



# FINANCE OXYGEN TERMS OF USE

**S.E. RENTALS PTY LTD**

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# FINANCE OXYGEN

## TERMS OF USE



### 1. Use of Oxygen

1.1 Finance Oxygen is the software platform of S.E. Rentals Pty Ltd (ACN 082 999 988) (“**SER**”), such software comprising Oxygen Sales, Oxygen Manager and Oxygen Billing (“**Finance Oxygen**”). Oxygen Sales allows salespersons to provide quotes, generate finance documents, obtain approvals and settle finance transactions. Oxygen Manager provides managers with reporting tools for portfolio management and access to sales activity in relation to finance or proposed finance transactions. Oxygen Billing allows administration teams to provide a one document, one bill solution that enables variable billings for service-related usage-based programs.

1.2 These Terms of Use are a binding contract between each person or entity who uses or is granted access to use Finance Oxygen (“**you**”) and SER. Your use or continued use of these Terms of Use constitutes your acceptance of these Terms of Use. You must only use Finance Oxygen in accordance with the provisions of these Terms of Use.

1.3 Where a “**Supplier**” under a Supplier Relationship Agreement (“**Supplier**”) with SER (or any other agreement (however described) between the Supplier and SER under which the Supplier may submit requests or proposals to SER from time to time to acquire or finance equipment for the rental, lease or other supply of such equipment to customers) (“**Supplier Relationship Agreement**”) is granted access to or uses Finance Oxygen, the Supplier acknowledges and agrees that:

- (a) these Terms of Use supplement the terms and conditions contained in the Supplier Relationship Agreement and if there is any inconsistency between these Terms of Use and the Supplier Relationship Agreement, these Terms of Use will prevail to the extent of such inconsistency; and
- (b) references to “**you**” in these Terms of Use includes references to the Supplier.

The Supplier agrees to procure the observance and performance of these Terms of Use by each of its officers, employees, agents, brokers and sub-contractors who uses Finance Oxygen.

1.4 You must only use each of Oxygen Sales, Oxygen Manager or Oxygen Billing (as the case may be) for the applicable purpose referred to in clause 1.1 and, where applicable, for the purposes of performing your obligations under the Supplier Relationship Agreement. For the avoidance of doubt, you acknowledge and agree that you must only use Finance Oxygen for the purposes of carrying out activities in connection with new customers and existing customers. Without limitation, you must not, without SER’s prior written consent, conduct credit checks or any related activities via Finance Oxygen in respect of prospective customers.

1.5 Subject to clause 1.6, you must not assign or sub-license your rights under these Terms of Use or otherwise permit any other person or entity to use Finance Oxygen without SER’s prior written consent and must not permit customers or any other person to use or input data into Finance Oxygen.

1.6 Where SER has authorised one or more persons to access Finance Oxygen on your behalf (each an “**Authorised User**”):

- (a) you must ensure that each Authorised User has received training to use Oxygen;
- (b) without limiting clause 1.3 (if applicable), you must procure the observance and performance of these Terms of Use by each Authorised User; and
- (c) if any Authorised User ceases to be employed or otherwise engaged by you, you must immediately notify SER in writing and by email to the relevant SER account manager or to ser@serentals.com.au. We may immediately revoke that Authorised User’s access to Finance Oxygen.

1.7 SER may issue to you one or more unique user names and passwords (“**Security Access Details**”) in order to access Finance Oxygen. You must keep the Security Access Details confidential and secret and must not, without SER’s prior written consent, disclose any Security Access Details to any other person (including any person working or otherwise engaged in the same organisation as you). If a person accesses Finance Oxygen using your Security Access Details, SER will rely on those Security Access Details and assume that it is you who is accessing Finance Oxygen. SER may revoke your access to Finance Oxygen at any time without notice.

1.8 If you become aware of any unauthorised disclosure or misuse of any Security Access Details or any of your devices on which Finance Oxygen is installed is lost or stolen, you must immediately notify SER by email to OxygenSupport@serentals.com.au and provide full particulars of such disclosure, misuse, loss or theft.

1.9 You must comply with all IT security standards set out in any instructions, manuals or guides issued by SER in relation to Finance Oxygen (which may be amended from time to time).

1.10 You must not:

- (a) post or transmit any material of any kind which contains a virus or other harmful component;
- (b) modify, copy, reproduce or distribute Finance Oxygen (or any part of it) or any content appearing on or accessible through Finance Oxygen;
- (c) delete any notices or other information or content appearing on Finance Oxygen; or
- (d) use or rely upon Finance Oxygen for any purpose or in any manner for which Finance Oxygen is not intended.

1.11 Without limiting your obligations under the relevant Supplier Relationship Agreement (if applicable), you must, at the time of submitting a request or proposal to SER to acquire or finance equipment, disclose or make available to SER all information in your possession or control, or in respect of which you are otherwise aware, which would be relevant to or in connection with the proposed finance transaction, including, if applicable:

- (a) whether the proposed transaction will result in SER paying any payout amount of an existing transaction between the relevant customer and another financier; and/or
- (b) whether the proposed transaction includes any data usage, call costs or internet provision.

### 2. Privacy obligations

2.1 You:

- (a) must comply with all applicable Privacy Laws in relation to all activities involving Personal Information, whether or not you are otherwise bound by those Privacy Laws;
- (b) must provide all assistance reasonably required by us for the purposes of enabling us to comply with our obligations under applicable Privacy Laws; and
- (c) must not do any act, engage in any practice, or omit to do any act or engage in any practice that would cause us to breach applicable Privacy Laws.

2.2 Without limiting clause 2.1:

- (a) you must take all reasonable steps to protect the Personal Information against any misuse, interference or loss and from any unauthorised access, modification or disclosure including, without limitation:
  - (i) adopting measures to protect smartphone and other electronic devices, and computer systems and networks for storing, processing and transmitting Personal Information from unauthorised access, modification and disclosure; and
  - (ii) adopting measures to protect communication via data transmission including email and voice, interception and preventing unauthorised intrusion into computer networks;
- (b) you must not use any Personal Information, for any purpose other than Permitted Purpose;
- (c) you must not disclose any Personal Information to any person without SER’s prior written consent;
- (d) you must only disclose Personal Information to those of your employees who have been authorised to receive such Personal Information to the extent to which those employees have a need-to-know basis necessary for fulfilling the Permitted Purpose; and
- (e) you must immediately notify us if you are obliged, by law, to disclose any Personal Information to any third party.

2.3 In relation to all Personal Information that may be disclosed from time to time by you to SER, you represent and warrant that:

- (a) you have complied with Privacy Laws in relation to the collection of such Personal Information and the subsequent disclosure of that Personal Information to SER; and
- (b) at the time of disclosing such Personal Information to us, you have taken all reasonable steps to confirm the accuracy, completeness, currency and relevance of such Personal Information.

2.4 You must notify SER immediately if:

- (a) you become aware or suspect that any Personal Information you have disclosed to SER may not be up-to-date, complete or accurate;
- (b) a person has made a complaint to you or a request to you for correction of, or access to, Personal Information under any Privacy Laws in connection with your activities or SER’s activities contemplated by these Terms of Use or the

Supplier Relationship Agreement;

(c) a regulator or other government agency has made any inquiry or request, expressed any concerns, or is undertaking any investigation or audit, in relation to your or SER's compliance with any aspect of any Privacy Laws. You must provide SER with all information reasonably available to you in connection with the matter notified and assist SER in undertaking any associated investigation and resolution.

2.5 A reference in these Terms of Use to Personal Information that you disclose or may disclose to SER includes any Personal Information that you upload on Finance Oxygen from time to time.

### 3. Liability and permitted exclusions

3.1 Except to the extent that any guarantee, representation or warranty provided or implied by the Australian Consumer Law and other applicable laws cannot be excluded, SER does not give any guarantee, representation or warranty as to the acceptability, fitness for purpose, condition, performance or safety of Finance Oxygen, or that services will be rendered with due care and skill. Without limitation:

(a) Finance Oxygen is provided "as is" and SER does not guarantee, warrant or represent that the functions contained in Finance Oxygen or access to Finance Oxygen will be uninterrupted or error-free or that no viruses or other harmful components will be transmitted through Finance Oxygen to your systems; and (b) SER does not guarantee, warrant or represent regarding your access to or the results from your access of Finance Oxygen in terms of correctness, accuracy, timeliness, completeness, reliability or otherwise.

3.2 To the full extent permitted by the Australian Consumer Law and other applicable laws, SER is not responsible for, and you release SER from, all claims, losses or liabilities arising from or in connection with the input of your data into Finance Oxygen, including, without limitation, any errors or omissions from your input of data in Finance Oxygen and any data inputted by you in Finance Oxygen being misleading, inaccurate, incomplete or out-of-date.

3.3 You acknowledge and agree that to the full extent permitted by the Australian Consumer Law and other applicable laws:

(a) SER is not liable to you or any other person in contract, tort (including negligence), in equity, by operation of statute (to the extent liability may be excluded by law) or otherwise for any kind of indirect or consequential loss or damage, loss of opportunity, loss of revenue, loss of profit or anticipated profit, loss of contracts, loss of goodwill or loss arising from business interruption arising out of or in connection with Finance Oxygen, except to the extent caused or contributed to by the fraud, negligence or wilful misconduct of SER or its officers or employees; and

(b) in any event, SER's liability in relation to Finance Oxygen, is limited, at SER's option, to one or more of the following (as SER reasonably determines): the supplying of those services again or paying the cost of having the services supplied again.

3.4 For the avoidance of doubt, nothing in these Terms of Use is intended to exclude, restrict or modify any rights or remedies which you may have under the Australian Consumer Law or any other applicable law which cannot be excluded, restricted or modified.

### 4. Indemnities

4.1 You indemnify SER from and against all claims, losses, liability, costs, damages and expenses suffered or incurred by SER arising from or in connection with:

(a) any unauthorised use of Finance Oxygen by any Authorised User during or after any time that that Authorised User is authorised to use Finance Oxygen; (b) any breach by you of these Terms of Use or any applicable laws (including Privacy Laws); or

(c) any errors or omissions from your input of data in Finance Oxygen and any data inputted by you in Finance Oxygen being misleading, inaccurate, incomplete or out-of-date (to the extent that you are aware that such data is misleading, inaccurate, incomplete or out-of-date at the time of your input), except to the extent caused or contributed to by the fraud, negligence or wilful misconduct of SER or its officers or employees.

### 5. Intellectual property rights

5.1 You acknowledge that:

(a) all information, texts, material, graphics and software displayed on or accessible via Finance Oxygen (excluding your data), appearing in any material form, including without limitation, on screen and in any print-outs is protected by copyright and is owned by SER;

(b) the source code and object code for Finance Oxygen is owned by SER;

(c) the ideas, know-how, methodology, formulae, algorithms, devices, configurations and compilations comprising or incorporated in Oxygen (excluding your data) comprises part of SER's intellectual property; and

(d) any trade marks associated with Finance Oxygen (whether registered or unregistered) are owned by SER.

5.2 You must not do anything inconsistent with the ownership of SER's intellectual property rights in Finance Oxygen. Without limitation, you must not reverse engineer, decompile, disassemble, reconfigure or otherwise attempt to discover the source code of Finance Oxygen, breach any copyright or other intellectual property rights held by SER in Finance Oxygen or make or attempt to make any derivative works or adaptations of Finance Oxygen.

### 6. Amendments

6.1 SER may amend these Terms of Use (and update the webpages on SER's website on which they are displayed) at any time and from time to time. SER will notify you of any amendments to these Terms of Use by posting a notice of the changes on Finance Oxygen or on SER's website.

6.2 Your use or continued use of Finance Oxygen following notice of any such amendments will constitute your acceptance of the amendments.

### 7. Definitions and Interpretation

7.1 In these Terms of Use, unless the context otherwise requires:

(a) "Australian Consumer Law" means The Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);

(b) "Permitted Purpose" means the purpose of performing your obligations to SER, whether under the relevant Supplier Relationship Agreement or otherwise;

(c) "Personal Information" means any information from time to time regarded as "personal information" for the purposes of the Privacy Act which is collected, used or disclosed in connection with any activity contemplated by these Terms of Use and/or (if applicable) the Supplier Relationship Agreement, including any such information collected via or uploaded on Finance Oxygen;

(d) "Privacy Act" means the Privacy Act 1988 (Cth);

(e) "Privacy Laws" means all legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information, including, without limitation, the Privacy Act; and (f) "Supplier Relationship Agreement" has the meaning given to it in clause 1.3.

7.2 In these Terms of Use, unless the context otherwise requires:

(a) headings are for convenience only and do not affect the interpretation of these Terms of Use;

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

(c) references to persons include references to corporations and other bodies and entities;

(d) references to statutes include all statutes amending, consolidating or replacing such statutes and includes any subordinated legislation issued under them;

(e) a reference to:

(i) anything (including any right) includes a part of that thing but nothing in this subparagraph (i) implies that performance of part of an obligation constitutes performance of the obligation;

(ii) a document (including these Terms of Use) includes all variations, amendments or supplements to, or replacements or novations of, that document;

(iii) a party to a document includes that party's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns; and

(f) a reference to a clause or party in these Terms of Use is a reference to a clause of, and a party to, these Terms of Use.