

BOQ EQUIPMENT FINANCE GENERAL TERMS

OCTOBER 2023



FINANCE



THESE GENERAL TERMS APPLY TO EQUIPMENT FINANCE AGREEMENTS YOU ENTER INTO WITH US.

PART A OF THE GENERAL TERMS APPLIES TO ALL EQUIPMENT FINANCE AGREEMENTS INCLUDING YOUR EQUIPMENT FINANCE AGREEMENT.

PARTS B TO F WILL ALSO APPLY DEPENDING ON YOUR TYPE OF EQUIPMENT FINANCE AGREEMENT.

PART B – SPECIFIC SECURITY AGREEMENT

PART C – LEASE AGREEMENT

PART D – COMMERCIAL HIRE PURCHASE AGREEMENT

PART E – RENTAL AGREEMENT

PART F – ESCROW AGREEMENT

ALL PRODUCTS ARE OFFERED SOLELY BY BOQ EQUIPMENT FINANCE LIMITED ABN 78 008 492 582, A WHOLLY OWNED SUBSIDIARY OF BANK OF QUEENSLAND LIMITED ABN 32 009 656 740. BANK OF QUEENSLAND LIMITED DOES NOT GUARANTEE OR OTHERWISE SUPPORT THE OBLIGATIONS OR PERFORMANCE OF BOQ EQUIPMENT FINANCE LIMITED OR THE PRODUCTS IT OFFERS.

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Part A - All Facilities

This Part A applies to all Equipment Finance Agreements and should be read together with the Particulars detailed in your Schedule, and depending on the type of Equipment Finance Agreement, Part(s) B, C, D, E or F.

1. Offers by you

- 1.1 You may from time to time make Offers to enter into one or more Equipment Finance Agreements with us in the manner set out in these General Terms.
- 1.2 An Offer may be an Offer to enter into:
 - (a) a Lease Agreement;
 - (b) a Commercial Hire Purchase Agreement;
 - (c) a Rental Agreement;
 - (d) a Specific Security Agreement; or
 - (e) an Escrow Agreement.
- 1.3 Every Offer to enter into a Lease Agreement must be made by you submitting to us:
 - (a) a signed Lease Schedule for the Goods;
 - (b) if required by us, payment of the First Instalment of Rent; and
 - (c) a Supplier's Invoice.
- 1.4 Every Offer to enter into a Commercial Hire Purchase Agreement must be made by you submitting to us:
 - (a) a signed Commercial Hire Purchase Schedule for the Goods;
 - (b) if required by us, payment of the First Instalment of Rent; and
 - (c) a Supplier's Invoice.
- 1.5 Every Offer to enter into a Rental Agreement must be made by you submitting to us:
 - (a) a signed Rental Schedule for the Goods;
 - (b) if required by us, payment of the First Instalment of Rent; and
 - (c) a Supplier's Invoice.
- 1.6 Every Offer to enter into a Specific Security Agreement must be made by you submitting to us:
 - (a) a signed Specific Security Agreement Schedule for the Goods;
 - (b) if required by us, the First Loan Instalment;
 - (c) all Registration Forms that we may require; and
 - (d) a Supplier's Invoice.
- 1.7 Every Offer to enter into an Escrow Agreement must be made by you submitting to us:
 - (a) a signed Escrow Schedule for the Goods;
 - (b) if required by us, the First Instalment of Rent;
 - (c) if required by us, a Payment Notice; and
 - (d) a Supplier's Invoice.
- 1.8 You must also provide to us any other information we reasonably require in relation to the Offer or a Supplier's Invoice.
- 1.9 In consideration of us entering into an Equipment Finance Agreement, you irrevocably appoint any Authorised Officer of ours as your Attorney to do anything including signing (electronically or otherwise) any document or Registration Form:
 - (a) which you are obliged to do or sign (electronically or otherwise) under any Equipment Finance Agreement;
 - (b) which is necessary or would help give effect to any right or power given to us under any Equipment Finance Agreement; or
 - (c) which is necessary or would help us register any Security Interest, and you must ratify anything done by such Attorney in accordance with this clause.
- 1.10 The submission of a Lease Schedule will constitute an Offer by you to enter into a Lease Agreement to lease the Goods from us on the terms set out in the Lease Schedule and these General Terms. The Lease Agreement constitutes a Security Agreement creating, in our favour, a Security Interest in the Goods described in the Lease Schedule.
- 1.11 The submission of a Commercial Hire Purchase Schedule will constitute an Offer by you to enter into a Commercial Hire Purchase Agreement to hire the Goods from us on the terms set out in the Commercial Hire Purchase Schedule and these General Terms. The Commercial Hire Purchase Agreement constitutes a Security Agreement creating a Security Interest in the Goods described in the Commercial Hire Purchase Schedule.
- 1.12 The submission of a Rental Schedule will constitute an Offer by you to enter into a Rental Agreement to hire the Goods from us on the terms set out in the Rental Schedule and these General Terms. The Rental Agreement constitutes a Security Agreement creating, in our favour, a Security Interest in the Goods described in the Rental Schedule.
- 1.13 The submission of a Specific Security Agreement Schedule will constitute an Offer by you to enter into a Specific Security Agreement with us on the terms set out in that Specific Security Agreement Schedule and these General Terms. The Specific Security Agreement constitutes a Security Agreement creating, in our favour, a Security Interest in the Goods described in the Specific Security Agreement Schedule, which you charge to us as security for your obligations under the Specific Security Agreement.
- 1.14 The submission of an Escrow Schedule will constitute an Offer by you to enter into an Escrow Agreement to fund the acquisition of the Goods on the terms set out in the Escrow Schedule and these General Terms. The Escrow Agreement constitutes a Security Agreement creating, in our favour, a Security Interest in the Goods described in the Escrow Schedule.
- 1.15 If you deliver to us a document purporting to be a Schedule, we may treat this as constituting a valid Offer even though:
 - (a) there may be errors or omissions in the document; or
 - (b) there has not been strict compliance with the procedures set out in these General Terms.

- 1.16 A Schedule can be signed by you or your Authorised Signatories.
- 1.17 Any Offer will constitute the Particulars for the relevant Equipment Finance Agreement.
- 1.18 Any Offer made by you may be revoked at any time prior to acceptance by us, by you providing Notice to us.
- 1.19 Where you have a Master Agreement, you can submit Offers and signed Schedules to us from time to time to enter into Equipment Finance Agreements with us, in the manner set out in the Master Agreement.
- 1.20 These General Terms, as amended from time to time, apply to all Equipment Finance Agreements you enter into with us and Security Interests arising from the Equipment Finance Agreements.

2. Consideration and acceptance of Offers

- 2.1 We will consider each Offer and we may in our absolute discretion accept or reject any Offer, subject to such conditions as we determine to be reasonably necessary.
- 2.2 Any Offer may be accepted by us:
 - (a) if the Offer is a Lease Offer, Commercial Hire Purchase Offer, Rental Offer or Escrow Offer, by paying for the Goods. We need not notify you or any Guarantor that we have accepted the Offer;
 - (b) if the Offer is a Specific Security Agreement Offer, by advancing all or any part of the financial accommodation, including by making any payment for the Goods; or
 - (c) in any case, by us giving Notice to you.
- 2.3 On the date we accept an Offer, a Lease Agreement, Commercial Hire Purchase Agreement, Rental Agreement, Specific Security Agreement or Escrow Agreement (as the case may be) is entered into between you and us in relation to the Goods.
- 2.4 The commencement date for any Equipment Finance Agreement will, unless we otherwise agree, be the date upon which we accept an Offer.

3. Acknowledgements

- 3.1 You and any Guarantor acknowledge that we enter into each Equipment Finance Agreement on the basis that the details in each Offer or Schedule submitted by you to us are true and correct in all respects. As a result of our reliance, you must ensure each Offer or Schedule you submit to us is accurate to the best of your knowledge.

- 3.2 You must at all times duly and punctually comply in all respects with your obligations under each Equipment Finance Agreement.
- 3.3 You authorise us to:
 - (a) complete or amend the description of the Goods in any Equipment Finance Agreement where the description is incomplete or inaccurate;
 - (b) insert the relevant and correct details, information and dates if any Equipment Finance Agreement is incomplete;
 - (c) insert the commencement date of any Equipment Finance Agreement; and
 - (d) take all steps as are considered advisable to register, amend or cancel the registration of, protect, perfect or record our Security Interest in, or better secure our position in and priority to, the Goods that are the subject of an Equipment Finance Agreement.

4. Execution of Documents

- 4.1 You authorise your Authorised Signatories to make Offers on your behalf.
- 4.2 You acknowledge that any Equipment Finance Agreement entered into pursuant to any Offer made by your Authorised Signatories (including if entered into electronically) is valid and binding on you.
- 4.3 You may by Notice in writing to us revoke the appointment of any Authorised Signatory. Notice of revocation is not effective until actual receipt is acknowledged by us.
- 4.4 You may by Notice to us nominate other Authorised Signatories from time to time.
- 4.5 Each Equipment Finance Agreement may be signed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Equipment Finance Agreement.
- 4.6 Provision of a copy of an Equipment Finance Agreement or any other document contemplated by an Equipment Finance Agreement bearing an original or Electronic Signature by electronic mail in portable document format (.pdf) form or by any other electronic means will have the same effect as physical exchange of the paper Document bearing an original or Electronic Signature. Any Equipment Finance Agreement so provided will be binding on each party as if it were physically executed.
- 4.7 An Equipment Finance Agreement may be signed by any Person using an Electronic Signature, and each party agrees to enter into this Document in electronic form and consents to each party signing the Document using an Electronic Signature.

5. Variation of Terms and Conditions

- 5.1 We may from time to time vary or amend these General Terms and will notify you by Notice if we do.
- 5.2 If the variation or amendment has a detrimental effect on your rights and obligations, then you are under no obligation to submit further Offers to us.
- 5.3 Unless you and we otherwise agree:
 - (a) any variation is effective from the date specified in the Notice under clause 5.1 ('notification date'); and

(b) any variation of the General Terms does not affect any Equipment Finance Agreement entered into, our Security Interest in, or the priority of our Security Interest in the Goods created, prior to the notification date.

5.4 On and from the notification date, any Offer made by you will be on the General Terms as so varied or changed. Any Offer made by you prior to the notification date which we have not accepted at the acceptance date, is also (unless otherwise specified in writing) varied so that it is on the terms of the General Terms so varied or changed. However, you are permitted to withdraw such Offer after the notification date, prior to our acceptance.

6. Termination

6.1 You may terminate one or more Equipment Finance Agreements according to their terms.

6.2 Unless we specify otherwise, termination of one Equipment Finance Agreement by you does not terminate any other Equipment Finance Agreement.

6.3 A default by you or a Guarantor in respect of payment of money under an Equipment Finance Agreement will be a Default under all Equipment Finance Agreements we are party to with you at the time of the default. Where we determine that you are unable to meet your payment obligations under one or more Equipment Finance Agreements, acting reasonably, we may terminate any or all Equipment Finance Agreements according to their terms.

7. What you must pay

7.1 Payment in full

(a) You must pay us the Total Amount Owing in full without setting off amounts you believe we owe you and without counter claiming amounts from us. This does not prevent you from making a separate claim against us for amounts you believe we owe you.

(b) We may set off against the Total Amount Owing, any money we owe you.

7.2 What happens to money we receive?

Money, property or proceeds received by or on our behalf from enforcement is to be applied in the following manner and order:

(a) first, in payment of claims of all Persons (if any) holding an interest (other than a Security Interest) ranking in priority to any Security Interest created by these General Terms;

(b) second, in payment of all Costs, of and incidental to the exercise of our enforcement powers or the Receiver's powers;

(c) third, in payment of claims of all Persons (if any) holding a Security Interest ranking in priority to the Security Interest created by these General Terms;

(d) fourth, in payment to us of the Total Amount Owing in such manner and order as we determine;

(e) fifth, in payment of claims of all Persons (if any) holding an interest or a Security Interest having a lower priority to the Security Interest created by these General Terms; and

(f) last, in payment of any surplus to you or any other person entitled to it.

7.3 If, at the time we receive the money, any part of the Total Amount Owing is not then due for payment, we may retain

an amount equal to that part. We may hold it in an interest bearing account. We may use it (and any net interest after tax, including income tax) to pay the Total Amount Owing when it becomes due for payment.

7.4 If you are in Default, or if you do not specify otherwise, we may use any money received under these General Terms towards paying any part of the Total Amount Owing we choose, such as by:

(a) paying a later instalment before an earlier instalment. (This applies even if that later instalment falls due after we give a Notice of demand); or

(b) applying the payment to one Equipment Finance Agreement before another.

7.5 We must pay any money remaining after the Total Amount Owing is paid either to you or to another Person entitled to it (such as another Person with a Security Interest over the Secured Property). In particular, we may:

(a) pay it to a Person whom we consider on reasonable grounds has a subsequent registered or unregistered Security Interest; or

(b) pay it into court by way of interpleader without incurring liability to you.

7.6 We do not pay you interest on any money remaining after the Total Amount Owing is paid. We may discharge our liability to account for the money by crediting it to an account in our books in the name of the Person to whom it is Payable.

7.7 We will credit payments as soon as practicable after we receive them (including, where we have appointed a Receiver, as soon as practicable after we receive the payment from the Receiver) and we do not have to refund any payment to you.

7.8 You must pay us these amounts when we ask. We can also debit any of these amounts to any account you have with us, even if we do not expressly ask you to pay us.

8. Costs

8.1 You must pay to us, within 10 Business Days after we ask, all Costs and expenses reasonably incurred by us in exercising or attempting to exercise our rights under an Equipment Finance Agreement, including Costs and expenses incurred in:

(a) doing anything pursuant to clause 50 (*PPS Law*);

(b) the exercise or attempted exercise or the preservation of any of our rights under an Equipment Finance Agreement or in relation to the Goods or Proceeds of the Goods;

(c) the release or discharge of any Security Interest under an Equipment Finance Agreement;

(d) repossessing the Goods and entering and removing the Goods from the land or Premises on or in which the Goods are situated;

(e) making good any injury caused to any land or Premises or to the property of any Person by any entry or removal;

(f) storing, insuring, registering and repairing the Goods and attempting to sell the Goods; and

(g) taking any reasonable action to protect our title to the Goods,

excluding any Cost to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the

mistake, error, fraud, negligence or wilful misconduct of our employees, officers or agents or any Receivers we appoint in respect of any Secured Property.

8.2 You indemnify us against and must pay us on demand for any liability, loss or reasonable Costs we suffer or incur:

- (a) in connection with an Equipment Finance Agreement, including:
 - (i) any money Payable under an Equipment Finance Agreement;
 - (ii) any receipt or other transaction arising out of an Equipment Finance Agreement; and
 - (iii) any other supply made by us under or in connection with any Equipment Finance Agreement;
- (b) due to any loss (including lawful confiscation), damage to or destruction of the Goods;
- (c) due to any liability or additional liability we incur under the Income Tax Assessment Act 1936 (Cth) or under any similar provision of any law by reason of the use of the Goods for any purpose other than that stated by you to us, and against any loss, liability, cost or expense incurred by us as a result of:
 - (i) any change in the rate of depreciation applying to the Goods;
- (d) if you Default under or repudiate an Equipment Finance Agreement (in which case you will also be liable for any loss arising because we require repayment of the Total Amount Owing earlier than its due date);
- (e) if you do not pay us the Total Amount Owing;
- (f) in connection with any Person exercising, or not exercising, rights under any Equipment Finance Agreement;
- (g) in connection with the Secured Property (including its purchase or sale and any related transactions); and/or
- (h) under any indemnity we give a Controller or administrator appointed:
 - (i) in respect of you; or
 - (ii) over any of the Secured Property,

excluding any loss or damage to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers or agents or any Receivers we appoint in respect of any Secured Property.

8.3 You must pay to us whenever we ask you to do so, any GST, consumption tax or other tax, charge or liability imposed or Payable on or in connection with:

- (a) the purchase or sale of the Goods;
- (b) any payment, receipt or other transaction arising out of our purchase or sale of the Goods;
- (c) any rental or other money paid or Payable under an Equipment Finance Agreement; or
- (d) any supply made by us under or in connection with an Equipment Finance Agreement.

8.4 You must pay to us, on demand, all reasonable Costs of a kind referred to in clauses 8.2(a) to 8.3(d) suffered or reasonably incurred by:

- (a) any Receiver or Attorney appointed under an Equipment Finance Agreement;

(b) any of our employees, officers, agents or contractors; or

(c) any other Person such as a lessee, purchaser or occupier of the Secured Property to whom we may have a liability in respect of the Secured Property.

You have to pay these amounts within 10 Business Days after we ask.

8.5 If a judgment, order or proof of debt in connection with the Total Amount Owing is expressed in a currency other than that in which the Total Amount Owing is due, then you indemnify us against, and you must therefore pay us on demand for:

(a) any difference arising from converting the other currency, if the exchange rate we use for converting currency when we receive a payment in the other currency is less favourable to us than the exchange rate used for the purpose of the judgment, order or acceptance of proof of debt; and

(b) the Costs of such conversion.

9. GST

9.1 You agree to compensate us on demand if we determine that, as a direct or indirect result of the imposition of GST, our Costs in connection with any Equipment Finance Agreement are increased, or any amount we receive or recover in connection with this Document is reduced.

9.2 If we:

(a) reasonably decide that we are liable to pay GST on a supply made in connection with an Equipment Finance Agreement; and

(b) certify that we have not priced the supply to include GST, then you agree to pay us an additional amount equal to the consideration Payable for the supply multiplied by the prevailing GST rate.

9.3 Without limiting any other provision of an Equipment Finance Agreement, if a GST like tax or similar value added tax is imposed on any supply made by us under or in connection with an Equipment Finance Agreement, the amount you must pay for that supply is increased by the amount of that tax.

9.4 Where we incur an amount of additional expense, cost or damage or recover a lesser amount by reason of the impact of GST in connection with or arising out of an Equipment Finance Agreement or any Security for any Amount Owing under an Equipment Finance Agreement, any such amount shall be for your account and may be recovered by us from you.

10. Rent and Other Payments

In relation to a Lease Agreement, Commercial Hire Purchase Agreement, Rental Agreement and Escrow Agreement, you must:

(a) pay the rent on the due dates and acknowledge that the rent includes reimbursement to us for any commission and other charges we pay (whether on your behalf or our behalf) in connection with an Equipment Finance Agreement; and

(b) make all payments to us at our address specified in the Equipment Finance Agreement or any address otherwise notified to you in writing. If any payments are made to another Person, you acknowledge that the recipient receives those payments as your agent;

- (c) pay interest on any overdue amount Payable under an Equipment Finance Agreement that is more than 7 days overdue, computed on daily rents, commencing on the day on which the amount first fell due for payment, compounded monthly and calculated at a rate per centum per annum equal to the Implicit Rate for that Equipment Finance Agreement plus 2% per annum;
- (d) pay to us, on demand, any money that we pay to make good any failure by you under an Equipment Finance Agreement or any other obligation incurred by you in respect of the Goods, including releasing any lien claimed (whether justifiably or not) over the Goods; and
- (e) pay all rent and mortgage payments on the Premises in which the Goods are housed.

11. Security

- 11.1 You grant to us a Security Interest in the Secured Property, as Security for the due and punctual payment of the Total Amount Owing and the performance of your obligations under each Equipment Finance Agreement.
- 11.2 Where you enter into a Specific Security Agreement, you charge all your rights, title and interest in the Goods in our favour by way of Security Interest as security for your obligations under the Specific Security Agreement.
- 11.3 You grant the Security Interest to us in exchange for us providing the financial accommodation to you under each Equipment Finance Agreement.
- 11.4 You agree that the Security Interest in respect of the Secured Property takes effect when you sign the Equipment Finance Agreement. If you do not already own the Secured Property at the date of an Equipment Finance Agreement, then the Security Interest in respect of the Secured Property takes effect as soon as you become the owner, or have a right or interest in, that Secured Property.
- 11.5 You may require us to release the Secured Property from this Security Interest when there is no Total Amount Owing. However, even if the Total Amount Owing is repaid, the Secured Property remains subject to a Security Interest in favour of us if we have reasonable grounds for believing that the Equipment Finance Agreement secures or will secure an obligation.
- 11.6 If we release any Secured Property from a Security Interest on the Register, we will lodge a Financing Change Statement in respect of the released property.

12. How this Equipment Finance Agreement affects you and the Secured Property

12.1 Looking after the Secured Property

You must:

- (a) keep the Secured Property in good working order and condition for Secured Property of their description and correct any defect, fair wear and tear excepted;
- (b) use and service the Secured Property, and ensure that the Secured Property is used and serviced, in the manner in which a cautious, prudent owner would do so as to prevent damage to or loss of or destruction to the Secured Property; and, in this regard, ensure that the Secured Property is used and serviced strictly in accordance with the

manufacturer's instructions and recommendations for proper use and servicing;

- (c) make any additions or substitutions to or for the Secured Property, in order to keep the Secured Property in good working order and condition;
 - (d) keep the Secured Property housed at the Premises when it is not on hire or in use;
 - (e) ensure that any accessories or replacements that are at any time supplied with, attached to or installed on or to the Secured Property become a part of the Secured Property;
 - (f) permit us or our nominees, and ensure that any Person who has possession of the Secured Property permits us or our nominees, to inspect the Secured Property at any time, when providing reasonable Notice to you;
 - (g) protect the Secured Property, and ensure that the Secured Property is protected from theft, loss or damage;
 - (h) not do, nor allow any Person to do, anything that might reduce the value of the Secured Property or affect our rights as Secured Party under an Equipment Finance Agreement;
 - (i) tell us if the Secured Property is stolen, lost, destroyed, defective or seriously damaged;
 - (j) give us a copy of any order or Notice from any Person about the Secured Property as soon as you become aware of it;
 - (k) comply with all laws and requirements of authorities and your other obligations in connection with the Secured Property;
 - (l) comply with and observe all requirements of any shipping authority at any time imposing any duty, obligation, charge, or fee on or in relation to the Secured Property;
 - (m) whenever requested by us, take or defend such legal proceedings as we may consider advisable for the protection or recovery of the Secured Property;
 - (n) pay on time all amounts for which you are liable as owner of the Secured Property (including rates, rents, Taxes, registration fees and Licence fees) or relating to the Premises.
- 12.2 Dealing with the Secured Property
- Without our consent which shall not be unreasonably withheld, you may not, and may not agree to do any of the following:

- (a) create or allow to exist another Encumbrance in connection with the Secured Property, its proceeds or the Specified Account other than any Permitted Encumbrances;
- (b) create any trust, power or lien in connection with the Secured Property or allow one to arise;
- (c) except in the ordinary course of your business of hiring out the Secured Property which is not in breach your obligations under an Equipment Finance Agreement, give any Person other than us control or possession of any Secured Property;
- (d) alter or make any addition to the Secured Property including altering any identifying number, sign or mark on them without our written consent;
- (e) conceal the Secured Property from us;
- (f) sell, transfer or dispose of or attempt to sell, transfer or dispose of any of the Secured Property;
- (g) lease, license or hire out the Secured Property other than in the ordinary course of your business of hiring out the Secured Property which is not in breach of your obligations under an Equipment Finance Agreement;
- (h) change the nature of the Secured Property;
- (i) waive any of your rights or release any Person from its obligations in connection with the Secured Property; or
- (j) move or permit to be moved the Secured Property from the jurisdiction in which it is situated as at the date of the Equipment Finance Agreement.

12.3 Your business

You must conduct your business in a proper and efficient manner and comply with each of the below requirements, where failure to do so would adversely affect your ability to meet your obligations under an Equipment Finance Agreement:

- (a) prepare and keep accounting and other records in accordance with the accounting principles and practice applicable by law or generally accepted in Australia, consistently applied;
- (b) not, without our consent, cease conducting your business and not significantly change the general character or the business practices of any business you conduct;
- (c) maintain and follow proper and reliable processes and procedures for assessing and approving Persons to whom you may hire out any Secured Property in a manner a prudent operator of a similar business would do;
- (d) obtain, renew on time and comply with the terms of each authorisation necessary to enter into the Equipment Finance Agreement, comply with obligations under it and allow it to be enforced;
- (e) not hire any Secured Property out except on commercial terms for valuable consideration at market rates;
- (f) not, without our consent, which shall not be unreasonably withheld:
 - (i) provide financial accommodation to a related entity; or
 - (ii) permit financial accommodation to remain owing to you by a related entity, or satisfy any financial

accommodation you now or in the future owe to a related entity;

- (g) not deposit money with a Person in circumstances where the money is not repayable unless you perform obligations (including to pay money) to that Person.

12.4 Accounts and other debts

We may at any time require you to open and maintain a Specified Account with us. We may require before or at any time after the opening of the Specified Account that:

- (a) officers nominated by us must be signatories to the Specified Account; and
- (b) no withdrawals can be made from the Specified Account without the signature of one of those officers.

12.5 You must immediately and until notified otherwise by us, deposit in the Specified Account:

- (a) any proceeds you receive under any insurance policy in relation to the Secured Property;
- (b) any proceeds of any account or book debt or other debt forming part of the Secured Property; and
- (c) all Sales Proceeds.

12.6 Clause 12.5(b) does not apply to proceeds received from any workers' compensation or public liability policy or reinstatement policy to the extent that the proceeds are paid to a Person:

- (a) entitled to be compensated under the workers' compensation or public liability policy; or
- (b) under a contract for the reinstatement of the Secured Property.

12.7 So long as no Default subsists, you may withdraw from the Specified Account an amount equal to all proceeds paid into that Specified Account, and deal with such withdrawn amounts as you think fit if, and only if:

- (a) the proceeds paid in were not Sales Proceeds; and
- (b) no Equipment Finance Agreement provides otherwise.

12.8 If a Default subsists, you must not withdraw any amount from the Specified Account without our prior consent.

13. Licences

13.1 If a Licence is required for any activity carried out in connection with the Secured Property, then you must:

- (a) when carrying out that activity, do so in a proper and orderly manner;
- (b) comply with all laws and requirements of authorities in connection with the Licence;
- (c) obtain and renew on time the Licence and each authorisation necessary to carry on the activity for which the Licence is necessary and oppose any application to restrict or cancel the Licence;
- (d) not, without our written consent:
 - (i) remove or apply to remove the Licence from or in connection with the Secured Property;
 - (ii) surrender or attempt to surrender the Licence;

- (iii) deal in any way with any interest in the Licence;
 - (iv) amend the Licence;
 - (v) do anything which could cause the Licence to be forfeited or cancelled; or
 - (vi) allow a Security Interest to arise over the Licence; and
- (e) give us a copy of each Notice, order, summons or conviction in connection with the Licence.
- 13.2 If a Default is subsisting, if we ask, you must do your best to ensure that the Licence is transferred to us or our nominee.
- 13.3 You acknowledge that, despite the Security Interest created under this Equipment Finance Agreement:
- (a) you remain liable to perform your obligations under the Licence; and
 - (b) we have no obligations under the Licence and no liability under the Licence if you are in Default under it.

14. General Undertakings

- 14.1 What you undertake
- (a) By entering into an Equipment Finance Agreement, you undertake certain obligations. You also give us rights concerning you and the Secured Property. For example, if you do not comply with your obligations, we may take possession of or seize the Secured Property, sell or otherwise deal with it, and sue you for any remaining Total Amount Owed.
 - (b) You are liable for all of the obligations under an Equipment Finance Agreement both separately on your own and jointly with any one or more other Persons named in the applicable Schedule.
 - (c) You must ensure that you are not in Default under an Equipment Finance Agreement. You must also carry out all your obligations to us on time.

Your other obligations under any Equipment Finance Agreement continue until the Total Amount Owed is paid to us, even if we release our Security Interest in the Secured Property.

- 14.2 You declare that:
- (a) for a Specific Security Agreement, you have or will have, at the time the Equipment Finance Agreement is intended to take effect in respect of the Secured Property, good, legal and beneficial title to the Secured Property free of any Encumbrance;
 - (b) for a Lease Agreement, Rental Agreement, Commercial Hire Purchase Agreement or Escrow Agreement, we have or will, at the time the Equipment Finance Agreement is intended to take effect in respect of the Secured Property, have good, legal and beneficial title to the Secured Property free of any Encumbrance;
 - (c) the Secured Property constitutes commercial property when used by you;
 - (d) you have told us all relevant information about you, the Goods, your use of the Goods and each Equipment Finance Agreement;
 - (e) you have power to carry on your business;
 - (f) you have obtained all authorisations necessary to enter into an Equipment Finance Agreement, to comply with

- your obligations and exercise your rights under an Equipment Finance Agreement, and allow an Equipment Finance Agreement to be enforced;
- (g) all the information (including details of all of your motor vehicles, aircraft, watercraft and other Goods which are described by serial number), you have given us is correct and not misleading;
- (h) you have not withheld any information that might have caused us not to enter into an Equipment Finance Agreement;
- (i) no consents are required to allow you to own or use or continue to own or use the Secured Property or to enter into this Equipment Finance Agreement;
- (j) you are not in Default;
- (k) for a Lease Agreement, Commercial Hire Purchase Agreement or Rental Agreement, the Secured Property is or will form part of the inventory of your leasing or rental business, except where the Secured Property is used by you for your business;
- (l) when not on hire or in use, the Secured Property will be in your possession and kept or housed at the Premises;
- (m) when on hire, the Secured Property will be kept or housed at your customer's location in Australia approved by you; and
- (n) you will promptly notify us in writing if the Secured Property is moved from the Premises and becomes located at another location, outside Australia or is, or is to be, moved from the jurisdiction in which it was located when the Security Interest created by the Equipment Finance Agreement attached to it.

14.3 You must tell us whenever anything happens which would mean that you could not truthfully repeat all the declarations in clause 14.2.

14.4 If you are an individual, you must promptly tell us if you change your name.

15. Your Undertakings – Goods

- 15.1 You must:
- (a) At your expense:
 - (i) keep the Goods in good repair and regularly serviced as required by the manufacturer;
 - (ii) produce the Goods for inspection whenever we reasonably ask you to do so, or where the Goods are subject to a Third-Party Hire Agreement, ensure that you maintain a right under the Third-Party Hire Agreement to inspect the Goods whenever you ask to do so, and, if reasonably requested by us, carry out an inspection of the Goods in the presence of our representative;
 - (iii) comply with all laws relating to the registration or licensing of the Goods or relating in any other manner to the Goods or its use;
 - (iv) protect our interest in the Goods and do everything (including signing Documents) necessary to register our interest in the Goods under any applicable law;
 - (v) put plates on the Goods identifying it as ours, if we ask you to do so;
 - (b) ensure the Goods are used predominantly for business purposes and only by properly qualified Persons;
 - (c) keep personal control of the Goods or where the Goods are subject to a Third-Party Hire Agreement,

- ensure that the Goods are kept in the personal control of the third-party hirer;
- (d) not attempt or purport to sell or dispose of the Goods or any interest in the Goods;
 - (e) ensure that no Security Interest (other than a Permitted Interest) is attached to any parts or spares installed in or fitted to the Goods;
 - (f) not create or allow to exist any Security Interest (other than a Permitted Interest) in the Goods or the Proceeds of the Goods;
 - (g) not allow the Goods to become co-mingled with, or accession to, other Goods or property;
 - (h) give us written Notice immediately if you become aware of any Person taking steps to register or perfect, or registering or perfecting, a Security Interest in relation to the Goods (other than a Permitted Interest);
 - (i) not change the place where the Goods are used without our prior written consent that will not be unreasonably withheld or where the Goods are subject to a Third-Party Hire Agreement, ensure that the third-party hirer does not change the place where the Goods are used without your prior written consent, unless the Goods are a motor vehicle;
 - (j) not alter or make additions to the Goods without our prior written consent, and not alter any identifying number or mark on the Goods;
 - (k) not pledge our credit or involve us in liability and you must not create any lien over the Goods for repairs or otherwise; and
 - (l) not attach the Goods to any land or Premises (unless it needs to be for its use), without our prior written consent that will not be unreasonably withheld. Our consent may be given or refused subject to conditions.

16. Your Undertakings – Motor Vehicle

- 16.1 If the Goods are a motor vehicle, you must at your expense:
- (a) keep it registered under all relevant laws in your name as owner and our name (where permitted and as applicable) as proprietor;
 - (b) keep it insured with an insurer approved by us under an enforceable comprehensive motor vehicle insurance policy and also comply with our other insurance requirements;
 - (c) keep it in very good condition and have it serviced regularly in accordance with the manufacturer's recommendations and keep all service log books for delivery to us;
 - (d) replace any unroadworthy or unsafe tyres on it with new tyres of the same or better quality as those first supplied;
 - (e) pay all parking and other fines, infringement notices and penalties;
 - (f) not permit it to be in the control of a Person who is affected by any drug or intoxicating liquor contrary to law or in circumstances that might impair that Person's ability to use it;
 - (g) not permit it to be used in a reckless or negligent manner;

- (h) not tamper with the odometer or any other meter fitted to it; and
- (i) not, without our written consent which will not be unreasonably withheld, paint or display signs or advertising media on it and, if we do consent, remove any such signs or media from it and restore it to our satisfaction prior to expiry or termination.

17. Your Undertakings – Aircraft

- 17.1 If the Goods are an aircraft, you must, at your expense:
- (a) maintain a current airworthiness certificate in respect of it;
 - (b) replace any part of it and spares that do not comply with the more stringent of the standards laid down by the manufacturer and the Authorities;
 - (c) ensure that the Goods and all spares are in good working order and condition;
 - (d) carry out its servicing in accordance with the requirements of the manufacturer and the Authorities, whichever standard is more stringent;
 - (e) operate it strictly in accordance with the requirements of the manufacturer and the Authorities (whichever standard is more stringent), and the other legal requirements and in compliance with the manufacturer's recommendations;
 - (f) keep and, on our request, make available to us, all proper log books, maintenance records and other books, Documents and records which are suggested by the manufacturer or which are required by the Authorities or by law to be kept;
 - (g) supply to us, as soon as we reasonably request, a report on it stating what requirements (if any) have been made by the Authorities in respect of it and any action taken in respect of it and an itemised list of all replacement and spare parts held; and
 - (h) register it and any part of it that requires separate registration and obtain all other licences and permits that may be required for the operation of it and insure and keep it insured against all third party liability arising at common law or by statute.

18. Your Undertakings – Watercraft

- 18.1 If the Goods comprise watercraft you must, at your expense:
- (a) keep the watercraft seaworthy, in a state of complete repair and in compliance with the requirements from time to time of all applicable laws and its insurers;
 - (b) do all things necessary to procure and maintain the registration certificate under the Shipping Registration Act, to procure and maintain any certificate or survey required under the Navigation Act and in compliance with all relevant shipping authorities; and
 - (c) comply with and observe all requirements of any shipping authority at any time imposing any duty, obligation, charge, or fee on or in relation to the Secured Property.

19. Your Undertakings – Leasing of Goods and Third-Party Hire Agreements

- 19.1 You must:
- (a) maintain and follow proper and reliable processes and procedures for assessing and approving Persons to whom you may hire out the Goods in a manner a prudent operator of a similar business would do;
 - (b) at all times comply with the requirements set out in the Particulars; and
 - (c) prepare and keep accounting and other records relating to the Third-Party Hire Agreements in accordance with the accounting principles and practice applying by law or generally accepted in Australia, consistently applied.
- 19.2 Without affecting your obligations under an Equipment Finance Agreement, where the Goods are subject to a Third-Party Hire Agreement, you must ensure that the third-party hirer complies with the obligations under clauses 15, 16, 17 and 18 to the extent the third-party hirer is not under a similar obligation under the Third-Party Hire Agreement).
- 19.3 You acknowledge that your obligations under an Equipment Finance Agreement will not be affected in any way by the rights or obligations of a third-party hirer under any Third-Party Hire Agreement.

20. Loss or Destruction of Goods

- 20.1 You must advise us if the Goods are stolen, lost, destroyed, substantially damaged or impaired.
- 20.2 If there is total or substantial loss or destruction of the Goods or part of it, the Equipment Finance Agreement terminates in respect of those Goods when we receive payment of:
- (a) the Recoverable Amount; and
 - (b) in the case of a Rental Agreement or an Escrow Agreement, the Loss Valuation of the impacted Goods.
- 20.3 The Equipment Finance Agreement continues in respect of any Goods that are not affected.
- 20.4 We will give you full credit for any insurance money or proceeds of salvage received by us (net of all recovery and other Costs), if and when received, but if you have not paid any part of the Recoverable Amount, we may deduct that unpaid amount from the insurance money or proceeds before paying the rest to you. When we are paid the Recoverable Amount, you are no longer liable for the rent instalments then unpaid in respect of the lost Goods.

21. Disposal of Goods by us

- 21.1 Where the Goods come into our possession on expiry of an Equipment Finance Agreement, on expiry of any extension of an Equipment Finance Agreement, or on early termination of an Equipment Finance Agreement (other than under clause 20), we may dispose of the Goods in any manner we consider reasonable. On any disposal of the Goods, we will dispose of it as soon as is reasonably practicable and will, in good faith, endeavour to obtain the market or best price reasonably obtainable for it in its then condition.

- 21.2 Where the Goods are sold under clause 21.1 and:
- (a) you have paid the Recoverable Amount or Residual Value and all other amounts Payable under this Equipment Finance Agreement, then except for Rental Agreements, we will pay to you the proceeds of sale of the Goods (net of all repossession, storage, sale and other Costs) as required under the Equipment Finance Agreement; or
 - (b) you have not paid us all or part of the Recoverable Amount or Residual Value or any other amount Payable under the Equipment Finance Agreement, the proceeds of sale of the Goods (net of all repossession, storage, sale and other Costs) will be applied first to those amounts until they are satisfied in full and you will only be entitled to the remaining excess (if any). If the proceeds of sale of the Goods (net of all repossession, storage, sale and other Costs) are insufficient to pay us what we are owed under the Equipment Finance Agreement, you must still pay to us the amount of the shortfall.
- 21.3 If the Goods have not been sold under clause 21.1 within 3 months of it being received into our possession after the expiry or termination of an Equipment Finance Agreement, we may obtain a valuation of the best wholesale value of the Goods in its then condition by an independent valuer approved by us in good faith as being a competent valuer, in relation to the type of Goods in question. Once the valuation is received, the Goods will be taken conclusively to have been sold under clause 21.1 for net proceeds equal to the amount of the valuation (after deducting all Costs and expenses of the valuation, storage of the Goods and all other money Payable to us under this Equipment Finance Agreement).
- 21.4 Nothing in this clause 21 limits our right to set off any Amount Owing under this clause 21 against any other Amount Owing by you to us.
- 21.5 A reference in this clause 21 to a repossession, return or disposal of the Goods includes a reference to a repossession, return or disposal of the whole, or a substantial part, of the Goods.

22. When you are in Default

- 22.1 You are in Default under an Equipment Finance Agreement if:
- (a) you do not pay the Total Amount Owing on time;
 - (b) you do something you agree not to do under an Equipment Finance Agreement or you don't do something you agree to do under an Equipment Finance Agreement, where such act or omission in our reasonable opinion adversely affects your ability to meet your obligations under an Equipment Finance Agreement;
 - (c) you give, or a Guarantor gives us information (including any incorrect declarations under clause 14.2 or clause 44) which are incorrect or misleading in any material respect;
 - (d) you do not, or a Guarantor does not, carry out in full, an undertaking given in connection with an Equipment Finance Agreement, within the period specified, or within 7 days if no period is specified;
 - (e) you are or become, or a Guarantor is or becomes, Insolvent or steps are taken to make you or the Guarantor Insolvent;
 - (f) (where you or a Guarantor is a corporation) you are or become deregistered, or a Guarantor is or becomes

deregistered, or steps are taken to deregister you or the Guarantor,

- (g) a Controller or a Receiver is appointed to any part of your or a Guarantor's property;
- (h) an Equipment Finance Agreement is, becomes or is claimed to be void or unenforceable, or the Equipment Finance Agreement or the Security Interest created by it does not have or loses the priority it is intended to have;
- (i) anything happens which in our reasonable opinion affects your ability to pay us the Total Amount Owing, or to fulfil your obligations under any Equipment Finance Agreement or Security, or our rights under or the value of any Security Interest or our ability to recover the Total Amount Owing in circumstances which may materially increase our risk;
- (j) we believe on reasonable grounds that urgent action is necessary to protect any Secured Property and we have asked you to take such action and you have failed to do so within a reasonable time specified by us;
- (k) the value of the Secured Property materially decreases other than as a result of fair wear and tear;
- (l) a Person is appointed to investigate or manage your affairs or the affairs of a Guarantor,
- (m) judgment for an amount exceeding \$20,000 is entered against the Secured Property and is not paid or satisfied within 7 days;
- (n) you cease to carry on business or threaten to do so;
- (o) (if an individual) you or a Guarantor is convicted of an indictable offence or sentenced to imprisonment;
- (p) a warranty or representation given or made by you to us proves to be untrue or incorrect in any material respect;
- (q) (where you are a corporation) a Minister directs the Commission under section 14 of the Australian Securities and Investments Commission Act 2001 (Cth) to investigate any matter relating to you or proposes to do so;
- (r) you do not, or a Guarantor does not, meet all your or their monetary obligations (whether present or future) on time or within any applicable grace period or any of these obligations become, or can be rendered, payable early otherwise than at your or the Guarantor's election in circumstance which may materially increase our risk; or
- (s) we reasonably believe someone acted fraudulently in connection with your entry into an Equipment Finance Agreement.

In each such case, before taking any action we will give you Notice and allow you a reasonable time (being not less than 30 days) to remedy the Default, if the Default is able to be remedied.

23. What can happen when you are in Default

- 23.1 If a Default is subsisting any right under an Equipment Finance Agreement that you may have to deal in the Secured Property immediately ceases.
- 23.2 If a Default is subsisting and we can act on that Default, we may do one or more of the following in

addition to anything else the law allows us to do as a Secured Party:

- (a) require that you pay us the Total Amount Owing immediately;
- (b) sue you for the Total Amount Owing;
- (c) enforce our rights in respect of the Secured Property;
- (d) appoint one or more receivers;
- (e) do anything that a Receiver could do under clause 25; and
- (f) exercise any other rights we have under an Equipment Finance Agreement.

24. Default Fees

- 24.1 Upon an Event of Default, Default Fees are payable by you as follows:
 - (a) where an Equipment Finance Agreement specifies the applicable Default Fees payable upon an Event of Default, you must pay to us Default Fees as specified in the Schedule of the Agreement; or
 - (b) unless otherwise set out in a Specific Security Agreement, if you are in Default under a Specific Security Agreement, a default rate of interest will be charged on any unpaid amount at 2% per annum; and
 - (c) where an Equipment Finance Agreement does not otherwise specify a Default Fee, a default rate of interest will be charged on any unpaid amount as 2% per annum.
- 24.2 Default Fees will accrue until the Event of Default is remedied and form part of the Total Amount Owing and are payable on demand from us.

25. Receivers

- 25.1 In addition to our powers under clause 23.2 we may appoint a Receiver to any part of the Secured Property.
- 25.2 In exercising our power to appoint a Receiver we may:
 - (a) appoint any Receiver to all or any part of the Secured Property or its income; and
 - (b) set a Receiver's remuneration at any figure we determine as appropriate, remove a Receiver and appoint a new or additional Receiver.
- 25.3 If we appoint more than one Receiver, they may act independently unless we specify that they must act together.
- 25.4 The Receiver is your agent unless we notify you that the Receiver is to act as our agent. You are solely responsible for anything done, or not done, by a Receiver and for the Receiver's remuneration and Costs.
- 25.5 Unless the terms of appointment restrict a Receiver's powers, the Receiver may do one or more of the following:
 - (a) take or give up possession of the Secured Property as often as it chooses;
 - (b) take any proceedings in your name or otherwise and give valid receipts;
 - (c) sever, remove and sell fixtures and fittings;
 - (d) advance to us an amount sufficient to discharge any debt secured over the Secured Property and pay any Costs associated with the discharge, and

- apply the amount of the advance to discharge the relevant debt and the payment of those Costs;
- (e) any advance made pursuant to paragraph (d) forms part of the Total Amount Owing;
 - (f) do anything else the law allows an owner or a Receiver of the Secured Property to do, including improving, selling, leasing or licensing it:
 - (i) for cash, debentures, shares, other obligations or valuable consideration by public auction, private treaty, public tender or otherwise and at a price Payable in a lump sum or by instalments spread over any period;
 - (ii) together with any other Goods and apportion the Costs of sale between those Goods and to give any options to purchase; and
 - (iii) in your name and on your behalf or otherwise, and to do anything else we consider desirable to complete the sale;
 - (g) enter into, rescind or vary a contract for sale and to resell without being responsible for loss;
 - (h) set aside from the sale proceeds of any sale by us any amount to meet future claims until the possibility of claims being made is ended;
 - (i) in order to transfer any of the Secured Property to any purchaser, fill up blanks in transfers or other Documents or instruments delivered by our to us;
 - (j) make any arrangement or compromise affecting the Secured Property;
 - (k) employ managers, officers, agents, employees, contractors and others to exercise the powers of the Receiver at any remuneration and on any conditions the Receiver determines;
 - (l) carry out and enforce Specific performance of, or otherwise obtain the benefit of, all contracts relating to the Secured Property;
 - (m) make repairs and improvements to or on the Secured Property or to enhance, upgrade or refurbish the Secured Property;
 - (n) take proceedings at law or in equity or in Insolvency in your name or otherwise connected with the Secured Property;
 - (o) operate the Specified Account;
 - (p) vary, replace, rescind, repudiate or terminate any Agreement to which our are a party and that relates to the Secured Property;
 - (q) have access to and use your property and services and the services of your personnel in the exercise of any rights under this Equipment Finance Agreement;
 - (r) exercise your rights and remedies and comply with your obligations in respect of the Secured Property and cause and permit any other Person to comply with their obligations in respect of the Secured Property;
 - (s) receive rents and profits derived from the Secured Property;
 - (t) do everything necessary to comply with your obligations under this Equipment Finance Agreement and to do, or cause to be done, anything else to protect the Secured Property or exercise our powers or which the Receiver thinks is in our interests (including expending money);

- (u) delegate to any Person any of the powers conferred on the Receiver and to exercise all your rights, powers and privileges in respect of the Secured Property;
 - (v) insure any part of the Secured Property that are of an insurable nature against loss or damage by fire or other risks as the Receiver thinks fit; and
 - (w) generally do or cause to be done anything relating to the Secured Property and income from the Secured Property (without being responsible for any loss or damage) that is considered necessary by us and could have been done by us if we were the absolute owner of the Secured Property.
- 25.6 The Receiver may exercise its powers without your consent and without giving you Notice.

26. Exclusion of time periods

- 26.1 We will give you notice or will comply with certain conditions before we require you to immediately pay all amounts you owe us or take enforcement proceedings or other action. For example, if a Default has occurred we will usually give you 30 days notice before we require you to immediately pay the Total Amount Owing or take enforcement proceedings (however, we can give you shorter or no notice in certain circumstances).
- 26.2 A law applying to an Equipment Finance Agreement may require us to give you a period of Notice or to wait for a period of time before exercising a Specific power (such as to sell the Secured Property).

27. Disposal of the Secured Property is final

- 27.1 You agree that if we or a Receiver sell or otherwise dispose of the Secured Property:
- (a) you will not challenge the acquirer's right to acquire the Secured Property (including on the ground that we or the Receiver were not entitled to dispose of the Secured Property or that you did not receive Notice of the intended disposal) and you will not seek to reclaim that property; and
 - (b) the Person who acquires the Secured Property need not check whether we or the Receiver had the right to dispose of the Secured Property or whether we or the Receiver exercised that right properly.

28. Dealing with rights under an Equipment Finance Agreement

- 28.1 We may assign or otherwise deal with our rights under an Equipment Finance Agreement in any way we consider appropriate, provided that in our reasonable opinion such assignment or dealing does not materially affect your rights and obligations under an Equipment Finance Agreement, in any materially adverse way. If we do this, we do not have to tell you and you may not claim against any assignee (or any other Person who has an interest in an Equipment Finance Agreement) any right of set-off or other rights you have against us.
- 28.2 If we do assign or otherwise deal with our rights under an Equipment Finance Agreement, you agree that you are still liable for the Total Amount Owing under an Equipment Finance Agreement.

28.3 Your rights are personal to you and may not be assigned without our written consent, which shall not be unreasonably withheld.

29. Disclosure of information

- 29.1 Without affecting the generality of clause 49, information you provide to us may be disclosed:
- (a) if you consent (you may not unreasonably withhold your consent);
 - (b) if required by any stock exchange or if allowed or required by law;
 - (c) to any Person in connection with our exercising rights or dealing with rights or obligations (including preparatory steps such as negotiating with any potential assignee of our rights or other Person who is considering contracting with us or a Receiver in connection with this Equipment Finance Agreement);
 - (d) to our officers, authorised agents and employees, to Receivers and to legal advisers, auditors and other advisers;
 - (e) to any of our related entities;
 - (f) where we think it is necessary to protect our position;
 - (g) if the information is generally and publicly available;
 - (h) to any other Guarantor, or
 - (i) for the purposes of the securitisation of any Equipment Finance Agreement.

30. Consents

- 30.1 Whenever a provision of an Equipment Finance Agreement specifies that:
- (a) consent or approval is required;
 - (b) that we may direct or require you to do or not do some act or thing; or
 - (c) that we will determine whether an event has occurred or not occurred,
- we will act reasonably and without unreasonable delay in determining whether or not to give that consent or approval (which will not be unreasonably withheld), determining whether that event has occurred or directing you to take some action or satisfy a requirement of ours.
- 30.2 We may impose reasonable conditions on any consent or approval we give under this Equipment Finance Agreement in order to protect our legitimate business interests. You must comply with all conditions and requirements in any consent or approval we give.
- 30.3 Our consent or approval will not be effective unless it is in writing.
- 30.4 We may charge a fee for giving our consent or approval.

31. Manager

- 31.1 We may appoint a Person to manage an Equipment Finance Agreement for us. We will tell you if we do so.
- 31.2 Any such manager is authorised to exercise all of our rights under this Equipment Finance Agreement. Until we tell you otherwise, you must deal with that manager

in relation to all matters arising in connection with an Equipment Finance Agreement.

32. Currency conversions

- 32.1 You must make each payment in the currency in which it is due.
- 32.2 If we receive an amount in a currency other than that in which it is due:
- (a) we may convert the amount received into the due currency (to do this it might be necessary to convert through a third currency) on the day and at such rates as we consider appropriate, taking into account market exchange rates available to us. We may deduct our usual Costs in connection with the conversion; and
 - (b) you satisfy your obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the Costs of the conversion.

33. Representations and warranties

- 33.1 You represent and warrant that:
- (a) all information (including, where a VIN in respect of the Goods is provided, the VIN) given to us by you is true and all financial statements are correct to the best of your knowledge and belief;
 - (b) all financial statements, information and other data furnished by you or any Guarantor to us, or any agent, broker or dealer introducing the transaction evidenced by this Equipment Finance Agreement, are complete and correct to the best of your knowledge and belief, and there are no other material facts or considerations the omission of which would render any information misleading, and have been prepared in accordance with generally accepted accounting principles and practices and accurately and fairly represent your current financial condition; and
 - (c) where you are a corporation:
 - (i) you are properly formed and validly existing;
 - (ii) you have power to enter into an Equipment Finance Agreement;
 - (iii) to the best of your knowledge and belief, in entering into an Equipment Finance Agreement, you are not in breach of any Document, law, or restriction applicable to you; and
 - (iv) the Person signing an Equipment Finance Agreement on your behalf has been properly authorised to execute it;
 - (d) the Goods are commercial property; and
 - (e) no Security Interest (other than Security Interest in favour of us or a Permitted Interest) has attached or will attach to the Goods.
- 33.2 You acknowledge that:
- (a) if an Equipment Finance Agreement specifies when you must perform an obligation you must perform it by the time specified. You must perform all other obligations under an Equipment Finance Agreement promptly;
 - (b) we are neither the manufacturer of the Goods nor a dealer in it;

- (c) you have not relied on our skill or judgment when deciding whether the Goods was reasonably fit for your purpose;
- (d) you conducted all negotiations directly with the supplier in relation to the purchase of the Goods;
- (e) the Goods will be delivered directly from the supplier to you and we will not take physical possession of the Goods prior to delivery;
- (f) any accessories, replacements or other chattels that are supplied with the Goods are part of it;
- (g) if the Goods are not subject to a Third-Party Hire Agreement we may, enter any Premises where we believe the Goods are located to inspect or test it or retake possession of it. We will give you reasonable Notice of the exercise of our rights under this clause unless an Event of Default has occurred in which case no Notice will be required;
- (h) if the Goods are subject to a Third-Party Hire Agreement, you have the right under the Third- Party Hire Agreement to enter the third- party hirer's Premises and inspect the Goods;
- (i) if the Goods are secured to land or Premises:
 - (i) it is not a fixture and we may enter and remove it when we are entitled to do so; and
 - (ii) if a Person other than you holds an interest in the land or Premises, you must obtain from that Person a written acknowledgment that the Goods are not a fixture, and written consent to the entry and removal of the Goods at any time by, and without any liability to, us, and you must pay, on demand, all Costs incurred by us in obtaining this acknowledgment and consent;
- (j) your obligations to pay rent and to comply with the terms of an Equipment Finance Agreement continue to the extent permitted by law, despite the occurrence of any defect in, or total or partial breakdown of, the Goods or any damage to or loss of the Goods;
- (k) in regard to a Lease Agreement and Rental Agreement, no option to purchase the Goods has been given to you and there is no agreement for the sale of the Goods to you; and
- (l) neither we, nor any Person having authority to act on our behalf, has given or made any representations, or promises regarding your rights or position in respect to any law relating to taxation, regarding the disposal of the Goods at the expiry of an Equipment Finance Agreement or otherwise except as is contained in the Equipment Finance Agreement.

- 33.3 You warrant that you thoroughly examined the Goods before the relevant Equipment Finance Agreement was entered into and you are satisfied as to the condition, quality and suitability of the Goods for your purposes and that the Goods are, or will be when delivered, in accordance with the description of the Goods contained in the Particulars and is of a design, size, capacity, type and manufacture selected by you.
- 33.4 The representations and warranties in this clause 33 are remade on each day you retain possession of the Goods.

34. Related Agreements

- 34.1 You agree that every lease agreement, loan agreement or funding arrangement and any other financial or credit agreement or arrangement (Related Agreements) entered into between you and us and/or any related bodies corporate of ours are collateral to each other and that:

- (a) any breach of the terms and conditions of any of the Related Agreements constitutes default under every other Related Agreement; and
- (b) the rights and remedies of ours or of any related bodies corporate of ours under each of the Related Agreements are not prejudiced by any indulgence we grant to you or any other person in our absolute discretion.

35. Introductions by Brokers

- 35.1 Where you have been introduced to us by a broker, agent, dealer or other Person, you:
- (a) request that we make payment to that Person of any commission Payable to that Person in respect to the transaction and acknowledge and agree that all such payments form part of the Total Amount Owing; and
 - (b) acknowledge that any broker or dealer is not the agent of or in any way related to us and we are not responsible for any claims or demands made by any broker or dealer against you for commissions which are undisclosed in the relevant Equipment Finance Agreement.
- 35.2 Any warranties, statements and representations or any agreements made or given by any broker or dealer in relation to each Equipment Finance Agreement are not warranties, statements representations or agreements made or given by us.

36. Indemnities

- 36.1 The indemnities in these General Terms are continuing obligations, independent of your other obligations under any Equipment Finance Agreement. They continue even after we have released the Secured Property from an Equipment Finance Agreement. The indemnities exclude any liability, loss or Costs to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors or agents, or any Receivers we appoint in respect of any Goods.

37. Exclusion of Implied Terms and Consumer Guarantees

- 37.1 All express and implied terms, consumer guarantees, conditions and warranties that otherwise might apply to this Equipment Finance Agreement are excluded to the extent permitted by the Australian Consumer Law or any other applicable law.
- 37.2 Clause 37.1 applies except as is provided:
- (a) in an Equipment Finance Agreement;
 - (b) in the Australian Consumer Law; or
 - (c) by any other legislation.
- 37.3 Our liability for a breach of any condition or warranty implied by the provisions of the Australian Consumer Law or any other legislation is, to the extent permitted by law, limited to:
- (a) in the case of Goods:
 - (i) the replacement of it;
 - (ii) the supply of equivalent Goods;
 - (iii) the repair of it;

- (iv) the payment of the cost of replacing it or of acquiring or hiring equivalent Goods; or
- (v) the payment of the cost of having it repaired;
- (b) in the case of services:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again; whichever is determined by us to be appropriate in the circumstances, but this provision does not apply to the implied undertakings referred to in section 51 of the Australian Consumer Law or any similar implied condition referred to in any other legislation applicable to this Equipment Finance Agreement.

- 37.4 The provisions of clause 37.3 do not apply if you establish that it is not fair and reasonable for us to rely on them.
- 37.5 Clause 37.3 only applies if the Goods are of a kind not ordinarily acquired for personal, domestic or household use or consumption.

38. How we can exercise our rights

- 38.1 Whenever a provision of these General Terms requires that our consent or approval is required or that we may direct or require that you do or do not do some act or thing or that will determine whether an event has occurred or not occurred, we will act reasonably in determining whether or not to give that consent or approval, determining whether that event has occurred or directing you to take some action or satisfy a requirement of ours.
- 38.2 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate acting reasonably, including by imposing conditions on our consent.
- 38.3 We may enforce our rights under an Equipment Finance Agreement before we enforce other rights or remedies:
- (a) against any other Person; or
 - (b) under another Document, such as another Security Interest.

If we have more than one Security Interest, we may enforce them in any order we choose.

- 38.4 If we do not or a Receiver does not, exercise a right or remedy fully or at a given time, we or the Receiver can still exercise it later.
- 38.5 Neither we nor a Receiver are liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy except for any loss to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers or agents, or any receivers we appoint.
- 38.6 If we or a Receiver exercise any right under this Equipment Finance Agreement or at law to enter or take possession of any Secured Property, we or the Receiver:
- (a) have complete and unfettered discretion as to how the Secured Property is managed; and
 - (b) are liable to account only for rents and profits actually received by us or the Receiver.
- 38.7 Our and any Receiver's rights and remedies under this Equipment Finance Agreement:
- (a) are in addition to other rights and remedies given by law independently of this Document and may be

exercised separately or concurrently (whether or not the same or other remedies and powers have already been exercised successfully or unsuccessfully); and

- (b) may be exercised even if this involves a conflict of duty or we, or the Receiver have a personal interest in their exercise.
- 38.8 Our rights and remedies under this Equipment Finance Agreement may be exercised by any of our directors, any of our employees or any other Person we authorise.
- 38.9 Whenever you fail to comply with any of your obligations under this Equipment Finance Agreement, we may (without prejudice to any of our other rights, powers and remedies) pay all amounts and do all such other things as we deem necessary or desirable to remedy any such Default or otherwise protect the Security Interest created by this Equipment Finance Agreement.
- 38.10 You shall reimburse us, within 10 Business Days after we ask, for all Costs we reasonably incur under clause 38.9, together with interest on those amounts calculated at a rate determined by us on a daily basis from the date upon which the expenditure is incurred until reimbursement thereof by you and, until reimbursed, the amount and interest on the amount shall form part of the Total Amount Owning.

39. Changes by you

- 39.1 We will not be bound by any changes to an Equipment Finance Agreement by you, unless we agree to them in writing.

40. If any part of the Document is unenforceable

- 40.1 If any part of an Equipment Finance Agreement is unenforceable, illegal or void, then the rest of the Equipment Finance Agreement is to be interpreted as if that clause or that part of the clause is not part of the Equipment Finance Agreement.

41. Your obligations and our rights are unaffected

- 41.1 An Equipment Finance Agreement does not merge with or adversely affect, and is not adversely affected by, any of the following:
- (a) another Security Interest or right or remedy to which we are entitled; or
 - (b) a judgment or order which we obtain against you in respect of any of the Total Amount Owning.
- 41.2 We can still exercise our rights under an Equipment Finance Agreement as well as under the judgment, order, other Security Interest, right or remedy.
- 41.3 An Equipment Finance Agreement and our rights under this Equipment Finance Agreement may be enforced even if we accept any payment as instalment or interest after Default and despite any previous or other Default and without there being necessity for any Notice to or of any further consent by you.
- 41.4 Except for any loss to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers or agents, or

any receivers we appoint, your liability under each relevant Equipment Finance Agreement and our rights and any rights of our Attorney are not affected by anything that might otherwise have that effect at law or in equity, including the following:

- (a) our granting time or other indulgence to, compounding or compromising with or wholly or partially releasing you or another Person;
- (b) a variation of our rights or material alteration of an Equipment Finance Agreement in respect of you or another Person, including an increase in the limit of or other variation in connection with the Total Amount Owing;
- (c) the transaction of business expressly or impliedly with, for or at your request or the request of another Person;
- (d) the loss or impairment of a Security Interest or a negotiable instrument;
- (e) a Person dealing with a Security Interest, judgment or negotiable instrument including taking, abandoning or releasing (wholly or partially), exchanging, varying, abstaining from perfecting or taking advantage of it;
- (f) the death or Insolvency of a Person;
- (g) a change in the legal capacity, rights or obligations of a Person;
- (h) the fact that a Person is or ceases to be a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- (i) a judgment against you or another Person;
- (j) any part of the Total Amount Owing being irrecoverable;
- (k) an assignment of our rights in connection with the Total Amount Owing;
- (l) the acceptance of repudiation or other termination in connection with the Total Amount Owing;
- (m) the invalidity or unenforceability of an obligation or liability of a Person other than you; or
- (n) where you are a corporation, your deregistration.

41.6 We are not obliged to resort to any other Security Interest for payment of the Total Amount Owing before we resort to this Equipment Finance Agreement.

41.7 This Equipment Finance Agreement binds each Person who signs even if another Person who was intended to sign does not sign it or is not bound by it.

42. Reinstatement of rights

42.1 Under a law relating to Insolvency, a Person may claim that a transaction (including a payment) in connection with the Total Amount Owing is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) we are immediately entitled, as against you, to the rights in respect of the Total Amount Owing to which we were entitled immediately before the transaction;
- (b) on request from us, you agree to do anything to restore to us any Encumbrance we held from you immediately before the transaction; and
- (c) we are entitled to recover from you as a debt all Costs incurred by us in connection with negotiations or proceedings in relation to that claim.

43. Power of Attorney

43.1 You appoint us, each of our directors, each of our employees whose job title includes the word 'manager' or 'head of', each of our solicitors, each other Person we authorise, and each Receiver under this Equipment Finance Agreement, separately as your Attorney. If we ask, you must formally approve anything they do under clause 43.2. You may not revoke these appointments.

43.2 If we are entitled to enforce an Equipment Finance Agreement, each Attorney may:

- (a) do anything which you can lawfully authorise an Attorney to do in connection with this Equipment Finance Agreement, a Licence or the Secured Property and do anything which you are obliged to do under this Equipment Finance Agreement or which you can do as owner of the Secured Property or which the Attorney believes is expedient to ensure compliance with this Equipment Finance Agreement to give effect to any of our rights or a Receiver's rights under this Equipment Finance Agreement or at law (these things may be done in your or the Attorney's name and they include signing and delivering deeds, selling, transferring or leasing the Secured Property, selling, transferring or surrendering any lease, lodging or withdrawing caveats, discharging or releasing on your behalf any Encumbrance over the Secured Property that is paid out by money advanced under clause 25.5(d), otherwise dealing with the Secured Property and starting, conducting and defending legal proceedings, and dealing with a Licence);
- (b) delegate their powers (including this power) and revoke a delegation; and
- (c) exercise their powers even if this involves a conflict of duty or if they have a personal interest in doing so.

43.3 Where permitted by law the Attorney may exercise its powers in clause 25 (Receivers) without your consent and without giving you Notice.

43.4 You acknowledge that any Person, including the Registrar of Titles of Western Australia or any other registration authority in Australia or elsewhere dealing with any Attorney or a Person purporting to be an Attorney under this power, is:

- (a) entitled to rely on execution of any Equipment Finance Agreement by that Person as conclusive evidence that:
 - (i) the Person holds the office set out in the power;
 - (ii) that the power of attorney has come into effect;
 - (iii) that the power of attorney has not been revoked; and
 - (iv) that the right or power being exercised or being purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power; and
- (b) not required to make any enquiries in respect of any of the matters set out in paragraph (a).

44. If you are the trustee of a trust

44.1 The following provisions of this clause 44 apply if you enter into this Equipment Finance Agreement, or own any of the Secured Property, as trustee of any trust or settlement, unless you have advised us in writing before entering into an Equipment Finance Agreement that one

or more of the acknowledgements and warranties cannot be made and we have agreed to waive the requirement that you make that acknowledgement or warranty.

- 44.2 You acknowledge that this Equipment Finance Agreement is binding on you personally and in your capacity as trustee of the Trust and that our right of recourse is not limited to you personally but extends to the assets of the Trust.
- 44.3 You must cause any successor of you as trustee of the Trust or any Person who becomes a trustee of the Trust jointly with you to execute all documents required by us to ensure that this Agreement is binding on the successor.
- 44.4 If we ask you to do so, you must exercise the rights of indemnity in relation to the Trust Fund and your rights against the beneficiaries to cause payment of all money owed by you to us or otherwise hold those rights for us.
- 44.5 You warrant that:
- (a) you are the sole trustee of the Trust and no action has been taken to remove or replace you;
 - (b) you have power under the Trust Deed to execute and perform your obligations under this Equipment Finance Agreement;
 - (c) you have a right to be fully indemnified out of the Trust Fund and no action has been taken which might prejudice or limit that right of indemnity;
 - (d) you have complied with all fiduciary obligations directly or indirectly imposed on you; and
 - (e) each of the warranties contained in this clause 44.5 will remain true as long as this Equipment Finance Agreement remains in force.
- 44.6 You make the following declarations:
- (a) each Equipment Finance Agreement is for the benefit of the relevant Trust;
 - (b) each Equipment Finance Agreement does not conflict with the operation or terms of the Trust;
 - (c) you are the sole trustee of the Trust;
 - (d) you have authority to enter into each relevant Equipment Finance Agreement;
 - (e) the Trust has not been terminated and no beneficiary is presently entitled to any assets of the Trust;
 - (f) you have the right to be fully indemnified out of the Trust assets for obligations incurred under an Equipment Finance Agreement;
 - (g) no action has been taken or is proposed to be taken to terminate the Trust;
 - (h) you have not delegated any of your powers as trustee or exercised any power of appointment;
 - (i) no property of the Trust has been resettled or set aside or transferred to any other trust;
 - (j) the Trust Deed complies with all applicable laws; and
 - (k) our rights under an Equipment Finance Agreement rank in priority to the claim of beneficiaries to the Trust Fund.
- 44.7 You must tell us whenever anything happens which would mean you could not truthfully repeat all these declarations (unless we consent to that thing happening).
- 44.8 You must cause any successor of yours as trustee of the Trust or any Person who becomes a trustee of the trust jointly with you to execute all documents required by us

to ensure that this Equipment Finance Agreement is binding on that successor.

- 44.9 For the purposes of this clause 44:
- (a) Trust means any trust of which you are trustee, whether the existence of the Trust is disclosed to us or not;
 - (b) Trust Deed means any Document relating to the constitution, creation or formation of the Trust; and
 - (c) Trust Fund means the trust fund comprising the property held by you as trustee under the Trust Deed.

45. Partnership

- 45.1 If this Equipment Finance Agreement is given to secure the Total Amount Owing by a firm or partnership or joint venture:
- (a) this Equipment Finance Agreement, your Agreement to pay under this Equipment Finance Agreement and the Security Interest created by this Equipment Finance Agreement continue to be in full force and effect despite any changes which may from time to time take place in its members or participants, whether by the death or retirement or the receivership, Insolvency, administration or liquidation of any member or participant or the admission of any new member or participant or otherwise, and even though the firm, partnership or joint venture no longer carries on business;
 - (b) this Equipment Finance Agreement, your Agreement to pay under this Equipment Finance Agreement and the Security Interest created by this Equipment Finance Agreement are binding on you even though you are not or having once been a member of or participant in the firm, partnership or joint venture are no longer one of its members or participants; and
 - (c) if you comprise of more than one Person, each of you agrees with each other and with us that its interest in the firm or partnership or joint venture ranks behind our rights and interest under this Equipment Finance Agreement.

46. Insurance

- 46.1 You must:
- (a) at your expense, keep the Goods insured against fire, accident and theft and for any other risks required by us with an insurer approved by us in our name and yours for an amount equal to the full insurable value;
 - (b) ensure that the insurance policy contains a term that the insurer will give us at least 30 days' written Notice before it cancels or materially alters the policy;
 - (c) give to us all relevant policies of insurance whenever we ask you to do so;
 - (d) not do or permit anything to be done which might or could prejudice any insurance or permit any insurer to decline a claim; and
 - (e) not enforce, conduct, settle or compromise any claim without our written consent.
- 46.2 In addition to your obligations under clause 12, you must maintain insurance against any other risk we reasonably require, in connection with the Secured Property.
- 46.3 Each policy under clauses 16 and 46 must:

- (a) note our interest as Secured Party and as loss payee;
 - (b) be for the full insurable value of the Secured Property on a replacement and reinstatement basis against all risks that a prudent owner would insure;
 - (c) otherwise be on terms and for an amount satisfactory to us; and
 - (d) be with an insurer approved by us acting reasonably.
- 46.4 You must give to us on the date of this Equipment Finance Agreement and then on an annual basis, certificates of currency that comply with this clause 46 for all insurances.
- 46.5 You must ensure that:
- (a) the insurance cover is not reduced, cancelled or adversely affected and you must notify us if it is or could be; and
 - (b) nothing happens that could permit an insurer to decline a claim and you must notify us if anything would permit an insurer to do this.
- 46.6 You irrevocably authorise us to:
- (a) in our absolute discretion, apply any insurance or other money received by us in respect of loss of or damage to the Goods, towards any money Payable by you to us or towards the repair of the Goods and to apply any money paid by you under this Equipment Finance Agreement to any debt or liability under this Equipment Finance Agreement; and
 - (b) use your name and act on your behalf in exercising any rights or instituting, carrying on and enforcing any legal proceedings which we think desirable to protect our rights in the Goods or to recover or compromise any claim for loss or damage under any insurance policy and give effectual releases and receipts.
- 46.7 Insurance claims
- (a) You must notify us if you have a right to make an insurance claim, if a claim is made and about the progress of any claim.
 - (b) You must not without our written consent, enforce or compromise claims under a policy of insurance, whether or not that policy also covers other property.
 - (c) 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 manner we choose whether or not the policy also covers other property.
 - (d) You agree that you do not have any right to a claim against us in relation to any insurance claim, the manner in which we deal with an insurance claim or in relation to insurance of the Secured Property generally.
 - (e) The proceeds of all insurance policies are, if received by you or another Person on your behalf, held in trust by the Person receiving that money to be applied in payment of the Total Amount Owed or, at our option, in reinstatement of the Secured Property and to pay any surplus to you or any other Person entitled to it.

47. Notices and communications

- 47.1 Notices, certificates, consents, approvals and other communications in connection with this Equipment Finance Agreement must be in writing, unless we agree otherwise.
- 47.2 Communications from us may be signed by any of our employees or authorised agents.

- 47.3 Communications from you must be signed by you (if an individual), a director (if a corporation) or another Person we approve.
- 47.4 Communications to you may be:
- (a) given personally to one of your directors;
 - (b) left at your residential or business address last known to us;
 - (c) sent by post to your postal or residential or business address last known to us;
 - (d) sent by email or other electronic communication to the email address last provided by you to us; or
 - (e) given in any other way permitted by law.
- 47.5 We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you by delivering it to, or leaving it at, your address last known to us or such other address as you and we agree at any time. This clause does not prevent any other method of service.
- 47.6 Communications to us must be:
- (a) given personally to one of our employees at our registered office or at a Bank of Queensland branch;
 - (b) sent by prepaid post to our registered office and no other place; or
 - (c) given by any other means permitted by law.
- 47.7 A communication is taken to be given (whether or not you actually receive it):
- (a) in the case of a communication given personally: on the date it bears or the date it is received by the Person to whom it is addressed, whichever is the later;
 - (b) in the case of a communication sent by post: on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later; and
 - (c) in the case of a communication sent by email or other electronic form: on the date and time it bears, provided the sender does not receive a non-delivery communication within 2 hours of sending.
 - (d) in the case of a communication given by newspaper advertisement — the date it is first published.

48. Governing Law

- 48.1 An Equipment Finance Agreement is governed by the laws of the State stated in the Particulars. You and we submit to the non-exclusive jurisdiction of the courts of that place.
- 48.2 We may serve any document in a court action (including a writ of summons, other originating process or third or other party Notice) on you by delivering it to, or leaving it at, your address set out in the Particulars, the last place known to us where the Secured Property is kept or such other address as you and we agree at any time. This clause does not prevent any other method of service.

49. Confidentiality and our Right of Disclosure

- 49.1 We may disclose information about you in the following circumstances:
- (a) with your express or implied consent which must not be unreasonably withheld; or
 - (b) to the extent we consider disclosure necessary to protect our interests;
 - (c) to Persons considering taking an assignment from us of this Equipment Finance Agreement;
 - (d) to Persons who hold this Equipment Finance Agreement as trustee for investors;
 - (e) to Persons who manage this Equipment Finance Agreement for us or under securitisation arrangements;
 - (f) to Persons considering purchasing us or who are involved in valuing us for ratings purposes;
 - (g) to our legal advisers, financial advisers, consultants, auditors and agents of ours involved in negotiating, administering or enforcing this Equipment Finance Agreement such as service agents, debt collection, enquiry agents;
 - (h) if required or authorised by or under law;
 - (i) if the information is generally and publicly available; or
 - (j) in any other circumstance we think it is necessary and in our interests to do so.
- 49.2 You can ask us for a copy of our privacy policy at any time. Our privacy policy sets out how we deal with any personal information that we hold about you or a Guarantor. The Privacy Notification and Consent form that you and all Guarantors received when you applied for this Equipment Finance Agreement provides you with more information about how we use your personal information.
- 49.3 Except if section 275(7) of the PPSA applies, we and you agree not to disclose information of a kind referred to in section 275(1) of the PPSA that is not publicly available. You agree that you will not authorise the disclosure of any information as contemplated by section 275(7)(c) of the PPSA.
- 49.4 For the purposes of section 275 of the PPSA and subject to clause 49.3, the terms of our Security Interest in the Goods are wholly contained in this Equipment Finance Agreement.

50. PPS Law

- 50.1 You must promptly upon our request do any of the following in respect of our Security Interest in the Secured Property:
- (a) do anything (including obtaining consents or executing a document) for the purpose of:
 - (i) ensuring that, any Security Interest created under, or provided for, by an Equipment Finance Agreement:
 - (A) attaches to the collateral that is intended to be covered by that Security Interest; and
 - (B) is enforceable, perfected and otherwise effective; and
 - (C) has the priority required by us; or

- (ii) enabling us to prepare and register a Financing Statement or Financing Change Statement; or
 - (iii) enabling us to exercise any of our rights or powers in connection with any such Security Interest; and
- (b) provide any information requested by us in connection with this Equipment Finance Agreement to enable us to exercise any of our rights or powers or perform any of our obligations under the PPSA Law.
- 50.2 You acknowledge and agree that:
- (a) you must not cause or permit any Person to take a Security Interest over, or to register a Financing Statement in relation to, any of the Secured Property unless the Security Interest is a Permitted Encumbrance or it is taken with our prior written consent and you will immediately notify us if you become aware of any Person taking steps to register, or registering, a Financing Statement in relation to the Secured Property;
 - (b) you must not allow other Goods or Personal Property to become commingled with, or accessions to, the Secured Property. You must not allow the Secured Property to become an accession to any other Goods or Personal Property without our prior written consent;
 - (c) you must not allow any Secured Property to become a fixture to any property without our prior written consent;
 - (d) you have no rights under, or by reference to, sections 125, 142 and 143 of the PPSA; and
 - (e) you waive your rights to:
 - (i) receive any Notice under sections 95, 121(4), 130 and 135 of the PPSA;
 - (ii) receive a statement of account under section 132(4) of the PPSA;
 - (iii) receive details of the amounts paid to other secured parties in a statement of account provided by us under section 132(1) of the PPSA; and
 - (iv) receive a copy of, or Notice of, any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to any Security Interest under, or provided for by, this Document.
- 50.3 Anything that you are required by us to do under this clause shall be done by you at your own expense. You agree to reimburse on demand our Costs in connection with any action taken by us under or in connection with this clause.

51. Third-Party Hire Agreements - Perfection of your Security Interest in the Goods

- 51.1 If you enter into a Third-Party Hire Agreement, then you must establish and maintain processes and procedures which a skilled and experienced Person engaged in the same type of business as yours, acting in good faith and with prudence, would establish and maintain, including any Specific processes and procedures specified by us, to:
- (a) identify any transaction, dealing or arrangement which provides for a Security Interest in the whole or any part

- of the Goods in your favour for the purposes of the PPSA;
- (b) Register, perfect and maintain continuous perfection of, preserve and enforce any Security Interest you hold, or have the benefit of, in the whole or any part of the Goods;
 - (c) ensure that any Security Interest you hold, or have the benefit of, in the whole or any part of the Goods that is granted by a grantor to you as secured party has the highest ranking in priority over any other perfected Security Interest granted by the same grantor in that or the relevant part of the Goods;
 - (d) end the registration of any Security Interest which you hold or have the benefit of, as soon as you cease to hold or have the benefit of it; and
 - (e) ensure compliance with the PPS Law.
- 51.2 You must maintain detailed, up-to-date documentation of these processes and procedures.
- 51.3 You must, at all times, maintain complete and up-to-date records of all documents and information relevant to your Security Interests in the Goods including:
- (a) all transactions, dealings, arrangements and related Documents relating to your Security Interests under the PPS Law;
 - (b) details of perfection of your Security Interests and, if perfection is effected by a registration, copies of Verification Statements relating to your Security Interests, each showing a future end time for registration;
 - (c) notifications of Verification Statements to grantors of your Security Interests in accordance with the PPSA (unless waived in accordance with the PPSA);
 - (d) communications with grantors and other parties with respect to your Security Interests; and
 - (e) steps taken to enforce your Security Interests.
- 51.4 You must promptly and fully exercise your rights and powers and comply with your obligations under the PPS Law.
- 51.5 If we require, you must immediately notify the third-party hirer of our interest in the Goods and direct that all payments to be made by the third-party hirer to you be paid directly to us.
- 51.6 You must ensure that your employees, officers and representatives fully comply with the processes and procedures described in clause 51.1 and your other obligations under this clause 51 at all times.
- 51.7 You must allow us access to your place of business (during normal business trading hours and on us giving you giving reasonable Notice) to inspect and copy accounting and other records and documents relating to the compliance or non-compliance with your obligations under this Equipment Finance Agreement, the Goods and the Third-Party Hire Agreements.

52. Cross Default

- 52.1 You agree that each Equipment Finance Agreement entered into between you and us and any Guarantee and any Security given in respect of an Equipment Finance Agreement are collateral to each other and that:
- (a) any breach of an Equipment Finance Agreement constitutes a Default under every other Equipment Finance Agreement; and

- (b) our rights and remedies and the rights and remedies under each Equipment Finance Agreement are not prejudiced by any concession we grant to you or any other Person.

- 52.2 You agree that we can apply any money received from enforcing our rights under any Equipment Finance Agreement in any way we choose.

53. Agency and Maintenance

- 53.1 You acknowledge that we may have entered into the Equipment Finance Agreement as agent for some other Person and you agree that you are not entitled to make any objection to that (irrespective of whether the agency is disclosed or otherwise) or to the fact that the other Person has or acquires property in the Goods.
- 53.2 If any maintenance or other charges other than rent are packaged with the rent Payable by you, you acknowledge that this has occurred with your authority and:
- (a) neither we nor any Person for whom we may be acting as agent in respect of the leasing of the Goods, are in any way responsible for the maintenance of the Goods or any other service packaged with the rent;
 - (b) any failure of performance or breach by any Person providing the maintenance or other services, in no way affects, excuses or releases you from payment of any rent Payable under the Equipment Finance Agreement or otherwise affects the performance by you of your obligations under the Equipment Finance Agreement; and
 - (c) any failure on your part to pay the rent in full constitutes a breach of an essential term of the Equipment Finance Agreement.
- 53.3 If you have an arrangement with any other Person to provide, budget for or finance maintenance or any other services, you acknowledge that neither we nor any Person for whom we may be acting as agent in respect of the leasing of the Goods are liable in respect of that arrangement and the failure of any other Person to perform that arrangement in no way affects, excuses or releases you from payment of any rent Payable under the Equipment Finance Agreement or otherwise affects the performance by you of your obligations under the Equipment Finance Agreement.

54. Inconsistency

- 54.1 To the extent there is any inconsistency between these General Terms and the Particulars, the Particulars shall prevail.

55. Execution by Attorney

- 55.1 Where an Equipment Finance Agreement is signed by an Attorney, that Attorney, by executing, declares that the Attorney has no notice of revocation, termination or suspension of its power of Attorney.

56. Guarantee and Indemnity Provisions

- 56.1 Guarantee

In consideration of our agreeing (at the Guarantor's request, which the Guarantor acknowledges) to enter into Equipment Finance Agreements with you, the Guarantor grants this Guarantee to us, as a separate and independent obligation, for the due and punctual payment by you to us of all money Payable by you to us under all Equipment Finance Agreements entered into by you with us.

The Guarantor's liability under this Guarantee excludes any liability caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers or agents, or any receivers appointed by us.

56.2 Indemnity

As a separate collateral undertaking, the Guarantor indemnifies us from and against any liability, loss, or damage, including Costs on a full indemnity basis that we reasonably incur by reason of:

- (a) any breach by you or any Guarantor of any obligation or undertaking of you or any Guarantor under any Equipment Finance Agreement, Guarantee or Security Interest;
- (b) an Equipment Finance Agreement not being enforceable against you in whole or in part;
- (c) you or a Guarantor being or becoming Insolvent; and
- (d) the obligations of you under an Equipment Finance Agreement or the obligations of the Guarantor under this Guarantee not being enforceable because of any fact or circumstance.

56.3 The Guarantor agrees:

- (a) to pay a sum equal to the amount of the loss described in clause 56.2 to us on demand in writing; and
- (b) that it is not necessary for us to incur expense or make payment before enforcing this indemnity and requiring payment.

56.4 Future Obligations

- (a) This Guarantee and indemnity applies to obligations, liabilities, loss and damage arising after the execution of this Guarantee, including obligations arising as a result of subsequent accommodation by us (if provided for by the Equipment Finance Agreement).
- (b) Neither the Guarantee nor the indemnity is discharged or prejudicially affected by any settlement of accounts, but remains in full force until a final release has been given by us.
- (c) Any representative of the estate of a deceased or mentally incapable Guarantor is not entitled to terminate or revoke the Guarantee or the indemnity given in this Guarantee or in any way limit or diminish the liability of the estate of the deceased or mentally incapable Guarantor in respect of obligations under the Equipment Finance Agreement arising after the death or incapacity.

56.5 Interest

- (a) The Guarantor must, on demand by us, pay interest on all sums Payable by the Guarantor which are due but are unpaid.
- (b) Interest accrues from day to day from the due date for payment up to the date of actual payment, before or after judgment, at the same rate of interest as is required to be paid under the Equipment Finance Agreement.

56.6 Preservation of Guarantor's Liability

The Guarantor's liability is not prejudiced or affected by anything that might otherwise have that effect, including, but without limitation, any of the following:

- (a) by our granting time or other concession to or making any composition with you or any Guarantor;
- (b) by you or any Guarantor, being a body corporate, being wound up or by proceedings being commenced for its liquidation or if an administrator or a Receiver or Receiver and manager is appointed in respect of any of its assets or undertaking or if a provisional liquidator is appointed in respect of it;
- (c) by our obtaining any further or other covenant or Security or Guarantee in respect of your obligations from any other Person;
- (d) by our forbearing or neglecting to exercise any remedy or right we have for the enforcement of your obligations;
- (e) by the absence of any Notice to the Guarantor of Default by you or by any other Guarantor;
- (f) by any Guarantor (being a natural person) becoming bankrupt or entering into any composition or arrangement with his or her creditors, or assigning his or her estate or any part of it for the benefit of creditors, or becoming of unsound mind or dying;
- (g) any change in the membership of any partnership or firm of which you or the Guarantor is a member; or
- (h) our assignment of our interest in the Equipment Finance Agreement and this Guarantee to any Person without the Guarantor's consent or knowledge.

56.7 Voidable Preferences Etc.

The Guarantor acknowledges that no payment operates, discharges or reduces any Guarantor's liability if the payment is voidable as a preference or an Insolvent transaction under any law relating to bankruptcy or the winding up of companies and no discharge that occurs because of such a payment discharges the liability of the Guarantor under this Guarantee.

56.8 Administration in Insolvency

- (a) If the Guarantor's affairs or your affairs are under administration in Insolvency and, as a result, a Guarantor has a right to lodge a proof of debt or enforce any Security, the Guarantor agrees that the Guarantor holds that right in trust for us. This applies even if there is no connection between that right and the Guarantor's right being Guarantor under this Guarantee.
- (b) The Guarantor must not enforce any right referred to in clause 56.8(a) without our prior written consent.
- (c) The Guarantor must, if we ask the Guarantor to do so in writing, execute all Documents and do all things required to enable us to receive the benefit of that right, including taking legal proceedings.
- (d) The Guarantor (and where there is more than one Guarantor, each of Guarantor separately) irrevocably appoint us and each Authorised Officer of us (with power to appoint a substitute or substitutes) as the Guarantor's Attorney to execute, under seal or otherwise, and deliver all documents and do all things, including the signing and lodging of proofs of debt, which we require to enable us to obtain the benefit of the rights referred to in clause 56.8(a).
- (e) If, in any administration in Insolvency of your affairs, your liability to pay all or any part of the money which is

- Payable to us is released, deferred or disclaimed, the Guarantor indemnifies us against any loss which we would otherwise suffer due to the release, deferral or disclaimer.
- 56.9 Obligations not affected by incapacity or irregularity
- (a) The Guarantor's obligations under this Guarantee remain in full force and we are entitled to recover against the Guarantor to the full extent specified in this Guarantee, even though:
- (i) the Equipment Finance Agreement or any transaction contemplated by the Equipment Finance Agreement was beyond your power or authority; or
- (ii) by reason of any incapacity or any defect, informality, immunity or limitation, the whole or part of the money Payable under or in respect of the Equipment Finance Agreement or by the Guarantor under or in respect of this Guarantee cannot be recovered.
- (b) We are not required to see or inquire into your powers or authorities, or any Guarantor or the directors or other agents acting or purporting to act on your behalf or on behalf of any Guarantor.
- 56.10 Efficacy of Execution by Guarantor
- (a) The Guarantor acknowledges that it is not a condition of any Guarantor who executes this Guarantee being bound by it that any other Guarantor executes this Guarantee or delivers it to us.
- (b) The Guarantor acknowledges that there are no other conditions to the coming into effect, or the remaining in effect, of this Guarantee. In particular, the failure of any other Guarantee, indemnity or Security to come into effect does not prejudice the effectiveness of this Guarantee.
- 56.11 Miscellaneous
- (a) The Guarantor:
- (i) agrees to waive any rights the Guarantor might have as surety which are inconsistent with the terms of this Guarantee or which might in any way restrict our rights, remedies or recourse; and
- (ii) agrees that if anything in this Guarantee is unenforceable, illegal, void or contrary to any legislation, then this Guarantee is to be interpreted as if that clause is varied to the extent necessary to render the clause no longer illegal or void, or is if necessary, omitted, and the rest of this Guarantee remains in force.
- (b) In addition to any other amounts Payable under this Guarantee, the Guarantor must pay to us, on demand, all Costs and expenses reasonably incurred by us in exercising or attempting to exercise our rights under this Guarantee.
- 56.12 Cross-Guarantee
- (a) The Guarantee and the indemnity takes effect as a cross-Guarantee and cross-indemnity when the Persons included in the definition of Customer in the Particulars are the same as some or all of the Persons included in the definition of Guarantor.
- (b) When the Guarantee and the Indemnity takes effect as a cross-Guarantee and a cross- indemnity, they must each be construed as a separate Guarantee and a separate indemnity in relation to each Person included in the definition of Customer as if that Person were:
- (i) the only Person included in the definition of Customer in the Particulars; and
- (ii) excluded from the definition of Guarantor.
- 56.13 Cross-linking of Guarantees
- (a) This Guarantee and all other Guarantees or indemnities given to us in respect of your obligations under an Equipment Finance Agreement are to be read together as if they were one and the same document.
- (b) The obligations of each Guarantor are joint and separate with every other Person who gives a Guarantee or indemnity to us in respect of your obligations to us under each Equipment Finance Agreement.
- 56.14 Trust Provisions
- (a) The following provisions of this clause apply if the Guarantor is trustee of a Trust. The Guarantor acknowledges that this Guarantee is binding on the Guarantor personally and in the Guarantor's capacity as trustee of the Trust and that our right of recourse is not limited to the Guarantor personally but extends to the assets of the Trust.
- (b) The Guarantor must cause any successor of the Guarantor as trustee of the Trust or any Person who becomes a trustee of the Trust jointly with the Guarantor to execute all Documents required by us to ensure that this Guarantee is binding on the successor.
- (c) If we ask the Guarantor to do so, the Guarantor must exercise its rights of indemnity in relation to the Trust Fund and the Guarantor's rights against the beneficiaries to cause payment of all money owed by the Guarantor to us or otherwise hold those rights for us.
- (d) For the purposes of this clause:
- (i) Trust means any trust of which the Guarantor is trustee, whether the existence of the Trust is disclosed to the Financier or not;
- (ii) Trust Deed means any Document relating to the constitution, creation or formation of the Trust; and
- (iii) Trust Fund means the trust fund comprising the property held by the Guarantor as trustee under the Trust Deed.
- 56.15 Agency
- The Guarantor acknowledges that we may have taken this Guarantee as agent for some other Person and that the Guarantor is not entitled to make any objection to that (irrespective of whether the agency is disclosed or otherwise).
- 56.16 Governing Law
- The Guarantee is governed by the laws of the applicable Equipment Finance Agreement. The Guarantor and us submit to the non-exclusive jurisdiction of the courts of that place. We may serve any document in a court action (including a writ of summons, other originating process or third or other party Notice) on the Guarantor by delivering it to, or leaving it at, the Guarantor's address set out in the Particulars, the last place known to us where the Secured Property is kept or such other address as we and the Guarantor agree at any time. This clause does not prevent any other method of service.

57. Guarantor's Acknowledgement

- 57.1 The Guarantor acknowledges that:
- (a) We are or may be prevented by the provisions of the *Privacy Act 1988* (Cth) and from our duty of confidentiality to you to disclose information on your financial position to the Guarantor and the Guarantor must therefore satisfy himself/herself/itself in this regard;
 - (b) it is a fundamental condition of our entering into the Equipment Finance Agreement that the Guarantor give this Guarantee in respect of your obligations to us; and
 - (c) this Guarantee can and may be called upon by us if you default in your obligations to us.
- 57.2 The Guarantor understands that the obligations undertaken in executing this Guarantee comprise both a Guarantee and an indemnity and the Guarantor's obligations as indemnifier will continue even if we are not able, for any reason whatsoever, to enforce your obligations under the Equipment Finance Agreement.
- 59.3 The Guarantor has made independent enquiries of your present financial position and has not relied on any representations by any of our officers or Person purporting to represent us in connection with your present or anticipated future financial position.
- 59.4 The Guarantor has provided this Guarantee freely and voluntarily and (after having read the Guarantee and had the opportunity to receive independent legal and financial advice) with full understanding of the legal and financial consequences of giving the Guarantee.

58. Meaning of Words

Amount Owing means, at any time, all money which one or more of you owe us, or will or may owe us in the future, including under, or in connection with the Secured Property, or an Equipment Finance Agreement.

Australian Consumer Law means the Australian Consumer Law contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Authorised Officer means:

- (a) for us, a director or secretary, or an officer whose title contains the word "director", "chief", "head", "president" or "manager" or a *person* performing the functions of any of them, or any other *person* nominated by us as an *authorised officer* for the purposes of any *arrangement* with us; and
- (b) for you, a *person* appointed by you to act as your *authorised officer* for the purposes of any *arrangement* with us.

Authorised Signatory means your authorised signatories specified in the Particulars as changed from time to time in accordance with clauses 4.3 and 4.4.

Authorities means the Civil Aviation Safety Authority or the relevant state or federal Department of Transport or similar government body.

Attorney means each attorney appointed by you.

Business Day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a national public holiday.

Controller has the meaning given to it in the Corporations Act.

Commercial Hire Purchase Agreement or Hiring Agreement means an Equipment Finance Agreement to hire Goods from us with an option to purchase arising from acceptance of a Commercial Hire Purchase Offer.

Commercial Hire Purchase Offer means an offer made pursuant to the General Terms to enter into a Commercial Hire Purchase Agreement.

Commercial Hire Purchase Schedule means a Schedule in such form as we may specify from time to time.

Commercial Hire Purchase Terms and Conditions means the Terms and Conditions applicable to each Offer to enter into a Commercial Hire Purchase Agreement, being the Terms and Conditions in Part D of the General Terms.

Costs includes charges and expenses. It also includes charges and expenses in connection with advisers (in the case of legal advisers, on a full indemnity basis or solicitor and own client basis, whichever is higher).

Customer means the customer named in the Particulars.

Default or Event of Default means an event specified in clause 22.

Default Fees means the fees payable by you as specified in a Schedule or these General Terms.

Electronic Signature means an electronic method of signing that identifies the Person and indicates their agreement and intention to sign a document.

Encumbrance means any:

- (a) Security Interest;
- (b) right of set-off, assignment of income, garnishee order or monetary claim;
- (c) Notice under section 218 or 255 of the Income Tax Assessment Act 1936 (Cth) or under subdivision 260A of Schedule 1 of the Taxation Administration Act 1953 (Cth) or under any similar provision of any law;
- (d) right that a Person has to lease, Licence, occupy or to use; or
- (e) equity, interest or writ of execution,

or any agreement to create any of them or allow them to exist.

Equipment Finance Agreement means each and every Lease Agreement, Commercial Hire Purchase Agreement, Rental Agreement, Specific Security Agreement or Escrow Agreement entered into with us, including by way of a Master Agreement, and any extensions, variations or renewals of those Agreements.

Escrow Agreement means an Equipment Finance Agreement to acquire Goods arising from acceptance of an Escrow Offer.

Escrow Offer means an offer made pursuant to the General Terms to enter into an Escrow Agreement.

Escrow Terms and Conditions mean the Terms and Conditions applicable to each Offer to enter into an Escrow Agreement, being the Terms and Conditions in Part F of the General Terms.

Escrow Schedule means a Schedule in such form as we may specify from time to time.

Final Repayment Date means the date specified in the Particulars.

Financier means us as described in a Schedule.

Financing Change Statement has the meaning given to it in the PPSA.

First Instalment of Rent means for each Equipment Finance Agreement (other than a Specific Security Agreement):

- (a) if we and you have not agreed upon any common payment date, rent for one (1) payment period as referred to in the Schedule for that Agreement; or
- (b) if we and you have agreed upon a common payment date, rent from the commencement date of that Agreement until the next common payment date and (unless otherwise agreed by us) for one (1) payment period thereafter.

First Loan Instalment means for each Specific Security Agreement the First Loan Instalment specified in the relevant Specific Security Agreement Schedule.

General Terms means these General Terms including Parts A - F, as amended and updated from time to time.

Goods means any Goods or Secured Property from time to time the subject of an Equipment Finance Agreement or, as the case may be, of an Offer and includes everything used or held in connection with them including all accessories, replacements, attachments, features, devices and software installed upon or fitted to the Goods, all manuals, operating guidelines, log books and service books.

Grantor means you as the provider of a Security Interest in favour of us.

GST has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Guarantee means the Guarantee and Indemnity in Clauses 56 and 57 of these General Terms.

Guarantor means, the party or parties specified in the Particulars together with any other party who may from time to time provide a Guarantee for the due performance by you under any Equipment Finance Agreement. If there is more than one party who is a Guarantor then Guarantor will mean all such parties jointly and each of them severally.

Implicit Rate means the rate of return anticipated by us to be earned by us on our investment in this transaction when the Equipment Finance Agreement was entered into (noting such rate may not be specific to your circumstances but may be the rate used by us generally for products of this or a related type).

Insolvent means a Person who:

- (a) is (or state that they are) an Insolvent under administration or Insolvent (each as defined in the Corporations Act);
- (b) has a Controller appointed, is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of their property;
- (c) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by us);
- (d) has an application or order made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above;

(e) is taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand;

(f) is the subject of an event described in section 459C(2) (b) or section 585 of the Corporations Act (or they make a statement from which we reasonably deduce they are so subject);

(g) in the case of an individual, is declared or becomes bankrupt or is of unsound mind;

(h) is otherwise unable to pay their debts when they fall due; or

(i) has something substantially similar to any of the things referred to above happen to them under the law of any jurisdiction.

Lease Agreement means an Equipment Finance Agreement to lease the Goods from us arising from acceptance of a Lease Offer.

Lease Offer means an offer made pursuant to these General Terms to enter into a Lease Agreement.

Lease Schedule means a Schedule in such form as we may specify from time to time.

Lease Terms and Conditions means the Terms and Conditions applicable to each Offer to enter into a Lease Agreement being the Terms and Conditions in Part C of the General Terms.

Licence means any right, licence, permit allocation, quota or authorisation (including to develop and use the Secured Property) which allows activity to be carried out on or in connection with the Secured Property.

Loan means the amount specified in the Particulars for a Specific Security Agreement.

Loss Valuation has the meaning given to it (as the context requires) in the Rental Terms and Conditions and the Escrow Terms and Conditions.

Master Agreement means a master agreement including unlimited guarantee and indemnity you have with us which allows you to submit Schedules to us to offer to enter into one or more Equipment Finance Agreements with us from time to time.

Navigation Act means the Navigation Act 2012 (Cth).

Notice means any Notice, demand or consent provided in accordance with clause 47.

Offer means a Lease Offer, a Commercial Hire Purchase Offer, a Rental Offer, Specific Security Agreement Offer or an Escrow Offer.

Particulars means the Particulars set out in a Schedule or in a Master Agreement.

Payable, in relation to an amount, means an amount which is currently payable or will or may be payable in the future.

Permitted Encumbrance means:

- (a) every lien created, or arising, or provided for by operation of law (other than the PPSA Law) in the ordinary course of trading securing an obligation that is not yet due;
- (b) every possessory lien for the unpaid balance of moneys Owing for repairs as long as the moneys secured by the lien is paid when due;
- (c) Security Interest in the Secured Property created in your favour and registered pursuant to the PPSA; and

- (d) the right and interest of a lessee or hirer of the Secured Property under a lease or Rental Agreement entered into by you without breaching your obligations under this Document.

Permitted Interest in respect of the Goods or a Third- Party Hire Agreement, means:

- (a) our Security Interest under an Equipment Finance Agreement;
- (b) your interest (including a Security Interest where applicable) as lessor or hirer under a Third-Party Hire Agreement; or
- (c) the interest of the third-party hirer or third-party lessee under a Third-Party Hire Agreement.

Person includes an individual, a firm, a strata corporation, a body corporate, an unincorporated association and an authority.

PPSA means the Personal Property Securities Act 2009 (Cth).

PPSA Law means:

- (a) the PPSA;
- (b) any regulation made pursuant to the PPSA; and
- (c) any amendment from time to time made to any other legislation or regulation as a consequence of a PPSA Law referred to in paragraph (a) or (b).

PPSA Security Interest means a 'Security Interest' as defined in the PPSA.

Premises means the location of the Secured Property specified in the Particulars or such other location notified by you and accepted in writing by us.

Proceeds has the meaning given to it in the PPSA.

Receiver includes receiver, or receiver and manager.

Recoverable Amount has the meaning given to it (as the context requires) in the relevant Terms and Conditions that apply to the corresponding Equipment Finance Agreement.

Register has the meaning given to it in the PPSA.

Registration Form means a Verification Statement or any document that is required by us or an authority in connection with the assessment or payment of any tax (including stamp duty) in relation to an Equipment Finance Agreement or our Security Interest in the Goods.

Residual Value means the Residual Value of the Goods specified in the Particulars;

Rental Agreement means an Agreement to hire Goods from us arising from acceptance of a Rental Offer.

Rental Offer means an offer made pursuant to these General Terms to enter into a Rental Agreement.

Rental Schedule means a Schedule in such form as we may specify from time to time.

Rental Terms and Conditions means the Terms and Conditions applicable to each Offer to enter into a Rental Agreement, being the Terms and Conditions in Part E of the General Terms.

Sales Proceeds means all the proceeds of any sale, disposal or other dealing with any asset comprised in the Secured Property.

Schedule means a Lease Schedule, a Commercial Hire Purchase Schedule, a Rental Schedule, a Specific Security Agreement Schedule or an Escrow Schedule.

Security Agreement means a 'Security Agreement' as defined in the PPSA.

Secured Party means the Person described in the Particulars.

Secured Property means any Goods or property described in the Particulars and includes any agreements in respect of the renting or hiring out by you of the Secured Property.

Security Interest means:

- (a) any Security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power or title retention arrangement;
- (b) a PPSA Security Interest; or
- (c) any document to grant or create anything referred to in either paragraphs (a) or (b) of this definition and any other thing which gives a creditor priority to any other creditor with respect to any asset or an interest in any asset.

Serial Number has the meaning given in the PPSA.

Shipping Registration Act means the *Shipping Registration Act 1981* (Cth).

Specified Account means the account opened by you with us.

Specific Security Agreement means an Equipment Finance Agreement between you and us where we provide financial accommodation to you to purchase Goods arising from the acceptance of a Specific Security Agreement Offer.

Specific Security Agreement Offer means an offer made pursuant to these General Terms to enter into a Specific Security Agreement.

Specific Security Agreement Terms and Conditions means the Terms and Conditions applicable to each Offer to enter into a Specific Security Agreement, being the Terms and Conditions in Part B of the General Terms.

Specific Security Agreement Schedule means a Schedule in such form as we may specify from time to time.

Supplier or Vendor means the supplier or vendor of the Goods.

Supplier's Invoice means unless we otherwise agree an invoice from the Supplier which:

- (a) is addressed to us if the Equipment Finance Agreement is a Lease Agreement, Commercial Hire Purchase Agreement or Rental Agreement;
- (b) is addressed to you if the Agreement is a Specific Security Agreement;
- (c) specifies the name and ABN of the Supplier;
- (d) sets out a full description of the Goods including registration numbers (including the Serial Number, if any), engine numbers, manufacturer's numbers to identify the Goods;
- (e) specifies whether the Goods are new or second hand; and
- (f) specifies the total purchase price payable (inclusive of GST) to the Supplier in respect of the Goods.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if

imposed on our overall net income or if they arise as a result of our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers and agents or any receiver we appoint.

Third-Party Hire Agreement means an agreement, arrangement or understanding under which you as a lessor on-hire the Goods to another Person or allow another Person to use, occupy or have possession of the Goods and includes all your right, title and interests under, in and to the Third-Party Hire Agreement.

Total Amount Owning means, at any time, all money which one or more of you owe us, or will or may owe us in the future, including under, or in connection with the Secured Property, or an Equipment Finance Agreement.

This description includes:

- (a) any Loan with us;
- (b) any brokerage or commission Payable by us in connection with an Equipment Finance Agreement;
- (c) all money owing by you to us under any judgment, order, agreement, deed or other thing into which a present or future obligation of yours to us becomes merged,

but does include an amount that would, if that amount formed part of the Total Amount Owning, be Payable under an Agreement that is void under any applicable legislation.

This definition applies:

- (a) irrespective of the capacity in which you or we became entitled to the amount concerned;
- (b) irrespective of the capacity in which you or we became liable in respect of the amount concerned;
- (c) whether you or we are liable as Guarantor, as surety, or otherwise;
- (d) whether you are liable alone, or together with another Person;
- (e) even if you owe an amount or obligation to us because it was assigned to us, whether or not:
 - (i) the assignment was before, at the same time as, after this Document is executed;
 - (ii) you consented to or were aware of the assignment; or
 - (iii) the assigned obligation was secured or unsecured;
- (f) if you are a trustee, whether or not you have a right of indemnity from the trust fund;
- (g) whether or not the money is due for payment at that time;
- (h) even if the money is owing only on a contingency; and
- (i) whether the relevant transaction took place before or after you executed the relevant Equipment Finance Agreement.

A reference to the Total Amount Owning also includes any part of it.

Verification Statement has the meaning given to it in the PPSA.

VIN has the meaning given to it in the PPSA.

we, us and **our** means BOQ Equipment Finance Limited ABN 78 008 492 582 and its successors and assigns.

you, your, Grantor and **Customer** means the Person or Persons named in the Particulars. If there are more than one, you means each of them separately and every two or more of them jointly.

Unless defined in the General Terms, a term or expression which is used in this Document and which is defined in the PPSA has the meaning given to that term or expression in, or in the context of, the PPSA.

59. Interpretation

61.1 Interpretation

The following rules apply to the interpretation of these General Terms. Reference to:

- (a) a Person includes the Person's successors and assigns;
- (b) a thing includes all or part of that thing;
- (c) a statute includes a statute as amended, repealed or replaced from time to time;
- (d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) a gender includes all other genders;
- (f) currency or \$ is to Australian dollars;
- (g) clauses are references to clauses in these General Terms;
- (h) the singular includes the plural and the other way around;
- (i) a reference to the Terms and Conditions means a reference to the relevant Specific Security, Lease, Commercial Hire Purchase, Rental or Escrow Terms and Conditions, as the context requires;
- (j) the Corporations Act means the *Corporations Act 2001* (Cth); and
- (k) headings for clauses are included for guidance only and must not be used for interpretation.

A day ends at midnight for all purposes under this document.

Part B – Specific Security Agreement

This Part B applies to all Specific Security Agreements and should be read together with Part A of the General Terms, the Particulars and your Specific Security Agreement Schedule.

1. Payment of Total Amount Owing

- 1.1 You must pay the Instalments specified in the Particulars (being a composite payment of principal and interest with the interest being calculated at the Contract Rate).
- 1.2 Any Instalment not paid by the due date for payment will accrue interest at the Default Rate.
- 1.3 On the Final Repayment Date you must pay to us the balance of the Total Amount Owing and all interest Payable on the Total Amount Owing.

2. What you must pay

- 2.1 Payment in full
 - (a) You must pay us the Total Amount Owing in full without setting off amounts you believe we owe you and without counter claiming amounts from us.
 - (b) We may set off against the Total Amount Owing any money we owe you.

3. Early Repayment

- 3.1 You have no right to repay the Loan early. However, if we agree at any time at our sole discretion to permit you to make early repayment of the Loan, then the conditions of this clause 3 will apply.
- 3.2 You must:
 - (a) pay to us the Termination Payment; and
 - (b) fulfil all your other obligations under these General Terms to the date of early repayment.
- 3.3 If the Secured Property is stolen, lost, destroyed or substantially damaged or impaired and it is not reinstated in accordance with the General Terms:
 - (a) the Loan terminates in respect of the Secured Property or part of the Secured Property which has been totally or substantially lost or destroyed;
 - (b) the Loan continues in respect of any Secured Property that is not affected;
 - (c) you must pay us the Termination Payment (and once the Termination Payment has been paid you will not be liable for any further Loan Instalments in respect of the relevant Secured Property); and
 - (d) we will give you full credit for any insurance money or proceeds of salvage received by us (net of all recovery and other Costs), if and when received, but if you have not paid any part of the Termination Payment or any other Amount Owing to us we may deduct that unpaid amount from the insurance money or proceeds before paying the rest to you.
- 3.4 If we take action due to any Event of Default, the amount that is Payable by you in respect of the principal, scheduled interest and break costs for each

terminated Loan is the Termination Payment. This does not limit the amount Payable by you in respect of any of the Total Amount Owing that is not referable to principal, Scheduled interest or break costs, for example, Receiver or other enforcement Costs, indemnity amounts or Default Fees.

4. Conversion of interest to principal

- 4.1 We may, at our complete discretion, convert interest not paid when due into principal. If we do convert unpaid interest into principal then that principal is immediately Payable and interest will be Payable on that principal in the manner provided for in the General Terms. However, interest will not be taken to have been turned into principal merely because interest is charged on it or of its inclusion in any statement of account.
- 4.2 You recognise and acknowledge that we are authorised to charge interest on interest that has become Payable.

5. Interest

- 5.1 You must pay interest on any part of the Total Amount Owing which is due for payment but which is not otherwise incurring interest. The interest accrues daily from (and including) the due date up to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days (in a leap year, a year of 366 days). You must pay interest owing under this clause 5, on demand from us.
- 5.2 The rate of interest applying to each daily balance is the Default Rate.
- 5.3 Each month (or any other period we choose), we may add to the amount you owe us any interest under this clause 5 which has not been paid. You will then be liable for interest under this clause 5 on the Total Amount Owing.
- 5.4 If any amount you must pay to us becomes covered by a court order, you must pay interest on that amount as a separate obligation. The interest accrues from and including the date we first ask you for the amount until but excluding the date that amount is paid. This obligation is not affected by the court order. The rate is the Default Rate or the rate in the court order (whichever is higher). You must pay interest under this clause 5 on demand from us.

6. Definitions in this Part B

In this Part B, the following terms have these meanings:

Contract Rate means the rate of interest used by us to calculate the total amount of interest Payable by you under this Document.

Default Rate means the rate of interest that is 2% per annum above the Contract Rate.

Discount Rate means the rate of interest that is 2.5% per annum less than the Contract Rate.

Final Repayment Date means the date specified in item 8 of the Particulars.

Instalment means the principal and interest instalments specified in the Schedule.

Termination Payment means the aggregate of:

- (a) any Loan Instalment and any other money then accrued due but not paid and any interest Payable on it (including any interest on the Termination Payment, if not paid when due);
- (b) the aggregate of the Loan Instalments not then accrued due rebated to reflect their then value ascertained by applying the Discount Rate to each Loan Instalment over the period by which payment is brought forward by virtue of the early termination; and
- (c) such additional amount as we determine to be reasonable compensation for our cost associated with the early termination being an amount equivalent to one month's Loan Instalment.

Any defined terms referred to in this Part B which are not defined in Part A of the General Terms have the meaning given to them in the Particulars.

Part C – Lease Agreement

This Part C applies to all Lease Agreements and should be read together with Part A of the General Terms, the Particulars and your Lease Agreement Schedule.

1. When the Lease takes effect

- 1.1 This Lease only commences when it has been accepted by us in accordance with clause 1.3 below. Until this Lease is accepted by us, delivery to you of the Goods are provisional only.
- 1.2 If provisional delivery of the Goods are made, your obligations as to insurance, care and use of the Goods and otherwise (except as to payment of rent) bind you as soon as you sign this Lease. You are then a tenant at will of the Goods at a daily rent equal to the amount obtained by dividing the amount of the first rent instalment by the number of days in the first rent period. If this Lease is ultimately accepted by us, all rent paid will be applied by us in reduction of the Total Rent.
- 1.3 On the date the Goods has been purchased and/or financed by us, that purchase and/or the provision of finance (whichever occurs first) will be an acceptance creating a contract which will be without Notice to you and governed by the law of the state or territory specified as being the applicable law in the Particulars.
- 1.4 You must immediately notify us in writing if you are requested to accept delivery of the Goods and, notwithstanding the other provisions of this clause 1, you must not accept delivery or take possession of the Goods without our prior written approval.

2. Delivery and Ownership

- 2.1 You must obtain delivery of the Goods on the date you require it and must notify us on the date you obtain delivery. We are not liable for, and nor is the Lease affected by, any delay in delivery or refusal to deliver unless we are unreasonably responsible for it. The Goods always remain our property. You only have a right to use the Goods.

3. Default and Breaches

- 3.1 The following are additional Events of Default in respect of a Lease:
 - (a) if you fail to pay the rent on the due date and that Default continues for 7 days or more or you Default in payment of any other money Payable under this Lease and Default continues for 7 days or more;
 - (b) if, after we sign this Lease, you refuse to obtain or take delivery of the Goods or fail to do so within a reasonable time (of which we are the sole judge) after delivery is available; or
 - (c) if any insurance proposal made by you in respect of the Goods is declined or any insurance is cancelled.
- 3.2 Upon the occurrence of an Event of Default:
 - (a) any right under this Lease that you have to deal with the Goods immediately ceases; and/or
 - (b) if the Goods are subject to a Third-Party Hire Agreement, we are entitled to exercise your rights and powers, without assuming your obligations and

liabilities, as lessor under the Third-Party Hire Agreement.

In each such case, before taking any action we will give you Notice and allow you a reasonable time (being not less than 30 days) to remedy the Default if the Default is able to be remedied.

- 3.3 Before we act on a Default, we will allow you a reasonable time (being not less than 30 days) to remedy the Default if it is able to be remedied, and notify you of this time period. However, we do not have to do this if it is reasonable for us to act to manage a material and immediate risk relating to:
 - (a) the Default;
 - (b) your particular circumstances; or
 - (c) the value of the Goods.
- 3.4 We will act on a Default immediately, if the Default by its nature is material, or if we reasonably consider the event has had, or is likely to have, a material impact on:
 - (a) you or a Guarantor's ability to meet you or their financial obligations (or our ability to reasonably assess these);
 - (b) the value, safety or risk to the Secured Property (or our ability to reasonably assess it); or
 - (c) our legal or reputational risks, assessed by us acting reasonably.

4. Fundamental Terms

- 4.1 The fundamental and essential terms of this Lease are that:
 - (a) you must pay all money due or payable under this Lease within 7 days of the due date; and
 - (b) you must ensure that nothing happens which might prejudice the safety or condition of the Goods or our ability to recover it;
 - (c) you must ensure that any Security Interest you hold in the Goods is continuously perfected; and
 - (d) you must ensure that no event of Default specified occurs or, if it does, you must remedy it, if it is capable of remedy, within 30 days.
- 4.2 You will repudiate this Lease and we may accept that repudiation and terminate the Lease by Notice to you if you do not comply with a fundamental and essential term of this Lease.
- 4.3 If we terminate this Lease, we are entitled to payment, as liquidated loss of bargain damages, of the Recoverable Amount being the aggregate of:
 - (a) the present day value at the date of termination (ascertained by applying the Discount Rate to each payment over the period by which the date for payment is brought forward) of the Residual Value and of all the rent that would otherwise have been Payable had this Lease not terminated and which, at

- the date of termination, had not fallen due for payment;
- (b) the amount of any rent or other money then overdue under this Lease and any interest Payable on it (including any interest on the Recoverable Amount, if not paid when due); and
 - (c) such additional amount as we determine to be reasonable compensation for our cost associated with the early termination being an amount equivalent to one month's rental payment.
- 4.4 On the expiry or termination of a Lease, you must pay to us:
- (a) the Residual Value of the Goods;
 - (b) if the Goods are not received within 7 days after we have given you Notice to return it to us, by way of liquidated damages for detention, a daily sum equal to the amount obtained by dividing the amount of the last rent instalment specified in the Lease by the number of days in the last rent period specified in the Lease; and
 - (c) all other money Payable under the Lease.
- 4.5 If you continue to remain in possession after expiry or termination of this Lease with our written consent, you must, until the return of the Goods, pay to us a daily rent equal to the amount obtained by dividing the amount of the last rent instalment by the number of days in the last rent period and must comply with the terms of this Lease as far as applicable.

5. Return of Goods

- 5.1 You have no right to return the Goods to us prior to the expiry of the term of the Lease unless that right is given to you by a law which cannot be excluded. However, if during the term of the Lease you ask us to accept the return of the Goods prior to the expiry of the term of the Lease and we agree to that return, you must pay to us an amount equal to the Recoverable Amount and the provisions of this clause 5 of Part C apply to the disposal of the Goods.
- 5.2 You must return the Goods to us at the address specified in this Lease or otherwise notified to you in writing:
- (a) when the Lease expires;
 - (b) if the Lease is otherwise determined;
 - (c) if we agree to accept the return of the Goods; or
 - (d) if we become entitled to possession of the Goods.
- 5.3 You are responsible for all delivery Costs and the Goods must be returned in good order and repair.
- 5.4 You must also return all tools, accessories, manuals, log books and software supplied with the Goods or which form part of the Goods.
- 5.5 If you fail to return the Goods as required by this Lease, then we may retake possession of it.

6. Definitions in this Part C

In this Part C, the following terms have these meanings:

Discount Rate means the rate specified as the Discount Rate in the Particulars or if there is no rate specified then the Implicit Rate less 2.5% per annum.

Lease means the Lease Agreement.

Recoverable Amount has the meaning given to it in clause 4.3.

Any defined terms referred to in this Part C which are not defined in Part A of the General Terms have the meaning given to them in the Particulars.

Part D - Commercial Hire Purchase Agreement

This Part D applies to all Commercial Hire Purchase Agreements and should be read together with Part A of the General Terms, the Particulars and your Commercial Hire Purchase Agreement Schedule.

1. When the Hiring Agreement takes effect

- 1.1 This Hiring Agreement only commences when it has been accepted by us in accordance with clause 1.3 below. Until this Hiring Agreement is accepted by us, delivery to you of the Goods is provisional only.
- 1.2 If provisional delivery of the Goods are made, your obligations as to insurance, care and use of the Goods and otherwise (except as to payment of rent) bind you as soon as you sign this Hiring Agreement. You are then a tenant at will of the Goods at a daily rent equal to the amount obtained by dividing the amount of the first rent instalment by the number of days in the first rent period. If this Hiring Agreement is ultimately accepted by us, all rent paid will be applied by us in reduction of the Total Rent.
- 1.3 On the date the Goods have been purchased and/or financed by us, that purchase and/or the provision of finance (whichever occurs first) will be an acceptance by us creating a contract which will be governed by the law of the state or territory specified as being the applicable law in the Particulars.
- 1.4 You must immediately notify us in writing if you are requested to accept delivery of the Goods and, notwithstanding the other provisions of this clause 1, you must not accept delivery or take possession of the Goods without our prior written approval.

2. Deposit

- 2.1 If a Deposit is specified in the Particulars, you warrant that you have, by way of deposit:
 - (a) provided to the Vendor (or will so provide when required by us); or
 - (b) at our option, provided to us cash and/or Goods at least equal in value to the Deposit (or will so provide when required by us).
- 2.2 Where the Deposit has been or will be provided to the Vendor, it was or will be provided by you on terms that the Vendor is to account to us for the value of the Deposit in reduction of the amount Payable by us to the Vendor for the purchase of the Goods.
- 2.3 Any Deposit paid or provided by you is deemed to have been paid or provided in consideration of the grant of the option contained in clause 7.

3. Delivery and Ownership

- 3.1 You must obtain delivery of the Goods on the date you require them and must notify us on the date you obtain delivery.
- 3.2 We are not liable for, and nor is the Hiring Agreement affected by any delay in delivery or refusal to deliver, unless we are unreasonably responsible for it. Subject to clauses 7 and 9, the Goods always remain our property. You only have a right to use the Goods.

4. Fundamental Terms

- 4.1 The fundamental and essential terms of this Hiring Agreement are that:
 - (a) you must pay all money due, or required to be paid, under this Hiring Agreement within 7 days of the due date;
 - (b) you must ensure that nothing happens which might prejudice the safety or condition of the Goods or our ability to recover the Goods;
 - (c) you must ensure that any Security Interest you hold in the Goods is continuously perfected; and
 - (d) you must ensure that no event of Default occurs.
- 4.2 You will repudiate this Hiring Agreement and we may accept that repudiation and terminate it by Notice to you if you do not comply with a fundamental and essential term of this Hiring Agreement.
- 4.3 If we terminate this Hiring Agreement under clause 4.2 we are entitled to payment, as liquidated loss of bargain damages, of the Recoverable Amount.
- 4.4 We are entitled, pending payment by you of all moneys Payable by you under this Hiring Agreement (including, without limitation, the full amount under clause 4.3 and the performance of all outstanding obligations or obligations assumed by you under this Hiring Agreement, to retain or take possession of the Goods.

5. Return of Goods

- 5.1 You have no right to return the Goods to us prior to the expiry of the term of the Commercial Hire Purchase Agreement unless that right is given to you by a law which cannot be excluded. However, if during the term of the Commercial Hire Purchase Agreement you ask us to accept the return of the Goods prior to the expiry of the term of the Commercial Hire Purchase Agreement and we agree to that return, you must pay to us an amount equal to the Recoverable Amount and the provisions of clause 21 of the General Terms apply to the disposal of the Goods.
- 5.2 You must return the Goods to us at the address specified in this Equipment Finance Agreement or otherwise notified to you in writing:
 - (a) when the Commercial Hire Purchase Agreement expires;
 - (b) if the Commercial Hire Purchase Agreement is otherwise determined;
 - (c) if we agree to accept the return of the Goods; or
 - (d) if we become entitled to possession of the Goods.
- 5.3 You are responsible for all delivery Costs and the Goods must be returned in good order and repair.
- 5.4 You must also return all tools, accessories, manuals, log books and software supplied with the Goods or which form part of the Goods.

- 5.5 If you fail to return the Goods as required by this Commercial Hire Purchase Agreement then we may retake possession of it.

6. Terms Charges

- 6.1 You acknowledge that you must pay all interest, fees, charges and any stamp duty that is or may be levied under this Hiring Agreement. The amount of the Terms Charges is stated in the Particulars and the rent instalments have been calculated on the basis of the Terms Charges Payable on this Hiring Agreement.

7. Option to Purchase

- 7.1 Subject to clause 7.2, you have the option at any time during the currency of this Hiring Agreement (provided that you are not then in Default under this Hiring Agreement) to purchase the Goods from us. If you duly exercise this option, you will be the absolute owner of the Goods.
- 7.2 You may exercise the option to purchase by complying with the terms of this Hiring Agreement to the date of exercise and by paying to us the Recoverable Amount at that time.

8. Option to Terminate

- 8.1 Prior to the payment of the last of the rent instalments provided for in the Particulars, you have the right to terminate the hiring provided for by this Hiring Agreement at any time by:
- (a) at your own expense, returning the Goods to us or our nominee, at a time and place nominated by us;
 - (b) paying to us the Recoverable Amount at that time; and
 - (c) fulfilling all your other obligations under this Hiring Agreement to the date of the exercise of the right.
- 8.2 If you exercise the right to return the Goods in the manner provided for in clause 8.1, we will dispose of the Goods in accordance with our rights as soon as practical.
- 8.3 Nothing in this clause 8 is to be taken to limit or affect any of your warranties or indemnities in this Hiring Agreement or the General Terms but once you have exercised your rights in accordance with clause 8.1, you are freed of all further obligations under this Hiring Agreement.

9. Ownership on completion of rent period

- 9.1 Provided you are not otherwise in Default under this Hiring Agreement, upon payment by you of the whole of the rent Payable by you under this Hiring Agreement at the times and in the manner provided in this Hiring Agreement, and the payment by you of all other money which you are required to pay under this Hiring Agreement, property in, and title to the Goods vests in you absolutely.

10. Interest provisions specific to the Commercial Hire Purchase Agreement

- 10.1 Interest accrues day to day from the due date for payment up to the date of actual payment, before or after judgment, at the same rate of interest as is required to be paid under the Hiring Agreement.

11. Default and breaches

- 11.1 The following is an additional Event of Default in respect of a Hiring Agreement:
- (a) if, after we sign this Hiring Agreement, you refuse to obtain or take delivery of the Goods or fail to do so within a reasonable time (acting reasonably) after delivery is available.
- 11.2 Upon the occurrence of an Event of Default:
- (a) any right you have under this Hiring Agreement to deal with the Goods immediately ceases; and/or
 - (b) if the Goods are subject to a Third-Party Hire Agreement, we are entitled to exercise your rights and powers, without assuming your obligations and liabilities, as lessor under the Third-Party Hire Agreement.

12. Additional Provisions – Western Australia and Queensland

- 12.1 You warrant to us that:
- (a) if you are resident in Queensland and the Goods are located in Queensland, then:
 - (i) unless separately disclosed to us in writing, you are not a farmer as that term is defined in the Queensland Legislation;
 - (ii) you must immediately notify us if at any time you become a farmer as at that term is defined in the Queensland Legislation; and
 - (iii) you will not without our consent use the Goods in connection with a farming business as that term is defined in the Queensland Legislation;
 - (b) if you are resident in Western Australia and the Goods are located in Western Australia:
 - (i) unless separately disclosed to us in writing, you are not a farmer as that term is defined in the Western Australian Legislation; and
 - (ii) you must immediately notify us if at any time you become a farmer as at that term is defined in the Western Australian Legislation.
- 11.2 Notwithstanding the provisions of clause 60 of the General Terms, where under any Applicable Legislation the Termination Amount must be calculated in accordance with the formula set out in that legislation, then that Termination Amount will be calculated in accordance with the rule of 78 (being paragraph (b) of the definition of terms and charges in section 3 of the Schedule to the Queensland Legislation and paragraph

(a)(1) of the definition of statutory rebate in clause 2 of the Western Australian Legislation), taking into account any applicable GST adjustment.

- 11.3 The subsequent provisions of this clause apply only where:
- (a) you are resident in Queensland or Western Australia or the Goods are located in either of those states;
 - (b) under the Applicable Legislation you are a farmer and the Goods the subject of this Hiring Agreement are farm Goods (if the Applicable Legislation is the Queensland Legislation) or Goods of a type referred to in the Western Australian Legislation (if that is the Applicable Legislation); and
 - (c) the exercise by us of our rights against you is subject to any restrictions or limitations contained in that Applicable Legislation.
- 11.4 Nothing in this Hiring Agreement avoids, limits or restricts any right which you may have under any Applicable Legislation. We must exercise our rights under this Hiring Agreement subject to all of your rights under any Applicable Legislation.
- 11.5 Without limiting the foregoing, where under any Applicable Legislation:
- (a) you are entitled to any period of Notice greater than any Notice provided for in this Hiring Agreement or you are entitled to any Notice in addition to any Notice provided for in this Hiring Agreement, then we must give notices in accordance with the Applicable Legislation; and
 - (b) the maximum amount that we may recover from you is subject to any limitation or restriction, then the maximum amount that we may recover under this Hiring Agreement is the lesser of the amount so specified in that Applicable Legislation and the amount provided for in this Hiring Agreement.

Western Australia Legislation means the *Hire Purchase Act 1959 (WA)*.

Any defined terms referred to in this Part D which are not defined in Part A of the General Terms have the meaning given to them in the Particulars.

13. Definitions in this Part D

- 13.1 In this Part D, the following terms have these meanings:

Applicable Legislation means the Western Australia Legislation and the Queensland Legislation.

Recoverable Amount means the aggregate of:

- (a) the Termination Amount;
- (b) the amount of any rent or other money then overdue under this Hiring Agreement and any interest Payable on it (including any interest on the Recoverable Amount, if not paid when due); and
- (c) such additional amount as we determine to be reasonable compensation for our cost associated with the early termination being an amount equivalent of one month's rental payment.

Queensland Legislation means the *Credit (Rural Finance) Act 1996 (QLD)*.

Termination Amount means the present day value at the date of termination (ascertained by applying the Discount Rate to each rent instalment over the period by which the date for payment is brought forward) of all the rent that would otherwise have been Payable had this Hiring Agreement not terminated and which, at the date of termination, had not fallen due for payment, taking into account any applicable GST adjustment.

Part E – Rental Agreement

This Part E applies to all Rental Agreements and should be read together with Part A of the General Terms, the Particulars and your Rental Agreement Schedule.

1. Agreement Effective

- 1.1 The Rental Agreement only commences when it has been accepted by us in accordance with clause 1.3 below. Until Rental Agreement is accepted by us, delivery to you of the Goods is provisional only.
- 1.2 If provisional delivery of the Goods is made, your obligations as to insurance, care and use of the Goods and otherwise (except as to payment of rent) bind you as soon as you sign Rental Agreement. You are then a tenant at will of the Goods. If the commencement date of a Rental Agreement is not the first rent instalment due date specified in the Particulars, you must pay us an additional rent, based on the number of days from and including the commencement date of that Rental Agreement, up to but excluding the first payment due date (being the "Interim Period").
- 1.3 On the date the Goods have been purchased and/or financed by us, that purchase and/or the provision of finance (whichever occurs first) will be an acceptance by us, creating a contract which will be governed by the law of the state or territory specified as being the applicable law in the Particulars.
- 1.4 You must immediately notify us in writing if you are requested to accept delivery of the Goods and, notwithstanding the other provisions of this clause 1, you must not accept delivery or take possession of the Goods without our prior written approval.

2. Agreement non-cancellable

- 2.1 The Rental Agreement can not be cancelled or terminated except as provided for in Rental Agreement.

3. Delivery and ownership

- 3.1 You must obtain delivery of the Goods on the date you require it and must notify us on the date you obtain delivery. We are not liable for, and nor is Rental Agreement affected by, any delay in delivery or refusal to deliver unless we are unreasonably responsible for it. The Goods always remain our property. You only have a right to use the Goods.

4. Return of Goods

- 4.1 You have no right to return the Goods to us prior to the expiry of the term of the Rental Agreement unless that right is given to you by a law which cannot be excluded. However, if during the term of the Rental Agreement you ask us to accept the return of the Goods prior to the expiry of the term of the Rental Agreement and we agree to that return, you must pay to us an amount equal to the Recoverable Amount and the provisions of clause 21 of the General Terms apply to the disposal of the Goods.

- 4.2 You must return the Goods to us at the address specified in this Rental Agreement or otherwise notified to you in writing:
 - (a) when the Rental Agreement expires;
 - (b) if the Rental Agreement is otherwise determined;
 - (c) if we agree to accept the return of the Goods; or
 - (d) if we become entitled to possession of the Goods.
- 4.3 You are responsible for all delivery Costs and the Goods must be returned in good order and repair.
- 4.4 You must also return all tools, accessories, manuals, log books and software supplied with the Goods or which form part of the Goods.
- 4.5 If you fail to return the Goods as required by this Rental Agreement then we may retake possession of it.

5. Recoverable Amount

- 5.1 If we terminate the Rental Agreement, we are entitled to payment, as liquidated loss of bargain damages, of the **Recoverable Amount** being the aggregate of:
 - (a) any rent instalments and any other money then accrued due but not paid and any interest Payable on it (including any interest on the Recoverable Amount, if not paid when due);
 - (b) as liquidated loss of bargain damages, the aggregate of the rent instalments not then accrued due rebated to reflect the then value ascertained by applying the Implicit Interest Rate less 2.5% per annum to each such instalment over the period by which the date for payment of it is, by virtue of this clause, brought forward (together with an amount equal to any stamp duty Payable in respect of such rebated Total Rent); and
 - (c) such additional amount as we determine to be reasonable compensation for our cost associated with the early termination being an amount equivalent of one month's rental payment.

6. End of Term and Holding Over

- 6.1 If you want the Rental Agreement to terminate upon the expiration of the initial period of Rental Agreement as set out in the Particulars, or any further period agreed between us and you, (the "Fixed Term") you must:
 - (a) deliver to us a written confirmation that you intend to return the Goods on expiry (which, once sent, you may not revoke without our prior written consent) which must be received by us no later than:
 - (i) 1 month prior to the end of the Fixed Term for monthly rental instalment periods; and

- (ii) 3 months prior to the end of the Fixed Term for any rental instalment period which is 3 months or longer;
 - (b) return the Goods on or before the last day of the Fixed Term in accordance with clause 4; and
 - (c) continue to pay rent as provided for in Rental Agreement until the expiry date of the Fixed Term.
- 6.2 We will inform you of your obligations prior to the end of your Fixed Term.
- 6.3 If you do not fully comply with clause 6.1, the Rental Agreement is automatically renewed at the end of the Fixed Term for another rental instalment period and the Goods will continue to be rented to you on the basis of a periodic rental governed by the terms of the Rental Agreement, but you or we may cancel at any time by delivering a written cancellation Notice to the other party (which, once sent, may not be revoked without the other party's prior written consent) specifying the cancellation date for the periodic rental arrangement ("Cancellation Date"), which cancellation date must be at least one rental instalment period (whether 1 month, 3 months or otherwise, as applicable) after the date of the Notice.
- 6.4 If the periodic rental is cancelled in accordance with clause 6.2, you must return the Goods on or before the Cancellation Date.
- 6.5 You must continue to pay rent for the Goods up to the Cancellation Date.

7. Default and Breaches

- 7.1 The following are additional Events of Default in respect of a Rental Agreement:
- (a) if, after we sign Rental Agreement, you refuse to obtain or take delivery of the Goods or fail to do so within a reasonable time (of which we are the sole judge) after delivery is available.
- 7.2 Upon the occurrence of an Event of Default:
- (a) any right under Rental Agreement that you have to deal with the Goods immediately ceases; and/or
 - (b) if the Goods are subject to a Third-Party Hire Agreement, we are entitled to exercise your rights and powers, without assuming your obligations and liabilities, as lessor under the Third-Party Hire Agreement.

8. Increased Costs

If we determine that we are affected by any change in any making, interpretation or administration of any present or future law, official directive or regulation (including, without limitation, changes in the depreciation rates or methods applicable to the Goods in Rental Agreement) and, as a result:

- (a) the cost to us of renting the Goods under a Rental Agreement; or
- (b) any amount paid or Payable to us or the return to us under Rental Agreement is in any way reduced;

then you must pay us within a reasonable period by way of increased rent, the amount notified by us to you which represents the increased cost or reduction.

9. Upgrade of Goods

- 9.1 If you notify us that you wish to upgrade the Goods, we will give consideration to financing the upgrade. We will only consider the upgrade if:
- (a) you are not in Default under Rental Agreement; and
 - (b) we are satisfied with your financial performance and position.

10. Definitions in this Part E

In this Part E, the following terms have these meanings:

Approved Valuer means an independent valuer who is experienced in valuing goods of a type similar to the Goods and appointed by us acting reasonably and in good faith.

Fair Market Value means:

- (a) if we dispose of the Goods the net amount obtained by us on such disposal (after payment of repossession, storage, sale and other Costs); or
- (b) if the Goods have not been sold within 3 months of the Goods having been received into our possession after expiry or termination of the relevant Rental Agreement the market or best value of the Goods in its then condition as determined by an Approved Valuer.

Implicit Interest Rate means the rate of return anticipated by us to be earned by us on our investment in this transaction when the Rental Agreement was entered into (noting such rate may not be Specific to your circumstances but may be the rate used by us generally for products of this or a related type);

Loss Valuation means:

- (a) the value which the Goods would have had if it had not been lost, destroyed or irreparably damaged, assuming the Goods was in excellent condition prior to the event, as determined by an Approved Valuer, as adjusted for:
- (b) the amount (if any) by which the estimate Fair Market Value of the Goods immediately before its loss exceeds the amount we estimated would be the Fair Market Value or the Residual Value (whichever is the greater) of the Goods at the end of the original term when we originally calculated the rental payments.

Any defined terms referred to in this Part E which are not defined in Part A of the General Terms have the meaning given to them in the Particulars.

Part F – Escrow Agreement

This Part F applies to all Escrow Agreements and should be read together with Part A of the General Terms, the Particulars and your Escrow Agreement Schedule.

1. Introduction

- 1.1 Under this Escrow Agreement you and the Guarantor have asked us to purchase the Goods for the purpose of financing it to you.
- 1.2 It is anticipated that the Goods will be acquired by us over a period of time and that the applicable Equipment Finance Agreement over the Goods will be entered into immediately after the whole of the Goods have been acquired by us and are located in Australia.
- 1.3 We have agreed to pay for the Goods (including any duty or freight charges) in the manner set out in this Part F.
- 1.4 In consideration of our agreeing to acquire the Goods under this Escrow Agreement, you have undertaken to pay to us costs and interest on all money expended by us in the course of acquiring the Goods until the Escrow Agreement and the applicable Equipment Finance Agreement is entered into and becomes operative.
- 1.5 When the whole of the Goods have been acquired by us and is located in Australia, you and we will terminate this Escrow Agreement and you will immediately enter into the applicable Equipment Finance Agreement with us and the Guarantor must continue to give the Guarantee to us.
- 1.6 The parties acknowledge the Escrow Agreement records their respective obligations. This Escrow Agreement is binding on the parties on the date the Goods are purchased and/or financed by us.

2. Payments by us

- 2.1 Whenever you wish us to make a payment to a Supplier:
 - (a) by way of deposit or part payment; or
 - (b) in respect of any other money payable in connection with the Goods;you must deliver to us, not later than 24 hours before the date on which you wish the payment to be made, a properly completed and signed Payment Notice.
- 2.2 Subject to clause 1.3, we will, as soon as practicable after receipt of the Payment Notice, pay to the Supplier the amount specified in the Payment Notice.
- 2.3 We are not obliged to make any payment in response to a Payment Notice unless:
 - (a) we are satisfied:
 - (i) with the Supplier;
 - (ii) that the amount specified in the Payment Notice is due and payable to the Supplier;
 - (iii) that title to the Goods, or that part of the Goods in respect of which payment is being requested, will pass to us immediately the payment is made;

- (iv) that we have received such particulars as we may require of the Goods, or that part of the Goods in respect of which payment is being requested, to enable us to lodge a Financing Statement or a Financing Change Statement on the Register;
 - (v) that the amount specified in the Payment Notice, when aggregated with the amounts previously paid under this Agreement does not exceed the Agreed Price of the Equipment or the Maximum Amount of Advance under this Agreement;
 - (vi) that the Goods are adequately insured and that we are named as owner on the insurance policy;
 - (vii) that default is not continuing under this Agreement or any other agreement between us and you; and
 - (viii) that you have appropriate arrangements in place to cover any exposure to exchange rate fluctuations; and
- (b) you:
- (i) have delivered to us an invoice satisfactory to us in respect of which payment is to be made; and
 - (ii) in the case of a final payment by us, have delivered to us:
 - (A) an inspection certificate satisfactory to us; and
 - (B) the properly signed Schedule for the applicable Equipment Finance Agreement and the Guarantee (if applicable).

2.4 You agree that:

- (a) all payments to the Supplier in any currency other than Australian dollars will be converted to Australian dollars at the exchange rate applying on the date on which the payment is made by us;
- (b) we may deduct our usual costs in connection with the conversion; and
- (c) you satisfy your obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the costs of the conversion.

3. Our Rights to Make Payments

- 3.1 In addition to making payments under clause 2.2, we are authorised by you and the Guarantor, at any time and from time to time, to make all payments to the Supplier that we consider necessary to enable the Supplier to complete the construction and/or installation and/or delivery of the Goods to us. You and the Guarantor acknowledge that we are entitled to complete the construction and/or installation and/or to take all action we consider necessary to place the Goods in a condition which we consider to be fit for delivery and use. However, we are not obliged to take any steps to

complete construction and/or installation of the Goods other than as specified in clause 2.2.

- 3.2 You and the Guarantor indemnify us in respect of all money expended by us in exercising our rights or powers under clause 3.1. You and the Guarantor also agree to pay to us interest calculated in accordance with clause 4.2, on all money that is spent by us in exercising those rights or powers.

4. Interest Payable by You

- 4.1 You agree to pay to us, or otherwise as we at any time direct in writing, interest on all:

- (a) money paid by us under clause 2;
- (b) money paid by us under clause 3; and
- (c) other money which is paid by us under this Agreement or in respect of the Goods.

- 4.2 Interest payable by you under this Agreement accrues and is computed as follows:

- (a) the rate of interest (expressed as a rate per centum per annum) applicable to each payment made by us is the rate specified in the Particulars; and
- (b) interest is computed on daily balances on the basis of actual days elapsed from the date of payment of any money by us and accrues from day to day.

- 4.3 All interest payable by you to us under clause 4.1 must be paid monthly, commencing 1 month from the date on which the first payment is made by us to the Supplier.

5. Your Obligations on Finalising Acquisition

- 5.1 Subject to clause 6, you must, not later than 7 days prior to the date on which the final payment for the Goods (including any duty or freight charges) becomes due, deliver to us a statement of the final amount to be paid to the Supplier for the construction and/or installation and/or supply of the Goods.

- 5.2 Before the final payment for the Goods is made by us to the Supplier and this Escrow Agreement is terminated, you must sign and deliver to us the applicable Equipment Finance Agreement properly signed by you together with the Guarantee (if applicable) properly signed by the Guarantor as guarantor. The Equipment Finance Agreement will then be completed by us by inserting:

- (a) the Commencement Date of the Equipment Finance Agreement;
- (b) the description and other details of the Goods; and
- (c) all other details necessary to render the Equipment Finance Agreement complete and effective.

- 5.3 You irrevocably authorise us to complete the Equipment Finance Agreement in the manner specified in clauses 5.2(a) to 5.2(b) (both inclusive).

6. Security Interest in the Goods

- 6.1 You must procure that the Supplier will:

- (a) grant in favour of us a first-ranking Security Interest in the Goods or the relevant part of the Goods for which we have paid pursuant to this Agreement;
- (b) do all acts and things and execute all documents required by us to register, protect, perfect, record or preserve our Security Interest in the Goods and to comply with related requirements under the PPSA Law or the applicable law of the jurisdiction in which the Goods or the relevant part is located; and
- (c) not to create any Security Interest (except in favour of us) or do anything which may adversely affect our Security Interest in the Goods.

- 6.2 You must:

- (a) bear all costs, expenses and charges associated with all acts and things required to be done by you under this clause 6; and
- (b) indemnify us against any costs, expenses or charges paid by us in connection with this clause 6 (excluding any costs, expenses or charges to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors or agents, or any receivers we appoint in respect of any property).

- 6.3 For the purpose of carrying into effect this clause 6 and for valuable consideration, you irrevocably appoint us and our substitute or substitutes the Attorney of you to make, sign, seal, execute and deliver any document, and to do any act or thing on your behalf. You agree to ratify and confirm everything the Attorney or the Attorney's substitute does or causes to be done by virtue of this power of Attorney and acknowledge that this power of attorney has been given to us by way of security for your obligations to us.

7. Events of Default

- 7.1 The following are additional Events of Default under the Escrow Agreement:

- (a) the property in and the title to the whole of the Goods do not pass to us on or before the Final Purchase Date;
- (b) you are at any time in default of your obligations under this Escrow Agreement and do not remedy the default within 30 days after notice from us to so remedy;
- (c) any event occurs which would be characterised as an event of default or an act of repudiation under the applicable Equipment Finance Agreement (if it was in effect at that time); or
- (d) any event occurs which would be characterised as a breach, an event of default or an act of repudiation (including any failure to make a payment when required to do so) under another agreement that you have with us, including under any agreement relating to a letter of credit facility that is to be used in conjunction with this agreement.

- 7.2 If an Event of Default occurs, then this Escrow Agreement may be terminated by us by service on you of a Termination Notice, however in each such case, before taking any action we will give you notice and allow you a reasonable time (being not less than 30 days) to remedy the default if the default is able to be remedied.

- 7.3 You expressly agree with us that you will, within 7 days of the date of the Termination Notice, pay to us:
- (a) an amount equal to the total amount paid by us to the Supplier in respect of the Goods;
 - (b) interest calculated as provided in clause 4 to the date of payment by you; and
 - (c) all other amounts owing or payable by you under this Agreement, including amounts payable by way of reimbursement or indemnity.
- 7.4 As soon as is practicable after receipt by us of all money payable by you under clause 7.3, we will transfer all property held by us in the Goods to you.

8. Sale by Us after Default

- 8.1 In addition to any other rights, powers and remedies we may have, if you fail to pay to us at the required time the money required to be paid under clause 7.3, we are entitled at any time to dispose of the Goods by public auction or private sale.
- 8.2 If we sell the Goods after default by you and receive from the sale a Net Amount which is less than the amount which you are required by this Agreement to pay to us, you must pay to us an amount which is equivalent to the difference between the amount required to be paid by you and the net amount received by us.
- 8.3 If we have not sold the Goods under clause 8.1 within 1 month of you having failed to make payment in accordance with clause 7.3, we may obtain a valuation of the best wholesale value of the Goods in its then condition by an independent valuer approved by us in good faith as being a competent valuer in relation to the type of Goods in question and, in that event, the Goods is conclusively taken to have been sold under clause 8.1 for net proceeds equal to the amount of the valuation less all costs, charges and expenses (calculated in accordance with clause 14 of this Part F) of the valuation, storage of the Goods and all other money payable to us under this Escrow Agreement.

9. Your obligations under the Escrow Agreement

- 9.1 You must pay the number of rent instalments specified in the Particulars. The first of these instalments is payable on the Commencement Date of the Escrow Agreement but the number of instalments may change prior to the Commencement Date of the applicable Equipment Finance Agreement by agreement with us.
- 9.2 The rent payable by you under the Escrow Agreement is calculated by applying a rate of interest (expressed as a rate per centum per annum) to the total cost price of the Goods. The applicable interest rate is the rate that we would, in the ordinary course, apply to a transaction of a similar size and nature as at the Commencement Date of the Escrow Agreement.

10. You must also comply with Equipment Finance Agreement

- 10.1 Until you have properly signed and delivered the applicable Equipment Finance Agreement prior to termination of the Escrow Agreement to us in accordance with the requirements of this Escrow Agreement, you

must, as from the date of the Escrow Agreement, comply with the agreements, obligations and provisions of the applicable Equipment Finance Agreement (except the obligation to pay rent) and the provisions of the applicable Equipment Finance Agreement apply and have full force and effect. If there is a conflict between the provisions of this Escrow Agreement and the provisions of the applicable Equipment Finance Agreement, the provisions of this Escrow Agreement prevail.

11. Location of Goods

- 11.1 The Goods must, at all times after payment has been made by us, be located at the place specified in the Particulars.

12. Business purpose

- 12.1 You warrant that the Goods are acquired and will be used solely for business purposes.

13. No taxation representations

- 13.1 We make no representation or warranty that the payment of any money payable by you under this Escrow Agreement is an allowable deduction (within the meaning of any income tax legislation) from your taxable income. You acknowledge that any payments may not be an allowable deduction.

14. Costs

- 14.1 The creation, variation and extension of this Agreement includes the negotiation, preparation, signing and stamping of this Agreement and obtaining the necessary consent of any other party or authority.
- 14.2 Costs, charges and expenses include all bank charges, federal, state, local government and other rates, taxes, duties, levies and other charges, and any penalties and fines (not incurred due to our neglect or default) which are or may in the future be levied on this Agreement or the transaction between us and you and/or any Guarantor and any variation or extension of this Agreement. Without limitation these include any stamp duty or similar charges payable in relation to the transfer of title in the Goods, or any part of it, to us or where permitted under this Agreement, by us. You are not liable to pay or reimburse us in respect of any income tax payable by us.
- 14.3 The enforcement of this Agreement and/or the Equipment Finance Agreement includes the exercise or attempted exercise by us or on our behalf of any right, remedy, power or authority conferred under this Agreement and/or the Equipment Finance Agreement or the general law or by statute in order to enforce, protect or preserve the Goods including:
- (a) seizing the Goods and in entering upon and removing the Goods from the land or premises on or in which the Goods is situated;
 - (b) making good any injury caused to the land or premises or to the property of any person by that entry or removal;
 - (c) storing, insuring, registering and repairing the
 - (d) Goods and attempting to sell the Goods; and

- (e) taking any action to protect our title to the Goods irrespective of whether or not that action ultimately proves to have been necessary.

Legal and professional costs and outlays reasonably incurred by us will be charged and allowed on a common fund basis to provide full indemnity to us for costs, charges and expenses incurred in accordance with clause 14.1 without excluding or limiting your, or any Guarantor's, entitlement to challenge the propriety or amount of any item or to require the taxation of any bill of costs.

15. Definitions in this Part F

In this Part F, the following terms have these meanings:

Agreed Price of the Equipment means the amount specified in the Particulars.

Agreement means the Escrow Agreement set out in the Particulars and in this 'Part F – Escrow Agreement.'

Fair Market Value means:

- (a) if we dispose of the Goods the net amount obtained by us on such disposal (after payment of repossession, storage, sale and other Costs); or
- (b) if the Goods have not been sold within 3 months of the Goods having been received into our possession after expiry or termination of the relevant Rental Agreement the market or best value of the Goods in its then condition as determined by an Approved Valuer.

Loss Valuation means the amount payable by you to us in accordance with clause 7.3.

Net Amount means the sale proceeds actually received in respect of the Goods less any commission and all costs, charges and expenses (including, but not limited to, storage expenses) incurred by us, calculated in accordance with clause 8.

Payment Notice means a notice substantially in the form annexed to the Escrow Schedule.

Termination Notice means a notice issued by us to you pursuant to clause 7.2 whereby we terminate or purport to terminate our obligations to you.

References to 'applicable Equipment Finance Agreement' means the Equipment Finance Agreement to be entered into by you with us at the termination of the Escrow Agreement.

Any defined terms referred to in this Part F which are not defined in Part A of the General Terms have the meaning given to them in the Particulars.

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