135 (notice of retention);
  - j) section 142 (redemption of collateral); and
  - k) section 143 (reinstatement of security agreement).
- 19.1.7 The following provisions of the PPS Law confer rights on Ortesi:
- a) section 123 (seizing collateral);
  - b) section 126 (apparent possession);
  - c) section 128 (secured party may dispose of collateral);
  - d) section 129 (disposal by purchase); and
  - e) section 134(1) (retention of collateral).
- 19.1.8 The customer agrees that in addition to those rights, Ortesi shall, if there is default by the customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the customer agrees that Ortesi may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 19.1.9 Ortesi waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 19.1.10 Ortesi and the customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply to it. The Agreement in this sub-clause is made solely for the purposes of allowing Ortesi the benefit of section 275(6)(a) and Ortesi shall not be liable to pay damages or any other compensation or be subject to injunction if Ortesi breaches this sub-clause.