

BOQ Business

# FACILITY GENERAL CONDITIONS

July 2019



BUSINESS

# ABOUT THIS FACILITY AGREEMENT

This *facility agreement* is made up of a number of documents: the *Facility Details*, each *Schedule*, and these *General Conditions*. They should be read together. You should also carefully read any *securities*.

The meaning of words printed *like this* and some other key words are explained in these *General Conditions*.

Part A of the *General Conditions* applies to all Bank of Queensland Limited facilities including your *facility*. Parts B, C, D or E will also apply depending on your type of *facility*.

Further terms and conditions which may be relevant to the use of your account may be found in the Business Lending Supplementary Terms and Conditions, the Electronic Banking Terms and Conditions and the Business Banking Guide to Fees and Charges, each as amended from time to time. The most recent versions of these documents are available at [www.boq.com.au](http://www.boq.com.au) or may be requested from us. Your use of any bank account or electronic banking service in connection with the *facility* will also be subject to the terms and conditions of that account or service.

The relevant provisions of the Banking Code of Practice may apply to this *facility agreement*. The Banking Code of Practice applies to banking services provided to customers who are individuals or *small businesses*, each as defined in it. We will comply with the Banking Code of Practice, where it applies to the banking services we provide to you.

*Break costs* may be payable if a *break cost event* is taken to have occurred on your *fixed rate business term loan*, *fixed rate commercial rate loan*, *variable rate commercial rate loan* or *interest capitalised commercial rate loan*. These *General Conditions* (together with the Business Banking Guide to Fees and Charges) provide details of when *break costs* may be payable and how they are calculated). Please read them carefully as *break costs* can be many thousands of dollars.

# CONTENTS

<b>PART A:</b>	
<b>ALL FACILITIES</b>	<b>3</b>
<b>How you obtain the facility</b>	<b>4</b>
1. What must happen before you can use the facility	4
2. Conditions of use	5
3. Representations and warranties	6
<b>What you must pay and when</b>	<b>7</b>
4. What you must pay	7
5. Repayments and other payments	7
6. Establishing accounts and accounting for transactions	8
<b>Additional amounts you must pay</b>	<b>9</b>
7. Fees and charges	9
8. Costs	9
9. GST	9
10. Other amounts	9
11. Break costs	10
<b>Undertakings</b>	<b>11</b>
12. Undertakings	11
<b>Default</b>	<b>13</b>
13. When are you in default?	13
14. What can happen when you are in default	14
15. Default fees and rates	14
<b>Other matters</b>	<b>16</b>
16. Reducing or cancelling the facility limit	16
17. Facility reviews and changes to your margin	16
18. Expired facilities	16
19. Additional requirements for progressive draw facilities	16
20. Additional requirements for construction finance facilities	17
<b>General</b>	<b>19</b>
21. Dealing with rights under this facility agreement	19
22. Disclosure of information	19
23. Consents	20
24. Manager	20
25. Currency conversions	20
26. Setting off money	20
27. Multiple accounts	20
28. Our certificates	20
29. Prompt performance	20
30. How we may exercise our rights	21
31. Administrative matters	21
32. Changes	21
33. Compensation for unforeseen circumstances	22
34. Illegality or impossibility	22
35. If any part of this facility agreement is unenforceable	22
36. Your obligations and our rights are unaffected	22
37. Reinstatement of rights	23
38. Indemnities	23
39. Power of attorney	23
40. Trustee provisions	23
41. Insurance	24
42. Valuers and consultants	24
43. Other security interests	24
44. Consent to telephone recording	24
45. Notices, Other Communications and Serving Documents	24
46. Banking Code of Practice and other code or legislation	25
47. Inconsistent law	25
48. Governing law	25
49. Ending this facility agreement	25
50. Further information	26
51. Our advice	26
52. Commissions	26
53. PPSA law	26
<b>How to interpret this facility agreement</b>	<b>27</b>
54. Meaning of words	27
55. Interpretation	33

**PART B:  
BUSINESS TERM LOAN 35**

1. What must happen before you can use the facility	36
2. Repayments	36
3. Repayment type	36
4. Switching your repayment type	36
5. Interest	36
6. Fixed business term loan	36
7. Variable business term loan	37
8. Switching facility type	37
9. Repaying early	38
10. Redrawing amounts	38

**PART C:  
BUSINESS OVERDRAFT  
AND BUSINESS LINE OF CREDIT 39**

1. What must happen before you can use the facility	40
2. The facility limit	40
3. Repayments	40
4. Annual percentage rate	40
5. Interest	40
6. Ending this facility	40

**PART D:  
COMMERCIAL RATE LOAN 41**

1. What must happen before you can use this facility	42
2. Payments	42
3. Interest	42
4. Variable commercial rate loan	42
5. Fixed commercial rate loan	42
6. Interest prepaid commercial rate loan	43
7. Interest capitalised variable commercial rate loan	43
8. Switching facility types	44
9. Interest period	44
10. Repaying early	45
11. Redrawing amounts	45
12. Financial Markets Transactions	46

**PART E:  
BANK GUARANTEE FACILITY 47**

1. Additional conditions of use	48
2. Payments	48
3. Termination or cancellation of bank guarantee	48
4. Payment of bank guarantee	48
5. Preservation of liability	48
6. Ending this facility	49

PART A:

# ALL FACILITIES

THIS PART A APPLIES TO ALL FACILITIES AND SHOULD BE READ TOGETHER WITH THE FACILITY DETAILS, THE SCHEDULE AND DEPENDING ON THE TYPE OF FACILITY, PART(S) B, C, D OR E.

# HOW YOU OBTAIN THE FACILITY

## 1. WHAT MUST HAPPEN BEFORE YOU CAN USE THE FACILITY

- 1.1 We will only allow you to use the *facility* (or any part of it) if the following conditions are either met, in a form and substance satisfactory to us, or waived by us in writing:
- a. the title to each *security property* (where relevant) is satisfactory to us;
  - b. we are satisfied that you have an adequate and appropriate insurance policy for each *security property* (where relevant) for its full insurable value and the policy notes our interest;
  - c. all searches, certificates, reports and consents we request relating to a *security property* have been provided, are satisfactory to us, and you have paid our costs incurred in obtaining them;
  - d. when your *facility* is to refinance an existing *facility*, you have given to us a written payout figure as at the *drawdown date* from your outgoing financier and at settlement of your *facility* we have received any releases of *security* interests that are required by us;
  - e. when any *security property* is, or is intended to be, the subject of any subdivision or amalgamation prior to settlement of your *facility*, you have given us 14 days written notification that the plans of subdivision or amalgamation, and the certificates of title, have been registered;
  - f. when any *security property* is part of a *shared scheme*, the *governing body* has any insurance policy it is required to by law together with building unit cover over the whole of the building. We must be satisfied that any insurance is adequate;
  - g. we are satisfied with any additional enquiries we have made about you or any *security property*;
  - h. we are satisfied with any credit reference check undertaken by us on a *debtor/guarantor*;
  - i. we have received any valuation reports we request from a valuer approved by us, the reports are satisfactory to us, and you have paid our costs incurred in obtaining them;
  - j. we have received written confirmation from your accountant that your financial accounts are in order, you have complied with all of your accounting and reporting obligations including your obligations in respect of *GST* and that all *taxes* and employee entitlements (including superannuation and *PAYE*) are up to date;
  - k. we have received evidence to our satisfaction that all relevant council, water and other rates, *taxes* or charges for each *security property* (where relevant) are paid up to date;
  - l. we have received, executed by you, the *Facility Details* (including each *Schedule*), each *security*, and related documents (such as title documents);
  - m. if you intend to use the *facility* for the purchase of any real property, we have received a copy of the contract of sale executed by the parties;
  - n. if you are leasing any *security property*, we have received a copy of the lease;
  - o. nothing has happened since you applied for the *facility* which has led to a significant adverse change in your financial circumstances or which we reasonably believe could lead to this;
  - p. when a *guarantee* is being given as a *security*:
    - i. we have confirmed that each *guarantor* has received a copy of the *facility agreement*, the *guarantee*, and all relevant documentation required to be provided under the Banking Code of Practice (where it applies) or legislation;
    - ii. if we have requested *guarantor* certificates of independent legal advice, we have received a certificate for each *guarantor* that the certificate is requested for, from the *guarantor's* solicitor who does not work for the law firm of solicitors acting for you or the law firm acting for us in relation to your *facility*; and
    - iii. if we have requested *guarantor* certificates of independent financial advice, we have received a certificate for each *guarantor* that the certificate is requested for, from that *guarantor's* financial adviser or accountant;
  - q. where you are a corporation, you have given us copies of the following documents, certified by one of your directors, or by your secretary, that the document is complete, correct and up to date:
    - i. your certificate of incorporation; and
    - ii. an extract of the minutes of your board of directors containing evidence of resolutions authorising you to execute this *facility agreement* and the *securities* and to perform your obligations under them;
  - r. if you are entering this *facility agreement* as a trustee of a trust, or a *debtor/guarantor* is entering into a *security* as a trustee of a trust, we have received a copy of the trust deed certified as being complete, correct and up to date and the terms of that trust deed are satisfactory to us;
  - s. we have received to our satisfaction all other documentation or information we reasonably require, including satisfaction of any special conditions stipulated in the *Facility Details*, and any other settlement requirement we specify has been complied with;
  - t. you have paid up to date all *fees* specified in the *Facility Details* and all other amounts payable under this *facility agreement*;

- u. for a *progressive draw facility*, you have done all the things required by clause 19 of this Part A;
  - v. for a *construction finance facility*, you have done all the things required by clause 20 of this Part A;
  - w. you have provided us with evidence that you have paid or will pay at settlement of your *facility* any debts we have informed you in writing that we require you to pay;
  - x. to the extent that they are relevant, you are complying with all other terms and conditions in this *facility agreement*, including any special conditions stipulated in the *Schedule* and ;
  - y. we are satisfied that the representations and warranties in clause 3 of this Part A are correct and not misleading at the date the *facility* is provided.
- 1.2 If you sign this *facility agreement* you will be bound by it. If you do not wish to proceed with your *facility* and you have not drawn down on the *facility* you may terminate the *facility* or this *facility agreement*. If you do so, we will require payment of all *fees* and charges incurred by us before termination, including the application *fee* stipulated in the *Facility Details*.
- 1.3 If you have a *facility* to which Part B, C, D or E relates, there may be additional requirements that must be satisfied before we allow you to use the *facility*. Please refer to these other Parts.

## 2. CONDITIONS OF USE

- 2.1 We require you to:
- a. give us reasonable notice of the timing of any drawing or give us reasonable notice if you want to use a *facility*. The amount of notice that you must give us for a particular *facility* is stipulated in the relevant Part applying to that *facility*;
  - b. comply with any specific drawdown requirements specified in each *Schedule* or in the relevant Part applying to that *facility*;
  - c. meet all special conditions and all financial, reporting and other covenants stipulated in the *Facility Details*; and
  - d. if required by a *Schedule*, complete a *request notice* or any other document we may require from time to time. These forms and notices:
    - i. must be in the form we require from time to time;
    - ii. must be signed by an *authorised officer*; and
    - iii. are irrevocable.

- 2.2 Whenever we receive a *request notice*, we may:
- a. provide the type of financial accommodation requested by you in the notice or request; or
  - b. provide any other type of financial accommodation as you and we agree.

We do not have to provide you with the type of financial accommodation requested by you. We can consent or refuse to provide any type of financial accommodation for any reason.

- 2.3 Unless we agree otherwise in writing, you may use a *facility* only for the purpose specified in the *Schedule* for that *facility*.
- 2.4 You may only use the *facility* if:
- a. the *facility* remains current and has not expired;
  - b. all representations, warranties and declarations made in this *facility agreement* remain correct and are not misleading;
  - c. you have complied with all special conditions, covenants and undertakings in this *facility agreement*;
  - d. we have received all other information and documentation we have requested;
  - e. the drawdown on the *facility* will not cause the *facility limit* or *reduced facility limit* to be exceeded; and
  - f. any *request notice* provided is in a form, and contains information, that meets our requirements.
- 2.5 You cannot use the *facility* if you are in *default* under this *facility agreement*.

### 3. REPRESENTATIONS AND WARRANTIES

3.1 You represent and warrant (except in relation to matters disclosed to us and accepted by us in writing) that:

- a. neither you nor, if you are a corporation, any director or other *person*, breaches any law or any obligation to another *person* by signing any *arrangement with us* or entering transactions or performing obligations under them;
- b. (if you are a corporation), you have been incorporated in accordance with the laws of the place of your incorporation and that you validly exist under those laws;
- c. you have power to carry on your business and you are not in breach of any law or obligation;
- d. you have full capacity and power and have obtained all authorisations necessary for you to enter into this *facility agreement*, to comply with your obligations and exercise your rights under it, and allow this *facility agreement* to be enforced;
- e. your obligations under each *arrangement with us* to which you are a party are valid and binding and enforceable in accordance with their terms;
- f. you benefit by entering into this *facility agreement* and the transactions contemplated by it;
- g. the *security* is in full force and effect;
- h. all declarations made by you in each other *arrangement with us* are true and are not misleading;
- i. you are not aware of any circumstances which may prevent you from repaying the *total amount owing* in accordance with this *facility agreement*;
- j. there are no reasonable grounds for you or any *related entities* to suspect that you or they are *insolvent* or likely to become *insolvent*;
- k. you are not in *default* (see clause 13 of this Part A) under this *facility agreement*, any *security interest*, or other agreement or undertaking to which you are a party or any court order which binds you;
- l. there is no potential event of *default* which by the giving of notice, lapse of time or both would constitute a *default* under this *facility agreement*, any *security interest* or other agreement;
- m. there is no pending or threatened legal proceeding affecting you or any of your assets before a court, authority, commission or arbitrator except those in which a decision against you (either alone or together with other decisions) would be insignificant;

- n. you have disclosed in writing to us all facts relating to you, this *facility agreement* and all things in connection with them which are material to the assessment of the nature and amount of risk undertaken by us in entering into any transaction relating to this *facility agreement* and doing anything in connection with this *facility agreement*;
- o. all the information provided to us in connection with this *facility agreement* and the *securities* is true and is not misleading;
- p. all financial reports, statements and accounts and all other financial information provided to us was prepared in accordance with the Australian Accounting Standards current at that time (if relevant) and gives a true and fair view of your state of affairs and the results of your operations as at the date of the account, report or information;
- q. you have not withheld any information that might have caused us not to enter into any *arrangement with us*;
- r. unless otherwise stated in this *facility agreement*, you are not signing any *arrangement with us* as a trustee of any trust or settlement; and
- s. except as expressly stated in the *facility agreement* you have not entered into this *facility agreement* on the basis of any representations or warranties made by us or any *person* on our behalf.

3.2 You also give the representations and warranties in clause 3.1 of this Part A in respect of any *debtor/guarantor* and any information provided to us by a *debtor/guarantor*.

3.3 You must tell us whenever anything happens which prevents you from repeating any one or more of the representations and warranties in clauses 3.1 and 3.2 of this Part A and you repeat these representations and warranties before:

- a. we provide any amount to you under any *arrangement with us*;
- b. you acknowledge that another agreement is to be an *arrangement with us*; and
- c. you consent to us providing financial accommodation to another *person* which is *guaranteed* by you under an *arrangement with us*.

# WHAT YOU MUST PAY AND WHEN

## 4. WHAT YOU MUST PAY

- 4.1 You must pay us the *total amount owing* as stipulated in this *facility agreement* including:
  - a. interest (if any) under a *facility* as stipulated in this *facility agreement*;
  - b. our *fees* and charges as stipulated in this *facility agreement* and the Business Banking Guide to Fees and Charges and any government or third party *fees* and charges payable in connection with the *facility* or any *security*;
  - c. our *costs* as stipulated in this *facility agreement* (including clause 8 of this Part A); and
  - d. any other money that you owe us under this *facility agreement* or any *security*.
- 4.2 In the absence of receipt of funds by any other payment method permitted by this *facility agreement*, you authorise us to automatically debit amounts owing under this *facility agreement* to your *nominated account*, your *facility account* or any other account in your name held with us, or as agreed between you and us. You acknowledge that the terms and conditions applicable to your *nominated account* or other account apply to all amounts debited to that account in accordance with this *facility agreement*.
- 4.3 Failure to pay amounts that are debited to your *nominated account* or other account in accordance with this *facility agreement* (for example, where those amounts overdraw your account or exceed your available credit), will also continue to be a liability due and payable by you under this *facility agreement*.
- 4.4 If there are insufficient funds or available credit in the *nominated account* to be debited in accordance with clause 4.2 of this Part A, we may at our discretion either:
  - a. overdraw your account by debiting the amount due; or
  - b. debit the amount due or any part of it to your *facility account*. If you are in *default* because we have debited your *facility account*, clauses 14 and 15 of this Part A will apply.
- 4.5 If we overdraw your account in the manner described in clause 4.4(a) of this Part A, we may at any time and at our discretion, subsequently reverse any debit (or any part of any debit) made to the account and re-debit that amount to your *facility account* or any other account in your name held with us.
- 4.6 You can contact us for information on current standard *fees* and charges and any interest rates.

## 5. REPAYMENTS AND OTHER PAYMENTS

- 5.1 In the absence of *default*, you must pay the *facility amount owing* on or before the last day of the *term*. If you *default*, you must pay the *total amount owing* on the date it becomes due for payment under clause 14 of this Part A. Upon it falling due and payable, the *facility amount owing* or the *total amount owing* (as appropriate) may, at our discretion, be debited from your *facility account* to your *nominated account* or retained in your *facility account*.
- 5.2 Where you have a *business term loan* or *commercial rate loan*:
  - a. the *facility limit* or *reduced facility limit* is not fully drawn; or
  - b. *early repayments* have been made in accordance with clause 9 of Part B or clause 10 of Part D,and this has caused the *balance owing* on the *facility account* to be less than the amount of a *reduction* or *special reduction*, you must pay the *balance owing* on the *facility account* instead. The *facility limit* or *reduced facility limit* will still be reduced by the amount of the *reduction* or *special reduction*.
- 5.3 Payments made after a day ends may not be credited to your account until the next day.
- 5.4 If you are in *default* or you have not specified how an amount is to be applied, we may use any payment we receive under or in accordance with this *facility agreement* to reduce the *balance owing* on any of your accounts in any order we choose. If we do this you must still make any *repayments* or other payments due under this *facility agreement*. If we are obliged by law or this *facility agreement* to pay the money in a particular way, then we will do so.
- 5.5 If Part D applies, *reductions* or *special reductions* on your *commercial rate loan* will be automatically debited to your *nominated account*.
- 5.6 You may make all other *reductions*, *special reductions*, *repayments* or other payments to us in any of the ways we tell you. Unless this *facility agreement* specifically provides otherwise, ways in which you may make these payments include via internet banking. If you choose to make any payments by internet banking these payments will be subject to our Electronic Banking Terms and Conditions which are disclosed to you at the time you receive these *General Conditions*.
- 5.7 If you make any *reductions*, *special reductions*, *repayments* or other payments by direct debit and we debit the relevant account when there are insufficient funds in it, then the direct debit may be reversed and you will be regarded as not having made the payment.
- 5.8 If this *facility agreement* does not otherwise specify the manner or time of payment of an amount owing under this *facility agreement* you must pay us that amount in the manner and when we ask for it.

## 6. ESTABLISHING ACCOUNTS AND ACCOUNTING FOR TRANSACTIONS

- 6.1 You authorise us to open any accounts as required in connection with a *facility* and debit amounts to them in accordance with this *facility agreement*.
- 6.2 We may assign any date we consider appropriate to a debit or credit of an account (except that, in the case of a debit, the date must not be earlier than the date on which the relevant transaction occurs).
- 6.3 We will credit payments to an account as soon as practicable after we receive them. This is not necessarily the same day that you pay. For example, cheque proceeds will be credited to your account subject to clearance. If a cheque is subsequently dishonoured the payment to which it relates will be treated as not having been paid.
- 6.4 We may subsequently adjust debits and credits to an account, and the *balance owing* on any account, so as to accurately reflect the legal obligations of you and us (for example, because of an error or because a cheque is dishonoured). If we do this, we may make consequential changes (including to interest charges).
- 6.5 If a law requires you to deduct an amount in respect of *taxes* from a payment under an *arrangement with us* with the result that we would not actually receive on the due date the full amount provided for under the *arrangement with us*, then:
  - a. you agree to deduct the amount for the *taxes* (and any further deduction applicable to any further payment due under paragraph (c) below);
  - b. you agree to pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipts to us; and
  - c. if the amount deducted is in respect of *accountable taxes*, the amount payable is increased so that, after making the deduction and further deductions applicable to additional amounts payable under this clause, we are entitled to receive (at the time the payment is due) the amount we would have received if no deductions had been required.

# ADDITIONAL AMOUNTS YOU MUST PAY

## 7. FEES AND CHARGES

### 7.1 You must pay us:

- a. all *fees* and charges stipulated in the Business Banking Guide to Fees and Charges, the *Facility Details* in the circumstances described in the *Facility Details* and any other changed or new *fee* or charge notified to you;
- b. an amount equal to any government charges and duties under this *facility agreement*, calculated in accordance with the relevant legislation. These are payable by you whether or not you are primarily liable for such charges and duties; and
- c. all third party *fees* and charges payable in connection with your *facility* or any *security*.

7.2 You authorise us to debit these *fees* and charges to your *nominated account*, *facility account* or to any other account held in your name with us. We may do so on or after the date we pay them or the date they become due or payable by you or us. We do not have to tell you first, however, we will provide you with details of such amounts upon request from you.

## 8. COSTS

### 8.1 You must pay us for:

- a. our reasonable *costs*, and any *receiver's costs* and remuneration, in arranging, administering and terminating this *facility agreement*, any *security*, another *arrangement with us* and any transactional documentation in connection with them (including giving and considering consents, variations, discharges and releases, producing title documents, or enforcing, attempting to enforce or taking any other action in connection with our or any *receiver's rights*); and
- b. all *taxes*, *fees*, and charges payable in connection with this *facility agreement*, any *security*, any other *arrangement with us* and any transactions under them and any interest, penalties, fines and expenses in connection with them.

You must pay us these amounts within 2 *business days* after we ask. We can also debit any of these amounts to any of your accounts.

## 9. GST

9.1 Unless otherwise expressly stated, all amounts referred to in this *facility agreement* do not include *GST*.

9.2 To the extent (if any) that *GST* is payable in respect of all or any part of a supply made by a party under or in connection with this *facility agreement* (including any indemnity or reimbursement amount), the consideration to be provided for that supply is increased by an amount equal to the *GST* payable by the supplying party.

## 10. OTHER AMOUNTS

10.1 You indemnify us against, and you must therefore pay us on demand for, liability, direct loss or reasonable costs (including consequential or economic loss) we suffer or incur:

- a. if you *default* under this *facility agreement* (in which case you will also be liable for any loss arising because we require payment of the *total amount owing* earlier than its due date);
- b. if you do not pay us the *total amount owing*;
- c. in connection with us or any *person* acting on our behalf exercising, or not exercising, rights under this *facility agreement*;
- d. in connection with the *security property*, the monitoring of *works* or this *facility agreement*;
- e. as a result of doing anything that we agree to do under any *facility* at your request or consequent upon your *default*;
- f. our reliance on a facsimile, email or other electronic notice from or purporting to be from you or a *person* authorised by you;
- g. in connection with finance which you request not being provided in accordance with your request for any reason (other than our *default*); or
- h. under any indemnity we give a *controller* or administrator appointed:
  - i. in respect of you or a *guarantor* providing a *security*; or
  - ii. over any *security property*.

This includes liability, loss or *costs* of the type referred to above that are suffered or incurred by:

- i. any *receiver* or *attorney* appointed under this *facility agreement* or a *security*;
- j. any of our employees, officers, agents, contractors or *authorised officers*; or
- k. any other *person* such as a lessee, purchaser or occupier of the *security property* to whom we may have a liability in respect of the *security property*.

but it does not include liability, loss or *costs* to the extent caused by our or their fraud, negligence or wilful misconduct. You have to pay these amounts within 2 *business days* after we ask.

10.2 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 conversion.

## 11. BREAK COSTS

- 11.1 A *break cost event* is taken to have occurred if:
- you have a *fixed business term loan* and you break your *fixed rate period* by:
    - paying the *facility amount owing* in full;
    - paying more than your *elected repayments* plus the *extra payment limit* in any 12 month period;
    - changing your *repayment type*; or
    - changing your *facility type* to a *variable business term loan*;
  - you have a *variable commercial rate loan* or an *interest capitalised variable commercial rate loan* and you:
    - pay the *facility amount owing* in full or in part on a day that is not an *interest payment date* or the last day of the *term*;
    - change your *facility type* on a day that is not an *interest payment date*; or
    - change your *interest period* on a day that is not an *interest payment date*;
  - you have a *fixed commercial rate loan* and you:
    - pay the *facility amount owing* in full or in part on any day other than the last day of the *fixed rate period*;
    - change your *facility type* to another *facility type*; or
    - change your *interest period* on any day prior to the expiration of your current *interest period*;
  - you are required to make *reductions* or *special reductions* and a payment to be made in accordance with those *reductions* or *special reductions* is not made during a *fixed rate period* or is changed at your request during a *fixed rate period*; or
  - you *default* on a *facility* during a *fixed rate period*, in which case the *total amount owing* becomes immediately due for payment.
- 11.2 We generally arrange our own funding position on the understanding that a *break cost event* will not occur. As a result, that funding position will change and we may make a loss from re-arranging our own funding if a *break cost event* occurs. The estimated amount of that loss will be passed on to you as *break costs*.
- 11.3 If a *break cost event* occurs and we calculate whether *break costs* may apply as a result of the event, you may be charged a *break cost administration fee* in addition to the amount of the *break costs* (if any).
- 11.4 To work out whether you need to pay us *break costs* we will use a formula. This formula is an estimate of our loss as a result of the *break cost event*.
- 11.5 The calculation does not necessarily reflect the actual transactions that we may enter into at the time the *break cost event* occurs. We manage our funding position on a portfolio basis. Therefore there will not necessarily be a specific transaction referable to your *facility*.
- 11.6 In general terms you will need to pay us a cost if our current wholesale interest rate for the remaining *fixed rate period* is lower than the original wholesale interest rate.
- 11.7 The wholesale interest rate is the rate at which we determine we can get fixed rate funds from the money market on the relevant day. The wholesale interest rate does not include any *margin*.
- Among other things, the formula takes into account:
- the wholesale interest rate that applied on the first day of the *fixed rate period* in which the *break cost event* occurs (the original wholesale interest rate);
  - the wholesale interest rate for the remaining part of the *fixed rate period*, using rates which apply at the time the *break cost event* occurs (the current wholesale interest rate);
  - the amount of *principal* that was paid during your *fixed rate period* or the amount of *principal* outstanding at the time the *break cost event* occurs;
  - the *extra payment limit* (if any) we allow you to prepay before we impose *break costs*;
  - the amount of any unpaid interest, *fees* and charges and any *default* interest which was debited to your accounts in respect of the *facility*;
  - the timing, dollar amount and frequency of any *repayments*, *reductions* or *special reductions* required under the *facility*; and
  - the remaining *fixed rate period*.
- 11.8 The formula compares the value of the foregone payments at the original wholesale interest rate and at the current wholesale interest rate. The difference between these two values is adjusted to account for the time value of money.
- 11.9 When using this formula, we may assume the wholesale interest rate which applies on the date of calculation is the current rate on the date the *break cost event* occurs.
- 11.10 We will notify you of the amount of *break costs* calculated by us in accordance with the formula. The amount notified will constitute the *break costs* for the relevant *break costs event*. You will need to pay us the *break cost administration fee* and the *break costs* (if any) when the *break cost event* occurs. If you do not pay these *costs* we may debit them to your *facility account*, *nominated account* or any other account held in your name with us.
- 11.11 We will not pay you a benefit if the wholesale interest rate for the remaining *fixed rate period* is higher than the original wholesale interest rate.
- 11.12 You can find out the amount of any *break costs* before causing a *break cost event* to occur by contacting us. You will not be charged a *break costs administration fee* for this unless a *break cost event* occurs.

# UNDERTAKINGS

## 12. UNDERTAKINGS

### Information

- 12.1 If you are not a corporation, you must supply us with the following information:
- a copy of your tax return if requested by us; and
  - all financial reports, statements and accounts and all other financial information required by the special conditions (if any) in the *Facility Details*.
- 12.2 If you are a corporation, you must supply us with the following information:
- a copy of your annual tax return if requested by us and any notification of change of officeholders;
  - details of any notice received from the Australian Securities and Investments Commission in connection with any offence or alleged offence, promptly after that notice is given and in any event within 5 *business days*;
  - if you are listed on a stock exchange, a copy of each release or notice you give the stock exchange or any notice received from the stock exchange in connection with any offence or alleged offence, promptly after that notice is given to the stock exchange and in any event within 5 *business days*; and
  - all financial reports, statements and accounts and all other financial information required by the special conditions (if any) in the *Facility Details*.
- 12.3 If we ask, you undertake to supply us with any other information about or documents relating to:
- any *arrangement with us*;
  - any *security property*;
  - your financial affairs or business or, if you are a corporation, the financial affairs or business of you and any of your *related entities*, or the financial affairs or business of any *debtor/guarantor*; or
  - evidence that you have observed and continue to observe your obligations under any *arrangement with us*.

### Financial undertakings

- 12.4 You must:
- not, without our consent:
    - give any *security interests* over your assets;
    - provide financial accommodation to a *related entity*;
    - 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*;
    - (if you are a corporation), pay any dividend, make any distribution or provide any loan otherwise than in the ordinary course of business;
    - (if you are a corporation), approve or register a transfer of shares in your capital or change your directors or company secretary;
  - 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*;
  - (if you are a corporation), ensure that your capital is not reduced or made capable of being called up only in certain circumstances; and
  - provide written particulars within 5 *business days* of any financial accommodation you obtain from any party other than us.

If you are a corporation, you must ensure that none of your subsidiaries do anything which you are prohibited from doing under this clause.

### Your business

- 12.5 You must:
- conduct your business (including collecting debts owed to you) in a proper, orderly and efficient manner; and
  - not, without our consent, cease conducting your business or change the general character of any business you conduct (or threaten to do any of these things).

## Authorisations

12.6 You must:

- a. obtain, renew on time and comply with the terms of each authorisation necessary for you to enter into the *arrangements with us*, observe obligations under them and allow them to be enforced; and
- b. obtain, renew on time and comply with the terms of each authorisation necessary for you to use the *security property* for its current purpose and, if we ask, use your best efforts to obtain permission to use the *security property* for any purpose we reasonably specify.

## Other undertakings

12.7 You must:

- a. promptly advise us if you are in *default* under this *facility agreement* or there is a potential event of *default* which by the giving of notice, lapse of time or both would constitute a *default* under this *facility agreement*;
- b. comply with all applicable laws and pay all obligations that if unpaid might result in a lien or claim against any of your assets; and
- c. maintain all risks insurance over all of your physical assets.

## Further steps

12.8 You agree to do anything we ask (such as obtaining consents, signing and producing documents, replying to questions, producing receipts and getting documents completed and signed):

- a. to provide more effective *security over the security property*;
- b. to provide us with any additional *security interest* we reasonably request (including a *guarantee* or a mortgage of additional property);
- c. to enable us to register any *security* (and, if required, renew its registration) and to enable us to obtain the agreed priority for the *security*;
- d. to enable us to exercise our rights in connection with this *facility agreement* or an *arrangement with us*;
- e. to enable us to register the power of *attorney* in clause 39 or a similar power; and
- f. to show whether you are complying with this *facility agreement* or an *arrangement with us*.

# DEFAULT

## 13. WHEN ARE YOU IN DEFAULT?

### 13.1 You are in *default* if:

- a. you do not pay on time any amounts due under this *facility agreement*. This includes if our electronic transfer instruction for your account is subsequently reversed by the paying institution;
- b. you or a *guarantor* is *insolvent*;
- c. another creditor takes *enforcement proceedings* against you or a *guarantor*;
- d. early *repayment* is required under a separate financing arrangement you have with us, or *default* based action is taken by us against you or a *guarantor*, due to an event of *default* set out in this clause 13.1;
- e. we believe on reasonable grounds that you, your agent or a *guarantor* has not complied with the law or any requirement of a statutory authority;
- f. it becomes unlawful for you or us to continue with *facility agreement*;
- g. you or a *guarantor* give us information or make a representation or warranty to us which is materially incorrect or misleading (including through omission);
- h. you use the *facility* for a purpose not approved by us;
- i. your or a *guarantor's* assets are dealt with, or attempted to be dealt with, in breach of the *facility agreement*, or any *security* or any other *arrangement with us*;
- j. you or a *guarantor* do not provide financial information required by your *facility agreement*;
- k. your or a *guarantor* do not maintain an authorisation necessary to conduct your business;
- l. you or a *guarantor* do not maintain insurance required by your *facility agreement*;
- m. legal or beneficial ownership, or management control, of you or a *guarantor* changes without our consent;
- n. the status, capacity or composition of you or *guarantor* changes without our consent; or
- o. in the case of a *construction finance facility*, prior to *completion*, an event referred to in clause 13.1(b), 13.1(c), 13.3(e), 13.3(k) or 13.3(o) of this Part A occurs in respect of the builder of the *works* and:
  - i. the builder is not replaced (within a reasonable period, as determined by us) by another builder, who is acceptable to us; and
  - ii. the replacement builder does not, if requested by us, enter into a tripartite deed with you and us in the form we require.

### 13.2 If you are a *small business*:

- a. before we act on a *default* (other than a *default* under clause 13.1(a)), we will allow you a reasonable time to remedy the *default* if it is able to be remedied, and notify you of this time period. We do not have to do this if we reasonably believe it is necessary to manage an immediate risk; and
- b. we will then only act on the *default* if the *default* by its nature is material, or we reasonably consider the event has had, or is likely to have a material impact on:
  - i. you or a *guarantor's* ability to meet your or their financial obligations;
  - ii. our credit or security risk (or our ability to assess it); or
  - iii. our legal or reputation risk where clauses 13.1(e), 13.1(g) or 13.1(h) applies.

### Additional defaults

This clause 13.3 applies to you if you are not a *small business*.

### 13.3 You are also in *default* if:

- a. you do not pay on time any amounts due under any other *arrangement with us*. This includes if your account is subsequently reversed by the paying institution;
- b. you do something you agree not to do under this *facility agreement*, a *security* or an *arrangement with us*, or you don't do something you agree to do under this *facility agreement*, a *security*, or an *arrangement with us*;
- c. you are, or a *debtor/guarantor* or another *person* is, in *default* under a *security* or any *arrangement with us*, or an event of *default*, however described, occurs under a *security* or an *arrangement with us*;
- d. you do not, or another *person* does not, carry out in full an undertaking given in connection with this *facility agreement*, a *security* or another *arrangement with us*, within the period specified, or within 7 days of our request if no period is specified;
- e. steps are taken to deregister you or the *debtor/guarantor*;
- f. this *facility agreement* or any *security* is, becomes, or is claimed to be, void or unenforceable;
- g. anything happens which in our reasonable opinion may affect your, or a *debtor/guarantor's*, ability to pay us the *total amount owing*, or to fulfil your, or a *debtor/guarantor's*, obligations under this *facility agreement*, a *security* or any other *arrangement with us*, or our rights under any *security* or our ability to recover the *total amount owing*;
- h. we believe on reasonable grounds that urgent action is necessary to protect any *security property* where we have requested you to take such action and you have failed to do so within a reasonable time as specified by us;

- i. the value of any *security property* materially decreases;
- j. a *person* is appointed to investigate or manage your affairs or the affairs of a *debtor/guarantor*;
- k. any of the following occurs to you (if you are a corporation) or to a *debtor/guarantor* (if it is a corporation), without our consent:
  - i. a change takes place in your directors or company secretary;
  - ii. a transfer of shares in your capital is registered;
  - iii. new shares, convertible notes or options for shares in your capital are issued; or
  - iv. your capital is reduced or made capable of being called up only in certain circumstances;
- l. you (if you are a corporation) or a *debtor/guarantor* (if it is a corporation) cease to be a subsidiary of the corporation which is your holding company or the *debtor/guarantor's* holding company at the date of this *facility agreement* or a corporation ceases to be your or the *debtor/guarantor's* subsidiary;
- m. you do not, or a *debtor/guarantor* does not, meet all 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 *debtor/guarantor's* election; or
- n. we reasonably believe someone acted fraudulently in connection with this *facility agreement* or an *arrangement with us*.

## 14. WHAT CAN HAPPEN WHEN YOU ARE IN DEFAULT

- 14.1 If you are in *default* we may do one or more of the following in addition to anything else the law allows us to do:
- a. require that you repay the *total amount owing* to us immediately;
  - b. require that you pay us the aggregate face value of all *bank guarantees* which have not yet expired (to be maintained as a deposit with us as *security* for any claim made by a *beneficiary*), or give us a written release or surrender documentation (as required by us) signed by the *beneficiary* in a form satisfactory to us;
  - c. sue you for the *total amount owing*;
  - d. enforce this *facility agreement* or any *security*;
  - e. make good any *default* and recover from you our reasonable *costs* of doing so. This includes paying any money that you owe us under this *facility agreement* and recovering that money from you;
  - f. exercise any other rights we have;
  - g. use any money you have in any account held with us towards repaying the *total amount owing* (this is known as "combining accounts");

- h. refuse to make any undrawn portion of the facility limit available to you; and
  - i. terminate any of our obligations under this *facility agreement*.
- 14.2 We will give you notice to require you to immediately pay all amounts you owe us and, if a law or a code to which we subscribe requires us to do so, we will give you notice before we take *enforcement proceedings* or other action.
- If such a law or code allows for that period to be shortened by agreement, then you agree that it is shortened to 1 *business day*.

## 15. DEFAULT FEES AND RATES

### Business term loans

- 15.1 If Part B applies and you do not pay us any part of the *balance owing* on your *facility account* when it is due to be paid, you must also pay us the *default fee* described in the *Schedule* or as notified to you from time to time. Charging the *default fee* is at our discretion.

### Business overdrafts and business lines of credit

- 15.2 If Part C applies and you exceed the *facility limit* or *reduced facility limit*, you must pay us an amount which is calculated at the *over limit rate*.
- 15.3 The *over limit rate* is payable on amounts that exceed the *facility limit* or *reduced facility limit*. The amount calculated at the *over limit rate* 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 (or 366 days in a leap year).
- 15.4 The *over limit rate* is 3% above the *annual percentage rate* on that day.
- 15.5 Each month (or any other period we choose) we may add to the *balance owing* on your *facility account*, the amount calculated at the *over limit rate* which has not been paid. You are then liable for interest under this clause on the total amount.

### Commercial rate loans

- 15.6 If Part D applies and you do not pay us any part of the *balance owing* on your *facility account* when it is due to be paid, you must also pay us *default* interest calculated at the *default rate* on that part of the *balance owing* on your *facility account*. Charging interest at the *default rate* is at our discretion. Interest charged at the *default rate* is debited to either of your *nominated account* or your *facility account*, at our discretion.

- 15.7 If we charge *default* 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 (or 366 days in a leap year).
- 15.8 The *default rate* is 4.5% above the *annual percentage rate* on that day.
- 15.9 If we charge *default* interest, each month (or any other period we choose) we may add to the overdue amount any *default* interest which has not been paid. You are then liable for interest under this clause on the total amount.

#### **Interest and court orders**

- 15.10 If any amount you must pay under any *arrangement with 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 rate in clause 15.4 or 15.8 of this Part A or the rate in the court order (whichever is higher). You must pay interest under this clause on demand from us.

#### **Margin reviews**

- 15.11 If you are in *default* by reason of any of the events described in clauses 13.1 (b) to (o) or clause 13.3 of this Part A, and do not remedy the default within any remedy period we notify you, we may, as an alternative to exercising any of our rights under clause 14 of this Part A, review and increase the *margin* or introduce a new *margin* (even during a *fixed rate period*). The review and increase in the *margin* is at our discretion. However we may not increase the *margin* by more than 4.5% per annum.
- 15.12 If we have reviewed the *margin* in accordance with clause 15.11 and you subsequently remedy the *default* to our satisfaction, we may, at our discretion, again review the *margin*.

# OTHER MATTERS

## 16. REDUCING OR CANCELLING THE FACILITY LIMIT

- 16.1 You may ask us to reduce or cancel the *facility limit* at any time by:
- if the *facility* is a *business term loan, commercial rate loan or bank guarantee facility* – providing us with a *request notice*; or
  - if the *facility* is a *business overdraft or business line of credit* – providing us with written notice.
- 16.2 We may by notice to you reduce or cancel:
- the undrawn portion of the *facility limit* for a *commercial rate loan or bank guarantee facility*; or
  - the *facility limit* of a *business overdraft or business line of credit*,

at any time. Except as specified elsewhere in this *facility agreement*, we cannot reduce or cancel any of the *facility limit* for a *business term loan* or the drawn portion of the *facility limit* for a *commercial rate loan or bank guarantee facility*. Despite the rest of this clause 16.2, if the *Facility Details* expressly state that a *commercial rate loan* is a committed *facility*, then no portion of the *facility limit* for that *commercial rate loan* may be cancelled under this clause 16.2.

- 16.3 If you or we reduce a *facility limit*, you must immediately:
- if you have a *business term loan, business overdraft, business line of credit or commercial rate loan* – pay us the amount (if any) by which the *facility amount owing* exceeds the new *facility limit*; and
  - if you have a *bank guarantee facility* – pay us the aggregate value of all *bank guarantees* which have not yet expired which exceed the new *facility limit* (to be maintained as a deposit with us as *security* for any claim made by a *beneficiary*) or give us a written release or surrender documentation (as required by us) signed by the *beneficiary* in a form satisfactory to us, for the amount which exceeds the new *facility limit*
- 16.4 If you or we cancel a *facility limit*, you must immediately:
- if you have a *business term loan, business overdraft, business line of credit or commercial rate loan* – pay us the *facility amount owing* in full; and
  - if you have a *bank guarantee facility* – pay us the aggregate face value of all *bank guarantees* which have not yet expired (to be maintained as a deposit with us as *security* for any claim made by a *beneficiary*) or give us a written release or surrender documentation (as required by us), signed by the *beneficiary* in a form satisfactory to us, in respect of all *bank guarantees* which have not yet expired.

## 17. FACILITY REVIEWS AND CHANGES TO YOUR MARGIN

- 17.1 We may review your *facility* annually or more frequently if set out in the *Facility Details* or at any time if there is or may be, in our opinion, a *change of credit*. A review *fee* may be payable when we conduct a review.
- 17.2 You must comply with all our reasonable requirements in relation to any review, including by:
- providing us with all financial reports, statements and accounts and all other financial information we require;
  - ensuring that any valuer we nominate is granted access to any *security property* to enable them to conduct a valuation of the *security property*; and
  - pay any *fees* or charges associated with the review (in accordance with clause 7.1), including the costs of a valuation as required under clause 17.2(b).
- 17.3 You must comply with these requirements within any reasonable time period we require.
- 17.4 Following a review under clause 17.1, we may:
- take any action specified in the *Facility Details*; and
  - if there has been a *change of credit*, we may by 30 days' prior written notice do either or both of the following (taking into account the *change of credit*):
    - increase your *margin* by up to 4.5% per annum; and
    - restructure your *facilities* or change their terms and conditions.

## 18. EXPIRED FACILITIES

- 18.1 If we continue to make a *facility* available to you after the end of the *term*, and this *facility agreement* has not been extended, amended or replaced, then the terms of this *facility agreement* will continue to apply to the *facility* until we notify you otherwise.
- 18.2 Clause 18.1 of this Part A shall not be construed as a waiver of any event of *default* or of our rights under this *facility agreement* or as any agreement or undertaking to grant an extension.

## 19. ADDITIONAL REQUIREMENTS FOR PROGRESSIVE DRAW FACILITIES

- 19.1 You may draw down a *progressive draw facility* in more than one sum.
- 19.2 We need not make the *initial drawdown* under the *progressive draw facility* unless, in addition to those requirements in clause 1 of this Part A, you have also contributed any money we have required you to contribute.

## 20. ADDITIONAL REQUIREMENTS FOR CONSTRUCTION FINANCE FACILITIES

20.1 If your *construction finance facility* is a *progressive draw facility* then the requirements in clause 19 of this Part A will apply.

### Requirements before the initial drawdown under a construction finance facility

20.2 We need not make the initial drawdown under the *construction finance facility* unless we have received to our satisfaction or our consultant has received and approved the following documents:

- a. a copy of a fully signed fixed price construction contract with a building contractor acceptable to us;
  - b. a copy of the construction plans approved by the local authority;
  - c. a copy of a full set of the specifications signed by you and your builder;
  - d. a copy of all relevant approvals (including a set of council approved plans and specifications), evidence that the terms of the approvals have been met and any other reports and documents appropriate to the *works*;
  - e. evidence that the builder and other contractors and consultants are registered, hold all necessary licences and have contractors all risks insurance (including workers compensation related insurance) in an amount acceptable to us;
  - f. evidence of an adequate and appropriate insurance policy in your name for the period of construction for the contract price of the construction work and evidence that the policy notes our interest;
  - g. where required by us, a surveyor's certificate and/or a consulting engineer's certificate; and
  - h. the projected construction costs and cashflows.
- d. you must not have any changes made to the council approved plans, specifications and relevant council approvals without our prior written consent, unless we agree otherwise. You must ask for our consent in writing, and pay our costs and expenses of those changes;
  - e. you must comply with our directions about the plans and specifications or about the *works*;
  - f. notwithstanding clause 20.4 of this Part A, you are responsible for any payments made to your builder or other contractors;
  - g. we must be satisfied with the *works* upon *completion*; and
  - h. you must tell us in writing if you are not satisfied with the *works*. If you do not tell us otherwise, we assume that you are satisfied with the *works*.

### Drawdown under a construction finance facility

20.4 We pay money drawn down for *works* to you or to your builder or other contractors as you direct.

20.5 You agree that you cannot make any claim against us on the basis that we have paid money for *works* to your builder or other contractors as directed by you.

20.6 We may only allow a drawdown:

- a. if you have given us written particulars of the *works* completed;
- b. if the requirements in clauses 1, 19 and 20.2 of this Part A are satisfied at the time the drawdown is requested;
- c. if we are satisfied with any report obtained from our consultant;
- d. if we are satisfied with the inspection of the stage of *works* including any receipts requested by us for materials and labour; and
- e. in an amount determined by us. If our determination is less than the amount you ask for, then unless we agree otherwise you must separately arrange with the builder or other contractors for the balance to be paid.

20.7 The fact that we allow any drawdown shall not be construed as proof or admission that the *works* or any part of the *works* have been undertaken in accordance with this *facility agreement*.

### Appointment of consultants

20.8 We may appoint a consultant (such as a valuer, quantity surveyor or engineer) to provide reports to us on the progress of the *works*, to examine documents related to the *works* and to act on our behalf under this *facility agreement*.

### General requirements for a construction finance facility

20.3 If you have a *construction finance facility*:

- a. you must start construction without unreasonable delay and ensure that all *works* on the *development site* are carried out only in accordance with plans and specifications approved by us and in accordance with all laws, requirements of authorities and Australian Standards;
- b. you alone are responsible for ensuring that all plans are followed and that materials and workmanship are satisfactory even if we also monitor the *works*. We are not liable for the quality of, or any delays in, the *works*;
- c. you must not vary the construction contract without our prior written consent, unless we agree otherwise;

### **Inspections under a construction finance facility**

20.9 We may require an inspection of the *works* at any time. The inspection may be conducted by us or a consultant that we nominate. If we monitor *works* (such as inspecting or accepting any part of the *works* construction or approving plans), we will be doing so for our own purposes and does not mean the *works* are reasonably satisfactory. We do not owe you any duty to exercise care or skill in doing so and we need not tell you the results of any inspection. You will pay our costs in respect of these inspections.

### **Requirements before the final drawdown under a construction finance facility**

20.10 We need not allow the final drawdown unless the following additional requirements are all satisfied:

- a. our consultant has inspected the site and certified that the *works* have been satisfactorily completed in accordance with the council approved plans and specifications provided to us;
- b. you provide us with a certificate of *completion* or similar certificate in relation to the completed *works*, if we have requested such a certificate;
- c. we are satisfied with the cost of the *works*;
- d. you have paid to your builder or other contractor any money owing to the builder or other contractor which exceeds the available balance of the *facility limit*;
- e. you tell us in writing that you are satisfied with the *works*; and
- f. you have provided us with confirmation that you have adequate and appropriate insurance for the *works* for its full insurable value and the policy notes our interest.

### **Default under a construction finance facility**

20.11 In addition to what can happen when you are in *default* as set out in clause 14 of this Part A, if you are in *default* under a *construction finance facility* we may complete the *works* in any way we consider appropriate. We do not have to. We may change plans and specifications. We may employ any consultants or builders we consider appropriate and you must pay our costs in doing any of the things referred to in this clause.

# GENERAL

## 21. DEALING WITH RIGHTS UNDER THIS FACILITY AGREEMENT

- 21.1 We may assign or otherwise deal with our rights under this *facility agreement* in any way we consider appropriate provided that such assignment or dealing does not in our reasonable opinion materially prejudice your rights or obligations under this *facility agreement*. 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 this *facility agreement*) any right of set-off or other rights you have against us.
- 21.2 If we do assign or otherwise deal with our rights under this *facility agreement*, you agree that you are still liable for the *total amount owing* under this *facility agreement*.
- 21.3 Your rights are personal to you and may not be assigned without our written consent.

## 22. DISCLOSURE OF INFORMATION

- 22.1 Information you provide to us may be disclosed:
- a. if you consent (unless you are an individual, 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 *facility agreement*);
  - d. to our officers, authorised agents and employees, to *receivers* and to legal advisers, auditors and other advisers;
  - e. to any *person* in the business of loan, finance or mortgage broking or other introducer who has introduced you to us. For the purposes of calculating and tracking commissions, information provided may include:
    - i. the approval or non-approval of the *facility* application;
    - ii. the financial particulars relating to your accounts held with us;
    - iii. any *drawdown date* and the amount of the drawdown;
    - iv. the *facility limit*, the *facility type*, and our product name or description for the *facility*;
    - v. the end of month balances on your accounts held with us;
    - vi. your account names and numbers;
    - vii. the date the *facility* is at an end;
    - viii. the details of any *default*; and
    - ix. any other information regarding the status of your accounts held with us that might affect the payment of the commission;

- f. to any of our *related entities*;
  - g. where we think it is necessary to protect our position and interests;
  - h. if the information is generally and publicly available;
  - i. to any other *debtor/guarantor*; or
  - j. to any *person* for the purposes of the securitisation of this *facility agreement* and any *security*.
- 22.2 Without limiting the generality of clause 22.1 of this Part A, you consent to us providing to any *debtor/guarantor*:
- a. a copy or summary of this *facility agreement*;
  - b. a copy of all *securities* given in connection with this *facility agreement*;
  - c. a copy of any formal demand that is or has been sent to you;
  - d. a copy of any relevant statements of account provided to you (if any);
  - e. a copy of any relevant financial accounts or statements of financial position which you have provided to us;
  - f. a copy of your credit reports from credit reporting agencies; and
  - g. any financial information about you the *guarantor* asks for or that we are required to provide by the Banking Code of Practice including notices of demand and current credit related insurance contracts (if any).
- 22.3 We and you agree not to disclose any information of the kind referred to in section 275(1) of the *PPSA* that is not publicly available. You agree not to authorise the disclosure of any information as contemplated under section 275(7)(c) of the *PPSA*.
- 22.4 Clause 22.3 does not prevent disclosure of any information by us:
- a. permitted under clause 22.1 or 22.2 or under any *arrangement with us*; or
  - b. where required under section 275 of the *PPSA* because of the operation of section 275(7) of the *PPSA*.

## 23. CONSENTS

- 23.1 Whenever a provision of this *facility agreement* specifies that:
- our consent or approval is required; or
  - that we may direct or require you to do or not do some act or thing; or
  - that we 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.

- 23.2 We may impose reasonable conditions on any consent or approval we give under this *facility agreement*. You must comply with all conditions and requirements in any consent or approval we give.
- 23.3 Our consent or approval will not be effective unless it is in writing. We may charge a *fee* for giving our consent or approval.

## 24. MANAGER

We may appoint a *person* to manage the *facility agreement* and any *securities* for us. We will tell you if we do so. Any such manager is authorised to exercise all of our rights under this *facility agreement* and any *securities*. Until we tell you otherwise, you must deal with that manager in relation to all matters arising in connection with this *facility agreement* and any *securities*.

## 25. CURRENCY CONVERSIONS

- 25.1 You must make each payment in the currency in which it is due. Unless stated otherwise in this *facility agreement*, payments are due in the currency in which we lend it to you or, if we incur obligations at your request, in the currency in which we are obliged to satisfy those obligations.
- 25.2 If we receive an amount in a currency other than that in which it is due:
- 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
  - 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.

## 26. SETTING OFF MONEY

- 26.1 Except to the extent you have a right of set-off granted by law which we cannot exclude by agreement, you must pay the *total amount owing* in full without setting off amounts you believe we owe you and without counterclaiming amounts from us. This does not prevent you making a separate claim against us for amounts you believe we owe you.
- 26.2 We may set off against the *total amount owing* any money we owe you.

## 27. MULTIPLE ACCOUNTS

We may use any money in any of your accounts held with us to pay the *total amount owing*.

If you have more than one account with us (either alone or with any other *person*) we may treat your accounts as one account. We do not have to do so, nor do we have to tell you before we do. However, we will provide you with details of such amounts or any combination of accounts upon request from you.

## 28. OUR CERTIFICATES

- 28.1 We may give you a certificate about a matter or about an amount payable in connection with this *facility agreement*. The certificate is sufficient evidence of the matter or amount unless it is proved by you to be incorrect.
- 28.2 We may rely on certificates provided by any other *person* with a *security interest* over the *security property* as to a matter or about an amount that is owed to them.

## 29. PROMPT PERFORMANCE

If this *facility agreement* specifies when you must perform an obligation, you must perform it by the time specified. You must perform all other obligations promptly.

## 30. HOW WE MAY EXERCISE OUR RIGHTS

30.1 We may exercise a right or remedy in any way we consider appropriate.

30.2 We may exercise our rights under this *facility agreement* even though:

- a. we could have done so before but did not or were slow in doing so;
- b. we have tried to exercise the rights before (in whole or in part);
- c. we could have exercised those or other rights before but did not;
- d. we have exercised other rights before; or
- e. we hold other *security* interests for payment of the *total amount owing*.

30.3 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.

30.4 We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.

30.5 Our rights and remedies may be exercised by any of our directors, any *authorised officer* or any of our employees.

30.6 Our rights and remedies under this *facility agreement*:

- a. are in addition to other rights and remedies given by law independently of this *facility agreement* or by any *security*; and
- b. may be exercised even if this involves a conflict of duty or we have a personal interest in their exercise.

## 31. ADMINISTRATIVE MATTERS

You agree that we may fill in any blanks in this *facility agreement* or in any related document in order to complete the document.

## 32. CHANGES

32.1 We may need to make changes to your *facility agreement*.

32.2 The types of changes that we can make include:

- a. changing the undrawn portion of the *facility limit* in accordance with clause 16.2;
- b. anything as specified in relation to a *facility review* in accordance with clause 17.4;
- c. making changes required to comply with any law, code or guidance or requirement of a regulator, or a decision of a court or other dispute resolution process;

- d. changing interest rates, discount rates or *default rates* (including any component of them such as a *margin*). This includes increasing, decreasing, renaming or substituting rates. It also includes adding, removing or changing *margins*, such as changing a *margin* in accordance with clauses 15.11, 15.12 or 17.4. However, we cannot change an interest rate during a *fixed rate period* and, if we change a *default rate*, it cannot exceed the rate specified in the *Schedule* or clauses 15.4 or 15.8;
- e. changing the amount, frequency, timing or method of calculation of payments;
- f. changing the method or frequency of calculation, or crediting or debiting interest;
- g. changing fees and charges. This includes introducing or removing fees and charges and changing the amount, method of calculation, frequency of charging or timing of payment of them; and
- h. any other matter or thing expressly permitted elsewhere in this *facility agreement*.

32.3 We can also make a change to this *facility agreement* if:

- a. we reasonably consider you will benefit from it;
- b. it is administrative or minor or corrects a mistake or omission;
- c. it reflects changes to our business or systems;
- d. it is made for security reasons;
- e. the change is reasonably made on a product or like customer basis (for example, to reflect current industry or market products or conditions).

32.4 We will tell you of changes to your *facility agreement* in accordance with the law and any code to which we subscribe.

32.5 Generally, we will tell you about changes as soon as reasonably possible (which may be before or after the change is made) or, where the change is unfavourable to you, by providing you with 30 days' notice. However, if we change an interest rate, we will tell you no later than the date of the change, unless we are not able to because the interest rate is calculated according to a money market rate or some other external rate, or a rate otherwise designated as a variable rate. Where there is a change to, or introduction of, a government *fee* or charge, we will tell you reasonably promptly after the government notifies us (however, we do not have to tell you if the government publicises the change to, or introduction of, the *fee* or charge). We can also give you a shorter notice period (or no notice) of an unfavourable change if we believe doing so is necessary for us to avoid, or to reduce, a material increase in our credit risk or our loss.

32.6 We tell you of changes by writing to you, advertising in a newspaper, placing a notice on or with a statement of account or other material we send you, or in any other way permitted by law or any code to which we subscribe.

### 33. COMPENSATION FOR UNFORESEEN CIRCUMSTANCES

33.1 You must compensate us on demand if we determine that:

- a. a *directive* or change in *directive* which comes into operation after the date of this *facility agreement*;
- b. a change in a *directive*'s interpretation or administration by an authority after the date of this *facility agreement*; or
- c. compliance by us or any of our *related entities* with such *directive*, changed *directive* or changed interpretation or administration, directly or indirectly;
- d. increases our *costs* in providing you with a *facility*;
- e. reduces any amount received or receivable by us, or our effective return, in connection with any *facility*; or
- f. reduces our return on capital allocated to any *facility*, or our overall return on capital.

However, a reference to a *directive* does not include a *directive* imposing or changing the basis of a tax on our overall net income.

Compensation need not be in the form of a lump sum and may be demanded as a series of payments.

33.2 You must compensate us whether or not the increase or *reduction* could have been avoided. However, at your request, we agree to consider ways of minimising any increase or *reduction*.

### 34. ILLEGALITY OR IMPOSSIBILITY

34.1 This clause applies if we determine that:

- a. a change in a *directive*;
- b. a change in the interpretation or administration of a *directive* by an authority; or
- c. a *directive*,

taking effect after the date of this *facility agreement*, makes it (or will make it) illegal or impossible for us to fund, provide, or continue to fund or provide any *facility*. In these circumstances, by giving a notice to you, we may suspend or cancel some or all of our obligations under this *facility agreement* as indicated in the notice.

34.2 The suspension or cancellation:

- a. must apply only to the extent necessary to avoid the illegality or impossibility; and
- b. in the case of suspension, may continue only for so long as the illegality or impossibility continues.

34.3 If the illegality or impossibility related to:

- a. a drawing under a *facility*, we may require *repayment* of all or part of the affected drawing and interest accrued on that part, by giving a notice to you; and
- b. a *bank guarantee* issued by us under a *bank guarantee facility*, we may require payment (as a deposit held by us as *security* for any claim made by a *beneficiary*) of an amount equal to all or part of the total maximum liability under the affected document less any amount which has already been reimbursed to us by you in respect of that document, by giving a notice to you.

You agree to pay the amount specified within 30 *business days* after receiving the notice (or, if earlier, on the date the illegality or impossibility arises).

### 35. IF ANY PART OF THIS FACILITY AGREEMENT IS UNENFORCEABLE

If a court decides that any clause or part of a clause of this *facility agreement* is illegal, void, or unenforceable, that clause or part clause is varied to the extent the court may determine is necessary to render the clause no longer illegal or void, or is if necessary omitted.

### 36. YOUR OBLIGATIONS AND OUR RIGHTS ARE UNAFFECTED

36.1 Any present or future law that would otherwise vary your obligations under this *facility agreement* is excluded (to the extent allowed by law) if it affects our rights or remedies adversely.

36.2 This *facility agreement* does not merge with or adversely affect, and is not adversely affected by, any of the following:

- a. a *security* 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 owing*.

We can still exercise our rights under this *facility agreement* as well as under the judgment, order, other *security*, right or remedy.

36.3 This *facility agreement* binds each *person* who signs it even if another *person* who was intended to sign does not sign it or is not bound by it.

### 37. REINSTATEMENT OF RIGHTS

Under a law relating to insolvency a *person* may claim that a transaction (including a payment) in connection with this *facility agreement* 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; and
- b. on request from us, you agree to do anything to restore to us any *security* we held from you immediately before the transaction.

### 38. INDEMNITIES

The indemnities in this *facility agreement* are continuing obligations, independent of your other obligations under this *facility agreement*. They continue even after you have repaid the *total amount owing*. It is not necessary for us to incur expenses or make payment before enforcing a right of indemnity conferred by this *facility agreement*.

### 39. POWER OF ATTORNEY

39.1 You appoint us, each of our *authorised officers*, each of our solicitors and each other *person* we authorise separately as your *attorney*. If we ask, you must formally approve anything an *attorney* does under clause 39.2 of this Part

A. You may not revoke these appointments.

39.2 If you are in *default* (and where required by law we have served a notice stating that you are in *default*) each *attorney* may:

- a. do anything which you can lawfully authorise an *attorney* to do in connection with this *facility agreement*, the *security property* or an *arrangement with us* or which the *attorney* believes is expedient to give effect to any of our rights or a *receiver's* rights (these things may be done in your or the *attorney's* name and they include signing and delivering deeds, selling, transferring or leasing the *security property*, selling, transferring or surrendering any lease, lodging or withdrawing caveats, otherwise dealing with the *security property* and starting, conducting and defending legal proceedings);
- 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 they have a personal interest in doing so.

39.3 Where permitted by law the *attorney* may exercise its powers in clause 39.2 without your consent and without giving you notice.

39.4 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 document 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).

### 40. TRUSTEE PROVISIONS

40.1 You make the following declarations if you enter into any *arrangement with us* or own any of the *security property* as trustee of any trust or settlement:

- a. any *arrangement with us* is for the benefit of the trust;
- b. any *arrangement with us* does not conflict with the operation of the terms of the trust;
- c. you are the only trustee(s) of the trust;
- d. you have the power as trustee of the trust to unconditionally enter into this *facility agreement* and perform your obligations under it;
- 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 the *arrangement with us* and the trust assets are sufficient to satisfy that right of indemnity;
- g. no action has been taken or proposed to terminate the trust;
- h. true copies of the trust deed and other documents relating to the trust have been provided to us and disclose all the terms of the trust;
- i. trustee or exercised any power of appointment;
- j. no property of the trust has been resettled or set aside or transferred to any other trust;
- k. the trust documents comply with all applicable laws;
- l. by entering into any *arrangement with us* and performing your obligations under it you are properly performing your obligations to the beneficiaries of the trust;
- m. you have taken all steps necessary to allow you to enter into and perform your obligations under any *arrangement with us*;
- n. no action has been taken to remove you as trustee or to appoint an additional trustee; and
- o. you have not breached your obligations as trustee.

40.2 You must tell us whenever anything happens which prevents you from repeating any one or more of the declarations in clause 40.1 of this Part A and you repeat the declarations before:

- a. we provide any amount to you under any *arrangement with us*;
- b. you acknowledge that another agreement is to be an *arrangement with us*; and
- c. you consent to us providing financial accommodation to another *person* which is *guaranteed* by you under an *arrangement with us*.

40.3 If you are a trustee, unless we have consented in writing, you must not:

- a. do anything in connection with the trust;
- b. deal with any property of the trust; or
- c. otherwise act in connection with the trust, in any way which adversely affects your ability to pay the *total amount owing*. This includes making any distribution of capital or resigning as trustee.

40.4 If you are a trustee, any *arrangement with us* binds you in your personal capacity and in your capacity as trustee of the trust.

40.5 If you are a trustee and you *default* you:

- a. must not exercise your powers or discretions under the trust unless we have consented in writing; and
- b. must not exercise your right to be paid from the assets of the trust on demand.

#### 41. INSURANCE

Any obligation in this *facility agreement* relating to insurance is an ongoing obligation until such time as this *facility agreement* is ended. If you fail to obtain insurance as required by this *facility agreement* you authorise us to do so on your behalf and at your cost.

#### 42. VALUERS AND CONSULTANTS

42.1 We may appoint a valuer to obtain a valuation report on any *security property* at any time. You must pay us all costs in connection with the valuation.

42.2 We may appoint accounting, legal, financial management or other consultants and investigators to examine your affairs at any reasonable time. For example, if we reasonably believe you are or may be in *default* or we reasonably believe that circumstances exist which could lead to you being in *default*, we may appoint a consultant to investigate whether this belief is accurate. You must co-operate with and comply with every reasonable request made by the consultant (including by making financial records available).

42.3 You must pay us all costs in connection with any valuer or consultant we appoint in accordance with this clause 42.

42.4 Any valuer or consultant we may use is an independent contractor and is not our agent or employee. We are not responsible for any representation, action or inaction by them.

42.5 Any report we obtain from the valuer or consultant is for our use only. Even if we give you a copy of the report, you cannot rely on it. You cannot sue us, the valuer or consultant if the report is wrong. You must obtain your own report if you wish to rely on it.

#### 43. OTHER SECURITY INTERESTS

If you are in *default* under this *facility agreement* and there is a *security interest* given to another *person* which is ranking in priority before our *security* on any *security property*, we may pay out that *security interest* and add the cost of doing that to the *total amount owing*.

#### 44. CONSENT TO TELEPHONE RECORDING

You consent to us recording our telephone conversations with you. Such recordings might be relied on by you or us in any arbitral or legal proceedings between you and us. There will not necessarily be a warning the conversation is recorded.

#### 45. NOTICES, OTHER COMMUNICATIONS AND SERVING DOCUMENTS

45.1 Notices, certificates, consents, approvals and other communications in connection with this *facility agreement* must be in writing, unless we agree otherwise.

45.2 Communications from us may be signed by any of our employees or authorised agents. In addition, if the notice is given by fax or email it is properly signed if our name appears at the beginning or end of the transmission.

45.3 If you are a corporation, communications from you must be signed by a director (unless we require it to be signed by more than one director) or another *person* we approve.

45.4 Communications to you may be:

- a. given personally (if you are a corporation, 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 you or your approved *person's* email or other electronic address last known to us;
- e. sent by fax to your residential or business fax number last known to us;

- f. where permitted by law, given by advertising a notice in a national newspaper or newspapers circulating in a State or Territory in which you ordinarily reside; or
- g. given in any other way permitted by law.

45.5 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.

45.6 Communications to us must be:

- a. given personally to one of our employees at our registered office and no other place;
- b. sent by prepaid post to our registered office and no other place; or
- c. given by any other means permitted by law.

Your local branch may be able to provide details of how your notice can be sent to us (including an email or other electronic address) but your local branch may not be authorised to receive the notice on our behalf. To ensure it is dealt with correctly, any notice should always be addressed to our registered office.

45.7 A communication to any one of you is taken to be given to all of you and you agree that we may treat each of you as the agent for all of you in respect of our communications.

45.8 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;
- c. in the case of a communication sent by email or other electronic form – on the date it bears or, if delivery is outside business hours, 9am on the next *business days*, provided the sender does not receive a non-delivery communication within 2 hours of sending;
- d. in the case of a communication sent by fax – on the date it bears or the date on which the machine from which it was sent produces a report indicating that the communication was sent to the fax (or other) number of the *person* to whom it is addressed, whichever is the later; or
- e. in the case of a communication given by newspaper advertisement – the date it is first published.

45.9 If you change your address, you must promptly tell us.

## 46. BANKING CODE OF PRACTICE AND OTHER CODE OR LEGISLATION

46.1 To the extent that the Banking Code of Practice, other code or legislation applies to this *facility agreement*, if:

- a. that legislation or code would otherwise make a provision of this *facility agreement* illegal, void or unenforceable; or
- b. a provision of this *facility agreement* would otherwise contravene a requirement of that legislation or code or impose an obligation or liability which is prohibited by that legislation or code,

this *facility agreement* is to be read as if that provision were varied to the extent necessary to comply with that legislation or code or, if necessary, omitted.

46.2 To the extent that the Banking Code of Practice, other code or legislation applies to this *facility agreement*:

- a. our rights to demand any amounts from you and to exercise our rights and remedies against you are subject to the limitations on enforcement of this *facility agreement* imposed by the legislation or code; and
- b. our rights and remedies under this *facility agreement* are in addition to those given to a credit provider under the legislation or code.

## 47. INCONSISTENT LAW

To the extent permitted by law, this *facility agreement* prevails to the extent it is inconsistent with any law.

## 48. GOVERNING LAW

This *facility agreement* is governed by the laws of the State of Queensland. You and we submit to the non-exclusive jurisdiction of the courts of that place.

## 49. ENDING THIS FACILITY AGREEMENT

49.1 You can end this *facility agreement* at any time if you:

- a. give us written notice; and
- b. do all things you are required to do when we cancel a *facility* as described in clause 16.4 of this Part A.

49.2 Unless we agree otherwise the settlement of any other transaction or the ending of this *facility agreement* requiring the release by us of any *security* must take place at our head office in Brisbane or at one of our branches.

49.3 You must pay any amounts debited to your *facility account*, *nominated account* or other account held with us after this *facility agreement* is ended.

## 50. FURTHER INFORMATION

If you request we will provide you with further information on the following:

- a. account opening and operating procedures;
- b. our confidentiality obligations;
- c. dispute handling procedures;
- d. combining accounts;
- e. bank cheques;
- f. cheque and cheque clearing;
- g. current *annual percentage rates*, other interest rates, *fees* and charges; and
- h. the Banking Code of Practice.

## 51. OUR ADVICE

51.1 We advise you to:

- a. advise us promptly when you are in financial difficulty; and
- b. carefully read these *General Conditions*, each *Schedule*, the *Facility Details*, the Business Lending Supplementary Terms and Conditions, the Business Banking Guide to Fees and Charges the Electronic Banking Terms and Conditions and each *security*.

51.2 We take no responsibility for any decision you make:

- a. to enter into this *facility agreement*;
- b. to obtain the *facility* and any amounts under it; or
- c. about the kind of interest rate (if any) you want under this *facility agreement*.

51.3 Our officers, employees and authorised agents do not have our authority to:

- a. make any predictions about what might happen to our or anyone else's interest rate;
- b. tell you what kind of interest rate would best suit you; or
- c. make any other representation, prediction or statement of opinion about any other matter or thing affecting this *facility agreement* or the *security*.

## 52. COMMISSIONS

We may pay commissions for the introduction of credit business and we may receive commissions for the introduction of business financed by this *facility*. There may be other commissions payable in connection with your *facility* that we do not know about or we are not required by law to disclose. You consent to us giving, or receiving from, any *person* who introduces you to us or us to you commission, *fees* or other monetary or non-monetary rewards, whether or not out of money paid by you under this *facility*. If the amount of the commission is not ascertainable, we may give or receive any monetary or non-monetary rewards based on the volume and value of introductions and in calculating the volume and value of introductions we will take this *facility* into account.

## 53. PPSA LAW

53.1 You must promptly upon our request:

- a. do anything (including obtaining consents or executing a new document) for the purpose of:
  - i. ensuring that, any *security interest* created under, or provided for, by any *arrangement with us*:
    - 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 any *arrangement with us* to enable us to exercise any of our rights or powers or perform any of our obligations under the *PPSA law*.

53.2 You must take any action necessary to register, perfect, preserve and maintain any *security interest* which you hold, or have the benefit of, under and in accordance with the *PPSA law*.

53.3 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.

# HOW TO INTERPRET THIS FACILITY AGREEMENT

## 54. MEANING OF WORDS

*accountable taxes* means taxes imposed by a *relevant country* other than those which would not be required to be deducted by you if we provided you with any of our name, address, registration number or similar details or any relevant tax exemption or similar details.

*annual percentage rate* means a per annum rate of interest. The *annual percentage rate* (if any) applying to a particular *facility* may be stipulated in the *Schedule*. Your *annual percentage rate* may be comprised of a *base rate* plus a *margin* (if any). The *annual percentage rate* may change from time to time in the manner permitted by this *facility agreement*. You can find out your current *annual percentage rate* by contacting us.

*arrangement with us* means an arrangement (including an agreement or a *security interest*) under which a *debtor/guarantor* has or could in the future have obligations to us or any of our *related entities*. It includes any agreement or *security interest* assigned to us.

*attorney* means each attorney appointed by you under clause 39 of this Part A.

*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*.

*balance owing* means, depending upon the context, at any time the difference between all amounts credited and all amounts debited to any or all of your *facility account*, *nominated account* and any other account held with us. For a *bank guarantee facility* the *balance owing* also includes all amounts paid by us or claimed by a *beneficiary* under a *bank guarantee* and the face value of any *bank guarantee* not yet expired. When the *balance owing* is to be calculated for the end of a day, it includes all debits and credits assigned to that day.

*bank guarantee* means a *bank guarantee* provided by us to a *beneficiary* under a *bank guarantee facility*.

*bank guarantee facility* means a *facility* which is stipulated as a *bank guarantee facility* in the *bank guarantee facility schedule*.

*bank guarantee facility schedule* means the *Schedule* of that name that forms part of this *facility agreement*.

*base rate* means:

- a. for a *business term loan*, *business overdraft* or *business line of credit* – a *base rate* that we set from time to time as a reference rate for our *business term loan*, *business overdraft* or *business line of credit* products. The *base rate* applying to your *facility* is stipulated in the *Schedule*;
- b. for a *commercial rate loan* – the *commercial rate loan base rate*.

The *base rate* forms part of your *annual percentage rate*. Information on current *base rate* may be published on our website, or in a national newspaper or newspapers circulating in a State or Territory in which you ordinarily reside. You can find out current base rates by contacting us.

*beneficiary* in relation to a *bank guarantee*, means a *person* to whom the *bank guarantee* is to be or has been issued.

*break cost event* has the meaning described in clause 11.1 of this Part A.

*break costs* are described in clause 11 of this Part A.

*business day* means any day on which Bank of Queensland is open for business.

*business line of credit* means a *facility* which is stipulated as a *business line of credit* in the *business line of credit facility schedule*.

*business line of credit facility schedule* means the *Schedule* of that name that forms part of this *facility agreement*.

*business overdraft* means a *facility* which is stipulated as a *business overdraft* in the *business overdraft facility schedule*.

*business overdraft facility schedule* means the *Schedule* of that name that forms part of this *facility agreement*.

*business term loan* means a *facility* which is stipulated as a *business term loan facility* in the *business term loan facility schedule*.

*business term loan facility schedule* means the *Schedule* of that name that forms part of this *facility agreement*.

*change of credit* means a change in the financial position of you or any *person* who has given a *guarantee* of your obligations under this *facility agreement* or an adverse change in the value of the *security property* which we determine would, it had occurred at the time we approved the *facility*, have materially affected our decision to provide the *facility* on the terms set out in the *facility agreement*.

*commercial rate loan* means a *facility* which is stipulated as a *commercial rate loan* in the *commercial rate loan facility schedule*.

*commercial rate loan base rate* for a *commercial rate loan*, is the internal rate or rates we set daily for each *facility type* for each of the interest periods. You can find out what this rate is for a particular day by contacting your branch.

*commercial rate loan facility schedule* means the *Schedule* of that name that forms part of this *facility agreement*.

*completion* for a *construction finance facility*, means the date of issue of a certificate of practical *completion* in a form suitable to us by a consultant we appoint or approve for the *works*.

*construction finance facility*, means a *business term loan* or a *commercial rate loan* which is to be used for construction purposes.

*control* of a corporation *includes* the direct or indirect power to directly or indirectly:

- a. direct the management or policies of the corporation; or
- b. control the membership of its board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, *arrangements*, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.

*controller* has the meaning given to it in the Corporations Act.

*costs* means any costs, charges and expenses, including those costs, 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).

*creditor payment terms* are calculated as:

$$\frac{\text{total trade creditors} \times 365}{\text{purchases} \times (12 / \text{period})}$$

*current ratio* is calculated as:

$$\frac{\text{current assets}}{\text{current liabilities}}$$

*debt servicing ratio* is calculated as:

$$\frac{\text{earnings before interest, tax, depreciation and amortisation}}{\text{total debt service costs}}$$

*debtor days* are calculated as:

$$\frac{\text{trade debtors} \times 365}{\text{sales} \times (12 / \text{period})}$$

*debtor/guarantor* means:

- a. you;
- b. any *person* who *guarantees* payment of any part of the *total amount owing*;
- c. if any part of the *total amount owing* includes obligations you owe under a *guarantee*, the *person* whose obligations you *guarantee* and any other *person* who *guarantees* that *person's* obligations; and
- d. any other *person* you and we agree is to be a "*debtor/guarantor*" for the purpose of this *facility agreement*.

*default* means any event specified in clause 13.

*default rate* means a per annum rate of interest (if any) payable under clauses 15.6 to 15.9 of this Part A. The *default rate* may change from time to time in the manner permitted by this *facility agreement*.

*development site* means each site where you intend to carry out, or you are carrying out, *works* using financial accommodation provided under a *construction finance facility*.

*directive* means a treaty, a law, an official directive or request having the force of law, and an official directive, request, guideline or policy with which financiers carrying on business in Australia generally comply. *Directive* includes any Australian Prudential Regulation Authority or Reserve Bank of Australia directive.

*drawdown date* means each date on which that *facility* is drawn down (such as by the advance of loan funds to you or the issue of a *bank guarantee* to a *beneficiary*).

*elected repayments* for a *business term loan*, means the higher of your *repayment* or any other *repayment* amount we may agree with you from time to time.

*enforcement proceedings* means a *person*:

- a. starting proceedings in a court to recover a debt or to recover possession of property subject to a *security interest*;
- b. otherwise enforcing a *security interest* by taking possession of property (or taking steps to do so) or exercising a power of sale or appointing *receivers* or voluntary administrators;
- c. applying to a court to appoint a provisional liquidator or a trustee in bankruptcy; or
- d. enforcing a judgment against another *person* or their assets.

*extra payment limit* for a *business term loan* during a *fixed rate period*, is the amount which is \$5,000 more than your *elected repayments* in any 12 month period.

*facility* means financial accommodation we agree to provide you under this *facility agreement* (including the issue of *bank guarantees*).

*facility account* means:

- a. for a *business term loan*, *business overdraft*, *business line of credit* or *commercial rate loan* – the account held with us in your name where we will debit amounts (including all drawdowns) in connection with your *facility*;
- b. for a *bank guarantee facility* – means the line of credit account held with us in your name and each sub-account established when a *bank guarantee* is issued.

*facility agreement* means these *General Conditions*, the *Facility Details* and each *Schedule* setting out the particulars of your *facility agreement*.

*facility amount owing* means at any time, the total of all amounts which are then due for payment, or which will or may become due for payment to us under this *facility agreement* in relation to a particular *facility*, which has not then been fully and finally paid. For a *bank guarantee facility* the *facility amount owing* also includes all amounts paid by us or claimed by a *beneficiary* under a *bank guarantee* and the face value of any *bank guarantee* not yet expired.

*Facility Details* means the details that form part of this *facility agreement*.

*facility establishment date* means the date we open your *facility account* under this *facility agreement*.

*facility limit* for a *facility* means the *facility limit* stipulated in the *Schedule* and as varied from time to time by us in accordance with this *facility agreement* and any new or replacement limit as you and we agree.

*facility type* means:

- a. for a *commercial rate loan* – any of the *variable commercial rate loan*, *interest capitalised variable commercial rate loan*, *fixed commercial rate loan* or *interest prepaid commercial rate loan* as stipulated in the *commercial rate loan facility schedule* and varied from time to time in accordance with this *facility agreement*; and
- b. for a *business term loan* – either a *variable business term loan* or *fixed business term loan* as stipulated in the *business term loan facility schedule* and varied from time to time in accordance with this *facility agreement*.

*final drawdown date* for a *progressive draw facility* means the date on which the *final drawdown* is made. The *final drawdown date* is the last day of the *progressive draw period*.

*financial markets documentation* means any *Master Agreement for Financial Markets Transactions* and/or any ancillary documentation between you and us governing the terms of a *financial market transaction*, including any schedule and/or confirmation.

*financial markets transaction* means one or more transactions that are or will be entered into between you and us and that are governed by the *Master Agreement for Financial Markets Transactions* between you and us.

*fixed business term loan* means a *business term loan* where the *annual percentage rate* is fixed.

*fixed commercial rate loan* means a *commercial rate loan* where the *interest period* may be any of 1, 2, 3, 4 or 5 years.

*fixed rate period* means any period for which the *annual percentage rate* or other interest rate applying to your *facility* (if any) is fixed. For the purposes of Part A, an *interest period* is a *fixed rate period*.

*General Conditions* means these *general conditions* that form part of this *facility agreement*.

*governing body* means each entity which manages or administers any *shared scheme* of which any *security property* is part.

*gross profit margin* is calculated as:

$$\frac{\text{gross profit}}{\text{sales}} \times 100$$

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

*guarantee* means a guarantee and indemnity.

*guarantor* means any *person* who guarantees payment of any part of the *total amount owing*;

*initial drawdown date* means the first *drawdown date*. For a *non-progressive draw facility*, this will be the only date on which the *facility* is drawn down.

*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, or 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. is no longer in control of their affairs;
- e. has an application or order made (and in the case of an application, it is not stayed, withdrawn 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;
- f. is taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand;
- g. 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);
- 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.

*interest capitalisation component* means, if you have an *interest capitalised variable commercial rate loan*, that amount of the *facility limit* described as such in the *Schedule*.

*interest capitalised variable commercial rate loan* means a *variable commercial rate loan* where:

- a. the *interest period* may be any of 1, 2 or 3 months; and
- b. subject to these *General Conditions*, interest is debited to the *facility account*.

*interest cover* is calculated as:

$$\frac{\text{earnings before interest and tax}}{\text{total interest paid plus all equipment finance and hire purchase payments}}$$

*interest only* for a *business term loan*, means a *repayment type* where you are required to make regular *repayments* of interest calculated on the *balance owing* on your *facility account* during the *interest period*.

*interest only period* for a *business term loan*, means the period during which you make *interest only repayments*. You will not be required to repay the *principal* during an *interest only period* unless you have agreed to make a *reduction* or *special reduction*.

*interest payment date* means:

- a. for a *variable commercial rate loan* and an *interest capitalised variable commercial rate loan* – the last day of each *interest period*;
- b. for a *fixed commercial rate loan* – subject to clause 9.7(c)(iii) of Part D, the same date in each month as the *drawdown date*; and
- c. for an *interest prepaid commercial rate loan* – the first day of each.

If your *interest payment date* falls on the 29th, 30th or 31st of a month, and a particular month does not have that date, your *interest payment date* falls due and owing on the last day of that month.

*interest period* for a *commercial rate loan*, means the period stipulated in the *commercial rate loan facility schedule* as varied from time to time in accordance with this *facility agreement*. For the purposes of Part A, an *interest period* is a *fixed rate period*.

*interest prepaid commercial rate loan* means a *commercial rate loan* where:

- a. the *interest period* is 1 year; and
- b. interest is paid annually in advance.

*interest prepayment* for an *interest prepaid commercial rate loan* means, the interest payment prepaid at the start of any *interest period*.

*loan to value ratio* is calculated as:

$$\frac{\text{the aggregate of each facility limit made available to you}}{\text{value of security property}} \times 100$$

The value of the *security property* is the market value of the *security property* as assessed by us or our advisers.

*margin* means the *margin* specified in the *Schedule* for a *facility* as varied from time to time in accordance with this *facility agreement*. A *margin* is calculated taking into account the nature and amount of risk undertaken by us.

*Master Agreement for Financial Markets Transactions* means any master agreement for financial markets transactions including any document with that name and any ISDA Master Agreement.

*net profit margin* is calculated as:

$$\frac{\text{net profit}}{\text{sales}} \times 100$$

*nominated account* for a particular *facility*, means the business transaction account held with us in your name, nominated by you as the relevant account for crediting and debiting amounts in accordance with this *facility agreement*.

*over limit rate* means a per annum rate of interest (if any) payable under clauses 15.2 to 15.5 of this Part A and clause 2.2 of Part C. The *over limit rate* may change from time to time in the manner permitted by this *facility agreement*.

*person* includes an individual, a firm, 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 other legislation or regulation made to implement, or contemplated by, any *PPSA law* referred to in paragraph (a) or (b).

*principal and interest for a business term loan*, means a *repayment type* where you are required to make regular *repayments* of the *facility amount owing* together with interest calculated on the *balance owing* on your *facility account*.

*progressive draw facility* means a *facility* where we allow you to draw down the *facility limit* by a series of drawdowns.

*progressive draw period* for a *progressive draw facility*, means the period during which we make the *facility limit* available to you by a series of drawdowns. The *progressive draw period* starts on the *initial drawdown date* and ends on the *final drawdown date*.

*receiver* includes *receiver*, or *receiver* and manager and has the meaning given to it in the Corporations Act.

*redraw* for a *business term loan* is described in clause 10 of Part B and for a *commercial rate loan* is described in clause 11 of Part D.

*reduced facility limit* means the *facility limit* following any *reductions* or *special reductions*.

*reduction* means a *reduction* of the *facility limit* due in the manner described in the *Schedule* and:

- a. for a *business term loan* or *commercial rate loan*, an equivalent payment; or
- b. for a *business overdraft* or *business line of credit*, a payment sufficient to ensure that the *facility amount owing* does not exceed the *reduced facility limit*.

*reduction date* means the dates upon which *reductions* are due as stipulated in the *Schedule*.

*related entity* has the meaning given to it in the Corporations Act.

*relevant country* means any country, or political sub-division of one or more countries, or any federation or association of countries in which a *debtor/guarantor* is either incorporated or is resident or domiciled for any tax purpose or in which a *debtor/guarantor* carries on business or owns or leases property or from which, or through which, any payment under an *arrangement with us* is made.

*repayment* for a *business term loan*, means the amount of the *repayment* which is specified in the *business term loan facility schedule* or as notified to you from time to time. The *repayment* may change from time to time in the manner permitted by this *facility agreement*.

*repayment date* for a *business term loan* means the dates upon which *repayments* are due as stipulated in the *business term loan facility schedule* or as otherwise notified to you at the time of entering into this *facility agreement*.

*repayment type* for a *business term loan*, means any of

- a. *interest only*;
- b. *principal*; or
- c. *principal and interest*,

as stipulated in the *business term loan facility schedule* and varied from time to time in accordance with this *facility agreement*.

*request notice* means a request notice (if any) in the form contained in the *Schedule* or any other form as notified to you from time to time.

*Schedule* means each *schedule* that forms part of this *facility agreement*, as stipulated in the *Facility Details*.

*security* means each *security interest* stipulated in the *Facility Details* under "Security" and any substituted or additional *security interest* given in connection with this *facility agreement* or which otherwise secures your liabilities in connection with this *facility agreement*.

*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*, or *guarantee*;
- b. a "security interest" as defined in the *PPSA*; 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.

*security property* means property over which a *security* is held and which is stipulated in the *Facility Details* and any substituted or additional *security property*.

*shared scheme* means each scheme or plan regulated by a *shared scheme* law that affects any *security property*. Examples of properties which are often part of a shared scheme are strata or stratum title home units and town houses and properties in integrated developments.

*small business* has the meaning given to it in the Banking Code of Practice.

*special reduction* means a *special reduction* of the *facility limit* due in the manner described in the *Schedule* and:

- a. for a *business term loan* or *commercial rate loan*, an equivalent payment; or
- b. for a *business overdraft* or *business line of credit*, a payment sufficient to ensure that the *facility amount owing* does not exceed the *reduced facility limit*.

*special reduction date* means the date upon which a *special reduction* is due as stipulated in the *Schedule*.

*stock turnover days* are calculated as:

$$\frac{\text{average value (finished goods and work in progress and raw materials)} \times 365}{\text{cost of goods} \times (12 / \text{period})}$$

*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.

*term* for each *facility*, means the *term* specified in the *Schedule*. The *term* may change from time to time in the manner permitted by this *facility agreement*.

*total amount owing* means, at any time, the total of every *facility amount owing* and any other amounts which are then due for payment, or which will or may become due for payment, in connection with this *facility agreement*. You can find out your *total amount owing* by contacting us.

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 *principal* debtor, 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, or after this *facility agreement* is executed;
  - ii. you consented to or were aware of the assignment; or
  - iii. the assigned obligation was secured;
- f. even if this *facility agreement* was assigned to us, whether or not:
  - i. you consented to or were aware of the assignment; or
  - ii. any of the *total amount owing* was previously unsecured; and
- g. if you are a trustee, whether or not you have a right of indemnity from the trust fund.

A reference to the *total amount owing* also includes any part of it.

*total debt service costs* means the total amount of *repayments*, including the amortising of principal debt and interest for all *arrangements with us*.

*variable business term loan* means a *business term loan* where the *annual percentage rate* is not fixed.

*variable commercial rate loan* means a *commercial rate loan* where the *interest period* may be any of 1, 2, 3 or 6 months.

*variation date* means the effective date of any variation to your *facility agreement* as agreed between you and us.

*variable rate period* means any period for which the *annual percentage rate* or other interest rate applying to your *facility* (if any) is not fixed.

“we” “us” and “our” means Bank of Queensland Limited ABN 32 009 656 740 and its successors and assigns.

*works* means the *works* specified in the *Facility Details* (if any) and any building work, excavation or earthworks on the *development site* or on any *security property*, work demolishing, removing or altering any part of the *development site* or any *security property*, or any building or development work required by an authority in connection with the *development site* or any *security property*.

“you” and “your” means the *person* or persons named in the *Facility Details* as the customer. If there are more than one, you means each of you separately and every two or more of you jointly. You includes your successors and assigns. In the definition of *total amount owing* it also refers to you as so defined whether as a *principal* or as a surety.

## 55. INTERPRETATION

The following rules apply to the interpretation of this *facility agreement*:

Reference to:

- a. a *person* includes the *person's* successors and assigns;
- b. a thing includes all or part of that thing;
- c. a document includes that document as changed or replaced from time to time;
- d. a statute includes a statute as amended, repealed or replaced from time to time;
- e. individuals includes corporations and the other way around;
- f. a gender includes all other genders;
- g. currency is to Australian dollars unless stated otherwise;
- h. this *facility agreement* is a reference to this *facility agreement* (as varied from time to time) between you and us;
- i. clauses are references to clauses in this *facility agreement*;
- j. the singular includes the plural and the other way around;
- k. the Corporations Act is a reference to the Corporations Act 2001 (Cth); and
- l. the Banking Code of Practice is a reference to the 2019 version of the Australian Banking Association Banking Code of Practice including any amendments from time to time which have been published by the Australian Banking Association and formally adopted by us.

Headings for clauses are included for guidance only and must not be used for interpretation.

For *repayments* or other payments made using our internet banking service refer to the Electronic Banking Terms and Conditions for when a day ends. For *repayments* or other payments made at a branch, a day ends at the time of closure of the branch. For all other purposes, a day ends at midnight under this *facility agreement*.

The use of the words "including", "such as" or "for example", when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

The use of the word "may" about any right or power we have under this *facility agreement* indicates that the right or power may be exercised or not exercised, at our discretion.

If something is to be "satisfactory to us", it must be satisfactory in both form and substance to us, and, if we require, to our legal advisers.

Words or phrases which are derived from words or phrases which are defined have a similar meaning to the defined term.

If you agree not to do something, you will also not attempt to or permit or cause the thing to be done.

If two or more people are the *debtor/guarantor*, the fact that one *person* is released from their promises does not mean that any of the others are also released.

It is the parties' intention that, in the interpretation of this *facility agreement*:

- a. if possible, words which have an ordinary meaning are given that meaning;
- b. this *facility agreement* is to be interpreted broadly;
- c. if a general term is used it must be given a broad meaning; and
- d. general terms must not be limited because of any legal rules of interpretation.

Any accounting terms used for the calculation of financial ratios or other financial covenants are to be interpreted in accordance with accounting standards under the Corporations Act and, if not inconsistent with those accounting standards, generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time.

Unless defined in this *facility agreement*, a term or expression which is used in this *facility agreement* and which is defined in the *PPSA* has the meaning given to that *term* or expression in, or in the context of, the *PPSA*.



PART B:

# BUSINESS TERM LOAN

THIS PART B APPLIES TO ALL BUSINESS TERM LOANS AND SHOULD BE READ TOGETHER WITH PART A, THE FACILITY DETAILS AND THE BUSINESS TERM LOAN FACILITY SCHEDULE.

## 1. WHAT MUST HAPPEN BEFORE YOU CAN USE THE FACILITY

- 1.1 You must give us a minimum of 3 *business days*' notice before you draw down on the *facility*.
- 1.2 We will only lend to you if the *initial drawdown date* is within 60 days of the *facility establishment date*. If the *initial drawdown date* is after the expiration of this 60 day period, we may still lend you the *facility limit* but we may change the terms on which we do. Alternatively, we may treat this *facility agreement* as ended. If we do so we will notify you, and we may keep any *fees* that you have paid us.

## 2. REPAYMENTS

- 2.1 You must pay us the *facility amount owing* by making regular *repayments* on or before the *repayment date* or at such other times as we agree.
- 2.2 You must make *repayments* on or before the *repayment date* regardless of whether the *repayment date* is a *business day*.
- 2.3 If you are in a *fixed rate period* you must make *repayments* by electronic transfer from an account with us.

## 3. REPAYMENT TYPE

- 3.1 The *repayment type* applying to your *facility* is stipulated in the *business term loan schedule* or as varied from time to time in accordance with this *facility agreement*. The *repayment type* begins on the *initial drawdown date*.
- 3.2 The *repayment type* will be *interest only* during an *interest only period*. If the *interest only period* is less than the *term*, at the end of the *interest only period*, your *repayment type* will automatically convert from *interest only* to *principal and interest*. If the *interest only period* is the same as the *term*, at the end of the *interest only period*, the *facility amount owing* will be due and payable.

## 4. SWITCHING YOUR REPAYMENT TYPE

- 4.1 This clause only applies to a *variable business term loan*. This clause does not apply to a *fixed business term loan*.
- 4.2 You may ask us to change your *repayment type* from:
  - a. an *interest only* to a *principal and interest repayment type*; or
  - b. a *principal and interest* to an *interest only repayment type* for an *interest only period*,by providing us with a *request notice* at any time.

- 4.3 You may only change your *repayment type* if:
  - a. we are offering the *repayment type* you request at the time of your request; and
  - b. we agree at our absolute discretion to your request to change your *repayment type*.
- 4.4 If we agree to change your *repayment type* you may be required to pay us a switching fee.
- 4.5 Any change to your *repayment type* is separately agreed between us and you as a change to the terms of this *facility agreement*.
- 4.6 The new *repayment type* commences on the *variation date*. We will notify you of your new *repayments* as a result of the change to your *repayment type*.

## 5. INTEREST

- 5.1 Interest is accrued daily and is payable by you on the *facility amount owing* but debited to your *facility account* on each *repayment date*. It will also be debited when the *facility amount owing* is to be repaid in full.
- 5.2 Interest charges for each day are calculated by applying the *daily percentage rate* for your *facility* to the *balance owing* on your *facility account* for the end of that day. The *daily percentage rate* is the *annual percentage rate* applying to your *facility* for that day divided by 365.
- 5.3 If the *facility* is a *progressive draw facility*, interest is also debited on the final *drawdown date*.

## 6. FIXED BUSINESS TERM LOAN

- 6.1 If you have a *fixed business term loan* the *annual percentage rate* applying to your *facility* is fixed for an agreed period. The *annual percentage rate* applying to your *facility* will remain fixed during the *fixed rate period* even if our other rates rise or fall.
- 6.2 If you choose to fix the rate at the start of the *term*:
  - a. the *fixed rate period* begins on the *initial drawdown date*; and
  - b. the *annual percentage rate* which applies for the *fixed rate period* is stipulated in the *business term loan facility schedule*.
- 6.3 At the end of the *fixed rate period*, you may elect to maintain your *fixed business term loan* by providing us with a *request notice*, at least 7 *business days* before the end of the *fixed rate period*.
- 6.4 You may only enter into a further *fixed rate period* if:
  - a. we are offering a further *fixed rate period* at the time you request it; and
  - b. we agree at our absolute discretion to your request.

- 6.5 You may continue to make an election in accordance with this clause in each subsequent *fixed rate period* until the *term* expires. The *fixed rate period* must not exceed the remaining *term*.
- 6.6 The *annual percentage rate* of any further *fixed rate period* may vary from the rate which applied for any previous *fixed rate period* and is effective from the first day of the new *fixed rate period*. A change in the *annual percentage rate* may be reflected in a change to the amount of your *repayments*. We will notify you of your new *repayments* as a result of any change to your *annual percentage rate*.
- 6.7 Any further *fixed rate period* is separately agreed between us and you as a change to the terms of this *facility agreement*.
- 6.8 If you fail to make an election in accordance with clause 6.3 of this Part B, or we do not agree to your request, at the end of the *fixed rate period*, your *facility* will automatically convert from a *fixed business term loan* to a *variable business term loan*. These *General Conditions*, as they relate to a *variable business term loan* will then apply. The *annual percentage rate* applying to the *facility* will be the *base rate* current at that time plus or minus the *margin* (if any) stipulated in the *business term loan facility schedule*. You may only switch back to a *fixed business term loan* in accordance with clause 8 of this Part B.

## 7. VARIABLE BUSINESS TERM LOAN

If you have a *variable business term loan*:

- a. we can change the *annual percentage rate* applying to your *facility* at any time;
- b. the *annual percentage rate* stipulated in the *Schedule* is only a guide. The actual *annual percentage rate* applying to your *facility* may change before or after the *facility establishment date*;
- c. we will tell you of a change in the *annual percentage rate* applying to your *facility* in accordance with this *facility agreement*; and
- d. a change in the *annual percentage rate* applying to this *facility* may be reflected in a change to the amount of your *repayments*. We will notify you of your new *repayments* as a result of the change to your *annual percentage rate*.

## 8. SWITCHING FACILITY TYPE

### Switching – variable business term loan to fixed business term loan

- 8.1 Subject to clause 8.2 of this Part B, you may, at any time, ask us to change your *facility type* from a *variable business term loan* to a *fixed business term loan* by providing us with a *request notice*.

- 8.2 If you have a *construction finance facility* or a *progressive draw facility*, you may only ask us to change your *facility type* after we have allowed the final drawdown.
- 8.3 You may only change your *facility* to a *fixed business term loan* if:
- a. we are offering the *fixed rate period* you request at the time of your request; and
  - b. we agree at our absolute discretion to your request to change your *facility type*.
- 8.4 If we agree to change your *facility type* from a *variable business term loan* to a *fixed business term loan* you may be required to pay us a *switching fee*.
- 8.5 The *fixed rate period* commences on the *variation date*.
- 8.6 The *annual percentage rate* which applies for the *fixed rate period* is the *fixed rate* that we notify you of at the start of the *fixed rate period*. A change in the *annual percentage rate* may be reflected in a change to the amount of your *repayments*. We will notify you of your new *repayments* as a result of any change to your *annual percentage rate*.

### Switching – fixed business term loan to variable business term loan

- 8.7 You may break your *fixed rate period* to switch your *facility* from a *fixed business term loan* to a *variable business term loan*. However, you may have to pay *break costs* in accordance with clause 11 of Part A.
- 8.8 To switch your *facility* from a *fixed business term loan* to a *variable business term loan* you must provide us with a *request notice*.
- 8.9 If we agree to change your *facility type* from a *fixed business term loan* to a *variable business term loan* you may be required to pay us a *switching fee*.
- 8.10 The *variable rate period* commences on the *variation date*.
- 8.11 The *annual percentage rate* which applies for the *variable rate period* is the *base rate* current at that time plus or less the *margin* we notify you of at the start of the *variable rate period*. A change in the *annual percentage rate* may be reflected in a change to the amount of your *repayments*. We will notify you of your new *repayments* as a result of any change to your *annual percentage rate*.

### Switching – generally

- 8.12 Any change to your *facility type* is separately agreed between us and you as a change to the terms of this *facility agreement*.
- 8.13 If you have switched your *facility types*, these *General Conditions* as they relate to the *facility type* you have switched to will apply on and from the *variation date*.

## 9. REPAYING EARLY

### Variable business term loan

- 9.1 If you have a *variable business term loan*, you may repay early as much as you choose, at any time, without notifying us in advance. You can do this by:
- paying one or more lump sums; or
  - increasing the amount of your *repayment*.
- 9.2 Once you make an early *repayment*, you may only *redraw* any amount repaid early under the *redraw* provisions in clause 10 of this Part B.

### Fixed business term loan

- 9.3 If you have a *fixed business term loan*, to avoid incurring *break costs* you may only repay early:
- at the end of the *fixed rate period*; or
  - any amount, provided that the extra *repayments* which are in addition to your *elected repayments* are less than the *extra payment limit*.

If you repay early in any other circumstances *break costs* may apply (see clause 11 of Part A).

- 9.4 During a *fixed rate period* you may not *redraw* any amount repaid early and clause 10 of this Part B does not apply during a *fixed rate period*.
- 9.5 Upon:
- you switching your *facility* to a *variable business term loan* (in accordance with clause 8.8 of this Part B); or
  - automatic conversion of your *facility* to a *variable business term loan* (in accordance with clause 6.8 of this Part B),

you may, subject to clause 10.10 of this Part B, *redraw* any amounts that you have repaid early.

### Effect of partial early repayment

- 9.6 If you repay part of a *facility limit* early, your *repayment* does not change, (unless we specifically agree to your request for a change) but it may mean you repay your *business term loan* quicker.
- 9.7 You must continue to make any *reductions* or *special reductions* on the *reduction* date or *special reduction* date (as appropriate), despite any payment made in accordance with this clause 9.

## 10. REDRAWING AMOUNTS

- 10.1 This clause only applies to a *variable business term loan*. This clause does not apply to a *fixed business term loan*.
- 10.2 Subject to clause 10.1 of this Part B, if you have repaid amounts early under this *facility* (for example, if you have made a one-off lump sum *repayment*, *repayments* more frequently than required or regular *repayments* of a greater amount than your *elected repayments*), you may ask us to allow you to *redraw* any amount repaid early. Any amount *redrawn* becomes part of the *balance owing* on your *facility account*.

- 10.3 You may only ask to *redraw* up to the amount which results in the *balance owing* on your *facility account* being not more than the amount which would be owing if you had paid all of your *elected repayments* on time and as required by this *facility*. If for whatever reason the amount you *redraw* exceeds this amount, you must repay the balance immediately.
- 10.4 You may request a *redraw* by providing us with a *request notice* at least 5 clear *business days* before you require the *redraw* amount.
- 10.5 *Redrawn* money will only be made available to you by deposit into your *nominated account*.
- 10.6 You may only *redraw* an amount in accordance with this clause if you meet the following criteria:
- you have not dealt with any *security* without our consent;
  - you are not, and any *debtor/guarantor* is not, in *default* under this *facility agreement* or any *security*;
  - you are not relying on any statement or representation by us (including our employees) or our agents relating to the taxation effects of making the *redraw*. You should obtain your own tax advice.;
  - you have not provided subsequent *security* interests over the *security property* to other parties;
  - the requested *redraw* will not exceed the *facility limit*;
  - any *security property* has not, in our opinion, been diminished in value; and
  - the *term* of the *facility* has not expired.

Each time you *redraw* an amount you declare these things to be true. If, for whatever reason, you do not meet the *redraw* criteria and a *redraw* is made, you must immediately repay upon demand the *redraw*.

- 10.7 We may impose *fees* and charges in connection with a *redraw* in accordance with this *facility agreement* and the Business Banking Guide to Fees and Charges.
- 10.8 You can find out what the minimum *redraw* amount is and how much you have available for *redraw* by calling us or asking at any branch.
- 10.9 We can end your rights to *redraw* under this *facility* at any time and without notice to you.
- 10.10 If there is more than one of you, then any of you or an *authorised officer* of any one of you may request a *redraw* of any amount available for *redraw*. If we allow the *redraw* we need not consult any other of you.
- 10.11 You cannot *redraw* the amount of any *reduction* or *special reduction*. However, you can use amounts available for *redraw* to pay a *reduction* or *special reduction* in full or part. To do this you must provide us with a *request notice* in accordance with clause 10.4 of this Part B, within 5 *business days* to enable the *redraw* to be deposited into your *facility account* on or before the *reduction* date or *special reduction* date.

PART C:

# BUSINESS OVERDRAFT AND BUSINESS LINE OF CREDIT

THIS PART C APPLIES TO ALL BUSINESS OVERDRAFTS AND BUSINESS LINE OF CREDITS AND SHOULD BE READ TOGETHER WITH PART A, THE FACILITY DETAILS AND THE BUSINESS OVERDRAFT FACILITY SCHEDULE OR THE BUSINESS LINES OF CREDIT FACILITY SCHEDULE AS APPROPRIATE.

## 1. WHAT MUST HAPPEN BEFORE YOU CAN USE THE FACILITY

You must give us a minimum of 3 clear *business days* notice before your first drawdown on the *facility limit*.

## 2. THE FACILITY LIMIT

- 2.1 The maximum credit available to you at any time is the *facility limit* or *reduced facility limit* less the *balance owing* on your *facility account*.
- 2.2 You must not allow your *facility limit* or *reduced facility limit* to be exceeded. If the *facility limit* or *reduced facility limit* is exceeded, you must:
  - a. immediately repay the excess and any applicable *fees* and charges;
  - b. pay us the *over limit rate* on the excess.
- 2.3 To avoid exceeding your *facility limit* or *reduced facility limit* you may want to make formal *arrangements with us* for a temporary increase on your *facility limit* or *reduced facility limit* for a limited period. If you make formal *arrangements with us*, you must repay the excess by which the *balance owing* on your *facility account* exceeds the *facility limit* or *reduced facility limit* within the time notified to you.

## 3. REPAYMENTS

- 3.1 You can choose when *repayments* are made as long as the *balance owing* on your *facility account* does not exceed the *facility limit* or *reduced facility limit* at any time (unless we have given prior approval to exceed the *facility limit* or *reduced facility limit*). The minimum amount of each *repayment* is the amount which will ensure that the *balance owing* on your *facility account* does not exceed the *facility limit* or *reduced facility limit* at any time.
- 3.2 You may choose to repay the *facility amount owing* in full or in part at any time.
- 3.3 Despite any other provision in this *facility agreement*, you acknowledge that we may demand immediate payment of the *facility amount owing* at any time and not only when a particular event occurs or does not occur.

## 4. ANNUAL PERCENTAGE RATE

The *annual percentage rate* that applies to your *facility* is a variable rate. This means that:

- a. we can change the *annual percentage rate* applying to your *facility* at any time;
- b. the *annual percentage rates* stipulated in the *business overdraft facility* and the *business line of credit facility schedule* is only a guide. The actual *annual percentage rate* applying to your *facility* may change before or after the *facility establishment date*; and
- c. we will tell you of a change in the *annual percentage rate* applying to your *facility* in accordance with this *facility agreement*.

## 5. INTEREST

- 5.1 Interest is accrued daily and is payable by you on the *facility amount owing* but debited to your *facility account* on the last day of each month. It will also be debited when the *facility amount owing* is to be repaid.
- 5.2 Interest charges for each day are calculated by applying the daily percentage rate for your *facility* to the *balance owing* on your *facility account* at the end of that day. The daily percentage rate is the *annual percentage rate* applying to your *facility* for that day divided by 365.

## 6. ENDING THIS FACILITY

- 6.1 We may end this *facility* at any time for any reason without your consent.
- 6.2 If we do end this *facility*, you must immediately pay the *facility amount owing*.

PART D:

# COMMERCIAL RATE LOAN

THIS PART D APPLIES TO ALL COMMERCIAL RATE LOANS AND SHOULD BE READ TOGETHER WITH PART A, THE FACILITY DETAILS AND THE COMMERCIAL RATE LOAN FACILITY SCHEDULE.

## 1. WHAT MUST HAPPEN BEFORE YOU CAN USE THIS FACILITY

- 1.1 You must give us a minimum of 3 clear *business days*' notice before any drawdown on the *facility limit*, unless we agree otherwise.
- 1.2 You must pay any amounts necessary to ensure that the *facility amount owing* does not exceed the *facility limit* or *reduced facility limit* at any time.
- 1.3 We may not permit you to use the *facility* if the *interest period* will extend beyond the *term*.
- 1.4 Unless we agree otherwise, drawdowns under the *facility* will be credited to your *nominated account*.
- 1.5 We will only lend to you if the *initial drawdown date* is within 60 days of the *facility establishment date*. If the *initial drawdown date* is after the expiration of this 60 day period, we may still lend you the *facility limit* but we may change the terms on which we do. Alternatively, we may treat this *facility agreement* as ended. If we do so we will notify you, and we may keep any *fees* that you have paid us.

## 2. PAYMENTS

- 2.1 You must maintain a *nominated account*. Any amounts payable by us to you under this *facility* will be credited to your *nominated account*.
- 2.2 You must ensure that there are sufficient funds in your *nominated account* to pay all amounts payable by you under this *facility*.
- 2.3 You authorise us to debit all amounts payable by you under this *facility* to your *nominated account*.

## 3. INTEREST

- 3.1 Unless we agree otherwise, interest will be payable:
  - a. in respect of a *variable commercial rate loan*, an *interest capitalised variable commercial rate loan* or a *fixed commercial rate loan* – in arrears; or
  - b. in respect of an *interest prepaid commercial rate loan* – in advance.
- 3.2 Interest is accrued daily and is payable by you on the *facility amount owing* but debited to your *facility account* (for an *interest capitalised variable commercial rate loan*) or your *nominated account* (for all other commercial rate loans) on each *interest payment date*. It will also be debited when the *facility amount owing* is to be repaid in full.
- 3.3 Interest charges for each day are calculated by applying the daily *percentage rate* for your *facility* to the *balance owing* on your *facility account* at the end of that day. The daily *percentage rate* is the *annual percentage rate* applying to your *commercial rate loan* for that day divided by 365.

- 3.4 Interest is also debited to you when you switch:
  - a. your *interest period* in accordance with clause 9.6 or 9.7 of this Part D; or
  - b. your *facility type* in accordance with clause 8 of this Part D.

## 4. VARIABLE COMMERCIAL RATE LOAN

- 4.1 A *variable commercial rate loan* may be drawn down in one lump sum or as a *progressive draw facility*.
- 4.2 The *annual percentage rate* for the first *interest period* under a *variable commercial rate loan* is determined as the sum of the *margin* and the *commercial rate loan base rate* on the *initial drawdown date*. The *annual percentage rate* for each successive *interest period* is determined as the sum of the *margin* and the *commercial rate loan base rate* on the first day of that successive *interest period*. Although the *base rate* is reset at the start of each *interest period*, the rate remains constant for the duration of that interest period. The *margin* may be varied by us (even during an *interest period*) pursuant to clause 15 or clause 17 of Part A.
- 4.3 If you have switched your *facility type*, the *annual percentage rate* for the first *interest period* on or following the *variation date* is determined in accordance with clause 8.5 of this Part D.

## 5. FIXED COMMERCIAL RATE LOAN

- 5.1 A *fixed commercial rate loan* must be drawn down in one lump sum.
- 5.2 The *annual percentage rate* for the first *interest period* is determined as the sum of the *margin* and the *commercial rate loan base rate* on the *initial drawdown date*. The *base rate* remains constant for the duration of the *interest period*. The *margin* may be varied by us (even during an *interest period*) pursuant to clause 15 or clause 17 of Part A.
- 5.3 At the end of the first *interest period* you may elect to maintain your *fixed commercial rate loan* by providing us with a *request notice*, at least 5 *business days* prior to the end of the *interest period*, requesting a further *interest period* not exceeding the remaining *term* of the *facility*. You may continue to make an election in accordance with this clause in each subsequent *interest period* until the *term* expires. The *annual percentage rate* for each *interest period* is determined as the sum of the *margin* and the *commercial rate loan base rate* on the first day of that *interest period*. Although the *annual percentage rate* is reset at the start of each *interest period*, the rate remains constant for the duration of that *interest period*.

- 5.4 You may only maintain your *fixed commercial rate loan* if:
- a. we are offering this *facility type* at the time you request it; and
  - b. we agree at our absolute discretion to your request.
- 5.5 If you fail to make an election in accordance with clause 5.3 of this Part D or we do not agree to your request, at the end of the *interest period*, your *facility* will automatically convert from a *fixed commercial rate loan* to a *variable commercial rate loan* with an *interest period* of 1 month. These *General Conditions*, as they relate to a *variable commercial rate loan* will then apply. You may only switch back to a *fixed commercial rate loan* in accordance with clause 8 of this Part D.
- 5.6 If you have switched your *facility type*, the *annual percentage rate* for the first *interest period* on or following the *variation date* is determined in accordance with clause 8.5 of this Part D.

## 6. INTEREST PREPAID COMMERCIAL RATE LOAN

- 6.1 An *interest prepaid commercial rate loan* must be drawn down in one lump sum.
- 6.2 The *annual percentage rate* for the first *interest period* is determined as the sum of the *margin* and the *commercial rate loan base rate* on the *initial drawdown date*. The *annual percentage rate* remains constant for the duration of the *interest period*.
- 6.3 We will debit your *nominated account* with the *interest prepayment* on each *interest payment date*. To ensure that you have sufficient funds or sufficient available credit in your *nominated account* for the *interest prepayment* to be debited you may ask us on the *interest payment date* and we will tell you how much the *interest prepayment* will be. We can also provide an estimate of the *interest prepayment* before the *interest payment date* but this amount is subject to change.
- 6.4 You are not required to make any other *principal* or interest payments during an *interest period*.
- 6.5 At the end of the first *interest period*, you may elect to continue to prepay your *facility* by providing us with a *request notice* at least 5 *business days* prior to the end of the *interest period*. You may continue to make an election in accordance with this clause in each subsequent *interest period* until the *term* expires. The *annual percentage rate* for each successive *interest period* is determined as the sum of the *margin* and the *commercial rate loan base rate* on the first day of that successive *interest period*.

- 6.6 You may only continue to prepay your *facility* if:
- a. we are offering this *facility type* at the time you request it; and
  - b. we agree at our absolute discretion to your request.
- 6.7 If we agree to your request, we will debit your *nominated account* in accordance with clause 6.3 of this Part D.
- 6.8 If you fail to make an election in accordance with clause 6.5 of this Part D or we do not agree to your request, at the end of the *interest period* your *facility* will automatically convert from an *interest prepaid commercial rate loan* to a *variable commercial rate loan* with an *interest period* of 1 month. These *General Conditions*, as they relate to a *variable commercial rate loan* will then apply. You may only switch back to an *interest prepaid commercial rate loan* in accordance with clause 8 of this Part D.
- 6.9 If you have switched your *facility type*, the *annual percentage rate* for the first *interest period* on or following the *variation date* is determined in accordance with clause 8.5 of this Part D.

## 7. INTEREST CAPITALISED VARIABLE COMMERCIAL RATE LOAN

- 7.1 An *interest capitalised variable commercial rate loan* may be drawn down in one lump sum or as a *progressive draw facility*.
- 7.2 The *annual percentage rate* for the first *interest period* under an *interest capitalised variable commercial rate loan* is determined as the sum of the *margin* and the *commercial rate loan base rate* on the *initial drawdown date*. The *annual percentage rate* for each successive *interest period* is determined as the sum of the *margin* and the *commercial rate loan base rate* on the first day of that successive *interest period*. Although the *base rate* is reset at the start of each *interest period*, the rate remains constant for the duration of each *interest period*.
- 7.3 The *facility limit* includes the *interest capitalisation component* (specified in the *Schedule*) for interest accrued under the *facility*. Unless we agree otherwise, you must only use the *interest capitalisation component* for interest accrued under the *facility*.

- 7.4 Until the *interest capitalisation component* is fully drawn, interest payable for each day is debited to the *facility account* on each *interest payment date*. Once the *interest capitalisation component* is fully drawn your *facility* will convert from an *interest capitalised variable commercial rate loan* to a *variable commercial rate loan* with the same *interest period*. These *General Conditions*, as they relate to a *variable commercial rate loan* will then apply, including clause 4.2 dealing with *annual percentage rates*. We do not have to notify you when your *facility* converts to a *variable commercial rate loan*. If you ask us we will tell you how much of the *interest capitalisation component* has been drawn at any time.
- 7.5 If you have switched your *facility type*, the *annual percentage rate* for the first *interest period* on or following the *variation date* is determined in accordance with clause 8.5 of this Part D.

## 8. SWITCHING FACILITY TYPES

- 8.1 You may ask us to change the *facility type* (and consequently the *interest period*) for your *facility* at any time by providing us with a *request notice*.
- 8.2 You may only change your *facility type* if:
- we are offering the *facility type* you request at the time of your request; and
  - we agree at our absolute discretion to your request to change your *facility type*.
- 8.3 If we agree to change your *facility type*, you may be required to pay us a switching *fee*. In addition, you may also be required to pay *break costs* in accordance with clause 11 of Part A.
- 8.4 Any change to your *facility type* is separately agreed between us and you as a change to the terms of this *facility agreement*.
- 8.5 The *annual percentage rate* for the new *facility type* is the sum of the *margin* and the *commercial rate loan base rate* applicable on the *variation date* (or if there is no *balance owing* on your *facility account* on the *variation date*, on the first *drawdown date* on or following the *variation date*). You must then commence paying interest on the *interest payment date* for the new *facility type*.
- 8.6 A new *interest period* will commence on the *variation date* (or if there is no *balance owing* on your *facility account* on the *variation date*, on the first *drawdown date* on or following the *variation date*).
- 8.7 On and from the *variation date*, these *General Conditions*, as they relate to the *facility type* you have switched to, will then apply.

## 9. INTEREST PERIOD

- 9.1 If you have a *variable commercial rate loan*, your *interest period* is either 1 month, 2 months, 3 months or 6 months as stipulated in the *Schedule*. If you do not provide a *request notice* (as permitted by clause 9.6(a) of this Part D), each subsequent *interest period* will be for the same period as the previous *interest period*.
- 9.2 If you have an *interest capitalised variable commercial rate loan*, your *interest period* is either 1 month, 2 months or 3 months as stipulated in the *Schedule*. If you do not provide a *request notice* (as permitted by clause 9.6(a) of this Part D), each subsequent *interest period* will be for the same period as the previous *interest period*.
- 9.3 If you have a *fixed commercial rate loan* your first *interest period* is either 1 year, 2 years, 3 years, 4 years or 5 years as stipulated in the *Schedule* or as specified in the *request notice* for any subsequent interest periods.
- 9.4 If you have an *interest prepaid commercial rate loan* your *interest period* is 1 year for the first year and for each subsequent year in which you make an election under clause 6.5 of this Part D.

### Changing your interest period

- 9.5 We may adjust the *interest period* at any time without your consent. For example, we may adjust the *interest period* so that it ends on a *business day*, matches the end of the *term* or better aligns with your rollover or statement dates.
- 9.6 If you have a *variable commercial rate loan* or an *interest capitalised variable commercial rate loan*:
- you may ask us to change the *interest period* at any time. You can make a request by providing us with a *request notice* at least 3 clear *business days* before you want the change to take effect;
  - we can consent or refuse your request to change your *interest period* for any reason. For example, we need not allow you to change an *interest period* if the *interest period* is not due to expire; and
  - if we agree to change your *interest period* then:
    - the new *interest period* will either commence on the date specified in the *request notice* or at the end of the *interest period* stipulated in the *request notice*, as directed by you;
    - the new *interest payment date* will be the last day of the new *interest period*;
    - if the date of the change is not an *interest payment date* you may be required to pay *break costs* in accordance with clause 11 of Part A; and
    - you may be required to pay us a switching *fee*.

- 9.7 In addition to your rights to select an *interest period* in accordance with clause 5.3 of this Part D, if you have a *fixed commercial rate loan*:
- a. you may ask us to change the *interest period* prior to the expiration of your current *interest period* by providing us with a *request notice* at least 5 clear *business days* before you want the change to take effect;
  - b. we can consent or refuse your request to change your *interest period* for any reason. For example, we need not allow you to change an *interest period* if the new *interest period* exceeds the remaining *term* of the *facility*; and
  - c. if we agree to change your *interest period* then:
    - i. the new *interest period* will commence on the date you and we agree;
    - ii. the *interest payment date* will be the same date in each month as the date of the change to the *interest period*;
    - iii. the *annual percentage rate* for the new *interest period* will be calculated in accordance with clause 5.3 of this Part D;
    - iv. you may be required to pay *break costs* in accordance with clause 11 of Part A; and
    - v. you may be required to pay us a switching *fee*.

## 10. REPAYING EARLY

### Variable commercial rate loan or interest capitalised variable commercial rate loan

- 10.1 If you have a *variable commercial rate loan* or an *interest capitalised variable commercial rate loan*, you may repay as much of the *facility amount owing* as you choose on an *interest payment date*. If the payment is made on a day other than an *interest payment date*, *break costs* may apply in accordance with clause 11 of this Part D.
- 10.2 You may only *redraw* any amount repaid early in accordance with clause 11 of this Part D.

### Interest prepaid commercial rate loan

- 10.3 If you have an *interest prepaid commercial rate loan* you may repay as much of the *facility amount owing* as you choose at any time during an *interest period* without penalty. However, if you wish to elect to make such a payment, no amount will be rebated to you in respect of interest that you have prepaid.
- 10.4 While your *facility* is an *interest prepaid commercial rate loan* you may not *redraw* any amount repaid early.

### Fixed commercial rate loan

- 10.5 If you have a *fixed commercial rate loan* and you make a payment of the *facility amount owing* or any part of the *facility amount owing* on any day other than the last day of the *fixed rate period*, *break costs* may apply in accordance with clause 11 of this Part D.

- 10.6 While your *facility* is a *fixed commercial rate loan* you may not *redraw* any amount repaid early.

### All facility types

- 10.7 You must continue to make any *reductions* or *special reductions* on the *reduction date* or *special reduction date* (as appropriate), despite any payment made in accordance with this clause 10. *Break costs* will not apply when you make a *reduction* or *special reduction* on a *reduction date* or *special reduction date*.

## 11. REDRAWING AMOUNTS

- 11.1 This clause 11 only applies to amounts repaid early under a *variable commercial rate loan* or an *interest capitalised variable commercial rate loan*.
- 11.2 Subject to clause 11.1 of this Part D, if you have repaid amounts early under this *facility* (for example, if you have made an *unscheduled payment*), you may ask us to allow you to *redraw* any amount repaid early. Any amount *redrawn* becomes part of the *balance owing* on your *facility account*. The *annual percentage rate* applying to the *redraw* will be the *annual percentage rate* applying to the *interest period* current at the time of the *redraw*.
- 11.3 You may only ask to *redraw* up to the amount that results in the *balance owing* on your *facility account* being not more than the *facility limit* or *reduced facility limit*. If for whatever reason the amount you *redraw* exceeds this amount, you must repay the excess immediately.
- 11.4 You may request a *redraw* by providing us with a *request notice* at least 5 clear *business days* before you require the *redraw* amount.
- 11.5 *Redrawn* money will only be made available to you by deposit into your *nominated account*.
- 11.6 You may only *redraw* an amount in accordance with this clause if you meet the following criteria:
- a. you have not dealt with any *security* without our consent;
  - b. you are not, and any *debtor/guarantor* is not, in *default* under this *facility agreement* or any *security*;
  - c. you are not relying on any statement or representation by us (including our employees) or our agents relating to the taxation effects of making the *redraw*. (You should obtain your own tax advice.);
  - d. you have not provided subsequent *security interests* over *security property* to other parties;
  - e. the *facility limit* has been fully drawn; and
  - f. any *security property* has not, in our opinion, been diminished in value.

Each time you *redraw* an amount you declare these things to be true. If, for whatever reason, you do not meet the *redraw* criteria and a *redraw* is made, you must immediately repay the *redraw*.

- 11.7 We may impose *fees* and charges in connection with a *redraw* in accordance with this *facility agreement* and the Business Banking Guide to Fees and Charges.
- 11.8 You can find out what the minimum *redraw* amount is and how much you have available for *redraw* by calling us or asking at any branch.
- 11.9 We can end your rights to *redraw* under this *facility* at any time and without notice to you.
- 11.10 If there is more than one of you, then any of you or an *authorised officer* of any one of you may request a *redraw* of any amount available for *redraw*. If we allow the *redraw* we need not consult any other of you.
- 11.11 You cannot *redraw* a *reduction* or *special reduction*. However, you can use amounts available for *redraw* to pay a *reduction* or *special reduction* in full or part.

## 12. FINANCIAL MARKETS TRANSACTIONS

- 12.1 Should you wish to manage your exposure under this *facility* you may do so by entering into one or more *financial market transactions* with us under our *financial markets documentation*.
- 12.2 Before entering into a *financial market transaction* you will be required to sign *financial markets documentation* which, amongst other things, provides details as to who will be authorised to enter into *financial market transactions* on your behalf. Depending on the size and type of your business, you will also be issued with either:
- a. a Financial Services Guide and the relevant Product Disclosure Statement(s); or
  - b. Financial Markets Wholesale Terms and Conditions.

The above documents and the *financial markets documentation* must be read in conjunction with this *facility agreement* and therefore you must ensure that you have read and understood these.

- 12.3 Any *security* will also secure your liabilities under or in relation to the *financial markets documentation* and any *financial markets transaction*.

PART E:

# BANK GUARANTEE FACILITY

THIS PART E APPLIES TO ALL BANK GUARANTEE FACILITIES AND SHOULD BE READ TOGETHER WITH PART A, THE FACILITY DETAILS AND THE BANK GUARANTEE FACILITY SCHEDULE.

## 1. ADDITIONAL CONDITIONS OF USE

- 1.1 You may ask us to issue a *bank guarantee* under this *facility* by giving us a *request notice* at least 5 clear *business days* before you want us to issue the *bank guarantee*.
- 1.2 You must pay any amounts necessary to ensure that the *facility amount owing* does not exceed the *facility limit*.
- 1.3 Each *bank guarantee* will be in a form acceptable to us and will contain additional terms and conditions (and other information) we consider appropriate. You will be bound by these terms and conditions.
- 1.4 We can consent or refuse to provide any requested *bank guarantee* for any reason.

## 2. PAYMENTS

- 2.1 If we make a payment to a *beneficiary* under a *bank guarantee*, you must pay us that amount immediately.
- 2.2 You must maintain a *nominated account*.
- 2.3 You must ensure that there are sufficient funds in your *nominated account* to pay all amounts payable by you under this *facility*.
- 2.4 You authorise us to debit all amounts payable by you and credit all amounts payable to you under this *facility* to your *nominated account*.

## 3. TERMINATION OR CANCELLATION OF BANK GUARANTEE

- 3.1 A *bank guarantee* will terminate on the earlier of:
  - a. the expiry date (if any) specified in the *bank guarantee*;
  - b. the date you cancel the *bank guarantee*; or
  - c. the date the *beneficiary* makes a claim under the *bank guarantee* which, in aggregate with other claims made by that *beneficiary*, equals the full amount shown on the face of the *bank guarantee*.
- 3.2 You may cancel a *bank guarantee* at any time if:
  - a. you give us a *request notice* at least 3 clear *business days* before you intend to cancel the *bank guarantee*;
  - b. you give us the original *bank guarantee* issued the *beneficiary*; and
  - c. you have paid us all *fees* and charges and any other money payable by you in respect of the *bank guarantee*.

## 4. PAYMENT OF BANK GUARANTEE

- 4.1 You authorise us to immediately pay any amount demanded or requested of us at any time under a *bank guarantee*. You may not revoke this authorisation. We:
  - a. need not first refer to you or obtain your authority for the payment;
  - b. need not enquire whether the demand or request has been properly made; and
  - c. may meet any demand or request even if you dispute the validity of the demand or request.
- 4.2 If the payment is less than the sum *guaranteed*, we will issue to the *beneficiary*, a replacement *bank guarantee* for the balance of the sum *guaranteed*.
- 4.3 You must pay an amount equal to each amount we pay under a *bank guarantee*. You must pay us these amounts when we ask. We can also debit any of these amounts to your *nominated account* even if we do not expressly ask you to pay us. We do not have to tell you first.
- 4.4 We may make a voluntary payment to the *beneficiary* to end our liability under any *bank guarantee* at any time without notice to you. You must pay us an amount to be maintained as a deposit with us to cover your liability under this clause 4 if we ask you for it. We may ask for this at any time.
- 4.5 You indemnify us against, and you must therefore pay us on demand for liability, loss or costs (including consequential or economic loss) we suffer or incur in connection with a *bank guarantee* including any cancellation made in accordance with clause 3.2 of this Part E.

## 5. PRESERVATION OF LIABILITY

- 5.1 Rights given to us under this clause and your liabilities under it are not affected by any act or omission by us or anything else that might otherwise affect them under law or otherwise, including:
  - a. any inaccuracy, insufficiency, forgery or alteration in any certificate, *bank guarantee* or other document which purports to be made, issued or delivered under this *facility agreement* or under any *bank guarantee*;
  - b. the fact that we release you (or another *person*) or give you or them a concession, such as more time to pay, or compound or compromise with them (whether or not an additional burden is imposed at the same time);
  - c. laches, acquiescence, delay, acts, omissions or mistakes on our part or the part of another *person*; or
  - d. the fact that the obligations of any *person* other than you may not be enforceable.

## 6. ENDING THIS FACILITY

- 6.1 Subject to the termination or cancellation of all *bank guarantees* in accordance with clause 3 of this Part E, you may cancel this *facility* or reduce the *facility limit* in accordance with clause 16 of Part A.

**1300 55 72 72**  
**boq.com.au**

