

Contents

1.	DEFINITIONS	2
2.	EQUIPMENT, DELIVERY, INSTALLATION AND RETURN	2
3.	USE, LOCATION AND RELOCATION	2
4.	SECURITY BOND	3
5.	REPAIRS AND MAINTENANCE	3
6.	INSPECTION OF EQUIPMENT	4
7.	PAYMENT	4
8.	YOUR DUTIES AND OBLIGATIONS	5
9.	PPSA	5
10.	RENTAL INCREASES	6
11.	END OF TERM	6
12.	REPUDIATION	6
13.	EXCLUSION OF LIABILITY AND INDEMNITIES	7
14.	GUARANTOR	8
15.	NOTICES AND OTHER COMMUNICATIONS	8
16.	GENERAL	8

The purpose of this document is to give you information you may require to make an informed decision about whether to subscribe to use Crystella Pty Ltd (Crystella) product(s) and to set out the terms and conditions of any such subscription.

1. DEFINITIONS

- 1.1. "Agreement" means this Agreement and any current or subsequent annexures and amendments.
- 1.2. "Business day" means any day (other than a Saturday or a Sunday, or a public holiday) we are open for business in the place we sign this Agreement.
- 1.3. "Commencement Date" means the day on which the Equipment is delivered to you.
- 1.4. "CPI" means the weighted average of the All Groups Consumer Price Index of the eight capital cities of the States and Territories of Australia published from time to time by the Australian Bureau of Statistics or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia.
- 1.5. "Equipment" means the Equipment specified in this Agreement.
- 1.6. "GST" means any goods and services tax payable by us on each taxable supply in connection with this Agreement or its subject matter, levied under A New Tax System (Goods and Services Tax) Act 1999 and related legislation.
- 1.7. "Guarantor" means any person who is named as the Guarantor and, if there is more than one, means each of them separately and every two or more of them jointly.
- 1.8. "Including", when introducing a list of items, does not limit the meaning of the words to those items or to items of a similar kind.
- 1.9. "Initial Payment" means the total of one month's rent plus the total other or one-off payments and the Security Bond, as these amounts are specified in this Agreement.
- 1.10. "Insolvent" means bankrupt, insolvent, in receivership, in liquidation, in provisional liquidation, under official management or administration, wound up, subject to any arrangement, assignment or composition or protected from any creditors under any statute.
- 1.11. "Person" includes firm, partnership, committee, and incorporated and unincorporated bodies.
- 1.12. "Security Bond" means the amount referred to in clause 4 of this Agreement.
- 1.13. "Term" means the term of this Agreement.
- 1.14. "We", "our" and/or "us" means Crystella Pty Ltd ACN 12 123 208 908 and its successors and assigns.
- 1.15. "You" means the entity or person or, if more than one, persons named as the Customer; if you are a trustee, you warrant that you enter into this Agreement with all necessary power and for a proper purpose, are liable personally and in your position as trustee and, in respect of your obligations under this Agreement, have a right to be indemnified by the trust ahead of the beneficiaries; and "you" includes your successors and assigns to whom we have consented.
- 1.16. An obligation on the part of two or more persons binds them jointly and severally.
- 1.17. This Agreement is governed by the law of New South Wales ("NSW"). You and we submit to the non-exclusive jurisdiction of the courts of NSW.

2. EQUIPMENT, DELIVERY, INSTALLATION AND RETURN

- 2.1. You affirm that the Equipment has been selected by you for your purposes.
- 2.2. You agree that the Equipment is being rented from us wholly or mainly for a business carried on by you.
- 2.3. You agree that the Equipment supplied under this Agreement is not acquired for personal, domestic or household use or consumption.
- 2.4. Legal title to the Equipment remains with us and the Equipment always remains our property.
- 2.5. You have the right to use our Equipment as governed by this Agreement.
- 2.6. You may never assert any other interest in the Equipment other than the right to use it governed by this Agreement.
- 2.7. We will deliver and install the Equipment and pick-up the Equipment for return at the conclusion or termination of this Agreement.
- 2.8. You must not attach the Equipment to any property without our consent. If it is attached to land, it does not become a fixture and you hereby confirm we can still remove it in accordance with this Agreement.

- 2.9 You confirm that you have selected units of an appropriate size to fit the intended location and that you have checked the location for adequate ventilation and clear ingress. Any costs incurred as a result of unit(s) being unsuitable for a location will be paid by you.
- 2.10 You hereby agree:
- a. You alone are responsible for examining the Equipment before accepting it and for satisfying yourself about it, including:
 - i. its compliance with its description; and
 - ii. its condition, suitability and fitness for your purposes.
 - b. you have not told us or anyone else the particular purpose for which you require the Equipment.
 - c. we have not made any representation, warranty or undertaking about the condition or quality of the Equipment, its suitability or fitness for your purposes, or its safety; and
 - d. you have not relied on our skill or judgement in deciding to enter into this Agreement.

3. USE, LOCATION AND RELOCATION

- 3.1 You must not move the Equipment from the Equipment location noted in this Agreement without our express consent in writing.
- 3.2 At your request and expense we will move the Equipment to an approved new location.
- 3.3 You must use the Equipment only in your business operations and for the purpose for which it is designed.
- 3.4 When we give instructions for use, the Equipment must be used in accordance with those instructions.
- 3.5 You must ensure that the Equipment is used and maintained in accordance with the manufacturer's instructions and recommendations.

4. SECURITY BOND

- 4.1 When requested by us and before delivery or installation of the Equipment you must pay us the Security Bond.
- 4.2 We will refund to you the Security Bond on the valid termination or expiry of this Agreement subject to the following conditions:
- a. We can apply any part or the whole of the Security Bond towards satisfaction of any amount payable to us under this Agreement or by you or any guarantor whatsoever (despite any description of the Security Bond as applying to any location or particular Equipment or amount); and
 - b. Without limiting the generality of the foregoing, we can apply the Security Bond or any part of it to costs for damage, replacement parts and repair to the Equipment, cleaning of the Equipment, insurance policy excesses for claims by us resulting from your breach of this Agreement, loss of rent, transport and storage or any other loss which would not have been incurred had you completed this Agreement, and no application of any part or the whole of the Security Bond will constitute a waiver of any claim not fully satisfied by the Security Bond.
- 4.3 Should you become Insolvent or enter Administration, title to the Security Bond is irrevocably surrendered to us.

5. REPAIRS AND MAINTENANCE

- 5.1 You are responsible for maintaining the Equipment in a clean and hygienic condition. This includes regular cleaning of condensers (minimum every 3 months).
- 5.2 If we are requested or required in our absolute discretion to clean the Equipment (eg as a result of spillage) you will be charged at our normal rates whether or not as a result of a service call.
- 5.3 We will attend to essential faults, such as failure to dispense carbonated water, within a reasonable time from your call. Non-essential faults will be attended to during normal working hours which are currently, but subject to change, 8.00am to 4.00pm Monday to Friday, excluding public holidays.
- 5.4 Any non-essential service provided at your request outside these hours will be subject to after-hours labour charges.

- 5.5 The classification of faults into essential or non-essential will be at our sole discretion.
- 5.6 You are responsible for the costs of repairs necessary as a result of vandalism, damage, misuse or neglect which has been caused by you or while the Equipment is in your care.
- 5.7 Only our service personnel or service contractors engaged by us may service or repair the Equipment.
- 5.8 We will not accept claims for any unauthorised service performed on the Equipment and you will be liable for any rectification work required as a result of unauthorised service work.
- 5.9 Anyone other than a Crystella authorised person repairing or servicing our Equipment constitutes a material breach of this Agreement.
- 5.10 We may refuse to service the Equipment if any rental payments are overdue by more than five business days and we give you notice in this regard when any service is requested.
- 5.11 We will not be liable for any loss or damage that you may suffer as a result of our failure to effect a repair so long as we comply with the terms of this agreement and we will not be liable for loss of product or trade or for any damage caused to property as a result of any malfunction of the Equipment and you should obtain your own insurance in this regard.
- 5.12 We will charge you for any repair or service required on the Equipment caused by your misuse, neglect or negligence.
- 5.13 You will be responsible for the transport costs of technicians and parts for any servicing on any islands or locations outside the mainland of Australia (including Tasmania).

6. INSPECTION OF EQUIPMENT

- 6.1 You must allow us, or our representative, during normal business hours, to enter the place where the Equipment is to inspect its condition or check whether the terms of this Agreement are being complied with or exercise any of our rights under this Agreement.
- 6.2 You must notify us immediately if any of the Equipment is:
 - a. stolen;
 - b. lost;
 - c. destroyed; or
 - d. damaged.
- 6.3 You must pay us the rental payment due up to the date on which the Equipment is stolen, lost, destroyed or damaged (if repair is impracticable or uneconomical), in addition to any rent instalment or other amounts due up to that date, including the replacement value of the affected Equipment, on the next payment date after the event referred to in clause 6.2.
- 6.4 This Agreement terminates in relation to the affected Equipment when you make payment under clause 6.3.

7. PAYMENT

- 7.1 Upon entering this Agreement, you must make the Initial Payment as defined in clause 1.9, unless otherwise agreed.
- 7.2 After the Initial Payment has been made, payments will be made every 7 days from the date of this Agreement unless otherwise agreed.
- 7.3 You must make all regular payments by direct debit to our bank account. All payments are required to be made by the due date. Any other payments required under this Agreement must be made as directed by us from time to time.
- 7.4 Subject to the terms of this Agreement, your obligation to pay the rent is absolute and unconditional and you must not withhold any payment under this Agreement, or make a deduction from it, for any reason including because:
 - a. the Equipment is damaged, does not operate, or is not in your possession;
 - b. you claim to have a set-off, counterclaim, or other right against us or any other person.
- 7.5 You must pay interest on any money payable under this Agreement which is overdue at a rate of two percentage points higher than the rate that is or would be charged to us by ANZ Bank on overdrafts from time to time.

- 7.6 Your obligation to pay an amount on the date it becomes due is not affected by any obligation you have to pay additional amounts which may become due and payable.
- 7.7 If the actual amount of stamp duty, GST and/or financial institutions duty in relation to this Agreement or the Equipment is greater than that included in the rent set out in any Annexure of this Agreement you must pay the actual amount of duty or GST.
- 7.8 If any payment made by you is dishonoured by your bank, we will charge you a dishonour fee of all bank charges imposed on us by reason of the dishonour plus a \$50.00 administration fee.
- 7.9 You must pay all further charges (including Dispatch Fees, Delivery Fees, Logistics, Administration and Restocking Fees), if we attempt to deliver goods to you and they are not accepted by you for any reason.
- 7.10 Should you require the Equipment to be uninstalled, prior to the end of Term, you will be required to pay an additional \$495 +gst fee, which includes decommissioning, uninstal, and return freight, unless otherwise agreed in writing.

8. YOUR DUTIES AND OBLIGATIONS

- 8.1 You have entered this Agreement as a principal unless you have told us otherwise and you do not enter into this Agreement as trustee of any trust or settlement.
- 8.2 You must give us any information we ask for about:
 - a. your financial position;
 - b. the Equipment.
- 8.3 Anything which you must do under this Agreement must be done at your cost.
- 8.4 You must ensure that neither you nor any guarantor becomes Insolvent. In the event that you become Insolvent, we may at our discretion terminate the Agreement and if we do so you are in default and we may elect to treat such default as repudiation under clause 12 of this Agreement.
- 8.5 You must insure and keep insured the Equipment for its full replacement value at all times.

9. PPSA

- 9.1 Unless otherwise defined in these terms and conditions, the capitalised words and expressions used in this clause have the meanings given to them in the Personal Property Securities Act 2009 (PPSA).
- 9.2 You acknowledge and agree to grant to us a Security Interest in the Equipment and its Proceeds, including any Accounts and Accessions, by virtue of clause 8 above.
- 9.3 You acknowledge that any retention of title supply pursuant to this rental Agreement attaches on delivery of the Equipment and constitutes a Purchase Money Security Interest as defined in the PPSA.
- 9.4 You agree that:
 - a. these terms and conditions, and, subject to us giving you at least 30 days notice, such other terms and conditions as we may adopt from time to time, apply to the supply of Equipment by us to you to the exclusion of all other terms and conditions of sale or purchase to the extent permitted by law and constitute a Security Agreement pursuant to the PPSA;
 - b. no variation to this Agreement will be of any effect unless we agree in writing;
 - c. the Equipment supplied by us secures the payment of the rental price of that Equipment and of any other goods we supply with priority to the fullest extent permitted by law over all other registered or unregistered Security Interests;
 - d. you will do all things necessary in our reasonable opinion, including providing all information we require, to enable us to register a Financing Statement or Financing Change Statement on the Register as a Security Interest and/or a Purchase Money Security Interest;
 - e. you will not change your name or ABN or other details required in respect of registration, or maintenance of registration, of each Security Interest on the Register without first notifying us in writing.
 - f. you waive your right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement in respect of any Security Interest created pursuant to this Agreement;
 - g. you must pay our costs of any discharge or necessary amendment of any Registration.
- 9.5 If the provisions of Chapter 4 of the PPSA would otherwise apply, to the maximum extent permitted by law, you agree that sections 129(3), 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply.

- 9.6 To the maximum extent permitted by law, you contract out of, and waive any rights you may have pursuant to, sections 95 and 96, and if the provisions of Chapter 4 of the PPSA would otherwise apply, sections 117, 118, 121(4), 123, 129(2) and 130 of the PPSA.
- 9.7 In addition to any other rights under this Agreement, we may exercise any and all remedies set out in the PPSA including, without limitation, entry into any building or premises owned, occupied or used by you, to search for and seize, dispose of or retain the Equipment in respect to which we have a Security Interest. In this regard you acknowledge that sections 126, 128, and 129(1) of the PPSA, relating to seizure of goods and disposal of seized goods, apply.
- 9.8 You agree with us that neither of us will disclose any confidential information of the kind referred to in section 275(1) of the PPSA and that this clause 9.8 constitutes a 'confidentiality Agreement' within the meaning of section 275(6) (a) of the PPSA.
- 9.9 You waive any rights you may have under section 275(7)(c) of the PPSA to authorise disclosure of any confidential information that is protected from disclosure under clause 9.8.
- 9.10 You appoint and authorise us as your attorney to sign in your name all documents which we reasonably consider necessary to enforce or protect our rights and powers under this Agreement and to protect, preserve and enforce our rights under the PPSA.

10. RENTAL INCREASES

- 10.1 Crystella reserves the right to increase the rent we charge you in accordance with this Agreement from time to time by reference to the formula set out in this clause. Crystella will give you 30 days' notice of any change to the rent.
The rent we charge you (exclusive of GST) will be increased to an amount calculated by multiplication of the then-current rent by a fraction the denominator of which is the CPI current one year previously and the numerator of which is the CPI as at the date we give you notice of the rent increase.

11. END OF TERM

- 11.1 This agreement is for the Term and will then continue in force after the expiry of the Term unless terminated by either party giving 90 days' notice of termination to the other party. Such notice can be given at any time after the date which is 90 days prior to the end of the Term.
- 11.2 If you decide to return the Equipment, you must on the last day of the term of the Agreement return the Equipment to us in good working order, and in good repair (fair wear and tear excepted) by allowing us to collect it at your expense.
- 11.3 You may terminate this Agreement if Crystella fails to perform an obligation under this agreement AND Crystella fails, within 14 days of receipt of a notice from you raising the failure, to rectify any such non-performance or (if the issue relates to pricing) to agree to negotiate a price which is acceptable to you. Any such notice is to be sent by email to **customerservice@crystella.com**

12. REPUDIATION

- 12.1 It is a fundamental provision of this Agreement that none of the following events occurs:
- a. You default in a payment of any rent and continue in default for 7 days after we notify you of the default; or
 - b. You breach any of the terms of an insurance policy in relation to the Equipment; or
 - c. An insurance policy over the Equipment is refused or cancelled; or
 - d. We discover a false statement or omission made by you in this Agreement or in relation to your application to enter in to this Agreement; or
 - e. An application is made or resolution is passed to wind you up or you commit an act of bankruptcy; or
 - f. You become an externally-administered body corporate as that expression is used in the Corporations Act; or
 - g. You become Insolvent; or
 - h. Any act which you cause or permit threatens the safety, condition or safe keeping of the Equipment; or

- i. You cease to carry on your business or your ownership or control materially changes; or
 - j. You part with possession of the Equipment, service or repair our Equipment.
- 12.2 You will repudiate this Agreement and we may terminate it by notice to you:
- a. if you do not comply with the fundamental provisions of this Agreement; or
 - b. if, in our opinion your actions suggest that you no longer intend to be bound by this Agreement.
- 12.3 If we give you notice of termination you must immediately make the Equipment available for pick-up by us in good working order, and in good repair (fair wear and tear excepted); and without prejudice to any remedies or damages available to us upon your default, we may at any time and without notice retake possession of the Equipment and there will forthwith at our option become due and payable by you to us the total ("the Payout Amount") of:
- a. all rent and any other money accrued due, but not paid, and the present value of the rent for the balance of the term less an allowance calculated by us for our not having to service the Equipment during the balance of the term (if under this Agreement the servicing of the Equipment is at our cost). The parties agree that the amount payable is a genuine pre-estimate of Crystella's loss flowing from any termination of this Agreement pursuant to the provisions of this clause 12; and
 - b. unless the Equipment is returned to us in good condition, a sum equal to the value the Equipment would have had if it was in good condition. For the purposes of this clause, the present value of an amount is calculated by applying a percentage discount (equal to the interest rate charged to us by ANZ on overdrafts from time to time less 2 percentage points) to that amount.
- 12.4 For the purposes of recovering possession and without limiting the generality of the foregoing, you irrevocably authorise and license us and our servants and agents to enter any premises where the Equipment may be stored and to take possession of the Equipment.
- 12.5 You also indemnify us for any costs we incur as a result of the early termination of this Agreement pursuant to the provisions of this clause 12. including legal costs on a full indemnity basis, costs of obtaining or attempting to obtain payment or otherwise enforcing this Agreement, costs of taking or attempting to take possession of the Equipment and any costs incurred by us or any financier in terminating or replacing any funding or hedging arrangements entered into by us or any financier in connection with the funding of our commitment to you under this Agreement.
- 12.6 Upon acceptance by us of your repudiation of this Agreement, we will take all reasonable steps to mitigate our loss by attempting to re-hire the Equipment for the balance of the term. We will give you credit for any amounts we receive during the balance of the term from re-hiring the Equipment.

13. EXCLUSION OF LIABILITY AND INDEMNITIES

- 13.1 Representations and agreements not expressly contained herein or expressly given by us in relation to the Equipment shall not be binding upon us as conditions, warranties and representations. Subject to clause 13.6, all such conditions, warranties and representations on our part are hereby expressly negated and excluded;
- 13.2 We provide no warranty of any kind where the Equipment is installed and/or used in conjunction with the goods of a supplier other than us (save for those which by law cannot be excluded) and deny all liability for any damage whatsoever suffered by any person arising from such use PROVIDED THAT our Equipment was free of safety defects at the time of delivery and any injuries or damages were not the result of any safety defect in our Equipment;
- 13.3 You shall indemnify us against any liability or loss (including environmental damage and personal injury) arising from your possession, operation or use of the Equipment or from any negligent or illegal act or breach of this Agreement by you or your contractors. This indemnity is a continuing obligation, separate and independent from your other obligations. It continues after this Agreement ends or is terminated. It is not necessary for us to incur expense or make a payment before we may enforce a right of indemnity.
- 13.4 If you require that our products be delivered to your premises then we will enter the premises at your risk and will not be responsible for any accidental damage to your property or premises;
- 13.5 You further agree to indemnify us against all losses and expenses which we may suffer or incur due to your failure to fully observe your obligations under this Agreement;

13.6 Nothing contained in this Agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of the Equipment of all or any of the provisions of the Competition and Consumer Act 2010 or any relevant State or Territory Statute which by law cannot be excluded, restricted or modified PROVIDED THAT to the extent that any such statute permits us to limit our liabilities to compensate or indemnify any person for breach of a condition or warranty, then our respective liabilities for such breach shall be limited in the case of Equipment to the replacement of the Equipment with the same or equivalent Equipment or to the repair of the Equipment or payment of the cost of repair and in the case of services to the resupply of the services.

14. GUARANTOR

14.1 The Guarantor acknowledges and agrees that:

- a. The Guarantor has read and understood the terms of this Agreement and has had the opportunity to seek independent legal advice in respect thereof;
- b. The Guarantor unconditionally and irrevocably guarantees the punctual payment to us of all amounts that become owing to us by you on any account and the due and prompt observance and performance of all covenants, obligations, terms and conditions on your part pursuant to this Agreement;
- c. The Guarantor unconditionally and irrevocably indemnifies us against any loss or cost we may suffer or incur due to a breach of this Agreement by you or the guarantee being voidable or unenforceable for any reason;
- d. The Guarantor's obligation under this Agreement is a primary obligation and we are not obliged to enforce any right against you or any other person before demanding payment by the Guarantor;
- e. The guarantee and indemnity provided herein is a continuing obligation and is not subject to any time or indulgence granted by us to you;
- f. The Guarantor's liability is as a principal debtor; and
- g. The Guarantor must pay any amount due under this clause immediately upon demand by us.

15. NOTICES AND OTHER COMMUNICATIONS

15.1 All notices, certificates, consents and other communications in connection with this Agreement must be in writing.

- a. They must be:
 - i. left at the address last notified or
 - ii. sent by prepaid post to the address last notified; or
 - iii. sent by facsimile to the facsimile number last notified.

15.2 If notices are sent by post, they are taken to be received on the third day after posting.

15.3 If notices are sent by facsimile, they are taken to be received at the time of sending unless the transmitting machine indicates that the facsimile was not sent or that there was an error in the sending. Production of a transaction report by the transmitting machine shall be sufficient evidence that the facsimile was sent at the time indicated on the report.

15.4 Notices take effect from the time they are received unless another time is specified in them.

16. GENERAL

16.1 You acknowledge that we may enter into this Agreement as agent for a finance company.

16.2 We may also transfer the Equipment or our interest in this Agreement, or give another person an interest in or form of security over either of them, without getting your consent.

16.3 We may exercise a right, remedy or power in any way we consider appropriate.

16.4 If we do not exercise a right, remedy or power at any time, this does not mean that we cannot exercise it later.

16.5 We are not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right, remedy or power, whether or not caused by our negligence.

- 16.6 Our rights, remedies and powers under this Agreement are in addition to any other rights, remedies and powers provided by law independently of it.
- 16.7 Any termination does not affect any other right or remedy we have for amounts due to us which remain unpaid.
- 16.8 If a date for payment of money under this Agreement is not a business day, the money must be paid on the preceding business day.
- 16.9 You authorise us to complete any blank spaces in this Agreement and we may amend this Agreement (if applicable) to correct any errors including the amount of the rent instalment. You will be bound by any changes we make provided we send you a written notice of the change within 14 days and you do not object within 7 days of receipt.
- 16.10 A term of this Agreement, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.