

## SELFCO LEASING – LOAN TERMS AND CONDITIONS

These terms are used by Specialist Equipment Leasing Finance Company Pty Limited T/A Selfco Leasing ABN 58 099 591 616 ("us") for Agreements.

### 1. MEANING OF WORDS AND GENERAL INTERPRETATION

1.1 The following words used in these terms have the meaning given below or as those words appear in the Schedule:

- "Agreement"** means all the terms and conditions contained in this document and the Schedule;
- "Business Day"** means a day upon which banks are ordinarily open for business in New South Wales;
- "Commencement Date"** means the date we make the loan to you;
- "Default Event"** means any of the events described in clauses 13 and 14;
- "Documentation Fee"** means the fee specified in the Schedule;
- "Discount Rate"** means the rate reasonably determined by us (which may be a lower rate than the Interest Rate), taking into account any costs to us of the early termination. Those costs may include costs incurred under our funding or hedging arrangements which may be assessed on a global basis across all or part of our funding and hedging arrangements, not just any specific arrangement for this Agreement;
- "Early Termination Amount"** means:
- the Repayments which, but for the early termination, would have been payable by you under this Agreement as from the date of early termination to the end of the Term (inclusive of any unamortised brokerage or commission), reduced to a present value by applying the Discount Rate to such Repayments; plus
  - any payments due under this agreement but unpaid.
- "Establishment Fee"** means the fee specified in the Schedule;
- "Goods"** means the goods specified in the Schedule and includes any part of them, together with all spare parts, enhancements and updates which may be incorporated with the Goods during the Term of this Agreement;
- "Guarantor"** means anyone who at any time guarantees to us the payment of all or any part of the money and other liabilities of you to us under or in relation to this Agreement and in any capacity, irrespective of whether the debts or liabilities are present or future actual, prospective, contingent or otherwise, and includes the guarantor specified in the Schedule;
- "GST"** means a goods and services tax or like tax;
- "Interest Charge"** means the amount specified in the Schedule;
- "Interest Rate"** means the rate of interest used by us to calculate the Interest Charge stated in the Schedule;
- "Insolvency Event"** means the happening of any of the following events:
- an application is made to a court for an order or an order is made appointing a liquidator, provisional liquidator in respect of a person (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
  - proceedings are initiated with a view to obtaining an order for the winding up or similar process of a person, an order is made or any effective resolution is passed for the winding up of a person, or a person is deregistered or dissolved;
  - except to reconstruct or amalgamate while solvent on terms approved by us, a person enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any class of its creditors;
  - a controller is appointed to or over or takes possession of all or a substantial part of the assets or undertaking of a person;

- a person is or is deemed or presumed by law or a court to be insolvent;
  - a person takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a person;
  - anything analogous or having a substantially similar effect to any of the events specified above happens in respect of a person under the law of any applicable jurisdiction; and
  - a person commits an act of bankruptcy.
- "Loan Amount"** means the amount specified in the Schedule and, where the context requires, includes any part of it and so much of it as shall remain owing;
- "PPSA"** means the Personal Property Securities Act 2009 (Cth);
- "PPS Register"** means the Personal Property Securities Register established under Part 5.2 of the PPSA;
- "PPS Security Interest"** means a security interest under the PPSA;
- "Receiver"** includes a receiver, or receiver and manager;
- "Repayments"** means the repayments referred to in the Schedule;
- "Schedule"** means the schedule to this Agreement;
- "Security Interest"** means:
- a PPS Security Interest;
  - any other mortgage, pledge, lien or charge; and
  - any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.
- "Serial Numbered Property"** means any Goods which may or must be described by serial number in a registration under the PPSA;
- "Small Business"** has the meaning applied by the Australian Financial Complaints Authority (and its successors) at the date of this Agreement;
- "Term"** means the term of the loan as specified in the Schedule;
- "Total Amount Payable"** means the amount specified in the Schedule; and
- "Vendor"** means the vendor of the Goods.
- 1.2 In this Agreement unless the context indicates a contrary intention:
- the expression "person" includes a corporation and any governmental, statutory or other body, association or entity;
  - a reference to any party includes that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
  - a reference to this Agreement or to any other document includes that document as amended, novated, varied or replaced from time to time.
  - a reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment or any substituted statutory provision and all ordinances, by-laws, regulations and other statutory instruments;
  - words importing the singular shall include the plural (and vice versa) and words denoting one gender shall include all genders;
  - headings are for convenience only and shall not affect interpretation;
  - a reference to a clause is a reference to a clause of this Agreement;
  - where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
  - where under this Agreement, any obligation or any payment of money might otherwise fail to be performed or paid on the 29th, 30th or 31st day of a

month which does not contain such a date, then such obligation or payment must be performed or paid on the last Business Day of that month;

- j) where the date on or by which any sum is payable or any act or thing is to be done is a day other than a Business Day, such sum shall be paid and such act or thing shall be done on the immediately preceding Business Day;
- k) any agreement or undertaking on your part under this Agreement shall be taken to be a covenant given by you in favour of us;
- l) if there is more than one person identified in this Agreement as "you", such expression shall be construed to refer to and bind each of those persons severally and every two or more of them jointly; and
- m) the following terms have the meaning given to them in the PPSA: "amendment demand", "collateral", "financing change statement", "financing statement", "perfected", "registration", "serial number" and "verification statement".

## **2. AGREEMENT**

- 2.1 You may offer to enter into an Agreement with us by providing us with the signed Schedule. You may only withdraw or vary this offer with our consent. Our consent will be in writing and will not be unreasonably withheld or delayed. Accordingly, you should not submit a signed Schedule to us unless you are certain you want to proceed with the transaction. If we accept such an offer made by you in the Schedule, then we will have entered into an Agreement with you.
- 2.2 Our acceptance of your offer will occur on the date that we notify you that we also have signed the Schedule. This notice may be in writing or electronic.
- 2.3 Clause 2.2 is the only way in which we will accept your offer.
- 2.4 Our acceptance of your offer is subject to:
  - a) us being satisfied that there are no other Security Interests in the Goods other than any Security Interest created under this document; and
  - b) any special conditions which we may specify in the Schedule.
- 2.5 If you have executed this Agreement as trustee of a trust, whether or not that fact is disclosed to us, this Agreement is binding on you personally and in your capacity as trustee.
- 2.6 You must only use the Loan Amount to acquire the relevant Goods and pay the Establishment Fee.
- 2.7 We may elect to pay part of the Loan Amount to the Vendor directly to purchase the Goods and you irrevocably authorise us to do so. Accordingly, you should not sign this Agreement until you have decided to proceed with the transaction.
- 2.8 Payment by us to the Vendor will be a full and sufficient discharge of our obligations under this Agreement.
- 2.9 If the Loan Amount has not been advanced one month from the date of this Agreement (or such later date as we may agree), then at our option this Agreement will come to an end.

## **3. PAYMENTS**

- 3.1 You must pay to us the Total Amount Payable. You acknowledge that the Total Amount Payable comprises the Loan Amount together with interest at the Interest Rate. In addition, you must pay:
  - a) the Establishment Fee on or before the Commencement Date. The Establishment Fee will usually be paid from the Loan Amount; and
  - b) the service fees at the time each Repayment is made.
- 3.2 You agree to make the Repayments (comprising both principal and interest) at the intervals specified in the Schedule, and to pay any other costs and expenses referred to in clause 5 or any other amounts which may become payable under the terms of this Agreement.
- 3.3 Repayments will be credited when they are actually received by us. All money received by us will be applied to

your account in such manner as we in our reasonable opinion think fit.

- 3.4 The Repayments have been calculated on the basis that all Repayments will be paid when due.
- 3.5 If any Repayment is due on a day which is not a Business Day, or a day which is the 29th, 30th or 31st of a month with no such date, the Repayment must be made on or before the next Business Day.
- 3.6 Your obligation to make the Repayments is absolute and unconditional and (without limitation) will continue even if the Goods break down, are defective, damaged, lost, stolen or destroyed, and you agree not to exercise or seek to exercise any right or claim to withhold payment or claim any deduction or set-off.
- 3.7 You must pay us interest to the date of repayment plus the Early Termination Amount if the whole or any part of the loan is repaid prior to the due date because either:
  - a) you repay early; or
  - b) we demand repayment after a Default Event occurs.

## **4. SECURITY INTEREST**

- 4.1 In consideration of us agreeing to advance the Loan Amount, you grant to us a PPS Security Interest in the Goods and in all other chattels which are acquired in substitution for any of the Goods to secure the punctual payment of all amounts that are payable, owing but not payable, or that otherwise remain unpaid by you to us on any account at any time.
- 4.2 You will undertake to ensure that the Security Interest granted to us under clause 4.1 will be a first ranking Security Interest in connection with the Goods.
- 4.3 You represent and warrant that you have full legal and beneficial title to the Goods free from any other Security Interest other than the Security Interest created under this document.

## **5. COSTS AND EXPENSES**

- 5.1 You must pay or reimburse us promptly on demand for:
  - a) all duties, fees, taxes and charges which are payable in connection with this Agreement, the Goods or a payment or receipt or other transaction contemplated by this Agreement;
  - b) our reasonable costs, charges and expenses in connection with the negotiation, preparation, execution, stamping and registration of this Agreement;
  - c) our costs, charges and expenses in connection with any consent, or any exercise or non-exercise of rights (including those arising from you defaulting under this Agreement); and
  - d) all costs and expenses (including legal costs on a full indemnity basis or solicitor and own client basis, whichever is higher) reasonably incurred by us in enforcing and doing anything in connection with this Agreement or to ensure that our rights are protected and preserved (including by making registrations or searches under the PPSA).
- 5.2 If an estimate of any fees or charges is included in the Schedule, your liability is not limited to the estimate if additional fees or charges are assessed to be payable.
- 5.3 You agree to repay to us on demand any money which we may reasonably see fit to pay to make good any failure by you to comply with any of your obligations under this Agreement.
- 5.4 You must pay to us any fee or charge that we may reasonably request:
  - a) to recover any transaction costs incurred by us, including but not limited to any costs incurred in seeking to make good any payments owed by you to us;
  - b) for acting on any assignment or variation of this Agreement requested or initiated by you;
  - c) to recover registration, account maintenance and update fees,and you authorise us to debit your account for these fees or charges at the time charged.

- 5.5 You must pay any payment under this Agreement by way of direct debit or in such other manner as we may from time to time direct in writing.
- 5.6 You authorise us to debit your account for any fees or charges levied by us under this Agreement from time to time.

## 6. GOODS

- 6.1 You must ensure that the Goods are used only in your general business, by qualified personnel, and only for the purposes for which they were designed.
- 6.2 Any accessories, equipment or attachments which are now or may in the future become attached to or installed on the Goods will form part of the Goods at the time of installation or attachment and will, on such attachment or installation, be subject to the Security Interest granted under clause 4.1. You must ensure that they are free of any Security Interest (other than Security Interests in our favour) before they are installed on or attached to the Goods.
- 6.3 You must not permit any Goods:
- to become a fixture or an accession to; or
  - to be manufactured, processed, assembled or commingled with, anything that we do not own or is not subject to a perfected Security Interest in favour of us, and even then only if the priority of that Security Interest is no less favourable than the priority of our Security Interest in those Goods. If the normal use of the Goods may require them to become a fixture or an accession then you may request our consent (which will not be unreasonably withheld or delayed), subject to any conditions reasonably necessary to protect our interest as a secured party under our PPS Security Interest in the Goods.

## 7. USE AND CARE OF GOODS

- 7.1 You, at your own expense, at all times must:
- use and service the Goods using recognised and approved methods and standards of operation and servicing in accordance with the manufacturer's or supplier's instructions and recommendation;
  - maintain and complete correctly the service and records and any log books for the Goods;
  - maintain the Goods in good working order and condition (ordinary wear and tear excepted) and correct any defect to the Goods;
  - replace any Goods which become damaged or destroyed with new articles of similar nature and value and, if they are Serial Numbered Property, promptly inform us in writing of the make, model and serial number of such replacement Goods;
  - do whatever is necessary or desirable to ensure that all warranties and guarantees given by the manufacturer or supplier of the Goods are effective;
  - not to do anything that would materially lower the value of the Goods;
  - only permit the Goods to be used or operated in the manner and for the purposes for which the Goods were designed and manufactured and in accordance with any laws;
  - use the Goods at your own risk.
  - notify in advance any person effecting repairs or maintenance of the Goods that you have no authority to pledge our credit or create a Security Interest over the Goods to or in favour of any person other than us;
  - comply with all laws and regulations relating to the use, possession, operation, storage, registration or licensing of the Goods;
  - comply with all laws relating to the registration or licensing of you as user or possessor of the Goods and pay all registration fees and other money payable to any authority in respect of the Goods or their use;
  - keep the Goods in your possession and not allow them to be moved, unless they are being moved in the ordinary course of your business and you have given us prior notice of where the Goods are being moved to;

- notify us promptly in writing if any of the Goods are lost or damaged in any material respect, regardless of the cause; and
- allow us to fix identifying plates or marks on or to the Goods to indicate that the Goods are subject to a Security Interest and that dealings with the Goods are restricted, or for any related purpose and you agree to give us access to the Goods to enable us to do this.

- 7.2 At all time you agree not to:
- alter any identifying mark on the Goods (such as a serial number);
  - alter, add to or install anything in or on the Goods without our prior written consent (which will not be unreasonably withheld or delayed);
  - sell, hire, dispose of, sublet, part with possession of, assign or otherwise deal in any way with the Goods or allow any PPS Security Interest which is not in our favour in the Goods, without our prior written consent (which will not be unreasonably withheld or delayed);
  - use or operate or permit the Goods to be used or operated when they are out of proper repair;
  - take or permit the Goods to be taken outside Australia without our prior approval (such approval not to be unreasonably withheld); or
  - use the Goods or any part of the Goods in any way which might endanger the safety and condition (excluding reasonably wear and tear) of the Goods or prejudice our interest in the Goods.
- 7.3 You must permit us, our personnel and agents to inspect the Goods at any reasonable time upon reasonable notice.
- 7.4 You acknowledge that, if you dispose of or otherwise deal with the Goods or an interest in them in breach of this Agreement, we have not authorised the disposal or agreed that the dealing would extinguish our PPS Security Interest, and that our PPS Security Interest continues in the Goods or interest, despite the disposal or dealing.

## 8. OTHER OBLIGATIONS

- 8.1 You must:
- do or cause to be done anything which we consider necessary or desirable to perfect and protect any PPS Security Interest provided for by this Agreement; and
  - provide us with all information we need in order to ensure that any registration of any PPS Security Interest provided for by this Agreement is, and remains, fully effective and with the priority that we require.
- 8.2 You represent and warrant that all information you have provided to us in relation to the Goods (including without limitation their serial numbers) are correct and you agree not to change your name or become a trustee to a trust after the date of this Agreement without first giving us 30 Business Days written notice of your proposed new name or the details of the trust.
- 8.3 You agree to notify us promptly in writing of any transfer of Goods or an interest in Goods, and to provide us with any information that we ask for in relation to the transferee to enable us to perfect our PPS Security Interest as against the transferee. You acknowledge that any such notification does not cure any breach of your undertaking in clause 7.2(c).
- 8.4 If you:
- lease the Goods to a third party; or
  - transfer the Goods to a third party and that third party grants you a Security Interest in the Goods
  - you must promptly provide us with all original documents relating to that lease or Security Interest. You acknowledge that providing such documents does not cure any breach of your undertaking in clause 7.2(c).
- 8.5 If you dispose of the Goods in any way that gives rise to an account (as defined in the PPSA), you grant us a PPS Security Interest in that account. You acknowledge that any such grant does not cure any breach of your undertaking in clause 7.2(c).

## 9. RISKS AND INDEMNITIES

- 9.1 You assume all risks and liability in relation to the Goods and the use, maintenance, repair and storage of the Goods (including liability for injury to any person or damage to any property, whether direct, indirect or consequential).
- 9.2 You indemnify us, our agents and employees against all loss, damage, liabilities, reasonable costs, taxes, charges and expenses (including legal expenses but excluding (1) indirect costs, losses and expenses and (2) any liability, cost, loss or expense to the extent due to the mistake, fraud, wilful misconduct or gross negligence of us, our employees or a Receiver we appoint) arising from or in respect of:
- the Goods' delivery, installation, use or change of use, location, condition, operation, seizure, forfeiture or other confiscation, or the Goods' loss, destruction, theft, or damage, however caused, including loss of value resulting from insufficient, inadequate or faulty repair;
  - any claim or demand made by any third party in relation to the Goods or the use of the Goods;
  - any damage to property or death of, or injury to, any person suffered or sustained in connection with the Goods or the use of the Goods;
  - any failure by you to observe your obligations under this Agreement or arising from the early termination of this Agreement or from any materially untrue or misleading representation, warranty or statement (including on tax matters) made by you in, or in connection with, this Agreement (and which are not otherwise recoverable under this Agreement);
  - you defaulting under this Agreement;
  - any steps taken by us to administer, exercise, enforce or preserve any of our rights under or in connection with this Agreement, including any Security Interest provided for by this Agreement;
  - any new legislation or change in any legislation (including government revenue raising legislation) or subordinate legislation, or any change in any ruling, guideline, directive or requirement issued by any government authority, or any change in the interpretation of any such legislation, subordinate legislation, ruling, guideline, directive or requirement that affects this Agreement, the transactions evidenced by this Agreement, our obligations under this Agreement, or our return under this Agreement;
  - any Security Interest contemplated by this Agreement not having its intended priority required by us, failing to attach to the Goods, not being perfected, or being void, illegal, invalid, unenforceable or of limited force and effect (other than as a result solely of our own act or omission).
- 9.3 If we determine (acting reasonably) that the Goods have been stolen and not recovered or have been damaged beyond economical repair, there is a Total Loss, and we may by notice terminate this loan, in which case you must pay to us:
- the Early Termination Amount; less
  - any amount we receive as a payout from any insurer in respect of the Total Loss; and
  - if we receive any amount from an insurer after you have paid the above money in full, we will pay that amount to you.
- 10. INSURANCE**
- 10.1 You will:
- at your own expense, insure the Goods, and at all times during the continuance of this Agreement keep the Goods insured under an enforceable policy, in both our and your name, for the full insurable value of the Goods against loss, damage, theft or destruction and any other insurable risks commonly insured for goods of a similar nature to the Goods, or as we may reasonably require and subject to such terms, conditions and exceptions as we may reasonably approve;
  - at your own expense, take out and maintain insurance against public risk liability in relation to the Goods and your use of the Goods for an amount reasonably approved by us from time to time;
  - punctually pay all premiums in relation to each policy and produce proof of payment to us on or before the due date for payment;
  - reasonably on demand, produce to us the original insurance policies and satisfactory evidence that all insurances are in force;
  - prevent the Goods being used, kept or situated at any time in any manner which may permit the insurer to decline a claim in respect of the Goods should they become lost, stolen or damaged; and
  - not otherwise do anything or permit anything to be done at any time which may contravene, prejudice or invalidate any insurance policy or subject it to an increased premium.
- 10.2 We are entitled to receive all money payable by any insurer under any relevant policy or by any other person in respect of damage to or loss of the Goods (to the extent of your indebtedness to us), and you appoint us your attorney to make, recover and/or compromise in our and/or your name any claim for loss or damage under your policy or otherwise, and to give effectual releases and receipts in each case acting reasonably.
- 10.3 You irrevocably authorise us to appropriate any insurance or other money received by us in respect of loss of or damage to the Goods towards any amounts payable by you to us.
- 11. BREACH OF ANY TERM**
- If you breach any term of this Agreement:
- we will not be obliged to lend you any more money and we can stop any redraws; and
  - we may rectify the breach by performing your obligations under this Agreement.
- 12. DEFAULT EVENTS**
- A Default Event occurs if we make a determination that a Default Event has occurred. A determination by us will be final and binding on you and each Guarantor. You must promptly inform us in writing if a Default Event occurs.
- 13. MONETARY DEFAULT EVENTS**
- A monetary Default Event is a Default Event that occurs as a result of your failure to make a payment. Each of the following is a Default Event:
- you fail to pay any money due to us under this Agreement by the due date;
  - you fail to pay any amount exceeding \$50,000 owing to any person other than us by the due date.
- 14. NON-MONETARY DEFAULT EVENTS**
- A non-monetary Default Event is a Default Event that occurs even if you have made all your payments. Each of the following is a Default Event:
- an Insolvency Event occurs to you or a Guarantor;
  - you or a Guarantor no longer have legal capacity;
  - enforcement proceedings are taken against you or a Guarantor, or your or their assets, by another creditor;
  - early repayment is required under a separate financing arrangement you or a Guarantor have with us, or default based action is taken against you or a Guarantor by us, in each case due to a Default Event which is described in this clause 14;
  - we reasonably believe that you, your agent, or a Guarantor have not complied with the law or any requirement of a statutory authority, and such non-compliance has, or has the potential to have, a material effect on any business you conduct;
  - it becomes unlawful for you or us to continue with this Agreement;
  - you or a Guarantor give us information, or make a representation or warranty to us, that is materially incorrect or misleading (including by omission), and is such that we would not have entered into this Agreement, or would only have entered into this

Agreement on different terms, if we had known the correct information;

- h) you use the Goods for a purpose not approved by us, for an illegal or improper purpose, or to finance an illegal or improper activity;
- i) your assets or a Guarantor's assets are dealt with, or attempted to be dealt with, in breach of the terms of this Agreement without our prior written consent (which will not be unreasonably withheld), including:
  - A) any of the Goods become subject to a Security Interest without a priority agreement being in place between us and the other security holder on terms acceptable to us (acting reasonably);
  - B) any of the Goods become subject to a Security Interest without our prior written consent (which will not be unreasonably withheld); or
  - C) the amount secured by any Security Interest over the Goods is increased without our prior written consent (which will not be unreasonably withheld);
- j) you or a Guarantor do not provide financial information required by any agreement with us;
- k) you or a Guarantor do not maintain a licence or permit necessary to conduct any business you conduct;
- l) you or a Guarantor do not maintain insurance required by any agreement with us;
- m) legal or beneficial ownership, or management control, of you or a Guarantor, or your or their business, changes without our prior written consent (which will not be unreasonably withheld);
- n) without our prior written consent (which will not be unreasonably withheld), the status, capacity or composition of you or a Guarantor changes, including:
  - A) you or a Guarantor cease to carry on your business or a material part of your business, or dispose of substantially all of your assets;
  - B) if you or a Guarantor are an individual, you or a Guarantor are sentenced to jail for a term of longer than 12 months;
- o) the Goods are taken out of your control;
- p) there is a material reduction in the value of the Goods;
- q) you, or any person on behalf of you, breach any material undertaking given to us or any condition imposed by us;
- r) all repairs necessary to keep the Goods in good repair are not made in a timely fashion;
- s) any other event agreed in writing by the Borrower to be a Default Event for the purposes of this Agreement.

## 15. INTEREST

15.1 Without limiting any of our other rights under this Agreement, you must pay to us on demand interest on any amounts due but unpaid under this Agreement at a rate equal to the Interest Rate plus 2% per annum, in respect of the period from the due date for payment until the payment has been received by us.

## 16. ENFORCEMENT

- 16.1 If you are a Small Business or an individual, we will only act on a specific non-monetary Default Event if the event by its nature is material, or we reasonably consider that the event has had, or is likely to have, a material impact on:
- a) you or a Guarantor's ability to meet your or their financial obligations to us;
  - b) our credit or security risk (or our ability to assess these); or
  - c) our legal or reputational risk.
- 16.2 If you are a Small Business or an individual, we will not:
- a) require you to repay the loan;
  - b) take enforcement action against you; or
  - c) enforce any security held to secure repayment of this loan,
- unless:
- d) we have given you at least 30 days written notice of the Default Event; and
  - e) if the Default Event is rectifiable, you have not rectified that Default Event; and

- f) no Default Event of the same type has arisen during that period.

16.3 We may give less than 30 days notice or no notice if:

- a) based on our reasonable opinion, it is necessary for us to act to manage an immediate risk;
- b) an Insolvency Event occurs to you;
- c) enforcement action is taken against you by another credit provider;
- d) we reasonably believe that you or a Guarantor have not complied with the law or any requirement of a statutory authority; or
- e) we have already given you a notice to rectify a non-monetary Default Event.

16.4 We can take action even if we do not do so promptly after a Default Event occurs. We do not lose any rights or forgive any Default Events unless we do so in writing.

16.5 Our rights and remedies under this Agreement may be exercised by any of our employees or any other person we authorise.

16.6 We are not liable for any loss caused by the exercise, attempted exercise, failure to exercise, or delay in exercising any of our rights or remedies, except where such loss arises from the mistake, fraud, negligence or wilful misconduct of us, our employees, or a receiver we appoint.

## 17. POWERS ON DEFAULT

- 17.1 At any time after a Default Event occurs, we may:
- a) demand and require immediate payment of any money due under this Agreement.
  - b) call up the loan and require payment of the entire balance owing under this Agreement.
  - c) exercise any right, power or privilege conferred by law, equity, this Agreement or any security.
  - d) seize and take possession of the Goods or any part of the Goods;
  - e) sell the Goods by way of private sale, auction or tender for cash, or on terms as we see fit;
  - f) receive rents, profits and any other payments which may be derived from the Goods;
  - g) exercise any of your rights, powers and remedies over or in connection with the Goods;
  - h) either with or without seizing the Goods, sell, lease or dispose of the Goods or any part of the Goods either at auction or by private treaty or by tender;
  - i) give valid discharges for purchase money or other consideration payable in respect of the disposal of the Goods;
  - j) execute any transfer, assignment or other instrument which we may consider necessary to give effect to any sale or disposal of the Goods;
  - k) appoint a person or persons as receiver and/or manager ("Receiver") of the Goods. We may remove any Receiver and may appoint a new Receiver; and
  - l) do anything reasonably incidental to any of the powers conferred on us under this clause 17.1.

17.2 Any Receiver appointed by us shall have power, in addition to any power conferred upon a receiver by law, to do any of the things set out in clause 17.1.

17.3 Any Receiver appointed by us shall be your agent unless we notify you that the Receiver is to act as our agent. You are solely responsible for anything done or not done by the Receiver, and for the Receiver's remuneration.

17.4 Net proceeds received from the enforcement of our rights under this clause 17 shall be applied towards the costs and expenses of enforcement, the outgoings and remuneration of any Receiver, and payment of any amounts that are payable, owing but not payable, or that otherwise remain unpaid by you to us on any account at any time, in the order of priority that we in our reasonable opinion see fit. Any surplus shall not carry interest and shall be paid to you or any other person entitled to it.

17.5 Despite any other clause in this Agreement, to the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by us of any PPS Security Interest provided for

by this Agreement, we and you agree with each other that to the extent the law permits:

- a) sections 142 (redemption of Collateral) and 143 (reinstatement of security agreement) of the PPSA are excluded; and
- b) we do not have to comply with the following provisions of the PPSA:
  - A) section 95 (notice of removal of Accession),
  - B) 118 (enforcing security interests based on land law),
  - C) 121(4) (notice to grantor of enforcement of Security Interest in liquid assets),
  - D) 125 (disposal or retention of Collateral after seizure),
  - E) 130 (notice by Secured Party of disposal of Collateral),
  - F) 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account), and
  - G) 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period),
  - H) 135 (notice or retention of collateral).

## **18. NOTICES AND DEMANDS**

- 18.1 Subject to any applicable laws, we may give you any notice, statement, demand or court document (including any collection notice, default notice, court originating process or other court document) by:
    - a) giving it to you personally;
    - b) leaving it at your last known residential or business address;
    - c) posting it to your last known residential or business address;
    - d) by electronic means to your last known electronic address; or
    - e) any other means permitted by law.
  - 18.2 Subject to any applicable laws, you consent to any notice, statement, demand or court document connected with your Agreement or any Security Interest given under your Agreement being given to you by electronic means, including any documents that would otherwise require personal service in accordance with the relevant court rules in force in the jurisdiction in which the Security Interest is located.
  - 18.3 A notice by hand will be deemed to have been received on the date of delivery. A notice delivered by pre-paid post will be deemed to have been received on the day two days after the date of posting although you may not actually receive the notice. A notice by email will be deemed to have been received upon receipt by the sender of a transmission report indicating transmission without error.
  - 18.4 Any notice or communication to you may be made by any officer or attorney of ours.
- ## **19. POWERS YOU GIVE TO US**
- 19.1 You irrevocably appoint us and our officers your attorneys with power to do anything considered by us to be desirable to give effect to this Agreement, including the completion or correction of any details in the Schedule, the doing of anything you should have done pursuant to this Agreement, for the purpose of perfecting any PPS Security Interest provided for by this Agreement, and anything we consider desirable to protect our rights under this Agreement.
  - 19.2 In particular, you irrevocably appoint us your attorney with full power to sue for and recover any claims for loss or damage in relation to the Goods, under any insurance or otherwise, to comprise any such claim in your name, or in the names of you and us, and to give effectual releases and receipts in respect of any such claim.
  - 19.3 You indemnify us against any loss, damage, costs or claim incurred or made and arising out of acting as your attorney, except where such loss arises from the mistake,

fraud, negligence or wilful misconduct by us or our employees.

## **20. GST AND TAXATION**

- 20.1 If GST is payable by us on any supply made under or in connection with this Agreement, then you must pay to us on demand the amount of such GST in addition to the consideration otherwise payable for the supply.
- 20.2 We are not liable to you for any statements made by or on our behalf regarding your rights or position in respect of any law, practice or standard relating to taxation or accounting, and you warrant that you have satisfied yourself regarding such matters.

## **21. STATUTORY POWERS**

- 21.1 Any powers conferred on secured parties, mortgagees or chargees under any conveyancing, bill of sale, chattel mortgage or other legislation of the State or Territory referred to in the Schedule are implied in this Agreement but only to the extent that they are applicable to the Goods and to the extent that they are not varied or modified by, or inconsistent with, this Agreement.

## **22. WAIVER**

No time or other indulgence granted to you will operate as a waiver of our rights in respect of any continuing or recurring breach. No failure to exercise and no delay in exercising our rights, powers, or privileges under this Agreement operates as a waiver. No waiver of our rights, powers, or privileges under this Agreement is effective unless made in writing.

## **23. EXERCISE OF RIGHTS**

Any rights, powers or discretions vested in us under this Agreement may be exercised by us or our nominee(s) or assign(s).

## **24. RIGHT OF ASSIGNMENT**

- 24.1 We are entitled to assign, novate or participate, either absolutely or by way of security, our rights, powers or discretions under this Agreement and to the Goods (subject always to your rights under this Agreement). You must sign anything and do anything we reasonably require to enable any dealing with this Agreement, any security and any document or agreement entered into or provided under or in connection with this Agreement.
- 24.2 You must not assign, novate, dispose or otherwise transfer any of your rights or obligations under this Agreement without our prior written consent (which will not be unreasonably withheld or delayed).

## **25. SET OFF**

You irrevocably authorise us to set off any amount held by us on any account of yours against any amount owing by you to us. You must not exercise any right of set off on any account.

## **26. CERTIFICATES**

A certificate purporting to be signed by us or any officer of ours, stating the amount outstanding by you or stating the occurrence of any of the events under or relating to this Agreement, will be prima facie evidence of the facts set out in such certificate.

## **27. GOVERNING LAW AND ENFORCEABILITY**

- 27.1 This Agreement (and any guarantee and indemnity) is governed by the law in force in New South Wales. You and the Guarantor submit to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them.
- 27.2 To the extent that any provision contained in this Agreement is prohibited without our written consent which will not be unreasonably withheld or delayed or void or unenforceable, such provision will be severed from this Agreement without invalidating the remaining provisions of this Agreement.

## **28. AUTHORITY TO COMPLETE**

You authorise us to complete any items of the Schedule which are incomplete in any respect.

## **29. AGENCY**

- 29.1 Neither the supplier, nor any introducer, broker or other person, who may be introduced to us, is our agent.
- 29.2 You acknowledge that our role in this transaction may have been that of a financial intermediary or agent (whether disclosed or not) and that we may receive commission brokerage or similar fees which are recovered as part of the Repayments.

**30. AUTHORITY TO SIGN**

Where this Agreement is executed by a person on your behalf, that person warrants that he or she has the authority and delegated power to execute this Agreement on your behalf.

**31. BROKERAGE**

Where you have been introduced to us by a supplier, broker or other person ("Introducer"), you consent to us paying to the Introducer commission or brokerage and including that commission or brokerage in the amount payable by you under this Agreement.

**32. OUR PRODUCTS**

You invite us to send to you from time to time any information concerning the financial services and products provided by us.

**33. PPSA PROVISIONS**

- 33.1 The rights and powers conferred on us by this document or the law are in addition to any rights and powers conferred by the PPSA.
- 33.2 For the avoidance of doubt, in addition to the powers under section 125 of the PPSA (obligation of Secured Party to dispose of or retain Collateral after seizure), we may take any action after default authorised by this document or the law, including delaying any disposal, leasing or action to retain any of the Goods.

**34. PPSA CONFIDENTIALITY**

- 34.1 You and we agree with each other not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. You agree that you will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if we approve. Nothing in this clause will prevent any disclosure by us that we believe is necessary to comply with our other obligations under the PPSA.
- 34.2 To the extent that it is not inconsistent with clause 34.1 constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, you agree that we may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that we are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

**35. ACKNOWLEDGEMENT OF NO SUBORDINATION**

Unless agreed to by us in writing, you acknowledge that we have not agreed to subordinate any PPS Security Interest provided for by this Agreement in favour of any third party.

**36. AUTHORITY TO REGISTER AND ASSISTANCE**

You acknowledge that we may register one or more financing statements in relation to any PPS Security Interest provided for by this Agreement. If permitted by the PPSA, you waive your right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement. You agree to take such steps as we reasonably require to perfect and otherwise ensure the enforceability and first ranking priority of any security interest granted under this Agreement, including by:

- a) obtaining and giving consents;
- b) producing and providing receipts;
- c) attending to the signing of documents or procuring the signing of documents;
- d) facilitating the registration of any security interest on the PPS Register;
- e) facilitating the giving of notice to any person, including any person who also has, or appears to have, a

- security interest over property which is the subject of a security interest under this Agreement; and
- f) facilitating the exercise of our right in enforcing any security interest.

**37. TRUST PROVISIONS**

If you enter into this Agreement as a trustee, you represent and warrant that you enter into this Agreement for a proper purpose of the trust (Trust), that you have power and authority under the Trust to enter into this Agreement and perform your obligations under this Agreement, and that you have the right to be indemnified fully out of the Trust property before the Trust's beneficiaries for all liabilities you incur under or in connection with this Agreement. Without our prior written consent (which will not be unreasonably withheld or delayed), you must not distribute any capital of the Trust, retire as trustee or be replaced as trustee, re-settle the Trust, amend the trust deed of the Trust or otherwise vary the terms of the Trust, grant a security interest over any of the assets of the Trust, or breach any terms of the Trust. You must tell us promptly if any of these events occur. You agree that in enforcing any PPS Security Interest provided for by this Agreement, we have recourse to and may satisfy any of your liability directly out of the Trust assets.

**38. PARTNERSHIP PROVISIONS**

This clause applies if you enter into this Agreement as a partnership. Each partner signing this Agreement represents and warrants that they have power and authority to enter into this Agreement for the partnership and perform their obligations under this Agreement. Each partner of the partnership is liable to us as a separate, independent, principal and personal obligation, whether or not we may recover any sum from the partnership assets. You must tell us promptly if the partnership is dissolved, and if this occurs (to the extent permitted by law) then each partner must act in relation to the administration of the partnership assets in the matter (if any) reasonably directed by us. A retiring partner is not discharged from any liability to us as a result of an agreement between the then existing partners and the obligations of a retiring partner to us are not affected by anything which might otherwise affect them at law or in equity (other than actions taken by us with the specific and express purpose of varying, waiving or terminating an obligation of the retiring partner).