

# Current Terms and Conditions for Asset Finance



# Table of contents

<b>A.</b>	<b>Introduction</b>	<b>1</b>
<b>B.</b>	<b>About The Schedule Or Offer</b>	<b>3</b>
<b>C.</b>	<b>Entering Into A Contract</b>	<b>4</b>
<b>D.</b>	<b>The Goods</b>	<b>7</b>
<b>E.</b>	<b>Exclusion Of PPS Law Enforcement Provisions</b>	<b>13</b>
<b>F.</b>	<b>Paying The Facility</b>	<b>15</b>
<b>G.</b>	<b>Changing Your Account Details</b>	<b>18</b>
<b>H.</b>	<b>Changing Details</b>	<b>19</b>
<b>I.</b>	<b>Ending The Contract</b>	<b>22</b>
<b>J.</b>	<b>If You Default</b>	<b>25</b>
<b>K.</b>	<b>General</b>	<b>29</b>
<b>L.</b>	<b>Indemnities</b>	<b>32</b>
<b>M.</b>	<b>Trustees</b>	<b>33</b>
<b>N.</b>	<b>Guarantors</b>	<b>35</b>
<b>O.</b>	<b>What It Means To Be A Guarantor</b>	<b>38</b>
<b>P.</b>	<b>Other Information</b>	<b>42</b>
<b>Q.</b>	<b>Meanings Of Words</b>	<b>46</b>

# A. INTRODUCTION

## A.1 Welcome

This booklet explains the basic obligations of customers (and also their guarantors) who obtain commercial Asset Finance from the Commonwealth Bank of Australia.

Please take the time to read the terms and conditions.

If you have any questions we recommend that you seek legal or financial advice. You can also obtain more information by talking to your Relationship Manager, Business Banker or Broker, or by calling us on **13 19 98**.

## A.2 Banking Code of Practice

The Banking Code of Practice (or, prior to 1 July 2019, the Code of Banking Practice), applies where relevant to your Facility if you are a Small Business as defined in the Code or an individual. It will also apply if you are an individual providing a guarantee and the Code applies to the Facility.

You can obtain a copy of the Code by contacting us:

- call us on **13 22 21**;
- visit your local branch or speak to your Relationship Manager;
- visit our website **[www.commbank.com.au](http://www.commbank.com.au)**

If the Code imposes an obligation on us that is in addition to obligations applying under a relevant law, then we will comply with the Code unless doing so would lead us to breach the law.

## A.3 Complaints

If you have a complaint about our services, products, facilities or any other aspect of Commonwealth Bank, we'd like to hear from you.

To make a complaint, please contact us on **1800 805 605**. You can also make a complaint in the following ways:

- verbally or in writing directly to your relationship manager or at any one of our Commonwealth Bank branches;
- by visiting **[www.commbank.com.au/contact-us/compliments-complaints](http://www.commbank.com.au/contact-us/compliments-complaints)** and completing the online complaint form; or
- by writing to us, care of:

CBA Group Customer Relations  
Reply Paid 41  
Sydney, NSW 2001

We strive, wherever possible, to resolve your complaint within 5 working days.

You will be advised of the details (including the timeframes) of our internal dispute process, and an officer with the appropriate authority to resolve the dispute will investigate your complaint thoroughly. We will do our best to resolve your complaint promptly.

If you're not satisfied with our handling of your matter, you can refer your complaint to external dispute resolution. The Australian Financial Complaints Authority (**AFCA**) scheme is a free service established to provide you with an independent mechanism to resolve specific complaints.

The contact details for AFCA are:

Website: **[www.afca.org.au](http://www.afca.org.au)**

Email: **[info@afca.org.au](mailto:info@afca.org.au)**

Phone: **1800 931 678** (free call)

Postal address: GPO Box 3, Melbourne, VIC, 3001

To find out more information about our Complaints process visit:

**[www.commbank.com.au/contact-us/compliments-complaints](http://www.commbank.com.au/contact-us/compliments-complaints)**

(Remainder of the page left blank).

## **B. ABOUT THE SCHEDULE OR OFFER**

The Schedule or Offer Document defines the details of the Asset Finance Facility. By signing it you agree to abide by all of the terms and conditions in this document.

### **B.1 Declarations you make**

By signing the Schedule or Offer Document, you declare that:

- for an Equipment Loan, you own the Goods or will own them when we advance the loan to you;
- you have not, or agreed to, mortgage, charge, pledge, let or hire the Goods or allowed them to become subject to a Security Interest without our prior written consent;
- you will not permanently part with possession of the Goods without our prior written consent;
- you have not breached any law or obligation to anyone else by entering into this Contract;
- all information you have given us is true and not misleading in any material respect;
- where a Guarantor gives us a Security Interest over Goods, they are the owner of those Goods;
- you will use the Facility only for business purposes, except for a Novated Finance Lease or Novated Operating Lease;
- unless you have told us otherwise, you do not enter the Contract as trustee of any trust.

### **B.2 Counterparts**

The Schedule or Offer Document may be executed in any number of counterparts. All of those counterparts taken together are deemed to constitute one and the same instrument.

(Remainder of the page left blank).

# C. ENTERING INTO A CONTRACT

## C.1 What happens when you enter into a Contract

When you enter into a Contract with us, we agree to purchase the Goods and lease or hire them to you, or lend you the Loan Amount.

We will only accept a Schedule and agree to purchase the Goods, or lend you the Loan Amount if:

- you have complied with any conditions we have told you about;
- you have provided us with all necessary identification information;
- we are satisfied with the valuation and title to the Goods;
- we have received:
  - the invoice for the Goods from the supplier of the Goods;
  - evidence of any insurance we require;
  - any other documents or information we reasonably require which are satisfactory to us.

### C.1.1 Setup Costs of the Facility

Whether or not we provide the Facility, you must pay any reasonable Costs we incur in the process of arranging it, including GST, on the date we incur them.

## C.2 How the Contract affects you and the Goods

When you enter the Contract you:

- can use the Goods during the Term;
- give us rights against you (for example, if you don't comply with your obligations, we may be entitled to terminate the Contract and your right to possession of the Goods, to repossess and sell them and sue you for any remaining money you owe us);
- undertake certain obligations in relation to the Goods;
- charge the Goods to us if the Contract is an Equipment Loan.

## C.3 Keeping us informed

You must tell us as soon as possible if:

- you become aware that you, or a party to the Contract, is in material Default or about to materially Default;
- you change your address or contact details;
- anyone is appointed to investigate your affairs or those of a Guarantor;
- there is any material litigation, dispute or claim made against you or your business which may have a Material Adverse Effect;
- if we ask, you must give us any information or documents we, acting reasonably, require that might affect:
  - the Goods; or
  - the Security Interest.

If we ask, you will promptly tell us the serial numbers of any Serial Numbered Goods that form part of the Goods.

## C.4 Record keeping and financial information

You must keep proper accounts and records according to current laws and practices that give a true and fair view of the state of your financial position. You must give us copies of them on our reasonable request.

- we can require at any time that your Accounts be audited at our Cost or that you supply us with any information we reasonably require about you, your business or related matters, including information to comply with any laws (e.g. anti-money laundering);
- if we ask for them you must also give us the following company information each year within 120 days of the end of the financial year;
  - copies of your annual Accounts;
  - balance sheets and income statements for your directors, shareholders, proprietors and Guarantors;
  - monthly cash flow projections for the following financial year;
  - a list of all outstanding accounts payable and receivable, noting how long they have been outstanding;
  - a list of stock you hold.

## C.5 Notices and communication

During the course of a Facility, we may have to tell you about things that have changed, and you may also need to inform us of things that have changed (such as your address).

### C.5.1 Sending and receiving notices

You must send us any notice in writing. You can give us a notice:

- in person at a branch;
- by post, by fax or by email. To fax, post or email a notice you must send it to the address, fax number or email we have provided.

We can give you a notice:

- in person;
- by leaving it at your last known address;
- by pre-paid post (to your last known address);
- by fax (to your last known number);
- in any other way permitted by law.

### C.5.2 Notices sent by email or via our website

We can email notices to you directly or tell you by email that you can retrieve them from our website, provided you've given us your email address.

We will email you promptly and tell you about the nature of the information available.

We may notify you by written notice that changes to these terms and conditions are available on our website, subject to any requirements of the Code.

## Changing your details

If you have changed your email address then you must tell us as soon as possible. You can also give us notice to end your Contract or receive information by electronic communication.

## Copies of electronic information

If we send you information by electronic communication, we will provide a hard copy of the information if you ask within 7 years of the electronic communication.

### C.5.3 When do our notices take effect?

Our notices to you take effect from the time you are deemed to receive them as set out below unless a later date is shown on the notice.

Notices sent by	Take effect
Post	On the day they would be received in the ordinary course of post.
Fax machine	At the time shown in a transmission report, if the machine creates a report showing that the fax was sent in full.
Email	On the day the email enters the system of the host of your email address or your internet service provider.

## Effectiveness of notices

We consider that a notice is fully effective despite the fact that at the date of the service you are:

- lacking in mental capacity;
- deceased;
- bankrupt;
- Insolvent;
- absent from your usual residence;
- as a corporation, in the course of liquidation or have had an administrator or receiver appointed.

(Remainder of the page left blank).



## **D. THE GOODS**

### **D.1 Providing security**

You must secure the Facility in the form we require as described in the Schedule or Offer Document. At all times, we must be satisfied with the valuation and title to the Goods.

### **D.2 Obtaining effective title**

You must do anything we reasonably ask to enable us to obtain effective title of the Goods and as we reasonably require to:

- exercise our rights;
- provide a more effective security over the Goods or to perfect the security over the Goods;
- perfect the security over any bank accounts or any other property, which are part of the Security Interest;
- enable us to register or perfect the Security Interest with the agreed priority, including any registration required or permitted by law;
- determine whether you are complying with the Contract.

You must:

- provide to us all negotiable instruments which are part of the Security Interest and all documents of title or certificates (for example, share certificates) relating to the Security Interest;
- allow us to obtain possession or control of any negotiable instruments or marketable securities or other similar interests, in any case, which are part of the Security Interest;
- ensure that all property which is intended to be subject to the Security Interest is subject to it;
- show us whether you are complying with the Security Interest;
- ensure we are satisfied that we will obtain title to the Goods when we pay for them.

### **D.3 Buy back arrangements**

Where you are the owner of the Goods and offer to sell the Goods back to us, you acknowledge that:

- the purchase price is payable to you as you direct on production of invoices and/or other papers evidencing your title to the Goods;
- we accept this offer by paying the purchase price;
- for Hire Purchases, Finance Leases and Operating Leases, title to the Goods will not pass until payment has been made and you warrant that the Goods are free from any Security Interests;
- you have disclosed to us the original cost of the Goods and any subsequent additions and alterations that you have made to them and warrant that the amounts disclosed are true and correct.

## D.4 The Goods

### D.4.1 Prior to using the Goods

Before using the Goods, you must:

- make sure they are properly installed or erected;
- identify any records you will need to keep;
- make sure you have the manuals and properly trained people to operate the Goods.

### D.4.2 Using and maintaining the Goods

When you use the Goods under this Contract you must do the following regarding:

Laws and standards	<p>Use your best endeavours to follow all laws and standards that apply to the Goods and their use and storage including registration requirements, applicable Australian standards, codes of practice and requirements under workplace health and safety laws.</p> <p>Tell us promptly if a serious or notifiable workplace health and safety incident occurs involving the Goods, e.g. incidents relating to faulty design or inadequate maintenance. You must tell us what you have done to rectify the issue.</p>
Operation of Goods	<p>Ensure they are only used or operated by properly trained/qualified people.</p>
Affixing Goods to land	<p>Never attach, affix or secure the Goods to any land or premises without our consent as this may affect our title to the Goods. If you do, then they will not be considered fixtures and we will be able to remove them.</p>
Inspection and repair of Goods	<ul style="list-style-type: none"><li>• Make sure they are inspected as reasonably necessary, maintained in good condition and working order, repaired, and cleaned;</li><li>• Keep records of all inspections and, if we request, give us copies;</li><li>• Repair them as we reasonably direct, at your expense.</li></ul> <p>Inspections we can make:</p> <ul style="list-style-type: none"><li>• Allow us to inspect them whenever we ask to on reasonable notice. If we do an inspection or valuation we do it for our purposes only and not on your behalf, even if the Contract requires you to pay us a valuation fee.</li></ul>
No changes in use of Goods	<p>Only use the Goods in your business for the agreed purpose.</p>
Permanent location of Goods	<p>Never permanently move them from the Permanent Location without our consent.</p>
Seizure of Goods	<p>Never allow anything to happen that would enable any person or court to seize the Goods lawfully, in payment for any debt or obligation of yours.</p>

Value of Goods	Never do anything that might materially reduce the value or put our Security Interest in them at risk.
Loss or destruction of Goods	Tell us promptly if they are seized, stolen, lost, destroyed, or damaged beyond repair. If this happens for a Finance Lease, Operating Lease or Hire Purchase you must pay us the Termination Amount for the affected Goods plus, for a Finance Lease, the Residual Value of the Goods. We will terminate the Contract in relation to the affected Goods when these are paid. If we later receive money from an insurer after receiving payment from you, and you don't owe us any money, we will refund to you the amount we receive up to the amount you paid us.

You agree that all parts, replacements and accessories you pay for become part of the Goods and our property, free of all liens, claims and encumbrances.

### **D.4.3 Environmental assessments**

You must comply with all relevant Environmental Laws or standards that apply to the Goods and conduct assessments or environmental audits at our reasonable request, using experts of our choosing and at your reasonable expense. You must give us the expert's findings in a signed written report.

### **D.4.4 Dealing in the Goods**

You must not:

- sell, mortgage, pledge, charge, let, hire or otherwise dispose of the Goods or your rights under the Contract without our prior written permission (subject to clause D.6.1);
- deposit the Goods with anyone else as security or payment for a debt or obligation.

## **D.5 Warranties about the Goods**

When you sign a Schedule or other Offer Document you agree that you have used your own skill and judgment in selecting the Goods as being fit for purpose and entering into the Contract.

You also agree we have not made, and do not make, any representation, warranty or statement or give any advice or undertaking which you have relied on in deciding to enter into the Contract, including about the condition or suitability of the Goods, or their quality or fitness for purpose or safety (nor does any other person do so on our behalf).

You agree that all implied terms and conditions concerning the Contract or the Goods not set out in the Contract are excluded, except where a law does not allow that exclusion.

### **D.5.1 Our liability if there is a breach of condition or warranty**

Our liability for breach of a condition or warranty about the Goods under the Australian Consumer Law, as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) or the ASIC Act 2001, is limited to:

- replacing or repairing the Goods;
- supplying equivalent Goods; or
- paying the Cost of replacing or repairing the Goods or of acquiring or providing equivalent Goods.

This limitation only applies if the Goods are not of a kind ordinarily acquired for personal, domestic or household consumption or if we are permitted by law to limit our liability in this way. We may not rely on this limitation if it is not fair and reasonable for us to do so.

We will allow you to enforce all dealer's or manufacturer's warranties for the Goods in your own name and at your own expense, as long as you are not in Default under the Contract.

## **D.6 Sub-hiring the Goods**

### **D.6.1 Sub-hiring to a third party**

If we give our prior written consent, you may sub-hire the Goods to a third party ("Third Party") provided the sub-hire includes express acknowledgements from the Third Party that:

- a.
  - (i) for a Finance Lease, Operating Lease or Hire Purchase, a person other than you is the legal owner of the Goods and that you have entered into an agreement to lease or hire the Goods from us;
  - (ii) for an Equipment Loan, you are the owner of the Goods but have charged them to Us as Security for an Equipment Loan;
- b. the Third Party is aware that the sub-hire will breach our Security Interest in the Goods unless we consent to the sub-hire and they are bound by the terms of the consent;
- c. the exercise of any rights by us under our agreement with you will not constitute a breach or default under the sub-hire or otherwise entitle the Third Party to terminate, rescind or revoke the sub-hire;
- d. the Third Party's rights in respect of the Goods are expressly subject and subordinate to our rights and nothing in the sub-hire will in any way limit, reduce, vary or otherwise qualify our rights under our agreement with you; and
- e. if a repudiation or termination occurs under our agreement with you:
  - (i) we may by notice to the Third Party terminate the sub-hire and upon such notice their right to possess and use the Goods automatically ceases and they must surrender possession and control of the Goods to us, notwithstanding that the Third Party may not be in breach or default of its obligations under the sub-hire; and
  - (ii) we may enter any premises where any Goods are located to exercise our rights under the Contract or your rights under the sub-hire including, if the need arises, the right to remove the Goods from the relevant premises; and
  - (iii) the Third Party obtains all necessary consents from the owner, occupier and other interested persons (such as any mortgagee) of the relevant premises where the Goods are located to enable us to inspect or take possession of the Goods.

### **D.6.2 Security Interest under PPS**

If you sub-hire Goods and the sub-hire is a "Security Interest" under PPS Law, you must:

- a. do everything required to ensure that your Security Interest has attached and is perfected by registration on the PPS Register including:
  - (i) where the Security Interest is a Purchase Money Security Interest ("PMSI"), it is properly perfected by a registration as a PMSI at all times; and
  - (ii) if the Security Interest is capable of being perfected by a serial numbered registration on the PPS Register in relation to any of the Goods, it is properly perfected as a serial numbered registration at all times.

- b. if we request at any time, ensure any original sub-hire that is a chattel paper will be:
  - (i) permanently and prominently marked in such a way that no other person can take possession of the sub-hire without being put on notice of our Security Interest in the sub-hire as chattel paper;
  - (ii) delivered to us and held in our possession.
- c. ensure each sub-hire is in a form acceptable to us;
- d. not give the sub-hirer any option to buy the Goods;
- e. provide evidence, in a form acceptable to us, that the requirements of this clause have been complied with.

### **D.6.3 Perfecting a Security Interest**

At our discretion, we may perfect any Security Interest we hold against any Third Party (including a Third Party who sub-hires the Goods) in any manner we consider appropriate to protect our interest in the Goods and the sub-hire as chattel paper.

### **D.6.4 Location of the Goods**

If we ask, you must provide all details as to the location of the Goods and the identity of any sub-hirer.

### **D.6.5 Indemnity**

You indemnify us from and against any direct loss, claim or liability we incur arising from or relating in any way to any sub-hire arrangements reduced to the extent it is caused by us.

### **D.6.6 Attorney**

You appoint us as your attorney to act in your name and on your behalf to enforce all your rights as sub-lessor, including the right to issue legal proceedings in your name and the right to enter the premises of sub-hirers and take possession of sub-hired Goods; and you undertake to ratify and confirm any act we take as your attorney under this power of attorney.

### **D.6.7 Security Interest in the chattel paper**

You grant us a Security Interest in the chattel paper for the purpose of securing payment of any money you owe us in connection with this Contract. The Security Interest created is a charge and you may not transfer, dispose or otherwise deal with the chattel paper or allow another Security Interest to exist over it.

## **D.7 Priority**

If the Security Property already has an existing mortgage or charge or Security Interest over it, then you must establish a priority position or a release with the current mortgagee, charge holder or holder of the Security Interest that is satisfactory to us.

## **D.8 Insurance**

You must take out insurance for the Goods on or before taking delivery of them, with an insurer acceptable to us, acting reasonably, and maintain insurance over the Goods throughout the Term according to our directions at any time (for example, against fire, accident or theft) for the full insurable value of the Goods and against usual risk at your own expense.

You must:

- ensure that each insurance policy notes our interest as holder of a Security Interest or Owner and that the terms and the amount insured are satisfactory to us;
- notify us and the insurer if something material happens to the Goods that are covered by an insurance policy;
- make all insurance claims you are entitled to make;
- produce evidence satisfactory to us of current insurance cover whenever we ask for it;
- ensure that the insurance cover is renewed when due and is not reduced or cancelled and notify us immediately if it is or is likely to be;
- assign to us your rights under the insurance policy if we ask you;
- tell us if an insurance claim is refused either in part or in full.

If we notify you, we may take over your rights to make, pursue or settle an insurance claim. We may exercise those rights in any reasonable manner we choose having regard to your interests under the claim and our rights.

We are entitled to receive all amounts which are payable to you by an insurer or other person. If you receive the proceeds from an insurance claim:

- you must tell us;
- you hold the proceeds for us and you must pay us so much of them towards the Amount Owing as we reasonably require as soon as we ask you;
- you must use them as we reasonably direct including to re-instate the Goods.

If we receive the proceeds from an insurance claim, we will use the proceeds towards paying:

- repair of the Goods (if possible);
- anyone with a prior claim; and any Amount Owing under the Contract. If there is any money remaining after the Amount Owing is paid, we will:
  - pay the money to another person entitled to it (for example, another person with a Security Interest over the Goods). If we choose, we may do this by crediting that other person's account with us or another financial institution;
  - after receiving payment from you under clause D.4.2, and you don't owe us any money, refund to you the amount we receive up to the amount you paid us.

We are then under no further liability to you for that money.

## **D.9 Other securities**

You agree that any other security set out in an Offer Document or acknowledged by you as securing the Facility will, along with the original security, secure all amounts you owe now or in the future under this Contract.

(Remainder of the page left blank).

## **E. EXCLUSION OF PPS LAW ENFORCEMENT PROVISIONS**

You agree that the provisions of the PPS Law concerning seizure and disposal or retention of the Security Property do not apply in relation to the Security Property while a person is in possession or has control of the Security Property for the purposes of enforcing a Security.

Unless the Security Property is not subject to PPS Law or is used predominantly for personal, domestic or household purposes, the following provisions in this clause also apply.

### **No right to receive enforcement information or notices under PPS Law after Default**

After a Default has occurred, to the extent PPS Law permits the parties to contract out of such provisions, you agree we do not have to give you any information, or notice, which we would otherwise have to give you under PPS Law:

- of our intention to remove any property from any part of the Security Property (including property which is installed in, or affixed to, the Security Property);
- of any amount paid by us to another person that holds a Security over the Security Property;
- where your obligations are secured by interests in personal property and land, of a decision by us to exercise any enforcement rights over the Security Property, in the same way as we may exercise our rights under any Security over land (or any interest in land) under land law;
- of a notice given by us to any person to pay the proceeds of any account, chattel paper or negotiable instrument forming part of the Security Property to us or if we take possession or control of any of those proceeds;
- of our intention to dispose of, purchase, to exercise any statutory right to retain the Security Property or commence any other Enforcement Proceedings;
- if we have not disposed of the Security Property within 6 months of taking possession or control of the Security Property, stating whether or not we have disposed of the Security Property or stating:
  - (i) the total amounts received in relation to the Security Property after we took possession or control of them, or commenced any other Enforcement Proceedings; or
  - (ii) any expenses incurred in relation to the retention of the Security Property before the disposal;
- if we dispose of the Security Property under a statutory right and you request a written statement of account, however only to the extent of specifying in that statement any amounts paid to other secured parties; or
- if, after a default by you, we exercise a statutory right to seize the Security Property and propose to exercise any statutory right we may have to retain the Secured Property.

### **Exclusion of rights**

You agree that, if the Security Property is not used predominantly for personal, domestic or household purposes, except as otherwise expressly provided in the Security Interest, you do not have a right (which you would, but for this clause, have under the PPS Act):

- a. to reinstate the Security Interest prior to us exercising a right to dispose of or to retain the Security Property; or
- b. to redeem the Security Property after we have seized the Secured Property as a result of a default by you, but prior to us exercising a right to dispose of the Security Property.

## **Waiver of other provisions**

You waive any rights that you may have under the PPS Law to:

- require the Security Property to be dealt with in accordance with the PPS Law if we obtain possession or control of the Security Property as a result of Enforcement Proceedings;
- receive a verification statement for a PPS registration if you are:
  - a. a company or incorporated body; or
  - b. an individual and the security property is, or the Goods in relation to the Contract are, held by you (other than as an employee) in the course or furtherance, to any degree, of a business, commercial enterprise, profession, trade, vocation or calling to which an ABN has been allocated (but excluding in the course of a private recreational pursuit or hobby).

## **E.1 Our rights in relation to the PPS Law**

We can register the Security and take any other action to perfect the Security.

We can assign or otherwise deal with our rights under the Security without your consent. If you receive notice of such assignment, you can exercise against the assignee the same rights you have against us under the Security

We can enter, or access, the Security Property to exercise our rights, inspect its condition or find out whether you are complying with the Security.

Unless there is an emergency, we must give you reasonable notice that we plan to enter, or access, the Security Property. You must help us enter, or access, the Security Property by giving your consent.

We can do anything you are obliged to do under the Security if you fail to act promptly and to our reasonable satisfaction in complying with that obligation.

(Remainder of the page left blank).



## **F. PAYING THE FACILITY**

### **F.1 What you must pay**

The Schedule or Offer Document defines the amount of your Rental Payments or Loan Repayments. You agree that:

- you will make all payments due to us as we direct;
- we may perform your obligations (including paying money) which you fail to perform and you will indemnify us on demand for all moneys, Costs or expenses reasonably paid or incurred by us.

#### **Costs of enforcement**

You agree to pay us any reasonable Costs for preserving our rights under this Contract. You agree to pay these Costs as well as any expenses connected with tracing or recovering the Goods or attempting to do so.

#### **F.1.1 Fees**

The Schedule or Offer Document defines the amount of the fees and when you must pay them. By signing the Schedule or Offer Document you agree to pay these amounts at those times.

You must also pay when we ask you to:

- all duties, fees, taxes (other than income taxes), charges and legal fees connected with the Contract and any transaction under it, as well as any interest, penalties, fines or expenses in connection with these duties;
- any Costs that we incur because you have failed to do something that you must do under the Contract;
- our reasonable Costs of enforcing the Contract and any security.

If you have to pay any taxes or duties of any kind from an amount you owe to us, you must:

- pay these amounts on time to the relevant authority;
- pay us the amount deducted so that we receive the full amount you owe us;
- pay us the amount of any taxes or duties that we incur if you have had to pay us more under the preceding dot point;
- we will provide you with a statement of our current standard fees, charges and interest rates, if you ask us.

#### **F.1.2 Regular payment dates**

You must make your Rental Payments or Loan Repayments on the dates and in the frequency stated in your Schedule or other Offer Document. If the dates are not in the month (29th, 30th, 31st) then they are due on the last day of the month. If the repayments are due on a non-Business Day then you must pay them on the next Business Day.

#### **F.1.3 When you must make rental payment**

For Finance Lease, Hire Purchase, or Operating Lease, you must pay rent until you return the Goods or, in the case of a Hire Purchase, until you exercise your option to purchase the Goods.

As we are the financier and not the supplier of the Goods, you must not withhold a payment to us, even if:

- you lose possession or control of the Goods;
- they suffer a defect, damage or breakdown of any kind;
- there is any defect in our title to the Goods;
- you claim to have a right of set-off or similar claim against us or any other person;
- there is an insurance claim pending against the Goods.

## **F.2 Finance Lease only**

### **F.2.1 How we calculate rent**

You agree that:

- we have calculated the rent and Residual Value of the Goods so that we will be reimbursed for the Amount Financed and interest;
- you will be liable for any capital losses we have made at the end of the Contract if we don't receive the Goods or if, on disposal, the Net Proceeds for the Goods are less than the Residual Value;
- if the Net Proceeds for the Goods are more than the Residual Value, then as Owner we are entitled to keep this surplus.

### **F.2.2 How tax and other changes affect your payments**

We assume that in calculating the Rental Repayments:

- all Rental Payments are included in our assessable income on the payment dates and not earlier;
- we can claim for depreciation deductions for the full purchase price (less any Input Tax Credits);
- the Residual Value of the Goods will be accepted by the Commissioner of Taxation;
- if the Contract is a Finance Lease, the Contract is a Finance Lease and is not claimed to be otherwise;
- you will only use the Goods in connection with a business carried on in Australia;
- the rate of income tax we must pay will not increase during the Term of the Lease.

We also assume that:

- we are entitled to a tax deduction for all fees and charges we incur in the relevant income year;
- we will pay income tax on the 21st of the 4th, 7th, 10th and 13th months after the start of the income year (1st July);
- we won't be required to include any amount in our assessable income if the Goods are lost, destroyed, seized, impounded, or replaced;
- we won't be assessed to pay penalty tax or interest for underpayment;
- we won't become liable to pay any new taxes, duties, or charges in respect of the Goods or the Contract;
- we won't incur extra Costs to maintain the Contract or acquire, own or lease the Goods after the date of the Contract due to a change in law, regulation or administrative practice applying to us.

### **F.2.3 We may recalculate Rental Payments**

If any of these cease to apply, or all or any part of a tax deduction we claim in connection with the Contract is disallowed for any reason, we may recalculate Rental Payments (and Residual Values and Termination Amounts) to preserve the tax net yield.

Our right to recalculate continues despite the expiry of the Contract or any termination of it.

If we do recalculate, you must pay on demand any shortfall or additional Costs, taxes, duties, or charges we incur as a lump sum in addition to the recalculated Rental Payments.

If you disagree with the amount charged we will appoint a member of the Institute of Actuaries of Australia to explain the charges. You will be liable for these Costs if our charges are found to be reasonable.

## **F.3 Variable Rate Facilities only**

For a Variable Rate Facility, unless you provide us with notice under H.1.1, the Rental Payments or Loan Repayments in the relevant Schedule will be adjusted at each Re-pricing Date in accordance with the Variable Rate.

## **F.4 How you can make payments or repayments**

The Schedule or Offer Document defines how you intend to make payments or repayments. If we change any aspect of the payment method we will write to you in advance.

### **F.4.1 Cheque**

If you pay by cheque you must allow time for the cheque to clear by the payment date. If the cheque is not honoured then we treat the payment as if it had never been made.

### **F.4.2 Direct debit**

You must nominate an account acceptable to us from which we will draw repayments and fees and charges.

You authorise us to debit from this account, payments of principal, interest and all fees, charges, taxes and duties you owe us. You can revoke this authority only if you give us authority to debit another account or when we have received all the amounts you owe us.

You must ensure that this Nominated Account is open and contains enough money to cover each payment on the day it is due to be debited.

If the Nominated Account doesn't have enough money in it on the payment date we can:

- debit the account at a later date with all or part of the payment due;
- debit the account anyway (this is not considered a waiver of our right to enforce the Contract) and charge you an overdrawing fee;
- debit any or all of the amount from any other accounts you have authorised us to debit for that Facility, without informing you in advance;
- treat the payment as if it had never been made, in which case we can charge you a fee and cancel the direct debit if we choose.

If a Nominated Account is closed, we may debit any other account in your name with amounts which otherwise would have been debited to the Nominated Account.

# G. CHANGING YOUR ACCOUNT DETAILS

If you want to change the details of the Nominated Account in any way you must tell us immediately by visiting a branch or contacting your Relationship Manager or calling **13 19 98** available 24 hours a day, 365 days a year. Changes can take up to 21 days to take effect.

## G.1 Direct debit service agreement

Repayments or other amounts in connection with the Contract are to be paid by direct debit from a Nominated Account with a financial institution.

### G.1.1 Changes to the agreement

For all matters relating to the direct debit arrangement, including requests to defer debits, change debit arrangements, stop or cancel the Direct Debit Request and dispute payments, you should contact us first.

To contact us, please either:

- call us on **13 19 98**;
- speak to your Relationship Manager; or
- visit our website **[www.commbank.com.au](http://www.commbank.com.au)**

Please allow 21 days for any amendments to take effect.

### G.1.2 Availability

Please be aware that not every account conducted by banks/financial institutions permit direct debiting through the Bulk Electronic Clearing System. If in doubt, please check with the bank/financial institution at which your account is held before completing the drawing authority.

It is your responsibility:

- to ensure there are enough cleared funds in your nominated debiting account on the date payments are to be drawn;
- to tell us if your nominated debiting account is altered, transferred or closed.

You should check your account details against a recent statement from your financial institution.

### G.1.3 Payment dates

If the due date for payment falls on a non-Business Day or public holiday, the payment will be processed on the next Business Day.

For returned unpaid drawings, we will treat the payment as if it had never been made.

A fee may be applied for drawings that are returned unpaid.

We reserve the right to cancel the direct debit arrangement at any time if drawings are returned unpaid by your nominated financial institution.

(Remainder of the page left blank).

# H. CHANGING DETAILS

During the Term of a Facility you may want to change things (e.g. the amount you've borrowed or the Facility Term) and we may want to change things (e.g. frequency of repayments). This section explains how these changes can be made.

## H.1 Changes you request

If you request a change in the details of the Facility and we agree to it, we will send you a Letter of Variation, a Schedule or Offer Document or a combination of those documents defining the new arrangement. By signing and returning a copy of the Offer Document or Schedule you agree to the new Facility details.

Term or rights of the Contract can only be varied in writing and must be signed by all bound parties except as provided in these terms and conditions.

If you ask us to extend or refinance your existing Facility (and we agree to do so), we may require or impose new or different terms.

### H.1.1 Changing Variable Rate Facilities only

Changes	You may
Switching the Variable Rate Facility to a Fixed Rate Facility	<ul style="list-style-type: none"><li>at any Re-pricing Date during the term of the Variable Rate Facility, switch the Variable Rate Facility to a Fixed Rate Facility (we may charge you a fee to do this).</li></ul>
Making a Bulk Reduction to the Variable Rate Facility	<ul style="list-style-type: none"><li>at any Re-pricing Date during the term of the Variable Rate Facility, make a Bulk Reduction (we may charge you a fee to do this).</li></ul>

## H.2 Changes we may make

Without limiting our rights, we may from time to time change any of the terms and conditions for the reasons mentioned below and for unforeseen events.

If we make a change you don't like, you can cancel the Contract by repaying the Facility. Depending on your Contract, you may have to pay additional early termination fees and charges.

Each of the changes below is a separate right and can be read as if such change was a separately expressed right.

Changes	We may
Interest	<ul style="list-style-type: none"><li>change the basis on which interest is charged or paid;</li><li>replace any reference Interest Rate with any other reference Interest Rate;</li><li>change the frequency with which interest is charged or paid;</li><li>change the link to any reference Interest Rate or how we describe it.</li></ul>

Changes	We may
Interest Rate	<ul style="list-style-type: none"> <li>change the Margin or Interest Rate in the event that there are circumstances that, in our reasonable opinion, constitute a Material Adverse Effect;</li> <li>change the Margin or Interest Rate in the event of Economic or Market Shock which materially increases our cost of financing for the purposes of the Contract.</li> </ul> <p>We will not however do this if the Contract is subject to the Code.</p> <p>None of the above limits or otherwise affects our right to charge Default Interest under clause J.2.5.</p>
Minimum balance	<ul style="list-style-type: none"> <li>change the minimum balance to which an account keeping fee applies.</li> </ul>
Fees or charges	<ul style="list-style-type: none"> <li>add, change or remove fees or charges or the frequency of charging of any fee or charge.</li> </ul>
Legal matters	<ul style="list-style-type: none"> <li>adopt or implement any legal requirement, decision, recommendation, regulatory guidance or standard of any court, tribunal, ombudsman service or regulator including any Change of Law.</li> </ul>
Benefits and product features	<ul style="list-style-type: none"> <li>add, change or remove any concessions or benefits (for example, special deals when packaged with other products);</li> <li>accommodate changes in the needs or requirements of our customers, such as new product features or services;</li> <li>correct errors, inconsistencies, inadvertent omissions, inaccuracies or ambiguities.</li> </ul>
Business process and practices	<ul style="list-style-type: none"> <li>reflect changes in technology or our processes including our computer systems;</li> <li>bring us into line with our competitors, industry or market practice or best practice in Australia or overseas.</li> </ul>

### H.2.1 Notifying you of changes

Generally, we will give you 30 days' prior written notice of the above changes by advertisement in the national media or local media or in writing to you. In some cases we do not give you prior notice but this applies only if the change:

- reduces your obligations;
- extends the time for payment of any amount under the Contract;
- is to your account number and does not otherwise change the Contract.

We may give you a shorter notice period, or no notice, of an unfavourable change if:

- it is reasonable for us to manage a material and immediate risk; or

- there is a change to, or introduction of a government charge that you pay directly, or indirectly, as part of your banking service. In that case, we will tell you about the introduction or change reasonably promptly after the government notifies us (however, we do not have to tell you about it if the government publicises the introduction or change).

(Remainder of the page left blank).

# I. ENDING THE CONTRACT

## I.1 Early termination

### I.1.1 Equipment Loan

If you want to terminate this Contract before the Term expires, you can apply to us. We will consider your application and decide whether or not to allow it. If we allow you to fully or partially pre-pay your Equipment Loan and you have a Fixed Rate Facility, you must pay us any applicable Early Repayment Adjustment.

#### **Calculating the Early Repayment Adjustment**

If we work out that we made a loss because of the pre-payment, we will charge the Early Repayment Adjustment. We will make a reasonable estimate of that loss using our standard formula which takes into account the difference between:

- Our wholesale market swap rate for the Fixed Rate Facility on the date the Interest Rate was fixed; and
- Our wholesale market swap rate as at the date of the pre-payment for the balance of the Fixed Rate Facility.

If the wholesale market swap rate at the pre-payment date is lower, you must pay the Early Repayment Adjustment. Our calculation may not be a true reflection of the actual transactions we may enter into as a result of the pre-payment, or which we may have entered into when you fixed the Interest Rate. There may not be specific transactions referable to the Equipment Loan because we manage our funding of Equipment Loans and Interest Rates on a portfolio basis.

If you ask us, we will give you an example showing how we estimated our loss as a result of the pre-payment.

**Warning: If the wholesale market swap rate falls, the Early Repayment Adjustment can be high. You can ask us for an estimate of an Early Repayment Adjustment at any time.**

#### **Final payment**

You must pay us the Amount Owing on the date the final payment is due or, if you Default, on the date it becomes due for payment. When there is no Amount Owing, we will release the Goods from the Security.

### I.1.2 Hire Purchases

You can buy the Goods from us if you are not in Default. You can do this at any time before the end of the Term by paying us:

- all amounts due;
- the Termination Amount;
- any other fees associated with terminating.

Once you pay us, we will transfer the title of the Goods into your name on an 'as-is, where-is' basis without any representation and warranty from us as to title, condition or any other matter.



### **I.1.3 Finance Leases and Operating Leases**

If you want to terminate this Contract before the Term expires, you can apply to us. We will consider your application and decide whether or not to allow it. If we allow it, you agree to:

- a. return the Goods to us in good return condition; and
- b. pay us the Termination Amount.

### **I.1.4 Variable Rate Facilities only**

Early termination of a Variable Rate Facility may occur in accordance with I.1.1, I.1.2 and I.1.3 subject to the following:

- you must provide us with 14 days prior written notice of your intention to terminate the Variable Rate Facility;
- if you terminate the Variable Rate Facility on the Re-pricing Date, we will not charge you Break Costs;
- in all other instances we can, at our discretion, charge you Break Costs.

### **I.1.5 Early termination administration fee**

In the event of an early termination under clause I.1.1, I.1.2, I.1.3 or I.1.4, an early termination administration fee will be payable and will be added to the Termination Amount. This represents our administration costs in processing the early termination and will be payable regardless of whether the Facility is subject to an Early Repayment Adjustment or Break Cost.

## **I.2 Return or recovery of Goods**

### **I.2.1 Finance Lease and Hire Purchase**

When the Contract ends or is terminated, you must return the Goods in good order (fair wear and tear excepted) at a time and place we reasonably decide.

If you ask, we may agree to let you continue to use the Goods on a month-to-month basis. If you do this you must pay rent at an amount agreed to by us. The conditions of the Contract still apply.

Except where we terminate for Default, either we or you may terminate this month-to-month agreement by giving a month's notice.

### **I.2.2 Operating Lease**

When the Term expires or the Contract terminates, you must return the Goods to us:

- at your expense;
- at a time and place we nominate;
- in a satisfactory condition reasonably corresponding with the use, maintenance and repair of the Goods.

If you return the Goods in an unsatisfactory condition, we may repair and restore the Goods at your expense.

You must give us 3 months' notice that you intend to return the Goods on the last day of the Term, or you will be deemed to hold over the Goods for a period of 3 months.

If you hold over the Goods after the Term expires or the Contract terminates, with our consent, you become a monthly tenant. You will pay a monthly rent on the same terms and conditions as in the Contract so far as applicable.

### **I.2.3 We may sell, re-let or re-hire the Goods**

If you return the Goods to us or we recover the Goods, we may try to sell them (for example through public auction or private treaty or tender) or we may re-let or re-hire them. We will pay the proceeds towards any amounts you owe.

You agree we may treat the Goods as having no value if:

- we don't receive or recover the Goods; or
- we reasonably determine (after obtaining the opinion of a valuer) that the costs and/or difficulty of recovery would exceed the proceeds we could reasonably expect to obtain on selling or re-letting or re-hiring the Goods; or
- after reasonable efforts, we are unable to sell, re-let or re-hire them for value within 60 days.

Where the Goods are treated as having no value, we are then entitled to demand and recover from you the amount of our losses.

### **I.2.4 Termination without sale**

This Contract terminates if we don't regain possession of the Goods within 1 month of the expiration of the Term or the termination of the rental of the Goods (the "termination date").

On the termination date you will pay us the Termination Amount. If you pay it later, you will also have to pay interest on the relevant amount from the termination date. This doesn't affect your liability to pay all amounts payable under this Contract up to the termination date.

(Remainder of the page left blank).

# J. IF YOU DEFAULT

You must ensure that you are not in Default under the Contract.

If you are experiencing financial difficulty in making your repayments (or expect to do so in the future), you or your representative should contact us as soon as possible. We will discuss your situation and the options that may be available to assist you. The sooner you contact us, the sooner we can try and help.

## J.1 When you are in Default

Each of the situations below is a separate event and can be read as if such a situation was a separately expressed event constituting a Default under the Contract.

You are in default if...	
General – all Borrowers, Guarantors and Grantors	<ul style="list-style-type: none"><li>• you fail to pay any amount owed to us on time;</li><li>• you, a Guarantor or a Grantor becomes bankrupt or insolvent or subject to any form of administration, or no longer has legal capacity;</li><li>• enforcement proceedings are taken against you, or a Guarantor, or your, or their assets, by another creditor;</li><li>• we believe on reasonable grounds that you, your agent or a Guarantor has not complied with the law or any requirement of a statutory authority or it becomes unlawful for you or us to continue with the Facility;</li><li>• you use the Facility for a purpose that is not approved by us;</li><li>• you or a Guarantor do not hold or maintain a material licence or permit necessary to operate your business;</li><li>• legal or beneficial ownership or control of your business or that of a Guarantor materially and in our opinion unacceptably changes without our consent (which consent will not unreasonably be withheld);</li><li>• you or a Guarantor does not provide financial information required by your Contract with us;</li><li>• we decide that you or anyone associated with the Contract is a Proscribed Person;</li><li>• you or anyone else connected with the Facility or Security gives us deliberately incorrect or misleading information in any material respect (including by omission), at any time.</li></ul>
The Security Property – all Borrowers and Guarantors	<ul style="list-style-type: none"><li>• a third party takes possession of the Goods or Security Property;</li><li>• in our reasonable opinion urgent action is required to protect our interest in the Goods or Security Property;</li><li>• a court order is issued against the Goods or Security Property or any of your assets which could have a Material Adverse Effect;</li><li>• you or a Guarantor do not maintain insurance required under your Contract with us.</li></ul>

### **You are in default if...**

Additional requirements for Contracts where the Code does not apply to the terms and conditions of the Contract because you are not an Individual or a Small Business as defined under the Code

- you, a Guarantor or a Grantor stop paying creditors, admit that you or they can't pay your or their bills, or stop carrying on business (or threaten to);
- anything happens that, in our reasonable opinion means you will not meet your obligations under the Contract;
- you fail to pay any present or future debts exceeding \$5,000 owed to a third party earlier than expected because of default, or you don't pay your debts exceeding \$5,000 to a third party when they are due;
- you breach a financial covenant;
- you don't keep to the other terms or conditions of the Contract;
- you or a Guarantor propose, or enter into, any arrangement with your creditors;
- an entity that has borrowed money from us becomes a Related Party and we decide that the aggregate amount lent to both is too high;
- you or the Guarantor are a company and any action is taken to start winding-up or deregistration proceedings.

## **J.2 How we may enforce this Contract**

### **J.2.1 Default notice**

If you are in Default we can choose to enforce this Contract. If we decide to do this we will give you a default notice except as set out below.

The notice will tell you what the Default is and ask you to fix it by a specified date. It will also contain any information the law requires us to give you.

If you can fix the Default we will give you 30 days notice before we will require you to repay the Facility in full or commence enforcement proceedings. If you are able to fix the Default during the 30 day period and no further Default of the same type has occurred during that period, we will not require you to repay the Facility in full or commence Enforcement Proceedings against you.

In some circumstances we do not have to give you a notice under the National Credit Code. For example, a court may excuse us from giving a notice or we may have made reasonable attempts to locate you without success.

We do not have to give you a notice or wait for the Default to be fixed where we believe on reasonable grounds that:

- you cannot fix the Default (for example, an administrator or Receiver is appointed to you; a petition is granted or order is made for your bankruptcy or winding-up; you enter an arrangement under Part X of the Bankruptcy Act 1966 (Cth) or a scheme of arrangement with your creditors);
- we were induced by your fraud to enter into the Contract, or
- urgent action is necessary to protect the Security Property.

## **J.2.2 If you don't fix the Default**

If you don't fix the Default within the time specified in any notice, or if we do not have to give you a notice, we can:

- cancel this Contract and any other Contract;
- decide that all amounts you owe us or may owe us are due immediately, without further notice (if the Loan is subject to the National Credit Code, we will tell you in the notice if we may do this);
- debit any account you have authorised us to debit;
- sue you for the money you owe us;
- take possession of the Security Property, sell it or appoint a receiver to do so;
- decide not to give you any un-drawn portion of the Facility;
- decide not to comply with any other of our obligations under the Contract;
- refuse any of your transactions or those of a Proscribed Person;
- cancel any Facility;
- stop providing a product or service;
- refuse our consent to any dealings with you or any Guarantors;
- do anything else the law or these terms and conditions allows us to do.

We can exercise these rights despite any delay or previous waiver of these rights.

## **J.2.3 We can take possession**

If we decide to take possession of the Goods or Security Property, you must do everything reasonably necessary to make sure we can. If we appoint a receiver or other controller, they can do anything they think is in our interests and delegate their powers (with our written consent).

If we take possession of Goods or a Security Property that is subject to the Regulatory Legislation, we agree to notify you in accordance with that legislation. We will also pay you any amount you are entitled to, or recover from you any amount you owe us, in accordance with the Regulatory Legislation.

## **J.2.4 You must pay us expenses and losses**

You must pay us for any reasonable expenses and losses we incur in exercising our rights under the Contract, including Break Costs. For example, if part of your Facility is at a fixed rate, you must also pay our reasonable estimate of the loss, known as Break Costs, we will incur because of the Facility not continuing to the end of the fixed rate period.

## **J.2.5 We can charge Default Interest**

We may charge interest at the Default Rate on any amount due and remaining unpaid.

The Default Rate is a rate that is 3% per annum above the Interest Rate we use to calculate the payment under the Contract.

Default Interest will be payable when we ask for it, or on the date that the final payment is due under the Contract if it has not been paid before.

Your obligation to make all payments on time is not cancelled by the provisions of this clause.

If any obligation to pay us an amount under the Contract becomes merged in a court order, you must pay interest on that amount as a separate obligation. We will calculate and accrue interest on a daily basis on the relevant part of the Amount Owing. The Interest Rate we apply from time to time is the higher of the rate we may charge under the Contract and the rate payable under the court order.

### **J.2.6 If we terminate the Contract**

If we terminate the Contract our rights and remedies continue. This means we may keep any deposit or rent already paid and may demand immediate payment of any money owed and you must pay us:

- as agreed damages, for our loss of your contractual bargain, the Termination Amount for a Finance Lease, Operating Lease or Hire Purchase;
- in the case of a Finance Lease, the Residual Value;
- any Costs, fees and charges for your Default or the termination reasonably incurred in exercising our rights in respect of your Default (including, for example, Break Costs).

We may also charge interest at the Default Rate for any of these amounts you owe us from the date of demand until they are paid. We may also enter onto your land and take the Goods and arrange to sell them.

If we sell the Goods after you have paid all amounts owed, we will pay you the Net Proceeds up to the amount you paid us. If you are in Default we may put these funds against any money you owe us.

### **J.2.7 We may set-off money owed to you**

If you are in Default, we can set-off any amount we owe or may owe you in the future (for example, interest we owe you on an unmatured term deposit) against any amount owing or payable under the Contract. We will promptly inform you after we have done so.

(Remainder of the page left blank).

# **K. GENERAL**

## **K.1 How we can exercise our rights**

We can enforce this Contract before or after we enforce our rights under any Security. If we don't exercise a right fully or at a given time, we can still exercise it later unless we have expressly agreed not to or it would be unconscionable to exercise that right or remedy later.

Any of our Authorised Officers or any solicitor or agent we authorise can exercise our rights under this Contract.

Our rights under this Contract are in addition to other rights provided by law independently of it.

## **K.2 Accounting Classification**

You acknowledge that we have not made any representation or warranty to you about your rights under this agreement for taxation or the classification of this agreement for the purposes of Accounting Standard AASB 1008: Accounting for Leases or its equivalent or otherwise.

## **K.3 Liability for loss**

We are not liable for loss caused by exercising, trying to exercise, failing to exercise, or delaying exercising, a right under this Contract, unless the loss is caused by our negligence.

## **K.4 Restrictions**

Anything we do under this Contract is subject to any restriction imposed on us by law, including the National Credit Code if it applies. If the law allows us to modify the restriction and we have modified it in this Contract, then what we do is subject to the modified restriction.

## **K.5 Exclusions**

The rights we have under this Contract are independent of those we have under any Security, or what the law says we have, and we can exercise them even if we obtain an order or judgment against you.

## **K.6 Refunds**

If a trustee in bankruptcy or a liquidator or other person asks us, or if a court orders us, to refund a payment we have received and we are obliged or agree to make a refund, we may treat the original payment as if it had not been made.

We are then entitled to our rights under any Security as if the payment had never been made (i.e. you are in Default) and you must do what we ask to return to us the benefit of any Security discharged in reliance on the original payment. If the secured agreement is a Guarantee, we have the right to refuse to give a discharge of this Contract in certain circumstances.

## **K.7 Applicable laws**

The Contract is governed by the laws in the state or territory in which your address is located, as defined in the Schedule or Offer Document. If required by a law relating to foreign investment, you must have a suitable advice from the Commonwealth Government allowing you to take an interest in the Security Property.

## K.8 Consents

You must comply with all our requirements in any consent we give in connection with the Contract. We will only refuse our consent if it is reasonable to refuse it. If we give our consent we may impose reasonable conditions.

## K.9 Statements of amount payable and certifications

Unless you ask us, we do not send you statements of account.

A written statement signed by one of our Authorised Officers is sufficient evidence of the respective balances of the Facility owing unless you decide to contest the statement in court.

## K.10 Documentation requests

We will, if you request, provide you with copies of documentation in our possession including:

- The Contract (including terms and conditions, standard fees and charges and interest rates);
- Any mortgage or other security agreement or document;
- any notice that we have previously given you which is relevant to us in exercising our rights.

We do not have to give you a copy of the following documents:

- a notice requiring you to take action if you ask for the copy more than two years after the Contract to which the notice relates was discharged or ended;
- a statement of account within 3 months after we gave you a copy of the same statement of account.

If we are giving you a document noted above, we will do so within 30 days.

We may charge you a reasonable fee for providing you with the document, however in certain circumstances we may waive or refund the fee.

## K.11 Third party commissions

If a third party (such as a Broker) introduces you to us or arranges the Contract with us on your behalf, we may pay them a commission.

We exclude responsibility for the third party and we are not liable for any of their actions or omissions.

You acknowledge that any commission we pay is included in calculating the payment. If we agree that you may terminate early, leaving some commission not being reimbursed, then you agree to us adjusting the Termination Amount or payout figure to allow for this reimbursement.

## K.12 Agency

You acknowledge that we may enter into a Contract as principal or agent. If we have entered into a Contract as agent for some other person, you are not entitled to make any objection to that, irrespective of whether the agency is disclosed or otherwise. We may transfer our interest in the Contract without getting your consent.

You agree that we may disclose any information or documents we consider necessary to help us exercise these rights.



## K.13 Assignment

We can assign, create any interest in or otherwise deal with the Goods or all or any of our rights under this Contract at any time as we see fit. If you receive notice of such assignment, you can exercise against the assignee the same rights you have against us under the Contract.

We can disclose any confidential information about this Contract, or about you, to:

- any Guarantor, or any potential assignee, participant or sub-participant of our rights under this Contract
- anyone considering taking an interest in or entering into an arrangement with us about this Contract (including any employee, agent or independent contractor engaged by any such person).

## K.14 Power of attorney

You appoint us and each of our Authorised Officers, separately as your attorney and may not revoke these appointments. You agree to approve anything the attorney does if we ask.

Each attorney can:

- complete or change any aspect of a Schedule or other Offer Document that is incomplete or inaccurate;
- provide details and complete all necessary formalities to render the Contract complete and enforceable.

If you are in Default, each attorney can:

- do anything you must do under the Contract;
- execute any document to help us transfer legal title of the security property if we sell it;
- delegate their powers (including this power) and revoke a delegation;
- exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.

You irrevocably authorise us to use your name and act on your behalf in exercising any rights or instituting, carrying on and enforcing any legal proceedings we think necessary to protect our rights in the Goods.

## K.15 GST

If we have to pay GST that relates to a supply under the Contract you must reimburse us the net cost of that GST by paying the amount to us when we ask you to. This doesn't apply if the GST is recovered under another provision of the Contract.

We will calculate the net cost of the GST liability to allow for any Input Tax Credits (and the like) to which we are entitled or which we have already received for our original GST liability.

## K.16 Severance

If any provision of these terms and conditions is found to be illegal, void or unenforceable for unfairness or any other reason (for example, if a court or other tribunal or authority declares it so) the remaining provisions of these terms and conditions will continue to apply to the extent possible as if the void or unenforceable part had never existed.

# **L. INDEMNITIES**

## **L.1 You agree to indemnify us**

You indemnify us against any and all liability, loss including consequential or economic, Costs or tax we have to pay due to:

- the Goods being lost or damaged either whilst in your possession, with another party, or the supplier of Goods in the instance that they are being constructed and we have agreed to fund the Facility on a progressive basis;
- our ownership of the Goods (for example, Costs to register our interest in it);
- you possessing, using and operating the Goods (including death or injury to a person or damage to property or the environment);
- our exercising our rights under the Contract;
- you or any other party giving false or misleading information or false declarations;
- you failing to do something you should have done under the Contract;
- you breaching or repudiating the Contract;
- the Contract terminating before the end of the Term (this includes Break Costs).

You agree to indemnify us and any attorney on demand for all moneys, Costs or expenses paid or that we reasonably incur in connection with any action we take reduced to the extent of our negligence, wilful misconduct or fraud.

## **L.2 What indemnities cover**

Without limitation, the indemnities cover:

- reasonable external or internal legal costs, charges and expenses calculated at our option on a full indemnity basis, solicitor and own-client basis or in accordance with the rates our in-house solicitor charges for such matters;
- the Costs we reasonably incur retaining consultants to evaluate matters of material concern to us;
- the Costs and expenses of any decontamination, restoration, rehabilitation, clean up or any other expenses, storage or otherwise, which we incur in tracing or recovering the Goods;
- any money we pay to release any lien claimed over the Goods;
- any money we pay to dismantle and remove the Goods from any premises and make any repairs or renovations to any such premises or the Goods.

Each indemnity in this Contract:

- is a continuing obligation;
- is a separate and independent obligation of the party;
- applies regardless of any indulgence granted to that party;
- survives the termination of this Contract.

# M. TRUSTEES

If you are entering into the Facility as the trustee of a trust, or acting as a Guarantor in your capacity as trustee of a trust, the terms and conditions in this section apply to you.

## M.1 Conditions

If you are a trustee, you must:

- be the sole trustee of the trust or if there is more than one trustee, be all the trustees of the trust;
- have the power under the trust deed to enter into and observe your obligations under the Contract;
- enter into the Contract in your personal capacity and in your capacity as trustee of the trust and for the benefit of the beneficiaries of the trust;
- have all the necessary authorisations required to sign the Contract and perform your obligations or allow them to be enforced;
- have a right to be fully indemnified for all your obligations under the Contract out of the property you hold on trust.

You also confirm that:

- the trust is validly constituted and has not been terminated;
- there is either:
  - no conflict of interest affecting you as trustee or your related parties or directors which prevent you from entering into or performing your obligations under the Contract; or
  - the trust deed permits you to enter into and perform your obligations under the Contract despite any conflict of interest that may affect you (or your related parties or directors).
- the trust fund is big enough to satisfy your right of indemnity;
- the trust is not in default under the trust deed and no action has been taken or proposed to terminate the trust;
- you have complied with your trust obligations (as have any directors or officers if the trustee is a corporation);
- you have taken every necessary action to authorise you to execute the Facility and perform your obligations under the Contract;
- executing the Facility is not a breach of trust on your part;
- our rights under the Contract have priority over the interest of the beneficiaries of the trust.

## M.2 What you agree to do

You agree to give us a copy of the trust deed and any other documents that disclose all the terms of the trust.

When you sign the Contract as a trustee, you agree to:

- execute any documents and do anything we ask to ensure that the Contract is binding on your successors at your own expense;
- at our request, exercise or hold for us your right of indemnity from the trust fund and the beneficiaries in order to pay us any money owed under the Contract;

- observe and perform your obligations as trustee of the trust;
- cause any successor trustee to abide by these terms and conditions.

### **M.3 What you agree not to do**

Without our consent you will not do anything to:

- retire or be removed or replaced as trustee of the trust or allow additional trustees of the trust to be appointed;
- terminate the trust, materially vary the trust deed or re-settle the trust fund or determine a vesting date;
- limit your right of indemnity from the trust fund for obligations under the Contract.

### **M.4 Continuance of conditions and agreements**

You acknowledge that:

- we rely on these conditions and agreements being true each time any of the Facilities are used;
- you repeat these conditions and agreements every time you accept a new Schedule or Offer Document from us;
- these conditions and agreements also apply to any Guarantor.

(Remainder of the page left blank).

# N. GUARANTORS

If you are considering entering into a Guarantee you should also read “Privacy” in section P. 2 and “WHAT IT MEANS TO BE A GUARANTOR” in section O. of this document.

## N.1 When this applies

This section applies to you if you are acting as a Guarantor for a Finance Lease, Hire Purchase, Equipment Loan or Operating Lease. In this section ‘You’ means any person who may become a Guarantor in connection with a Contract and ‘Borrower’ includes a Lessee or Hirer.

## N.2 Responsibility

By signing the Schedule or other Offer Document as a Guarantor, you are asking us to:

- lend money to the Borrower;
- enter into a Hire Purchase Contract with the Borrower; or
- provide a Finance Lease or Operating Lease to the Borrower.

## N.3 What you agree to do

You guarantee that the Borrower will pay us all amounts owing by the Borrower under the Guaranteed Contract until we have received the entire amount including interest.

You agree to all obligations both separately and jointly with any other Guarantors on the Contract.

### Repayments

Whenever the Borrower fails to make a payment, you must pay it for them. In some situations we can ask you to pay without asking the Borrower first. We can’t ask you to pay more than the Maximum Amount specified in the Schedule or other Offer Document.

### Indemnity

You indemnify us if we suffer any loss because the Borrower doesn’t pay, or the Guaranteed Contract is unenforceable because they die, become insolvent or lose capacity. You must pay for that loss when we ask you to. This obligation to indemnify us is separate from your other obligations as Guarantor and continues until the Contract is completely paid off.

### Extending your Guarantee

If the Borrower obtains a new loan or has changes made to an existing loan, these may be covered by your Guarantee to the extent that they fall within the limit contained in your Guarantee.

## N.4 What you must pay

If we ask you to pay an amount on behalf of the Borrower, you must pay us the interest on the amount that the Borrower would normally have paid, plus interest on that interest.

When we ask, you must also pay us any Costs we incur to enforce this guarantee, and for anything we have to do under this guarantee.

You must pay any amount we ask, up to the Maximum Amount under this guarantee, on the date we specify.

## **Allocating the payment**

Any amount you pay reduces your liability as Guarantor, but we don't have to credit it to the Borrower's account until we receive the full amount (whether from you or anyone else).

Until we decide to credit the amount to the Borrower's account, we charge interest on the amount at the rate and frequency defined in the Schedule or other Offer Document. We may apply this interest to the Borrower's debt at any time.

## **How we can use the money**

We can use any money you pay us to pay any part of the amounts the Borrower owes us.

## **Withdrawing your Guarantee**

You may, by written notice to us, withdraw from the Guarantee:

- at any time before we lend money under the Facility to the Borrower; or
- after the Facility has been provided, if the signed version of the Contract differs materially from the proposed Contract we gave you before you signed the Guarantee.

## **Ending your Guarantee**

You can end your liability under the Guarantee at any time by paying us the lower of:

- the total amount owed under the Contract by the Borrower, including any future or contingent liability; or
- the amount to which your Guarantee is limited to (plus any accrued interest or enforcement Costs); or
- an amount under any other arrangements we agree to in return for releasing you from your Guarantee.

If you ask us in writing how much you need to pay to end your Guarantee we will reply within 7 days. While an amount is owing, you cannot, without our consent:

- reduce your liability by claiming that you or someone else has a right of set-off or counterclaim against us;
- claim to be entitled to the benefit of a Guarantee or Security given for any Amount Owing;
- claim an amount from another Guarantor under a right of contribution;
- claim an amount in the Insolvency of another Guarantor of the obligations of the Borrower.

## **N.5 Limiting obligations**

If you want to further limit the amount that you guarantee, or the type of guarantee you are providing, we must agree to these limits in writing.

We don't have to agree to these limitations if:

- the Borrower doesn't have enough Security or the amount guaranteed is less than the Amount Owing;
- we are obliged to make further advances to the Borrower;
- we would be unable to preserve the current value of the Goods securing the Facility without making further advances.

If your Guarantee covers more than one of the Borrower's Contracts, we can choose to set a limit on the amount we can recover from you under all the Contracts. If we do this, we will give you a written notice of the Guarantee Limit. We can only increase this limit if you agree to the increase in writing.

## N.6 Our rights

We are not obliged to take any other guarantee for the obligations of the Borrower under the Guaranteed Contract.

Our rights are independent of any we have under another guarantee and those that the law says that we have. We can still exercise our rights even if we obtain a court order or judgment against the Guarantor.

Our rights and your liabilities are not affected by anything we do (or don't do) or anything else, that might otherwise affect our rights or the Guarantor's liabilities under any law relating to guarantees, including:

- changes to the Guaranteed Contract;
- concessions we give the Borrower, such as more time to pay;
- releasing or not registering a Security;
- releasing another Guarantor;
- being unable to enforce another Guarantor's obligations;
- another Guarantor failing to meet their obligations;
- another Guarantor who was intended to provide a guarantee does not do so or does not do so effectively;
- the death, insolvency, physical or mental disability of the Borrower or any Guarantor.

## N.7 Acting as trustee

You agree not to give this guarantee as a trustee without telling us. If you give the guarantee as a trustee, you are bound personally and in your capacity as trustee. You also agree to all the terms and conditions under section M. TRUSTEES.

## N.8 Where the Guarantor is a company

If the Guarantor is a company you declare that:

- the guarantee benefits the company, does not give rise to any conflict of interest and does not breach Chapter 2E of the Corporations Act; or
- a resolution approving the guarantee has been duly passed by the shareholders of the company.

(Remainder of the page left blank).

# O. WHAT IT MEANS TO BE A GUARANTOR

This section O. is included for the benefit of any person who may sign a Schedule or Offer Document as Guarantor for the obligations of the Lessee, Hirer or Borrower under a Contract for a Finance Lease, Operating Lease, Hire Purchase or Equipment Loan. In this section O. we refer to the Lessee, Hirer or Borrower as “the Debtor”.

## **As a guarantor:**

- **you can refuse to enter into the Guarantee - we will then decide whether we want to continue to provide the Debtor with the financial accommodation**
- **you are aware that there are financial risks involved**
- **you have the right to limit your liability - we will then decide whether we want to continue to provide the Debtor with the financial accommodation**
- **you can request information about the transaction or Facility to be guaranteed, including any Facility with us to be refinanced by the Facility**

**Warning: If you give us a Guarantee for the obligations of the Debtor then, when we ask, you must pay the moneys owed to us by the Debtor. If you have previously given us a mortgage or other Security in connection with any other borrowing or obligation, then you should be aware that the mortgage or other Security may, by its terms, also secure your obligations under the Guarantee.**

Before you sign a Schedule or Offer Document as guarantor:

- read the information in this section;
- read any other documents we give you;
- think very carefully about what you are doing;
- be sure about the creditworthiness, financial position and honesty of the Debtor;
- get your own legal and/or financial advice if you are at all unsure about signing (the Debtor must not be with you when you are being given that advice).

## **What is a Guarantee?**

A Guarantee is an important legal document. When you sign a Guarantee, you enter into a binding legal Contract. Under that Contract you promise to be personally responsible instead of, or as well as, the Debtor, to pay the moneys which the Debtor owes us.

## **What if you do not have the money to pay us?**

We can take you to court and ask the court for a judgment against you for the debt you owe us under the Guarantee.

This could mean that you lose everything you own, including your home.

## **What are the other kinds of things you should understand about giving us a Guarantee?**

This section does not tell you everything about a Guarantee.

It tells you about the nature and effect of a Guarantee, to help you decide whether or not to take on the obligations that the Debtor wants you to take on.

We tell you below about the good sense in getting independent advice.

## **Why do we need a Guarantee?**

Because the Debtor is unable to give us a good enough Security for the financial accommodation.



## **Can you refuse to give a Guarantee?**

If you have concerns or are not comfortable in giving a Guarantee, you can refuse to enter into the Guarantee. We will then decide whether we want to continue to provide the Debtor with the financial accommodation.

## **Who are you helping when you give us a Guarantee?**

The Debtor.

## **Who can you ask about the obligation which the Debtor has asked you to Guarantee?**

The Debtor is the first person you should ask for information about the obligations the Debtor wants you to Guarantee.

Because you know the Debtor and because, by giving the Guarantee you are doing the Debtor a favour, you should ask the Debtor:

- about their business affairs generally, and
- to tell you everything about the obligations you are being asked to Guarantee.

If the Debtor refuses to tell you what you want to know, you should think seriously about whether or not to give the Guarantee.

After you give a Guarantee, you should ask the Debtor for this kind of information at regular intervals until the Guarantee is at an end.

## **What can we tell you about the Contract?**

If we have the written consent of the Debtor, we can give you:

- a copy of the Contract you are being asked to Guarantee;
- a copy of any formal demand that we send to the Debtor under the Contract; and
- a copy of the latest statement of account provided to the Debtor under the Contract.

Unless you first get us the written consent of the Debtor, we cannot:

- give you details of specific transactions that the Debtor has entered into with us; or
- give you a copy of the Contract.

However, at any time you can ask us and we can tell you without the Debtor's consent:

- the amount of your liability under the Guarantee; and
- the amount, if any, that we may at any time have realised under any other Security (e.g. a Security given by the Debtor that we hold for the Guaranteed Contract).

If you want us to tell you these things, you must first ask us. Your request should be in writing.

## **These are some of the more important things that are in the Guarantee.**

- a Guarantee may say it is a limited Guarantee. If you give us a limited Guarantee, you should understand what that limit is, as regards principal, interest and other Costs;
- you can give us written notice at any time discontinuing your liability for any further advances of principal or financial accommodation that we make to the Debtor. However, you are still liable for all amounts the Debtor owes us at the time you give us your notice;
- the Guaranteed debt increases by the accumulation of amounts of interest on the unpaid balances in the Debtor's account;

- even if you do not give us a mortgage over your home or some other Security to support the Guarantee, we may sue you on your undertakings in the Guarantee. You may then be forced to sell any of your assets (including your home) to pay the judgment debt;
- if we hold more than one Security for the moneys the Debtor owes us, we can choose to enforce those Securities in any order we please. We do not have to enforce some other Security before we enforce your Guarantee;
- your Guarantee continues until:
  - a. the Guaranteed moneys are repaid to us in full; and
  - b. you give us written notice discontinuing your liability for any further advances of principal or other accommodation we make to the Debtor.
- if you join with other persons in giving the Guarantee (we call those other persons co-Guarantors), you are liable for all the obligations under the Guarantee both separately, on your own or jointly with any one or more of the co-Guarantors. If you make a payment under the Guarantee, you should get legal advice about your rights of contribution from the co-Guarantors;
- if it is proposed that others join with you in giving the Guarantee, upon signing the Guarantee you become and remain liable under the Guarantee even if those other persons change their minds and refuse to sign the Guarantee;
- if we release a co-Guarantor or any mortgagor or make any compromise or arrangement with the Debtor, your liability and the liability of any co-Guarantor under the Guarantee for the whole of the debt is not affected by the release, compromise or arrangement;
- you have no right to any moneys from the estate of a deceased or bankrupt Debtor until all the Guaranteed moneys are paid to us;
- under the Guarantee, we can recover moneys from you even though the law (e.g. the law of bankruptcy) does not allow us to recover them from the Debtor;
- if we receive a payment from an Insolvent Debtor or co-Guarantor, we may have to refund the payment to a trustee in bankruptcy. In that case, we can reinstate your Guarantee as if we had never received the payment.

### **Are you still not sure what to do?**

If you are still not sure about the obligations you take on if you give us a Guarantee, you should discuss the matter with your solicitor.

If you:

- are not sure about the Debtor's creditworthiness or financial position, and
- you want us to give you information about the Debtor, you must get us the Debtor's written consent before we can disclose that information to you.

In some circumstances we may already have the Debtor's consent.

If we do not already have the Debtor's consent, the consent you get for us must list the information that you want and that the Debtor agrees we can give you.

If you think you need financial advice (either on account of the Debtor's debt obligations or your own, or both), you should speak with your own financial adviser.

**You should not have the Debtor with you when you speak with the solicitor or the financial adviser.**

You may think you do not need any independent advice. You may consider you are experienced in business matters and know and understand the terms and meaning of Guarantees and Security documents.

Even if this is the case, you must be able to give the Guarantee freely and voluntarily, without pressure from any other person.

Before you give us a Guarantee, you should definitely get independent legal advice (and possibly financial advice as well) if you are not involved in the day-to-day management of any business whose debts you are asked to Guarantee and any one of the following circumstances applies:

- you are the wife or husband of the Debtor, or of a director of the Debtor company; or
- you live in some other relationship with the Debtor, or with a director of the Debtor company; or
- the Debtor has some influence over you and your decisions; or
- you are elderly; or
- you are sick or infirm; or
- you get easily upset or confused, particularly when someone wants you to do something for them that you do not fully understand; or
- English is not your first language and you are not fluent in the English language; or
- you are inexperienced in financial or business matters; or
- you are at all unsure about what you should do.

The Cost of any legal or financial advice you get is your responsibility.

(Remainder of the page left blank).

## P. OTHER INFORMATION

### P.1 Sanctions and refusing service

As a member state of the United Nations, Australia is obliged to implement United Nations Security Council sanctions and other international sanctions. It may sometimes impose its own unilateral sanctions.

Sanctions can cover various subject matters including financial restrictions, which means the Bank may be prohibited from dealing with certain persons or entities.

Consequently, if we are aware that you are a Proscribed Person or Entity, then we may be required to suspend, cancel or refuse you services or close or terminate any account, Facility, transaction, arrangement or agreement with you.

We may also be required to freeze your assets. You could incur significant Costs as a result of these actions.

### P.2 Privacy

You give us permission to collect, use and share your information with others as set out in this section and our privacy policy.

The information you give us must be correct and complete. If not, you may be breaching relevant legislation and we may not be able to provide you with the products and services that best suit your needs.

In this section:

**'You (and I/me in the "Your Acknowledgements")'** for individual Borrowers, the individual/s signing or accepting these terms; and for organisational Borrowers, the organisation and the person/s signing or accepting these terms. For individual Guarantors, the individual/s signing or accepting these terms; and for organisational Guarantors, the organisation and the person/s signing or accepting these terms;

**'We or us'** Commonwealth Bank of Australia;

**'Group'** Commonwealth Bank of Australia and its subsidiaries;

**'Your information'** the information about you that we collect, such as:

- Financial information you give us;
- Information about your interactions with us, such as your transactions, payments and use of our websites;
- Information from public registers or third parties, such as service providers, brokers and employers;
- Other Information described in our privacy policy or these terms.

#### P.2.1 Why we collect your information and what we use it for

We collect your information and use it to:

- confirm your identity
- assess your application for a product or service;
- design, manage, price and provide our products and services;

- manage our relationship with you;
- minimise risks and identify or investigate fraud and other illegal activities;
- contact you, for example, when we need to tell you something important;
- improve our service to you and your experience with us;
- comply with laws, for example the *Anti-Money Laundering and Counter-Terrorism Financing Act*, state/territory property laws (if you take out a mortgage) and the responsible lending provisions of the *National Consumer Credit Protection Act* and assist government or law enforcement agencies;
- manage our businesses;
- analyse your spending habits to assist our assessment or improve our products.

Sometimes we need to collect sensitive information. For example, if you're in financial difficulty and ask for hardship relief due to illness, we may ask your permission to collect information about your health. We may also collect, use and share your information for other reasons where the law allows or requires.

### **P.2.2 Sharing information with credit reporting bodies**

When you apply to us for credit, we may need to get credit reports about you. A credit report gives us information about your credit history. Credit reports are provided by credit reporting bodies, who collect and share credit information with credit providers like us. We do this so we and other credit providers can:

- assess your credit applications and ability to manage credit;
- manage your loans and collect overdue payments.

The information we can share with credit reporting bodies includes things such as:

- your identity;
- type and amount of credit you applied for or have – like credit cards, home loans or personal loans;
- if you've missed any repayments;
- if you've committed fraud or another serious credit infringement.

The credit reporting bodies we use are:

- Equifax Pty Ltd (**[equifax.com.au](https://equifax.com.au)**),
- Experian Australia Credit Services Pty Ltd (**[Experian.com.au/credit-services](https://Experian.com.au/credit-services)**)
- Ilion Australia Pty Ltd (**[checkyourcredit.com.au](https://checkyourcredit.com.au)**)

See our privacy policy for other key information about credit reporting matters, such as:

- how to get a copy of credit information we obtain from credit reporting bodies, correct this information or make a complaint;
- where to find each credit reporting body's policy on credit information handling;
- what to do if you think you're a victim of identity fraud;
- your right to tell credit reporting bodies not to use your information for direct marketing.

### **P.2.3 Sharing information with guarantors and other security providers**

You give us permission to give guarantors or other security providers information about you, the relevant credit facility, and any changes to that facility or new facilities. This is so they can decide if they want to be, or continue to be, your guarantor or security provider.

### **P.2.4 Who else can we share your information with?**

We may share your information with other members of the Group or third parties where the law allows. Among other things, this helps us offer you a high-quality customer experience. Group members may use your information for any of the purposes set out in Section 4 of our privacy policy:

The third parties we share your information with can include:

- any other persons named as applicants in your credit application e.g. your co-borrower(s);
- service providers – for example insurers, data analytics providers, valuers, loyalty program partners and our product distributors;
- businesses who do some of our work for us;
- debt collectors and debt purchasers;
- brokers, advisers and people who act on your behalf – such as your parent (if you are under 18), guardian, or a person with Power of Attorney;
- people or organisations involved in our funding arrangements – like loan purchasers, investors, advisers, researchers, trustees and rating agencies;
- people who help us process claims – like assessors and investigators;
- other banks and financial institutions – for example, if we need to process a claim for a mistaken payment;
- auditors, insurers and re-insurers;
- current or previous employers – for example, to confirm your employment;
- government and law enforcement agencies or regulators;
- organisations that help identify illegal activities and prevent fraud.

Sometimes, we might need to send your information overseas, for example to comply with laws, and assist government and law enforcement agencies or regulators. See our privacy policy for information about which countries information may be sent to.

### **P.2.5 Our privacy policy and how to contact us**

Visit **[commbank.com.au/privacy](https://commbank.com.au/privacy)** for our privacy policy or ask for a copy at any branch. It tells you about:

- other ways and reasons we may collect, use or share your information;
- how to access your information and correct it if it's wrong;
- how to make a privacy-related complaint (including about our compliance with the Australian Privacy Principles and credit reporting rules and codes) and how we'll deal with it.

Want to speak to us about your privacy?

- Phone: **1800 805 605** or **+61 2 9687 0756** from overseas 8:30am-6pm (AEST) Monday to Friday
- Fax: **1800 028 542** or **+61 2 9841 7700** from overseas

To make a privacy-related complaint visit **commbank.com.au/feedback** or write to us: CBA Group Customer Relations, Reply Paid 41, Sydney NSW 2001

## **P.2.6 What you need to know about being a co-borrower**

When you choose to borrow money with other people you all become co-borrowers. Before you become a co-borrower, you should understand that each Borrower is jointly and severally liable. This means:

- we can require you to pay the full amount of loan repayments and any outstanding debt, for example if the other borrower(s) can't or won't pay;
- failure to pay may result in debt collection, adverse credit rating and sale of assets;
- a co-borrower differs from a guarantor in that we can only require payment from a guarantor after we've taken steps to collect the debt from the borrowers.

## **P.2.7 Your Acknowledgements**

By signing the Schedule or other Offer Documents, I acknowledge the information I have given or will give is true and correct and:

- I've read these terms and give you permission to collect, use and share information in the ways mentioned in this section and in our privacy policy;
- if I give you my contact details, you can use these to communicate with me, including to give me updates, reminders and (unless I tell you not to) marketing information. If I change my contact details (for example address), I will inform you as soon as possible.
- I understand that if I do not wish to receive direct marketing messages or want to change my contact preferences, I can log on to Netbank and click Message Preferences or call us on **13 22 21**;
- if I provide personal information about another person, I am authorised to do so and I'll tell them what's in this document. All the permissions I've given apply to this application and any others I or my organisation make, as long as you are providing me or them with services, If I'm representing a number of applicants or office holders, they've asked me to give permission on their behalf.
- if I am or become a co-borrower, I've read the **What you need to know about being a co-borrower** above and I understand the difference and accept the risk of being a co-borrower versus a guarantor.

(Remainder of the page left blank).

# Q. MEANINGS OF WORDS

A reference in this document to:

- the singular includes the plural and vice versa;
- a document includes any variation or replacement of it;
- law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under laws made by parliament and consolidations, amendments, re-enactments or replacements of any of them);
- any thing includes the whole and each part of it.

## **Accounts**

You and your related parties' profit and loss accounts and balance sheets on an individual and consolidated basis for a particular period, together with any statements, reports and notes attached to or intended to be read with the profit and loss accounts or the balance sheets or both (including, without limitation any directors' statements and reports and any auditor's reports).

## **Amount Financed**

The amount set out in the Schedule or other Offer Document. It includes the cost of the Goods and any taxes, fees or charges we financed under the Contract. In the case of a Hire Purchase, the Amount Financed will be net of any trade-in or deposit (if any) you have paid for the Goods.

## **Amount Owing**

At any time:

- the total amount of repayments mentioned in the Schedule or other Offer Document;

plus,

- all accrued Default Interest charges and other amounts that you have become liable to pay under the Contract that have not yet been debited to your account;

less,

- the amount of repayments you have made.

## **Authorised Officer**

This includes:

- in our case, each of our officers within the meaning given in the Corporations Act 2001 (Cth), for example each of our officers whose position title is or includes the word 'manager' or the word 'executive'
- in your case, if you are a body corporate, firm or other person (other than an individual), an individual nominated by you under the Contract or any individual who is your officer within the meaning given in the Corporations Act 2001 (Cth).

## **BBSY (Bid) Rate:**

- a. the bank bill swap rate (expressed as a percentage per annum to 4 decimal places) which is the bid rates shown at approximately 10.10am (Sydney time) on the page "BBSY" of the Reuters Monitor System on the first day of that Interest Period for that Interest Period or, if such rate is not available for any reason;
- b. the arithmetic mean, (rounded upwards, if necessary, to 4 decimal places) of the rates quoted to the Bank by the Reference Banks at or about 10.30am (Sydney time) on the first day of that Interest Period (disregarding the highest and lowest rates quoted) for the purchase of a Bill



accepted by the Bank or Reference Banks having a face amount equal to the amount of the Advance and a tenor equal or approximately equal to that Interest Period (or, if that Interest Period is subject to adjustment, for a term equal or approximately equal to the duration of that Interest Period prior to such adjustment), or, if fewer than 2 Reference Banks are willing to provide quotes;

- c. the rate reasonably determined by the Bank to be its cost of funds having regard to prevailing market conditions.

For this definition 'Reference Banks' means National Australia Bank Limited, Westpac Banking Corporation and Australia and New Zealand Banking Group Limited or such other banks or financial institutions as the Borrower and the Bank may from time to time agree.

### **Borrower**

The Person named as the Borrower in the Schedule or Offer Document. If there is more than one, 'Borrower' means any combination of one or more of them and for each combination, means each of them separately and every two or more of them jointly.

### **Break Costs**

In relation to a Contract, means any Costs or losses associated with:

- liquidating or redeploying deposits or other amounts from third parties arranged or acquired for the purpose of funding the Contract;
- pre-paying or terminating any Facilities entered into to fund the Contract. This may include the difference between the return we would have received under the Contract if it had not been terminated early, and the return we receive by re-investing the principal amount we recover on early termination.

### **Bulk Reduction**

A lump sum repayment not specified in the Schedule or Offer Document.

### **Business Day**

A day that is not a Saturday or Sunday, or a public holiday, special holiday or bank holiday in the place in which any relevant act is to be done or may be done.

### **Change of Law**

The introduction of, or a change in, any law or regulation or any prudential standard, order, directive, requirement or guideline of the Australian Prudential Regulation Authority, the Reserve Bank of Australia or any other governmental, prudential, supervisory or other authority or a change in its interpretation or its compliance or method of compliance by us.

If it does not have the force of law, it must be one with which responsible banks would comply. Without limitation, it includes any of those circumstances with respect to:

- capital adequacy;
- equity;
- liabilities;
- liquidity;
- any form of reserve or deposit requirement;
- tax (including GST) on the supply of financial accommodation to you or by anyone to us to fund or maintain the Facility.

**Contract**

The Contract between the parties which consists of the Schedule or other Offer Document you sign and any other documents referred to in the Letter of Offer and these Terms and Conditions.

**Control**

The power to directly or indirectly govern the financial and operating policies of an Entity to obtain benefits from its activities, as defined in Accounting Standard AASB 1024: Consolidated Accounts (or, if applicable, Australian Accounting Standard AAS 24: Consolidated Financial Reports).

**Costs**

Includes charges and expenses, and costs, charges and expenses payable to or in connection with legal and other advisers on a full indemnity basis.

**Default**

You are 'in default' if you fail to meet any of the terms and conditions of the Contract.

**Default Interest**

The interest you must pay us on any amounts due and remaining unpaid under a Contract.

**Default Rate**

The rate at which we charge Default Interest.

**Discount Rate**

The rate we use for Hire Purchase, Finance Lease and Operating Lease is 3% per annum below the implicit Interest Rate for a Fixed Rate Facility, and 3% below the current Variable Rate for a Variable Rate Facility, in the Hire Purchase, Finance Lease or Operating Lease as applicable.

**Economic Shock**

An unexpected event adversely impacting the Australian economy as a result of an event(s) outside of it, which has the effect of increasing our Cost of financing for the purposes of this agreement.

**Enforcement Proceedings**

- proceedings in a court to recover a payment due under the Contract or a Security;
- taking possession of the Secured Property or taking any other action to enforce the Security, or both.

**Entity**

Any legal, administrative or fiduciary arrangement, organisational structure or other party (including a person).

**Environmental Law**

A law regulating or otherwise relating to the environment, including but not limited to:

- any law relating to land use or planning, pollution of air or water, soil or ground water contamination, chemicals, waste, use of dangerous goods, or to any other aspect of protection of the environment or persons or properties; and
- any statute now or in the future in force relating to heritage places, clearing land within the boundaries of catchment areas and water reserves and the protection and management of natural vegetation.

**Equipment Loan**

An Equipment Loan on the terms set out in the Contract.

**Facility**

The financial accommodation which we make available to you under the Contract and the particulars of which are in the Schedule or other Offer Document.

**Finance Lease**

A Finance Lease on the terms set out in the Contract.

**Fixed Rate Facility**

An Equipment Loan, Finance Lease, Hire Purchase or Operating Lease where interest is charged at a fixed rate.

**Goods**

In relation to a Finance Lease, Operating Lease, Hire Purchase or Equipment Loan, one or more of the following as the context requires:

- the Goods described in the Schedule or other Offer Document;
- any Goods you acquire with our consent in replacement or substitution for the Goods described in the Schedule or other Offer Document;
- any Goods you acquire as additional parts for the Goods described in the Schedule or other Offer Document;
- any interest in the Goods.

**Grantor**

A person who grants us a Security Interest.

**GST**

Any goods and services tax or similar tax together with any related additional tax, interest, penalty, fine or other charge.

**Guarantee**

A Guarantee given to secure your obligations under a Contract.

**Guarantee Limit**

The total amount we may recover from time to time under a Guarantee in respect of all Guaranteed Contracts secured by that Guarantee.

**Guaranteed Contract**

Each Contract for which a Guarantor provides a Guarantee.

**Guarantor**

The person or persons named as Guarantor in a Schedule or other Offer Document. It includes the Guarantor's executors, administrators and assigns.

**Hire Purchase**

A Hire Purchase agreement on the terms set out in the Contract.

**Hirer**

The person named as Hirer in the Schedule or other Offer Document. If there is more than one, 'Hirer' means any combination of one or more of them and for each combination, means each of them separately and every two or more of them jointly.

**Including, or for example**

When introducing an example, does not limit the meaning of the words in the example or exclude other examples of a similar kind.

**Insolvent and Insolvency**

A person is Insolvent if:

- in the case of a natural person, the person is an Insolvent under administration within the meaning of the Corporations Act 2001 (Cth);
- in the case of a corporation, the corporation is an externally administered corporation within the meaning of the Corporations Act 2001 (Cth).

**Interest Rate**

A per annum rate of interest, charged under the Contract.

**Lessee**

The person named as Lessee in the Schedule or other Offer Document. If there is more than one, 'Lessee' means any combination of one or more of them and for each combination, means each of them separately and every two or more of them jointly

**Letter of Variation**

Any Letter of Variation varying the Contract.

**Loan Amount**

The Loan Amount as set out in the Schedule or Offer Document.

**Loan Repayment**

Each Loan Repayment set out in the Schedule or Offer Document for that Contract.

**Margin**

The Margin specified in the Schedule.

**Market Shock**

If:

- there is a material change in a relevant market, which has the effect of increasing our cost of financing for the purposes of this agreement; and
- that change is outside the normal range of movements in the relevant market, as reasonably expected and foreseeable over the Term, and beyond our control.

**Material Adverse Effect**

In our reasonable opinion, a material adverse effect on:

- your ability to perform your obligations under the Contract or the Security Interest; or
- the value of, or the amount that may be recovered on the sale of, the Security Property; or
- our rights and remedies in relation to the Security Property.

## **Maximum Amount**

For a Guaranteed Contract:

- all amounts owing or which may become owing by you (including any amount which we determine to be the future or contingent liability) from time to time; and
- compounding interest on any amount we demand of the Guarantor under the Guarantee; and
- our reasonable enforcement Costs.

## **National Credit Code**

The National Credit Code in the National Consumer Credit Protection Act 2009, the regulations made under that Act, and that Code and the regulations as amended from time to time.

## **Net Proceeds**

In relation to a Finance Lease, Operating Lease, Hire Purchase or Equipment Loan, the sale or disposal price of the Goods less any taxes and other Costs of sale (for example, the Cost of tracing and recovering the Goods, transportation, storage, cleaning and repair or other charges).

## **Offer Document**

The Letter of Offer, Acceptance Document, Schedule, or other Offer Document, Terms Schedule or Letter of Variation, prepared by us setting out the particulars, or indicative particulars, of a Facility, or a Master Agreement or variation of which (including any similar replacing an earlier document signed by us) records the particulars of the Contract or of the Contract as varied.

## **Operating Lease**

An Operating Lease on the terms set out in the Contract.

## **Overdraft Index Rate**

The Interest Rate payable on a Progressive Facility until fully drawn and as varied by Us from time to time. You can check the Overdraft Index Rate at [www.commbank.com.au](http://www.commbank.com.au) under "Business Banking Rates and Fees".

## **Owner**

The person named as Owner in the Schedule or Offer Document for a Contract.

## **Parties**

You and us.

## **Permanent Location**

The address at which the Goods are to be kept, as stated in the Schedule or Offer Document.

## **Person**

Includes an individual, a firm, a body corporate, an unincorporated association or an authority.

## **PPS Law**

The Personal Property Securities Act 2009 (Cth) and any regulations made under that Act (both as amended from time to time).

## **Progressive Facility**

In relation to a Finance Lease, Operating Lease, Hire Purchase or Equipment Loan where staggered or instalment payments are made to a supplier.

## **Proscribed Person**

A person who appears to us either to be:

- a Proscribed Person or Entity under the Charter of the United Nations Act 1945 (Cth);
- in breach of the laws of any jurisdiction relating to money-laundering or counter-terrorism;
- a person with whom dealings are proscribed by the government or a regulatory authority of any jurisdiction;
- acting on behalf of, or for the benefit of, a person above.

## **Regulatory Legislation**

Credit (Rural Finance) Act 1996 (QLD) or sections 13,15 or 25 of the Hire Purchase Act 1959 (WA).

## **Related Party**

Any Entity that, at any time during a Reporting Period:

- has Control or significant influence over you;
- is subject to Control or significant influence by you;
- is subject to the Control of the Entity which has Control over you;
- is subject to the Control of the same Entity which has a significant influence on you;
- is subject to significant influence by the same Entity that has Control over you.

For the purposes of this definition

- a trust may be a Related Party, and
- 'significant influence' means the capacity of an Entity to affect substantially the financial or operating policies or both of another Entity.

## **Rental Payment**

Each Rental Payment set out in the Schedule or Offer Document for that Contract.

## **Renter**

The Renter described in the Schedule or Offer Document and, where the Renter is a corporation, includes its permitted assigns, and where the Renter is an individual includes its executors, administrators and permitted assigns.

## **Reporting Period**

Any period of time that we notify you in writing to be your Reporting Period.

## **Re-pricing Date**

The date shown in the Schedule when Rental Payments or Loan Repayments are re-priced.

## **Re-pricing Period**

For a Variable Rate Facility, how often we will review the Variable Rate based on the Re-pricing Dates.

## **Residual Value**

The Residual Value set out in the Schedule or other Offer Document for those Goods.

## **Schedule**

The Schedule (including any Schedule replacing an earlier Schedule signed by us), which records the particulars of the Contract or of the Contract as varied, including:

- a Finance Lease Schedule, Hire Purchase Schedule or Operating Lease Schedule containing particulars of the Contract you offer to enter into with us;
- an Equipment Loan Schedule containing particulars of the Equipment Loan you offer to enter into with us.

## **Security**

A Security Interest for your obligations under a Contract, or for a Guarantor's obligations under a Guarantee.

### **Security Interest**

A mortgage, charge or other encumbrance in relation to real property or an interest in relation to Goods or other personal property that, in substance, secures payment or performance of an obligation under a Contract or a Guarantee and includes a charge, Goods Mortgage, Equipment Loan, Finance Lease, Hire Purchase, Operating Lease, consignment, pledge, transfer of title or assignment.

### **Security Property**

The property mortgaged to us by the Security, or which is otherwise subject to a Security Interest, for the purpose of securing the repayment of all moneys owing or to become payable to us under the Contract.

### **Serial Numbered Good**

Any of the following:

- an aircraft engine or aircraft frame;
- a helicopter or small aircraft;
- a design, patent, plant breeder's right or trade mark which is registered or registrable under any legislation;
- a motor vehicle;
- a watercraft;
- any other property in respect of which, in accordance with the PPS Law, a Security Interest can be registered by serial number.

## **Small Business**

Where the Code of Banking Practice applies to the terms and conditions of the Contract (being contracts entered into before 1 July 2019) - Small Business means a business having:

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

Where the Banking Code of Practice applies to the terms and conditions of the Contract (being contracts entered into from 1 July 2019) - a business is a Small Business if at the time it obtains the Contract all of the following apply:

- a. it had an annual turnover of less than \$10 million in the previous financial year; and
- b. it has fewer than 100 full-time equivalent employees; and

- c. it has less than \$3 million debt to all credit providers including:
- (i) any undrawn amounts under existing loans;
  - (ii) any loan being applied for; and
  - (iii) the debt of all of its related entities that are businesses.

However, a business is not a “small business” if it is a company listed on the Australian Stock Exchange, a government entity, or an Australian Financial Services Licensee that is authorised under its licence to operate registered managed investment schemes as a responsible entity or to provide custodial and depository services.

Note: If the business is part of a group of bodies corporate (see s. 50 Corporations Act), paragraphs (a) and (b) above are assessed on the basis of the group.

## **Term**

The Term of the Facility, Loan, Equipment Loan, Finance Lease, Hire Purchase or Operating Lease set out in the Schedule or other Offer Document for that Contract during which payments are to be made.

## **Termination Amount**

The present values on that day of all Rental Payments which are still to fall due under the Contract. The ‘present value’ of a rental payment on a day is calculated by discounting that amount at the Discount Rate.

We will use the same calculation method, adjusted on a proportionate basis, if the relevant Contract is to be terminated in respect of some and not all of the Goods.

We may also adjust the Termination Amount to allow us to recover finance Broker charges or referral fees.

## **Terms and Conditions**

The Terms and Conditions set out in this document.

## **Terms Schedule**

The latest Schedule (if any) prepared by us setting out the particulars or indicative particulars of a Facility and includes any Terms Schedule replacing an earlier Terms Schedule.

## **Variable Rate**

The rate expressed as a percentage per annum that is the aggregate of the BBSY (Bid) Rate and the Margin.

## **Variable Rate Facility**

An Equipment Loan, Finance Lease, Hire Purchase or Operating Lease where interest is charged at a Variable Rate.

## **We or Us**

Commonwealth Bank of Australia (ABN 48 123 123 124 Australian Credit Licence number 234945) and its respective successors and assigns.

## **You and your**

Any person who agrees to be bound by any part of the Terms and Conditions. If there are more than one, You means each of them separately and every two or more of them jointly. You includes your executors, administrators and assigns and any related parties.



