

Westpac Banking Corporation ABN 33 007 457 141

WARNING!

This is a very important document.

*Before you sign any document that refers to it you should read it carefully and see your lawyer
and your financial adviser.*

EQUIPMENT FINANCE

MEMORANDUM OF COMMON PROVISIONS

General Conditions Booklet

November 2014

**THIS FORMS PART OF ANY MORTGAGE, GUARANTEE AND INDEMNITY, LEASE, HIRE
PURCHASE OR LOAN AGREEMENT WHICH REFERS TO THIS MEMORANDUM AND IS
SIGNED BY YOU.**

1 Reading this memorandum

1.1 Using this memorandum

This memorandum sets out the terms which apply when you sign any of the following (each a **Document**) which refers to this memorandum:

- a lease agreement (including any lease schedules) (a **Lease**);
- a hire purchase agreement (including any hire purchase schedules) (a **Hire Purchase**);
- a terms and conditions letter or loan agreement (including any loan schedules) (a **Loan**);
- a goods security (including any relevant schedules) (a **Goods Security**); or
- a guarantee and indemnity (including any relevant schedules) whether or not incorporated into the same Document as a Lease, a Hire Purchase or a Loan (a **Guarantee**).

This memorandum should be read with your Document and forms part of it.

Where this memorandum conflicts with a Document, the Document will prevail, except as set out in clause 8 ('The Lender's powers').

1.2 Definitions

Some terms used in this memorandum or a Document have particular meanings. They are set out above or as follows.

Where used in clause 10 ('Guarantee and Indemnity'), **anyone** or **anyone else** includes anyone who signs or was expected to sign a Guarantee, the Customer or anyone else who gives or was expected to give Security or anyone else.

Actual Payments Made, in respect of a Regulated Hire Purchase, means the amount already paid or provided, whether by cash or other consideration, by or on behalf of you under the Regulated Hire Purchase.

Attorney means each attorney appointed by you under clause 13.4 ("Power of attorney").

Authorisation includes any licence, consent, authority, authorisation, filing, lodgement, approval or registration.

Casualty and Termination Value, in respect of a Lease, means the amount calculated by the Lender to be necessary to return to the Lender its cost of acquiring the Goods and associated costs (to the extent not already recouped) and the same pre-tax return through to the date the Casualty and Termination Value is payable as the Lender would have received had the Document run its full term in relation to those Goods.

Corporations Act means the *Corporation Act 2001* (Cwth).

Customer in relation to a Guarantee means the person or entity described as a Customer in the Guarantee. If there is more than one, it includes any one or more of them.

Enforcement Expenses means the total of:

- (a) the reasonable costs incurred by the Lender of and incidental to taking possession of the Goods;

- (b) any amount properly expended by the Lender on the storage, repair or maintenance of the Goods;
- (c) (whether or not the Goods have subsequently been sold or disposed of by the Lender) the reasonable expense of selling or otherwise disposing of the Goods,

including goods and services tax, stamp duty or other government charges.

Event of Default means anything listed in clause 9.1.

Goods, in relation to:

- (a) a Lease or Hire Purchase, means the goods described in the Document and any part, attachment (including anything installed or affixed to the goods for the purposes of the PPSA), accessory, instruction or maintenance manual and maintenance records in respect of those goods;
- (b) a Loan, means the goods or other assets the subject of a Goods Security or other Security for the Loan including any part, attachment (including anything installed or affixed to the goods or other assets for the purposes of the PPSA), accessory, instruction or maintenance manual and maintenance records in respect of those goods or assets;
- (c) a Goods Security, the goods or other assets subject to the Goods Security including any part, attachment (including anything installed or affixed to the goods or other assets for the purposes of the PPSA), accessory, instruction or maintenance manual and maintenance records in respect of those goods or assets.

GST Group has the meaning given by the GST Law.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guaranteed Money, in relation to a Guarantee, means anything referred to in respect of the Customer under clause 4.1 ('Amounts payable by you') and under any Security. It includes:

- amounts which now or in the future would have been Guaranteed Money but for some reason as described in clause 10.4 ('Invalidity'); or
- if there is more than one Customer, amounts which any one or more of them owe.

Guaranteed Obligation in relation to a Guarantee, means any Guaranteed Obligation described in the Guarantee. It includes:

- anything which now or in the future would have been a Guaranteed Obligation but for some reason as described in clause 10.4 ('Invalidity');
- obligations of any one or more of the Customer owed to the Lender alone or with others now or in the future; and
- at any time, obligations which may arise after that time.

Hire Purchase Act means the *Hire Purchase Act 1959* (WA) or the *Credit (Rural Finance) Act 1996* (Qld), (as amended from time to time), whichever applies in the circumstances.

Instalments, in respect of a Loan, means the instalments of principal and/or interest (Implicit Rate) specified in the Document and payable in the manner specified in it and in this memorandum.

Implicit Rate in relation to a Document means the rate per annum used by Lender as the basis for calculating the Rentals or Instalments under that Document.

Lender, "we", "us", "lessor", "owner", "bank", or "secured party" means Westpac Banking Corporation ABN 33 007 457 141 of 275 Kent Street, Sydney or any Related Body Corporate of Westpac referred to at the front of the Document, and its successors and transferees.

Liquidation includes receivership, compromise or arrangement with creditors, administration (including any arising out of insolvency, mental illness or incapacity), amalgamation, reconstruction, winding up, dissolution, scheme, assignment for the benefit of creditors, bankruptcy, or anything similar, or death.

Manager means, in respect of the Lender:

- (a) any director or secretary;
- (b) any person whose title or acting title includes the word 'Manager';
- (c) any person from time to time nominated as a Manager by the Lender; or
- (d) any authorised officer of the Lender.

Net Amount Payable, in respect of a Regulated Hire Purchase, means all principal and all other amounts which you promise to pay under clause 4 ('Payment obligations') less the total amount of statutory rebates for terms charges, insurance and maintenance, calculated in accordance with the Hire Purchase Act (as amended from time to time) and as at the time the Lender took possession of the Goods.

PPSA means the *Personal Property Securities Act 2009* (Cwlth).

Principal Repayment Date, in respect of a Loan, means the date for repayment of the Principal Sum set out in the Document.

Principal Sum, in respect of a Loan, means the amount set out in the Document and includes any part of that amount or where the context requires, so much of that amount that remains owing.

Receiver means a receiver or a receiver and manager appointed under a Document. Where two or more persons are appointed, the expression 'Receiver' refers to each of those persons severally as well as to two or more of them jointly.

Regulated Hire Purchase means a Hire Purchase agreement executed in Western Australia, or a Hire Purchase agreement executed in Queensland which is regulated by the Credit (Rural Finance) Act 1996.

Related Body Corporate means related bodies corporate (as defined in the *Corporations Act 2001*) of Westpac Banking Corporation, which include Westpac General Insurance Limited, Westpac Financial Services Limited and BT Securities Limited.

Rental, in respect of a Lease or a Hire Purchase, means all rental and/or interest (Implicit Rate) owing, or to become owing, by you to the Lender under a Document. The amount of Rental is as stated in the Document as adjusted or varied

under it. Rental accrues on a daily basis, proportionately according to the number of days elapsed.

Repossession Value of the Goods means:

- the best price which could be reasonably obtained by the Lender at the time the Lender took possession of the Goods, or
- if you have introduced a person who has purchased the Goods for cash, the amount paid by that person.

Representative Member has the meaning given by the GST Law.

Residual Value, in respect of a Lease, means the amount stated in the Document or any other amount agreed between the Lender and you in writing (as adjusted or varied under the Document).

Secured Money means all amounts referred to in clauses 4.1 ('Amounts payable by you'), 4.2 ('Variation of Rental, Residual Value and Casualty and Termination Value – Lease'), 4.3 ('Increased costs'), 4.4 ('Payment on early termination by you'), 4.5 ('Withholding tax and GST'), 4.6 ('Currency') and 4.8 ('When you must pay').

Security means:

- (a) any Security Interest held by the Lender from or against you, the Customer or anyone else in relation to the obligations under any Document, any Guaranteed Obligation or any Guaranteed Money, now or in the future; and
- (b) in respect of any other Security Interest, which the person granting the Security Interest at any time acknowledges in writing secures the particular Lease, Hire Purchase or Loan or Lease, Hire Purchase or Loan of a class which would include that particular Lease, Hire Purchase or Loan.

It includes the rights of the Lender against you under any Document.

Security Interest includes any security interest under the PPSA, mortgage, pledge, lien, charge, hypothecation, trust arrangement, title retention arrangement, Security, other security interest or encumbrance or preferential interest or arrangement of any kind.

Small Business means a business having:

- (i) less than 100 full time (or equivalent) people if the business is or includes the manufacture of goods; or
- (ii) in any other case, less than 20 full time (or equivalent) people,

unless the Document is provided for use in connection with a business that does not meet the elements in (i) or (ii) above.

Total Amount Payable, in respect of a Lease, means the amount specified in the Document as the 'Total Amount Payable'.

Total Residual Value, in respect of a Lease, means the GST inclusive amount of Residual Value and as specified in the Document as the 'Total Residual Value'.

"you" or "your" means the person or entity described:

- in a Lease, Hire Purchase or Loan as a **Lessee, Hirer or Borrower**;

- in a Goods Security, as a *Grantor*, or
- in a Guarantee, as a *Guarantor*.

If there is more than one, it includes any one or more of you.

Where there is more than one of you, each of you is individually liable under the Document for the full amount, except where it provides otherwise. This liability will continue, as regards the others, even where one or more of you has not signed, is not liable or is no longer liable.

WARNING

This means that each one of you can be required to pay the whole amount even though you may have some other arrangement among yourselves or not all of you benefit equally.

Any one of you can terminate your liability in respect of future advances or financial accommodation by giving the Lender written notice. However if you do the Lender will terminate its obligation to provide the facility or allow any further drawings or utilisations.

Where an example is given of something in the Document or in this memorandum, or there is a heading, it does not limit what else might be included.

A reference to any party, including you, the Customer or the Lender, includes that party's successors and permitted assigns.

1.3 Interpretation

Headings are for convenience only and the following rules apply, except to the extent that the context requires otherwise.

- The singular includes the plural and vice versa.
- Words denoting individuals include firms and corporations and vice versa.
- A gender includes all genders.
- A reference to:
 - an agreement includes a Security Interest, guarantee, undertaking, deed, agreement or legally enforceable arrangement whether or not in writing; and
 - a document includes an agreement (as so defined) in writing or a certificate, notice, instrument or document.
- A reference to a specific agreement or document includes:
 - it as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by a Document; and
 - any document or agreement entered into or provided under it (including any undertaking by or to a party or its lawyers)

2 Commencement

2.1 Lease or Hire Purchase

If you have a Lease or Hire Purchase, it will commence on the earlier of the commencement date stated in the Document

and the date the Goods are delivered to you and you take delivery of the Goods under clause 3.1.

2.2 Loan

If you have a Loan, and you have not borrowed within one month from the date of the Document (or such later date as the Lender may agree), then the Lender need not lend to you.

3 Delivery, title and location of Goods – Lease or Hire Purchase

This clause 3 applies only if you have a Lease or a Hire Purchase.

3.1 Delivery

You will take delivery of the Goods at the premises stated in the Lease or Hire Purchase, on the Lender's behalf, at your own cost and risk of delay.

- The taking of delivery is your acceptance of the Goods as satisfactory to you; and
- (while you can be taken to have accepted the Goods even if there is no receipt) a receipt signed by you (whether or not given to the Lender), is conclusive proof that you have taken delivery and that the Goods are satisfactory to you.

3.2 Property of owner

Subject to clause 3.3, you acknowledge that the Goods are and will remain the Lender's sole property.

3.3 Option to purchase – Hire Purchase

If you have a Hire Purchase, you have the option of becoming the owner of the Goods by paying all amounts payable by you and complying with all of your obligations under the Document.

3.4 Location of Goods

You will keep the Goods:

- in your sole possession; and
- within Australia and, unless the Goods are normally mobile (for example, a motor vehicle or aircraft) at the premises stated in the Document or as otherwise agreed by the Lender.

4 Payment obligations

4.1 Amounts payable by you

You promise to pay the following amounts to the Lender. Your obligation to pay these amounts is absolute and unconditional. That obligation will not be affected by anything which would affect it but for this clause 4, including the non-existence of the Goods or any defect in the Goods or their title. The consideration for your obligations includes the Lender paying an amount which it believes is the purchase price of the Goods.

(i) Deposit and GST – Hire Purchase

If you have a Hire Purchase, the amount (if any) stated in the Document as the 'deposit' plus the amount stated in the Document as 'GST on this Agreement' (unless included in the 'Amount Financed' section of the Document).

(ii) All money

- (a) All money which you owe to the Lender under or in relation to a Document or for any reason; and
- (b) if you give a Guarantee, all money which the Customer owes to the Lender under a Document for any reason, under or in relation to the Guaranteed Obligations

without any set-off, withholding or deduction (except as set out in clause 4.4 ("Withholding tax or GST"). This applies whether the money is or becomes owed:

- (i) now or in the future;
- (ii) by any one or more of you or the Customer, alone or together with any one or more others; or
- (iii) actually or contingently,

and whether or not it is currently contemplated.

However, under a Guarantee you are only required to pay amounts payable by the Customer if the Customer fails to pay them when due or when they would have been due.

The following paragraphs do not limit anything under 'All money' above.

(iii) Interest

Where a Document provides for interest on an amount, interest will accrue on that amount as provided in the Document.

Where you have a Loan, the Instalments you must pay include amounts for principal and interest.

(iv) Default interest

If you do not make a payment when due then the Lender may charge you default interest on the overdue amount from the day it is due until it is paid. That default rate will be the Implicit Rate plus 2% per annum, or any other rate specified by the Lender as being equivalent.

Default interest will be calculated daily at the default rate divided by 365.

Default interest accrues both before and after any judgement or court order to pay an amount.

Unless it debits your account more often, the Lender will be taken to have debited your account with accrued default interest under this section ('Default interest') each month or other period it selects. That default interest will then itself bear interest at the Implicit Rate or, where payment of the default interest is overdue, at the default rate described in this clause.

(v) Duties, taxes and charges

All stamp duty, transactions and other duties and charges payable in respect of the Document, any Security for it, and any further document, transaction, receipt or payment under it.

This includes any duties passed on to the Lender by another financial institution and any fines and penalties unless they result from a failure by the Lender to lodge a document or return for it stamping in time, having received from you the amount of duty in sufficient time.

(vi) Indemnities and expenses

All liabilities, losses, damages, claims, proceedings (whether civil or criminal), fines, penalties, costs (including costs on a full indemnity basis) and expenses which the Lender or any of its Managers suffers or incurs as a direct or indirect result of:

- (a) an Event of Default;
- (b) any actual or contemplated enforcement or exercise of rights or powers under a Document or any Security;
- (c) any loss or destruction of the Goods or damage to the Goods for any reason;
- (d) its interest in, or control or power with respect to, you or the Goods, including under any law relating in any way to planning, the environment or health;
- (e) any proceedings, enquiry or order (including any subpoena or order to produce documents) relating wholly or partly to you, anything done or funded under the Document or the Goods, or any of your business or activities;
- (f) death, injury or property damage; or
- (g) any failure to comply with any law or duty.

This includes any reasonable amount which the Lender reasonably pays or incurs in preserving or maintaining any Goods after a breach occurs.

(vii) Other costs and expenses

All reasonable amounts which the Lender reasonably spends or incurs in relation to any valuation or negotiation, preparation, execution, delivery, stamping, registration and completion of the Document or any Security for it or any waiver, amendment, discharge, release or consent of, or under, any of them. This includes legal fees (on a full indemnity basis) and professional consultant's fees. The Lender may also ask you to pay any charges (calculated on a time employed basis) of an inhouse legal counsel as if they were paid to an external counsel.

4.2 Variation of Rental, Residual Value and Casualty and Termination Value – Lease

This clause 4.2 applies only if you have a Lease.

The Lender may (at its discretion) vary the Rental, the Residual Value and the Casualty and Termination Value applicable to the Goods where in its opinion, the tax effect of its ownership of the Goods or the Document or its participation in the transactions under or contemplated by the Document is not or will not be as assumed in its original calculation of its pre-tax rate of return.

If the Document has expired or terminated in relation to all or any of the Goods, you will pay on demand a lump sum by way of adjustment, as calculated by the Lender.

The variation or adjustment will be as necessary in the opinion of the Lender so as to yield the Lender the pre-tax rate of return which it would have received had such event not occurred. In each case the return will be calculated on the same basis and in the same manner as the Lender certifies was originally used in determining the Rental, Residual Value or the Casualty and Termination Value of the Goods.

The Lender will notify you of such a variation in writing, no later than the day on which the variation takes effect.

4.3 Increased costs

This clause 4.3 applies only if you have a Lease.

The Lender may notify you whenever the Lender determines that any of the following occurs:

- (a) the cost to the Lender (or any of the Lender's holding companies) of making available, funding or maintaining the Document is increased;
- (b) the pre-tax rate of return to the Lender (or any of the Lender's holding companies) under or in respect of the Document is in any way reduced;
- (c) the return on capital of the Lender (or any of the Lender's holding companies) which is or becomes directly or indirectly allocated to the Document is in any way reduced; or
- (d) the Lender's (or any of the Lender's holding companies') overall return on capital is in any way reduced, as a result of:
 - (i) any change in any law, official directive or request (including with respect to taxation, reserve, liquidity, capital adequacy, special deposit or similar requirements) (each a *Law*); or
 - (ii) any making of, any change in the interpretation of, or compliance with, any Law.

Upon demand from time to time you must pay to the Lender the amount certified by a Manager of the Lender as necessary to compensate the Lender (or the Lender's holding company) for such increased cost or reduction.

4.4 Payment on early termination by you

(a) Early payout of a Loan

If you have a Loan and no Event of Default has occurred (other than an Event of Default which has been remedied or waived), you may pay the Loan out at any time before the Principal Repayment Date by paying the Lender the sum of:

- (i) all Instalments which have fallen due for payment but which remain unpaid;
- (ii) all Instalments that would have been due if the Loan continued up to the Principal Repayment Date discounted to a present day value at the date of termination; and
- (iii) all other amounts you are liable to pay under clause 4 even if they are not yet payable.

(b) Early termination of a Lease

If you have a Lease and no Event of Default has occurred (other than an Event of Default which has been remedied or waived), you may terminate the Lease before the expiry of the Period of the Lease. To do so, you must pay the Lender the sum of:

- (i) all Rentals which have fallen due for payment but which remain unpaid; and

- (ii) all Rentals (exclusive of GST) that would have been payable during the period of the Document discounted to a present day value at the date of termination and the Residual Value; and
- (iii) all other amounts you are liable to pay under clause 4 even if they are not yet payable.

(c) Early termination of a Hire Purchase

If you have a Hire Purchase (that is not a Regulated Hire Purchase) and no Event of Default has occurred (other than an Event of Default which has been remedied or waived), you may terminate the Hire Purchase before the expiry of the Period of Hire. To do so, you must pay the Lender the sum of:

- (i) all Rentals which have fallen due for payment but which remain unpaid; and
- (ii) all Rentals that would have been payable during the period of the Document discounted to a present day value at the date of termination; and
- (iii) all other amounts you are liable to pay under clause 4 even if they are not yet payable.

4.5 Withholding tax

If you are required by law to deduct any tax, charge or duty from any payment (except a tax on the Lender's overall net income), then:

- you must pay that amount to the appropriate authority and promptly give the Lender evidence of payment; and
- the amount payable is increased so that (after deducting that tax, charge or duty and paying any tax, charge or duty on the increased amount) the Lender receives the same amount that it would have received had no deduction been made.

This clause 4.5 will survive termination of any Document.

4.6 GST

- (a) In this clause, the expressions consideration, GST, input tax credit, recipient, supplier, supply and tax invoice have the same meaning given by the GST Law.
- (b) Unless expressly stated otherwise in the Document, all amounts and payments are exclusive of GST.
- (c) If GST is payable on any supply made under the Document by a supplier to a recipient the Recipient must, subject to clause 4.6(d), pay to the Supplier in addition to and at the same time as the consideration is payable or to be provided for the supply, an additional amount calculated by multiplying the value of that consideration by the prevailing GST rate.
- (d) The Supplier must issue a valid tax invoice to the Recipient before any payment for a supply made by the Supplier under the Document is due.
- (e) Any reference to a cost or expense in the Document excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party is entitled to an input tax credit.

This clause 4.6 will survive termination of any Document.

4.7 Currency

You will indemnify the Lender against any exchange loss if any amount payable under or in connection with any Document is received in a currency which is different from that in which it is required to be paid under the Document.

This indemnity applies whatever the reason for the receipt of the amount in a different currency.

4.8 When you must pay

- (a) Except where a Document says otherwise, all amounts are payable on demand or when the Lender debits your account for them or in the manner specified in the relevant Document.
- (b) If you have a Loan, and if on the Principal Repayment Date there is any outstanding balance of the Principal Sum, interest or other money due and payable under your Loan, then you must pay such balance on the Principal Repayment Date.
- (c) In any event, if you or any person who has given any Security for any Document, die or cease to be of full legal capacity, the Lender may require you or your estate to pay all principal and all other amounts which you promise to pay under this clause 4. You or your estate must immediately pay them even if they are not yet otherwise payable.
- (d) Where a payment falls due on a day which is not a day on which the Lender is open for business in the place of payment, you must make the payment on the preceding day on which the Lender is open, except when you have arrangements for the payment to be made automatically from another account. In that case the payment must be made when the Lender would normally debit that account for that payment under its then normal procedures.

4.9 How payment is to be made

You may make payment by direct debit from another account or at any branch of Westpac Banking Corporation. If you arrange to make payment by direct debit and the Lender debits the account where there are insufficient funds in it, then the payment may be reversed and you will be regarded as not having made the payment. If you ask the Lender to cancel a request to arrange direct debit payments, the Lender will do so promptly. However you will need to make other arrangements to make payment.

The Lender will promptly process any complaint by you that a direct debit was unauthorised or otherwise irregular.

4.10 Authority to disburse Principal Sum

If you have a Loan, you authorise and direct the Lender to pay the Principal Sum in the manner set out in the 'Disbursement instructions' section in the Document. Payment by the Lender to the persons to whom you have directed payment shall be a full and sufficient discharge of the Lender's obligations under this clause 4.10.

5 Other obligations

5.1 Warranties to the Lender

You tell the Lender the following. You are taken to repeat these statements each time you use a facility. You should check they are true. These are warranties, which means the Lender can sue you if they are not true and this will be an Event of Default.

Lease

If you have a Lease, you warrant and represent that the tax depreciation (or other write-off or capital allowance) rate, basis and (if applicable) type stated in the Document are true and correct.

Ownership

If you give a Goods Security, you own the Goods alone or will do so on completion of your purchase. You do not own it as trustee except as you have told the Lender in writing.

No one else has any:

- interest in any of the Goods; or
- right over any of the Goods or to use it;

except

- as set out in the Goods Security or noted on the titles register; and
- as you have told the Lender in writing.

Documents binding

Each Document:

- is binding and enforceable against you;
- does not breach any obligation binding on you; and
- is effective Security over any properties which it is expressed to cover, with the priority (if any) stated in it.

Goods comply with law and other requirements

Each of the following complies with the promises in clause 5.2 ('Your other obligations') below: your business; everything you do or propose to do; and the Goods, their acquisition, and everything done on, in or with them, or proposed to be done on or in them or with them.

Each Authorisation and each material document or agreement included in the Goods is valid, and in full force.

Environmental and other claims

There is and has been nothing relating to you or any Goods or your business or assets, which:

- has given rise to substantial expenditure by you or to a requirement that you cease or substantially alter a material activity; or
- may give rise to such expenditure or requirement (including any claim),

under any law, including any law relating in any way to the environment, planning, health or safety.

Defaults

No Event of Default has occurred.

Solvency

You are able to pay your debts as they fall due. You have not committed an act of bankruptcy.

No litigation

No litigation, tax claim, dispute or other proceeding is current or, to your knowledge, threatened which may have a material adverse effect on your financial position, your ability to meet your repayment obligations under or in relation to a Document or a Security.

Information

All information (including information about your financial position) you have given the Lender is true and complete. It is not misleading, by omission or otherwise.

You acknowledge that the Lender has relied on the correctness of the above statements in entering into the Document and will continue to do so in dealing with you.

Statements

The statements applicable to you in the Documents are true.

5.2 Your other obligations

You promise to do all of the following at all times.

Documents

- (a) Comply with each Document. Ensure that everything you tell the Lender in a Document, or in connection with one, is true and complete, and not misleading or deceptive, by omission or otherwise.
- (b) If you have a Goods Security, deposit with the Lender the relevant documents evidencing title to the Goods as soon as they are available to you or your agents.

Comply with laws

Comply with all laws, including laws relating to the environment, planning, health or safety, and any licensing requirement, the terms of any Authorisation, any government or local government body or official's requirements.

Make sure there is nothing with or relating to any Goods or your business which might lead to a claim against you or the Lender.

If requested by the Lender, maintain procedures which in its opinion are necessary to monitor this.

Give the Lender any samples it reasonably requests.

Authorisations

If any Authorisation is required in relation to your business, anything done on, in or with the Goods, or anything which you do or propose to do, take out that Authorisation, renew it and keep it in force.

If the Authorisation is associated with the Goods, where a relevant law requires the Goods to be registered (for example, if it is a motor vehicle, boat or an aircraft):

- (a) you will register them in your name as if you were the owner, unless directed otherwise by the Lender;
- (b) if the Goods are a motor vehicle, you will register that motor vehicle in the same state or territory in which the premises, stated in the Document, is located; and
- (c) when you return the Goods to the Lender, you will immediately do everything necessary to have the Goods registered in the Lender's name or as the Lender directs.

Use of Goods

Ensure the Goods are used, operated and serviced properly and safely using recognised and approved methods and standards of operation and servicing in accordance with the manufacturer's instructions, specifications and recommendations using proper parts and without risk to health.

Repair and maintenance of Goods

Keep or maintain the Goods in good repair and condition, fair wear and tear excepted. You will give the Lender (if it reasonably requests) all proper parts for this purpose.

Alterations to Goods

- (a) Not:
 - (i) make any alterations or additions to any Goods; or
 - (ii) install anything on or in any Goods, except in compliance with the Document.
- (b) Everything installed on or in the Goods will be part of the Goods. This includes all parts and accessories.
- (c) If you have a Lease or Hire Purchase, everything installed on or in the Goods will be the Lender's property. This includes all parts and accessories.
- (d) If you have a Goods Security, and if the Lender requests you to do so, replace any part of the Goods which in the Lender's opinion needs replacement, and rectify any defects in their condition.

Affixation of Goods to land

- (a) Ensure that the Goods are not affixed to any land or building (except to any extent necessary to enable the proper use of the Goods).
- (b) Before the Goods are affixed to any land or building you will:
 - inform the Lender; and
 - first do anything requested by the Lender to preserve or protect its title to the Goods. This may include getting acknowledgments from other parties.

Business

- (a) Make sure any business or other activity carried on by you anywhere, or by anyone on or with the Goods, is carried out properly and efficiently.
- (b) You will not substantially change the nature of your business carried on by you as a whole. You will not take any action which would have that effect, whether by disposal, acquisition or otherwise.

- (c) You will not deal with any other party except at arms length for full commercial consideration in the ordinary course of business.

Records

Keep proper records and accounts. Prepare accounts in accordance with the law and current accounting practice. If the Lender or the law so requires, have them audited. The auditor must be a qualified person approved by the Lender.

Information

Give the Lender:

- copies of your balance sheet as at the end of your financial years and accounts in respect of that financial year (where applicable, the balance sheet and accounts must be audited and on a consolidated basis), within 120 days after the end of that financial year; and
- any other information which the Lender reasonably requests.

Notices of default and other events

Notify the Lender promptly of:

- (a) any Event of Default;
- (b) any actual or threatened litigation affecting you;
- (c) any representation or warranty you give under a Document which becomes false or misleading (giving full details);
- (d) any proposed or actual acquisition of the Goods by a governmental agency;
- (e) any requirement or notification of a governmental agency in connection with the Goods. You must give the Lender a copy of any related document that you have and full details of all relevant facts known to you in relation to such requirement or notification; and
- (f) anything else the Lender requires notice of.

Notify the Lender immediately of:

- (i) anything which might give rise to a claim under an insurance policy relating to the Goods in excess of \$1,000 or its equivalent;
- (ii) any cancellation of or reduction in the amount payable under any such insurance policy;
- (iii) any such insurance policy becoming void, voidable or of limited effect; or
- (iv) any other material circumstance or correspondence in relation to any such insurance policy.

Outgoings

Pay when due all your tax. Pay when due all outgoings and other amounts relating to any Goods.

Insurance

- (a) Make sure at all times you have insurance against liability to the satisfaction of the Lender, including public liability and worker's compensation insurance.

- (b) Make sure the Goods are insured at all times to the Lender's satisfaction:

- against fire, storm and flood, and other risks required by the Lender (in the case of motor vehicle, ship or an aircraft, must include third party and all risks required by law); and
- for an amount at least equal to its full replacement cost.

- (c) All insurance must be to a level and on terms specified by the Lender on the advice of valuers and/or insurance brokers. If the Lender does not specify any, it must be to a level and on terms a prudent person with your business and assets would insure.

- (d) Each insurance policy:

- must be with an Australian insurer approved by the Lender; and
- must have the Lender named as an insured (or if the Lender agrees, have you and the Lender named as co-insureds). If you have a Mortgage, the insurance policy must have both you and the Lender named as co-insureds.

- (e) Give the Lender a certificate of currency or a copy of each insurance policy. Before each policy expires you will renew or replace it and provide a certificate of currency or a copy of the new insurance policy to the Lender.

- (f) Not do, permit anything to be done, or omit to do anything which may prejudice any policy.

- (g) Not materially change the required cover under a policy, without the Lender's consent.

- (h) Do everything necessary to enable the Lender to collect any money under any insurance policy.

- (i) Hold any proceeds of the policy for the Lender and pay them to the Lender. You are to direct the insurer to pay proceeds to the Lender.

No dealings

- (a) Not:

- let any Goods;
- sell or otherwise dispose of any Goods or any interest in it;
- give anyone an interest in any of the Goods or a right over or to use any of it;
- give or allow another Security Interest over any Goods,

unless the Lender first gives its consent.

- (b) Not dispose of all or any material part of your assets or an interest in them or agree or attempt to do so (whether in one or more related or unrelated transaction).

- (c) If you have a Goods Security, not, without the Lender's consent, at any time during the term of the Document:

- execute or create any Security Interest over or affecting the book debts or any part of it in favour of any person other than the Lender;

- deal with, dispose of, or part with possession of, any interest, in the Goods; or
- do or allow anything to be done in derogation of the Lender's rights, powers or remedies under any Document.

Default

Do everything necessary to ensure no Event of Default occurs.

Secure Documents and protect the Goods

- (a) Do whatever the Lender reasonably asks (including obtaining consents, signing and producing documents, and getting documents completed and signed):
- to provide more effective security over the Goods, or any other personal property over which the Lender has a Security Interest for payment of money owing to the Lender in connection with the Document;
 - to ensure that a Security Interest created under or connected with, the Document is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
 - to enable the Lender to apply for any registration, or give any notification, in connection with a Security Interest created under or connected with, the Document so that the Security Interest has the priority the Lender requires;
 - to enable the Lender to exercise its rights in connection with the Goods;
 - to bind you and any other person intended to be bound under the Document;
 - to show whether you are complying with the Document.
- (b) If:
- you hold any Security Interest for the purposes of the PPSA and if your failure to perfect such Security Interest would materially adversely affect your business or our Security Interest over the Goods; or
 - a Security Interest in your favour arises over the Goods (whether or not as a result of a breach by you under the Document),
- you agree to implement, maintain and comply in all material respects with, procedures for the perfection of those Security Interests. These procedures must include procedures designed to ensure that you take all reasonable steps under the PPSA to continuously perfect any such Security Interest including all steps reasonably necessary:
- for you to obtain, the highest ranking priority possible in respect of the Security Interest (such as perfecting a purchase money Security Interest or perfecting a Security Interest by control); and
 - to reduce as far as possible the risk of a third party acquiring an interest free of our Security Interest (such as including the serial number in a financing

statement for personal property that may or must be described by a serial number).

If the Lender asks, you agree to arrange at your expense an audit of the PPSA procedures. The Lender may ask you to do this if it reasonably suspects that you are not complying with this clause.

- (c) If a Security Interest in connection with the Goods in the form of chattel paper (as defined in the PPSA) is held by you or arises in your favour (whether or not as a result of a breach by you under the Document), you grant a Security Interest in the chattel paper to the Lender for the purpose of securing payment of any money you owe the Lender in connection with the Document. The Security Interest created by this clause is a charge and you may not transfer, dispose of or otherwise deal with the chattel paper or allow another Security Interest to exist over it. You must deposit with the Lender all original documents of title comprising the chattel paper and any other documents the Lender requests relating to the chattel paper.
- (d) Notify the Lender in writing of any change in your name at least 14 days before you propose to change your name.
- (e) Not do or allow anything which may reduce or destroy the Goods' value without the prior written consent of the Lender.

Tax consolidated group

If you are or become a member of a consolidated group for tax purposes, have at all times an effective tax sharing agreement and ensure everything is done so that you will only be liable for tax in relation to your activities and not for all the tax of that consolidated group.

Certificate as to book debts

This paragraph applies only if you have a Loan.

When the Lender requests, while any moneys remain secured under a Document, furnish to the Lender a certificate as to the total amount of book debts due to you and outstanding at the end of the last preceding calendar month.

If the Lender requests, every third such certificate will be by an auditor approved by the Lender and the remaining certificates shall be signed by you or (if a company) by your secretary or director.

Remedy

You will promptly remedy any material breaches or circumstances referred to in this clause 5.2.

Legal proceedings

Prosecute and defend (at your own expense) all legal proceedings which are advisable, or which the Lender advises you that it considers advisable, to protect the Goods.

5.3 Your further obligations

You further covenant with the Lender as follows.

- (a) For as long as any moneys, referred to in or in relation to a Document, remain owing to the Lender:
- (i) you, as the Borrower, Lessee or Hirer, will not repay any debt or liability due by you to the Guarantor; and

- (ii) the Guarantor will not accept, request, sue for or take action to cause payment to the Guarantor of any debt or liability due by the Borrower, Lessee or Hirer to the Guarantor,

without the Lender's written consent, and

- (b) All debts and liabilities due by you, as the Borrower, Lessee or Hirer, to the Guarantor shall be subordinated to any moneys, referred to in or in relation to a Document, and owing to the Lender.

6 Loss and risk of Goods – Lease or Hire Purchase

This clause 6 applies only if you have a Lease or Hire Purchase.

6.1 Total loss or damage

If any of the Goods are lost, stolen, destroyed or damaged beyond repair (the **Lost Goods**) the following will apply.

- (a) You will immediately notify the Lender of such loss.
- (b) You will pay to the Lender on demand an amount equal to the sum of:
- (i) the amount of any Rental inclusive of GST relating to the Lost Goods accrued up to and including the date of demand and other money then payable under the Document; and
- (ii) the present value at the date of demand of all Rentals inclusive of GST that would have been payable in relation to the Lost Goods during the period of this Agreement after the date of demand. The present value will be calculated by the Lender by applying a discount rate which is 85% of the Implicit Rate.
- (c) The Document will terminate in respect of the Lost Goods but Rental in respect of the Lost Goods will continue until demand is made under paragraph (b).
- (d) The Document in respect of the remaining Goods will continue. As from the day after the date of demand under paragraph (b) the Rental will be reduced by the proportion which the cost of the Lost Goods bears to the amount of the Cost of Goods stated in the Document (as determined by the Lender).
- (e) In respect of a Lease, the Residual Value will be reduced by the proportion of the Residual Value equal to the proportion which the cost of the Lost Goods bears to the amount of the Cost of Goods stated in the Document (as determined by the Lender).

6.2 Risks

You assume all risks and liabilities for the Goods and their use, maintenance, repair and storage.

7 Warranties as to Goods

7.1 The Lender's exclusion of warranties

To the full extent permitted by law the following apply.

- (a) The Lender gives no condition, warranty or representation as to:

- (i) the Goods (including the design, capacity, age, quality, description, condition, use or ownership of the Goods or their merchantability, suitability or fitness); or
- (ii) the taxation and financial consequences of the Document, and none will be implied.

The following paragraphs (b) and (c) apply only if you have a Lease or Hire Purchase.

- (b) Before requesting the Lender to acquire or lease the Goods, and before entering into a Document, you must:
- (i) satisfy yourself as to the issues referred to in paragraph (a) above;
- (ii) make arrangements for servicing the Goods; and
- (iii) get from the manufacturer or supplier of the Goods any warranties and conditions the Lender requires.
- (c) To the extent that the Lender's liability cannot be excluded, that liability is limited to the replacement or repair of the Goods, supply of equivalent goods or payment of the cost of doing so at the Lender's option. In the case of any replacement of the Goods or any supply of equivalent goods, you agree to enter into a Document reasonably requested by the Lender for this purpose.
- (d) If you have a Goods Security, you must ensure that the manufacturer or supplier's warranties are preserved for the Lender's benefit.

7.2 Assignment of warranties

This clause 7.2 applies only if you have a Lease or Hire Purchase.

To the extent permitted by law, on your request, the Lender will assign to you the benefit of any condition or warranty given to the Lender by the manufacturer or supplier of the Goods. You will re-assign them to the Lender on termination of the Document.

8 The Lender's powers

The Lender and any of its Managers may do any one or more of the following at any time at your cost.

- Inspect any Goods or your books and records, and obtain a valuation or an environmental audit (whenever the Lender thinks it advisable). You will ensure that the Lender and any of its Managers has access to the premises where the Goods is located.
- In respect of a Loan, every 12 months, obtain from a registered valuer, a valuation of all the Goods and assets over which the Lender has Security.
- Appoint accountants to investigate and report to the Lender on the affairs and financial position of you or your business.
- Do what you promise to do but fail to do.
- Pay amounts which it understands to be due in relation to any Goods.
- Pay any loan or loans to be made under the Document as your solicitor, agent or conveyancer directs the Lender.
- Complete any Document and fill in any blanks

- Give any information about you and any Document to anyone who gives a Security.
- Apply for any registration, or give any notification, in connection with a Security Interest created under the Document.

9 Termination

9.1 Events of Default

An *Event of Default* occurs if any one or more of you or anyone who gives a Security:

- do not pay the Lender any amount due under, or breach, any Document or any Security;
- have given or give misleading or incorrect information to the Lender;
- in relation to a Lease or Hire Purchase, you breach an essential term (referred to in clause 9.6);
- commit an act of bankruptcy or enter into any assignment, arrangement or composition with any creditors;
- are a corporation, partnership or other entity, or trustee of a trust, and
 - an administrator, Receiver, liquidator or similar officer is appointed;
 - it is placed under Liquidation, terminated, wound up or dissolved, or steps are taken towards this;
 - there is, in the Lender's opinion, a substantial change (direct or indirect) in your or its management, ownership or control; or
 - it reduces share or other capital, buys back shares or other capital, or gives financial assistance for the acquisition of your or its shares or rights to take up shares, or resolves to do so or to approve doing so;
- do not pay when due any debt owed to a financier or any debt in respect of money borrowed or raised, or is required to pay any such debt in advance of its stated maturity, or could be so required under the relevant document; or
- are insolvent or are taken, presumed or assumed under law to be insolvent.

An *Event of Default* also occurs if:

- anyone sells, lets or otherwise disposes of or enforces Security or takes out a distress or execution against the Goods or any asset of you or anyone who gives a Security;
- for any reason, all or a material part of a Document or Security is terminated or of no or limited force and effect, or you or anyone who gives a Security alleges that it is so;
- any court, government or governmental agency, justice of the peace, police officer or other official does anything relating to any property which, in the opinion of the Lender may materially adversely affect the Lender's

Security or your financial condition or your ability to perform the Document;

- for any reason any Authorisation which forms a material part of the Goods, or which is important to you or your business, expires without renewal or is terminated or revoked, or its issuer is entitled to terminate or revoke it;
- for any reason any other party to a document or agreement which forms a material part of the Goods terminates it or treats it as repudiated, or is entitled to do so;
- an insurer under a policy required under a Document cancels the insurance or disclaims liability for any reason;
- in the opinion of the Lender there is or will be a material adverse change in or affecting any Security, or the business, capital, assets or financial condition of any one or more of you or anyone who gives a Security or to the value of the Goods or any property subject to a Security;
- anyone, without the Lender's consent, alters or attempts to alter its constitution which might, in the opinion of the Lender, detrimentally or prejudicially affect the Lender's rights and interests under a Document; or
- anything else occurs which you agree is an *Event of Default*, or which is described as an event of default or Event of Default or similar in any Document.

If you give or have given a Guarantee or guarantee and indemnity to the Lender there will also be an *Event of Default* if any of the above (in this clause 9.1) occurs with respect to the person whose obligations you guarantee (including a Customer). In this case "Documents" will refer to the Guaranteed Obligations or other obligations guaranteed.

9.2 What happens on default

At any time after an Event of Default which has not been waived (whether or not it is continuing), the Lender can do any one or more of the following, to the extent permitted by law.

- If you have a Lease or Hire Purchase terminate it, in which case clauses 9.3 and 9.4 will apply.
- If you have Loan or Goods Security:
 - require you to pay to the Lender the sum of:
 - ◆ all Instalments which have fallen due for payment but which remain unpaid;
 - ◆ all Instalments would have been due if the Loan continued up to the Principal Repayment Date discounted to a present day value at the date of termination by applying a discount rate of 85% of the Implicit Rate; and
 - ◆ all other amounts you are liable to pay under clause 4 even if they are not yet payable.
 - convert into Australian dollars on its usual terms any money you owe in another currency, in which case you will owe the amount in Australian dollars;
 - appoint an investigating accountant at your cost, with whom you must co-operate;
 - take legal action;
 - in the case of a Goods Security

- transfer legal title to the Goods to the Lender or its nominee;
- take possession of the Goods;
- sell the Goods in one or more lots or with other Goods;
- do anything you could do in relation to all or part of the Goods, and
- appoint one or more Receivers, remove or replace any one or more of them, and fix their remuneration.

They alone or together may do anything the Lender can do as set out above or anything else a Receiver may do at law.

To the extent the law permits, a Receiver will be your agent unless the Lender notifies you that the Receiver is to act as the Lender's agent, and need not comply with requirements imposed on mortgagees.

- (c) Despite anything in any Document, if an Event of Default occurs or a Guarantor stops or limits their obligations, the Lender need not make a loan or lease or hire any Goods or provide any other form of finance under or secured by any Document.

9.3 Payments on termination

(a) Early termination of a Lease by us

On termination of a Lease by us under clause 9.2, you must pay to the Lender by way of liquidated damages at the Lender's option either:

- (a) the sum of:
- (i) all Rentals which have fallen due for payment but which remain unpaid;
 - (ii) the present value at the date of termination of the Residual Value and of all Rentals (inclusive of GST) that would have been payable during the period of the Document but for the termination determined by the Lender by applying a discount rate of 85% of the Implicit Rate; and
 - (iii) all other amounts you are liable to pay under clause 4 even if they are not yet payable; or
- (b) the Casualty and Termination Value in respect of the Goods as at the date of such termination plus 0.5% (as an estimate of administration costs and costs of terminating early) of such Casualty and Termination Value.

(b) Early termination of a Hire Purchase by us

On termination of a Hire Purchase (other than a Regulated Hire Purchase) by us under clause 9.2, you must pay to the Lender by way of liquidated damages an amount equal to the sum of:

- (i) all Rentals which have fallen due for payment but which remain unpaid;
- (ii) the present value at the date of termination of all Rentals inclusive of GST that would have been

payable during the period of the Document but for the termination determined by the Lender by applying a discount rate of 85% of the Implicit Rate; and

- (iii) all other amounts you are liable to pay under clause 4 even if they are not yet payable including, for the avoidance of doubt, any amount for which you are required to indemnify the Lender under clause 4.1 under the section 'Indemnities and expenses' relating to the termination.

(c) Early termination of a Loan by us

On termination of a Loan by us under clause 9.2, you must pay to the Lender by way of liquidated damages an amount equal to the sum of:

- (i) all Instalments which have fallen due for payment but which remain unpaid;
- (ii) all Instalments that would have been payable during the period of the Document but for the termination determined by the Lender by applying a discount rate of 85% of the Implicit Rate; and
- (iii) all other amounts you are liable to pay under clause 4 even if they are not yet payable including, for the avoidance of doubt any amount for which you are required to indemnify the Lender under clause 4.1 under the section 'Indemnities and expenses' relating to the termination.

(d) Deduction for the value of returned Goods

If the Lender has possession of the Goods before you pay the amount specified in paragraphs (a), (b) or (c) of this clause 9.3, the Repossession Value of the Goods will be deducted from that amount.

9.4 Total Residual Value - Lease

This clause 9.4 applies only if you have a Lease.

If you have a Lease, on its expiry, you indemnify the Lender in respect of the amount by which the Repossession Value of the Goods falls short of the Residual Value.

9.5 Return of the Goods on termination

This clause 9.5 applies only if you have a Lease or Hire Purchase.

- (a) On the termination of a Document (either on its early termination or on its expiry), unless otherwise agreed, you must promptly return the Goods:
- (i) in a condition consistent with the performance of your obligations under the Document; and
 - (ii) to the Lender at the Lender's address stated in a Document or at any other address specified by the Lender,

unless:

- (in the case of expiry of a Lease) before such expiry, the Lender has agreed in writing to an extension of the period of the Lease; or

- (in the case of expiry of a Hire Purchase) you exercise your option to buy the Goods.
- (b) Despite your obligation in clause 9.5(a) an extension of the Lease may be agreed to by us commencing from expiry on the terms and conditions we agree with you in writing. If we do not agree terms and conditions of an extension with you, or if you do not return the goods as required under clause 9.5(a) an extension of the Lease will occur from expiry at the same rate of Rental as set out in the Document and upon the terms of the Document including the terms relating to the Residual Value. Any such extension will continue until terminated by either party giving one month's written notice to the other expiring at any time.
- (c) If the Goods are not returned, the Lender may repossess the Goods. For that purpose the Lender or its Manager may enter any place where the Goods are or are suspected to be located.

Reinstatement of a Document

Where the Lender has terminated a Document and taken possession of the Goods, the Lender in its absolute discretion may, but need not, allow you to reinstate the Document by:

- (a) paying all overdue money (calculated as if the Document had not been terminated); and
- (b) remedying any breach by you of the Document.

Sale of Goods on termination

If you have a Hire Purchase which is not a Regulated Hire Purchase or you have a Lease, the following provisions apply.

- (a) If any of the Goods come into the Lender's possession after termination of a Document (whether on its early termination or on its expiry), the Lender will submit those Goods for sale at the time and manner it thinks fit. The Lender has no duty as to when or how the sale must be carried out or as to the price achieved.
- (b) Subject to (c), if the Lender sells any of those Goods, the Lender will pay you an amount equal to the gross proceeds of sale it receives, less the sum of:
 - (i) any taxes, including but not limited to goods and services tax, for which the Lender, or any Representative Member of a GST Group of which the Lender is a member, is liable in connection with the sale of the Goods;
 - (ii) all costs and expenses of and incidental to the sale;
 - (iii) any other amount that you then owe to the Lender or, if less, the maximum amount allowed by law.

If the sum of (i), (ii) and (iii) exceeds the gross proceeds of sale actually received, you must pay the Lender an amount equal to the excess.
- (c) In the case of a Lease, if the amount referred to in paragraph (b) exceeds the amount payable by you under clause 9.3(a)(i) or (ii) ('Payments on termination'), we will pay you only up to the amount referred to in clauses 9.3(a)(i) or (ii).

- (d) If any of the Goods are returned to the Lender, but in the Lender's opinion it is not able to sell them within a reasonable time, then the value of those Goods will be taken to be nil except where the law requires otherwise. The Lender will be taken to have disposed of those Goods for no consideration.
- (e) You must pay the Lender on demand the amount of all costs and expenses associated with any attempted sale and any amount deducted under clause 9.3 for the value of the Goods. If you have a Hire Purchase, after such payment, the Lender will return the Goods to you if you request their return within 14 days of the demand.

Unless the Lender specifies a longer period, three months from return will be a reasonable time for the purposes of this paragraph.

If you have a Regulated Hire Purchase, the following provisions apply.

- (f) If any of the Goods come into the Lender's possession after termination of the hire (whether on its early termination or on its expiry), the Lender will submit those Goods for sale at the time and manner it thinks fit, in accordance with the Hire Purchase Act.
- (g) You may recover from the Lender, if the Repossession Value of the Goods is:
 - (i) less than the Net Amount Payable, but the total of the Repossession Value of the Goods and the Actual Payments Made, exceeds the Net Amount Payable, the difference between that total and the Net Amount Payable; or
 - (ii) equal to or greater than the Net Amount Payable, the total of the Repossession Value of the Goods and the Actual Payments Made, less the Net Amount Payable.
- (h) The Hirer will pay to the Lender on demand, the Lender's Enforcement Expenses.

9.6 Essential terms

This clause 9.6 applies only if you have a Lease or Hire Purchase.

You acknowledge that the following are essential terms of a Document:

- (a) you paying punctually when due, all moneys payable by you under the Document;
- (b) you duly and punctually complying with your obligations under clause 5.2 under 'Comply with laws', 'Use of Goods', 'Repair and maintenance of Goods', 'Alterations to Goods', 'Affixation of Goods to land' and 'Insurance' and clause 13.2 ('Assignment');
- (c) the representations and warranties you give in the Document; and
- (d) if you fail to comply with any of your obligations under the Document (other than an obligation to pay moneys or an obligation referred to in paragraph (b)), you complying with that obligation or remedying that failure to the Lender's satisfaction within 14 days of notice from the Lender requiring your to comply with or remedy that failure.

Any breach of any of these essential terms will constitute a repudiation of the Document by you entitling the Lender to exercise its rights under or in connection with the Document (including without limitation the rights to terminate the Document and to recover the moneys stipulated in clause 9.3 ('Payments on termination')).

10 Guarantee and indemnity

This clause 10 applies in relation to any Guarantee.

10.1 Guarantee

You unconditionally and irrevocably guarantee to the Lender that the Customer will:

- (a) pay to the Lender all the Guaranteed Money; and
- (b) perform the Guaranteed Obligations.

10.2 Payment

If the Customer does not pay an amount of the Guaranteed Money when it is due, you must immediately pay that amount to the Lender on demand.

10.3 Extent of the Guarantee

The Guarantee is a guarantee, undertaking and indemnity for the full amount of the Guaranteed Money and the Guaranteed Obligations.

However, where a limit is set out in the Guarantee as a dollar amount, the total amount which you may be required to pay under the Guarantee will not be more than the aggregate of:

- that limit; plus
- interest on that amount; plus
- any other amount in relation to the Guarantee referred to in clause 4.1 ('Amounts payable by you') under the heading 'Other costs and expenses', 'Indemnities and expenses', or 'Duties, taxes and charges; plus
- interest on any amount demanded from you and not paid,

and where there is more than one of you, the amount which the Lender may recover from you collectively may not exceed that aggregate even though it may claim that aggregate from each of you individually and each of you is individually liable.

10.4 Invalidity

If, for some reason

- the Lender has no legal right to recover an amount of the Guaranteed Money from the Customer or to enforce the Guaranteed Obligations;
- the Customer is not bound by obligations (or what would have been obligations) that otherwise would have been Guaranteed Obligations; or
- the Customer does not owe the Lender an amount that otherwise would have been included in the Guaranteed Money,

the amount will be taken to be part of the Guaranteed Money.

You must immediately pay that amount to the Lender whenever the Lender demands. That obligation will be taken to be part of the Guaranteed Obligations.

This applies even if the Lender knew or should have known of the problem. It applies even if, because of the problem, the Customer could never have been required to pay the Lender the amount and was never subject to the obligation.

This clause 10.4 and clauses 10.1, 10.2 and 10.3 are principal and independent obligations.

10.5 Unconditional nature of obligation

The Guarantee is a continuing guarantee and a principal and independent obligation of each Guarantor.

Your obligations are not affected or discharged by anything which might have affected or discharged them, including if:

- the Lender does not exercise or is slow to exercise any of its Security or rights against anyone;
- the Lender makes any arrangement, transaction or compromise with anyone, including one which varies, takes away or limits its Security or rights, or its freedom to exercise them;
- the Lender gives anyone a full or partial discharge or release, time to pay or any other concession;
- the Guarantee or any other document or Security is temporarily or permanently invalid or unenforceable, is not taken by the Lender, is lost, is not signed by anyone or is not binding on anyone intended to give it (including any of you);
- anything occurs as described in clause 10.4 ('Invalidity');
- there is a change in the nature or constitution of anyone including its members;
- anyone goes into some form of Liquidation; or
- anyone has a claim against the Lender.

10.6 If the Lender holds other Security

Any other Security for all or part of the Guaranteed Money or Guaranteed Obligations is independent of the Guarantee. The Guarantee is independent of it. In respect of other Security:

- (a) the Lender does not have to enforce it;
- (b) the Lender can change it or release or give up all or part of it; or
- (c) the value or effectiveness of that Security or right can be reduced or lost, and your obligations under the Document will not be affected. This applies even if that Security was mentioned to you. The Lender need not consider your position, nor will your obligations be affected if the Security is lost, or cannot be enforced.

When the Lender has received all of the Guaranteed Money and all other money the Customer owes the Lender, you may get the benefit of any Security the Lender then holds in respect of the Customer. Until then, you have no right to it.

10.7 Liquidation

If anyone goes into Liquidation and the Lender receives or recovers money in relation to the Guaranteed Money in the Liquidation or from anyone, the Lender can put it to one side.

The Lender need not use that money to pay the Guaranteed Money until it has received enough to pay the Guaranteed Money in full. Until that happens, you are fully liable for the Guaranteed Money as though the Lender had not received the money set aside.

You will not make a claim in that estate or Liquidation until the Guaranteed Money and Guaranteed Obligations have been paid and satisfied in full.

10.8 Variation of Guaranteed Obligations

The Lender can change a Document or replace it without your consent. The Guarantee applies automatically to all dealings between the Lender and the Customer in relation to the Guaranteed Money or the Guaranteed Obligations whether or not those dealings increase your liability (though any agreed limit set out in the Guarantee will still apply), including a change in the Guaranteed Obligations, or new or replacement Guaranteed Obligations (see the definition of Guaranteed Obligation in section 1.2).

10.9 Application of money

If the Lender receives or recovers any money in respect of debts of a Customer, the Lender may use it to pay off whichever part of those debts it chooses. The Lender does not have to apply it for the Guarantors' benefit.

10.10 Refund of payment

For some reason the Lender may be required to refund or give up money which the Customer or anyone else has paid to the Lender or which the Lender has recovered in any way. If that happens, you owe the Lender all the money you would have owed if the amount refunded or given up had never been paid or recovered.

You will do everything you can to restore to the Lender all Security and rights that the Lender held immediately before the Lender received the money it later had to refund or give up.

10.11 Reliance

The Lender is not required to do anything in relation to the Customer's financial and business condition and affairs or its transactions with the Lender, or to tell you anything concerning them, except as expressly set out in a Guarantee.

This does not limit the acknowledgement in clause 17 ('Acknowledgements').

10.12 Multiple Guarantors

The terms of a Guarantee apply to each of you individually and to all of you as a group. Each of you is individually liable for the full amount of the Guaranteed Money, even if one or more of the others:

- has not signed the Guarantee or is not bound by it; or
- in the future stops being liable.

The Lender can demand and recover payment from one or more of you without demanding it from the others.

11 Goods Security

- (a) If you have a Goods Security, you are the legal and beneficial owner of the Goods and you grant a Security Interest in the Goods to the Lender as Security for the payment of the Secured Money (except where a document provides otherwise). If there is more than one of you it includes amounts owed by any one or more of you (either alone or with others).
- (b) It also secures the Australian dollar equivalent of any amount in any currency, if it is necessary that amount be specified in Australian dollars to ensure that amount is secured.
- (c) The Security Interest created by paragraph (a) is a charge.
- (d) You grant the Security Interest in paragraph (a) as beneficial owner of the Goods unless you have told us that you enter this Goods Security as trustee of a trust. In that case, you grant the Security interest in:
 - (i) the Goods comprising the trust fund of the trust, as sole trustee of the trust; and
 - (ii) any other Goods, as beneficial owner.
- (e) To the extent that any law requires that something must be done (such as obtaining consent) before you may validly grant a Security Interest over any of the Goods, the Goods Security only takes effect in relation to those Goods when the thing required is done. You agree to do anything necessary to ensure that it is done.
- (f) The Security Interest created by paragraph (a) is a continuing Security. It remains in effect until the Lender discharges the Security Interest.

12 Discharge

The Lender will discharge a Goods Security, Guarantee or other Security at your request but only when the Lender is satisfied that you have irrevocably paid everything which is secured by it or may foreseeably become secured by it.

13 General provisions

13.1 Set-off

At any time the Lender may, but need not:

- (a) apply any amount it owes you, for any reason, towards any amounts payable or secured under a Document; or
- (b) if any one or more of you have any money in any account with the Lender, use it to pay amounts payable or secured under a Document.

If the Lender does this, the balance of your account or the amount it owes you will reduce by the amount used for this purpose.

To the maximum extent allowed by law you give up any right to set off any amounts the Lender owes you against amounts you owe under the Document.

You will pay money you are required to pay under this document without deducting amounts you claim are owed to you by the Lender or any person.

13.2 Assignment

You may not transfer or assign any Document or any rights under it.

The Lender can transfer to someone else any Document and all or any part of any debt owing under or secured by any Document without your consent.

If it does, the Document will apply to the transferee as if it was the Lender.

To the maximum extent allowed by law, any transfer will be free of any set off, equity or cross claim which you would have had against the Lender or transferees but for this paragraph.

If the Lender wants to transfer a Security, Document or debt, it can give anyone all information that privacy legislation allows it to give, or allows if you agree.

13.3 Right and powers separate

The Lender can, but need not, do anything under a Document, at once or after a time or more than once.

The Lender can exercise all its other rights and powers it has under law even if they overlap with those in the Document.

If the Lender does not do something when it is able to, that does not mean it is giving up that right and cannot do it later.

13.4 Power of attorney

For valuable consideration each of you appoints each of the Lender and any Receiver as your attorney and agrees to ratify anything an Attorney does under clause 13.5 (“Powers”).

13.5 Powers

An Attorney may:

- (a) do everything which ought to be done by you under or in connection with, or which the Lender can do under, a Document or any law; and
- (b) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.

While an Event of Default is continuing, an Attorney may, if you have a Mortgage, do anything which you can lawfully authorise an attorney to do in connection with this Mortgage or the Goods, or which the Attorney believes is expedient to give effect to any of the Lender’s or a Receiver’s rights (these things may be done in your name or the Attorney’s name, and they include signing and delivering documents, transferring, selling or leasing the Goods (including transferring legal title to the Goods to the Lender or its nominee), transferring, selling or surrendering any lease, lodging or withdrawing caveats, starting, and conducting and defending legal proceedings).

The Lender may sub-delegate to any of its Managers (including the power to delegate), for any period and may revoke the delegation.

You cannot revoke this power.

13.6 Remedy

If you fail to comply with a Document, the Lender may do anything to remedy the breach but need not do so.

13.7 Determination or certificate

Any determination by the Lender or certificate by a Manager of the Lender will be sufficient evidence of the matter stated in it unless the contrary is proved.

13.8 Cost

You will perform your obligations under a Document at your own cost.

13.9 Severability

Any term of a Document which is prohibited or unenforceable in any jurisdiction will, in that jurisdiction, be ineffective to the extent of the prohibition or unenforceability. That will not invalidate the remaining terms of the Document or affect that term in any other jurisdiction.

Further:

- a Goods Security will not include an asset so long as and to the extent that inclusion of that asset would make ineffective the Security given by that Document; and
- a Goods Security or guarantee will not secure a liability so long as and to the extent that inclusion of that liability would render ineffective the Document or the Security under it,

but you will use your best efforts to ensure that asset is included or that liability is secured as soon as possible.

13.10 Fees and commissions

If you are introduced to the Lender by anyone (for example, a broker or dealer) you consent to the Lender paying commission, fees, other remuneration and/or non-monetary incentives to such broker, agent, dealer or other person.

This cost may be passed onto you either directly, for example as a fee, and/or indirectly, for example as an increase in the cost of funding.

You must pay any fees or charges as determined from time to time by the Lender.

13.11 Use of money

- (a) The Lender may apply any money it receives or recovers in any way in respect of money you owe, in paying whatever of the money you owe that it chooses (despite any direction to the contrary). It may first pay anyone who the Lender believes ranks ahead of the Lender.

Where the Lender receives or recovers money to cover an amount contingently owing, or another amount before it is payable, or an unmatured bill of exchange, then the Lender will deposit it in an interest bearing account under its control.

- If the amount becomes actually owing, the amount becomes payable or the bill matures, the Lender will apply the money in the account in payment of your liability to it.

- If it ceases to be contingently owing, and there is no other amount owing, the Lender will pay the balance of the money in the account to you or any other person entitled to it.

An amount is **contingently owing** if it may become owing if something happens or is discovered,

The Lender may do the same with insurance proceeds which it does not use for restoring the Goods.

13.12 Delegation of powers

The Lender may delegate some or all of its powers, including delegation, to someone else (the **Delegate**). If it does, then anything done by the Delegate or its representative will be effective as if done by the Lender or its Manager.

A representative of the Delegate will be regarded as a Manager of the Lender.

13.13 Variation

Unless any Document says otherwise, the Lender may introduce new fees and charges and may vary:

- any Implicit Rate or any other interest rate except a fixed rate;
- the frequency with which interest is debited;
- the amount, frequency, number or method of calculation of or time for payment of any Instalments;
- in respect of a Lease, any Rental, Casualty and Termination Value or Residual Value (but only in accordance with clause 4.2);
- in respect of a Hire Purchase, any Rental; and
- the existing fees and charges and their frequency and time for payment.

The Lender may vary any other term or condition of any Document.

All of these changes can be made without your consent.

The Lender will notify you or advertise the changes before they are made as follows:

- any change in any Implicit Rate or any other interest rate or in the amount of existing fees or charges or their frequency or time for payment – the Lender will notify you or advertise on or before the day the change takes effect;
- any change to the method by which interest is calculated, the frequency with which interest is debited, or the introduction of any new fee or charge (other than a government charge) – the Lender will provide written notice to you at least 30 days before the change takes effect, except that such notice is not required where you cannot reasonably be located; and
- any other changes – the Lender will notify you on or before the day on which the change takes effect.

The Lender will notify you of the introduction or variation of a government charge payable directly or indirectly by you by written notice to you or by advertisement, unless the

introduction or variation is published by a government, governmental agency or representative body.

Advertisements will appear in *The Australian* and *The Australian Financial Review*.

13.14 Consents and opinions

The Lender may do all of the following at its absolute discretion (unless otherwise expressly provided) to the extent permitted by law:

- give or withhold approvals and consents;
- be satisfied or unsatisfied;
- form opinions;
- make determinations or variations; and
- exercise its rights and powers.

13.15 Notices

All notices, demands, approvals, consent or other correspondence (**Notice**) relating to a Document:

- must be in writing;
- must be signed by:
 - a Manager of the Lender; or
 - you (or your director, secretary, manager or executive);
- may be made by facsimile, post or personal delivery; and
- will be taken to be made when delivered, received or left at the address of the recipient shown in a Document or any other address which it may have notified the sender.

This section 13.15 does not limit any method of giving or serving demands provided for by statute.

Effect

Unless a later time is specified in it, a Notice takes effect from the time it is received.

Exclusion of certain PPSA provisions

You agree that:

- the Lender need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA, or any other provision of the PPSA notified to you by the Lender after the date of the Document, to the extent the law permits them to be excluded;
- you may not exercise rights under section 143 (reinstatement of security) of the PPSA to the extent the law permits them to be excluded; and
- the Lender need not give any notice required under the PPSA (including a notice of a verification statement) unless the requirement to give the notice cannot be excluded.

13.16 Governing law and jurisdiction

The Document is governed by the law of the Australian state or territory in which the Document was executed. The parties

submit to the non-exclusive jurisdiction of the courts with jurisdiction there.

13.17 Effect of law

The Document is subject to laws limiting the Lender, to the extent they cannot be excluded.

Otherwise all laws which limit the Lender's power or require notices to be given are excluded. Where a law which cannot be excluded requires a period of default, a period of notice or both, before enforcement, but allows the period to be specified or changed, then that period is one day.

13.18 Finance

The Lender will provide finance when it is obliged to do so.

13.19 Ownership of Documents

The Documents will remain the property of the Lender who can keep them forever, even if all Documents expire or are terminated.

13.20 Choice of securities and guarantees

The Lender need not resort to any Security, guarantee or any other power before resorting to any other of them.

13.21 Indemnities generally

Each indemnity in a Document:

- (a) is absolute and unconditional;
- (b) is a continuing obligation despite any settlement of account or the occurrence of any other thing;
- (c) must be discharged without set-off, deduction, abatement, counterclaim, suspension or deferment;
- (d) constitutes a separate and independent obligation of the party giving the indemnity from its other obligations under the Document; and
- (e) survives termination of any Document.

It is not necessary for the Lender or a Receiver to incur an expense or make a payment before enforcing a right of indemnity under a Document.

13.22 Consent and waivers

A consent or waiver by the Lender or a Receiver is effective only if it is in writing.

13.23 Effect of release

If you have a Goods Security, a full or partial release of the Goods Security by the Lender does not release you from personal liability under the Document until the Lender receives the Secured Money, regardless of any receipt given, payout figure quoted or other form of account stated or error or miscalculation by the Lender.

13.24 Confidentiality

Subject to clause 13.2 ('Assignment'), each party agrees not to disclose information provided by any other party that is not publicly available or the existence of or contents of the Document except:

- (a) to any person in connection with an exercise of rights or a dealing with rights or obligations under the Document;
- (b) to the officers, employees, legal and other advisers and auditors of each party and their related entities;
- (c) to any party to the Document or any related entity of any party to the Document, provided the recipient agrees to act consistently with this clause;
- (d) with the disclosing party's consent (not to be unreasonably withheld);
- (e) any disclosure the disclosing party reasonably believes is required by any law or stock exchange (except this paragraph does not permit the Lender to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7) of the PPSA applies).

13.25 Authority to complete and amend

You authorise the Lender to:

- (a) fill in the Document and any document signed by the Lender which is connected with the Document (such as financing statements, financing charge statements, or transfers of the Goods); and
- (b) make any amendment to any document described in (a) above, in order to accurately reflect or give effect to the terms of the Document which have been agreed between you and the Lender.

14 Borrower/Lessee/Hirer personal information and credit checks

This clause 14 applies only if you are a Borrower/Lessee/Hirer who is an individual person.

15 Trustees

This part only applies to those of you who are a trustee and sign a Document as trustee of a trust.

- The Document will bind you both personally and as trustee of the trust. However, to the extent any Mortgage covers assets of the trust, it will not secure obligations you owe in your own right or as trustee of another trust.

Where you sign a Document as trustee, as trustee you are not liable to pay amounts you owe in your own right or as trustee of another trust. Clause 4.1 ('Amounts payable by you') only includes amounts you owe as trustee of the trust.

- You confirm the following.
 - The trust is validly formed. Any relevant trust document is valid and complies with the law.
 - Any copy of the trust document you have given the Lender is a true and complete copy and discloses everything about the trust.
 - You are properly appointed as sole trustee of the trust (with anyone else who signs the Document as trustee).
 - You have always fully complied with the terms of the trust, and your duties and powers. No one has said that you have not done so.

- You have a full right of indemnity from the trust assets in respect of the Document.
- You have properly signed the Document under the terms of the trust and your duties and powers as trustee, or if there is any doubt and all beneficiaries have full legal capacity, you have obtained their consent.
- The Documents and the transactions entered into under them are for proper trust purposes.
- You have done everything required under the trust document to enter into the Document and the transactions they contemplate.
- None of the trust assets have been re-settled or set aside.
- The trust has not terminated nor has any event for the vesting of the assets occurred.
- You promise the following.
 - You will comply with the terms of the trust and your duties as trustee of the trust.
 - You will use all funds raised under the Document exclusively for proper trust purposes.
 - You will not do anything which may result in the loss of your right of indemnity from the trust assets or the termination of the trust.
 - You will remain sole trustee of the trust (with anyone else who signs the Document as trustee).
 - If, despite the above, you are replaced or joined as trustee, you will make sure the new trustee becomes bound to the Lender's satisfaction by the Document, or a document and arrangement of identical effect.
 - You will not re-settle, set aside or distribute any of the assets of the trust without the Lender's consent unless compelled to do so by the current terms of the trust document.

16 Corporations

This part only applies to those of you who are a corporation.

You confirm the following.

- Your directors and secretary have complied with all the requirements of your constitution and all relevant legislation to enter into and execute the Documents and carry out the transactions they contemplate. You have the corporate power to do so.
- The names of your directors and the secretary are as disclosed to the Lender in writing.
- You are not a subsidiary of, nor controlled by, a public company within the meaning of the *Corporations Act 2001* as amended, or any successor legislation unless you have otherwise specified in writing.
- You will obtain a commercial benefit from entering into the Documents and the transactions they contemplate, which your directors have resolved to enter into in good faith for your benefit and for proper purposes.

- The person(s) who sign(s), or witness(es) the fixing of your common seal to, a Document or a power of attorney under which the Document is executed, are two of your directors or a director and a secretary, or your sole director and secretary, and have the authority to do so.
- The Documents are duly executed on your behalf.

17 Acknowledgements

17.1 No reliance on the Lender

You acknowledge that if the Lender or its Manager inspects or tests any Goods, it is doing so for itself and not you. You should not rely on that inspection.

The Lender and its Managers are not responsible to you if any such inspection or search, enquiry, review or valuation has not been properly done, even if the Lender or the Manager has said it is satisfied with it.

17.2 No reliance generally

You acknowledge that you did not sign any Document in reliance on or as a result of any conduct of the Lender including any promises, advice or statements except as expressly set out in writing on behalf of the Lender. The only terms which apply to a Document are contained in it and this memorandum, except for terms which are required by law and cannot be excluded.

DIRECT DEBIT REQUEST SERVICE AGREEMENT

This Direct Debit Request Service Agreement is issued by Westpac Banking Corporation ABN 33 007 457 141 ("the Bank") and sets out your rights and responsibilities when making payments due under your facility by direct debit.

1. Our commitment to you

- (a) The Bank will debit your nominated financial institution account ("nominated account") in accordance with your Direct Debit Request ("DDR").
- (b) The Bank will give you at least 14 days' notice if the Bank needs to change your direct debit arrangements including changes to the monthly payment.
- (c) The Bank will keep information relating to your nominated account confidential, except where required for the purpose of conducting direct debits with your financial institution or in connection with claims made on the Bank relating to an alleged incorrect debit.

2. Your commitment to us

It is your responsibility to:

- ensure your nominated account can accept direct debits as direct debiting is not available on all accounts. If you are uncertain about this, please check with the financial institution where your nominated account is held;
- check your nominated account details against a recent statement before completing the DDR;

- ensure there are sufficient clear funds available in the nominated account to allow payments to be made in accordance with your DDR;
- advise the Bank as soon as possible if the nominated account is transferred or closed, or the account details change;
- arrange an alternate method of payment if the Bank cancels your direct debit arrangements for any reason; and
- ensure that all account holders on the nominated account sign the DDR.

3. Your Rights

You need to give the Bank at least 7 days' notice before your next scheduled payment for any of the following:

- stopping an individual payment;
- deferring a payment;
- suspending future payments;
- altering the DDR; or
- cancelling the payments completely.

You can make all of these changes by calling the Business Finance Operations Centre on 1300 360 322. You may also stop an individual payment or cancel your DDR by contacting the financial institution where your nominated account is held.

4. Other information

- (a) If the due date for a payment falls on a weekend or national public holiday, the Bank will automatically debit your nominated account on the next business day. If you are uncertain as to when a debit will be processed from your nominated account, please check the financial institution where your nominated account is held.
- (b) The Bank reserves the right to ask that instructions from you to stop or in any way alter the payment details is in a written form.
- (c) If your financial institution cannot withdraw the nominated amount from your nominated account (for example, there's not enough money in your account), they may dishonour the withdrawal. Please check the terms and conditions of your nominated account to see whether dishonour fees apply.
- (d) If you believe there has been an error in debiting your nominated account, please contact the Business Finance Operations Centre as soon as possible on 1300 360 322.