

Relationship Manager.Westpac  
Premium  
319-323 Bong Bong Street  
Bowral, NSW 2576

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Facsimile (02) 4961 5132  
Our Ref: 101968081  
Your Ref: 12446460

The Directors  
How Heavenly Pty Ltd  
175 Argyle Street,  
Moss Vale NSW 2577

12 March 2015

Dear Sir/Madam,

Thank you for the opportunity to discuss your finance requirements. I am pleased to advise that your request for finance has been approved. Full details regarding your Facilities are detailed in the attached Business Finance Agreement.

Would you kindly sign and return the duplicate Business Finance Agreement to accept this finance offer.

We appreciate the opportunity to provide your finance on this occasion and look forward to being of assistance to you in the future.

If you have any questions about any aspect of your finance or the attached documentation, please do not hesitate to contact me.

Yours sincerely,

Helen Sutton  
Relationship Manager  
0402793709

## **Business Finance Agreement**

12 March 2015

To: How Heavenly Pty Ltd ACN 169 433 587 as trustee for The HB and AP Superannuation Fund

We are pleased to offer finance as detailed in the following sections and attachments to this letter:

- **FINANCE DETAILS** **Page 2**  
This schedule details the Facilities, including the finance amount, term, repayment arrangements, interest rate and fees payable.
- **DETAILS OF FEES & CHARGES** **Page 7**  
This schedule displays details of the fees and charges payable, and how they are calculated.
- **TERMS OF FINANCE OFFER** **Page 9**  
These are terms specific to your finance arrangements.
- **ACKNOWLEDGEMENT & ACCEPTANCE** **Page 15**  
This section must be signed and returned to accept this finance offer.
- **ADDITIONAL ATTACHMENTS**

### **Product Schedules**

These contain information specific to certain types of Facilities.  
The attached Product Schedules relevant to your Facilities are:

- **Business Loan - Fixed Rate**

### **General Conditions Schedule**

The General Conditions Schedule contains terms and conditions that apply to all borrowers.

For definitions of terms used in this letter please refer to the General Conditions Schedule.

However, the General Conditions Schedule does not apply to Invoice Finance. This Agreement is a pricing agreement for the purposes of the Invoice Finance Agreement.

This Agreement only applies to the Facilities listed in the attached Finance Details.

## Finance Details

<b>Borrower's Name</b>	<b>How Heavenly Pty Ltd ACN 169 433 587 as trustee for The HB and AP Superannuation Fund</b>
------------------------	----------------------------------------------------------------------------------------------

Facility A	Business Loan		
Purpose	To assist with the purchase of a commercial investment property located at ‘The Mews’ 8/11-13 Bundaroo Street, Bowral NSW 2676		
Existing Limit	\$ 0.00		
Change in Limit	\$ +286,000.00		
Resultant Limit	\$ 286,000.00		
Interest Details			
Fixed Rate % p.a.	5.83	Variable Base Rate Name	Small Business Loan Rate
Variable Margin % p.a.	0.75	Interest Type & Period	Fixed for 2 years 1 month
Resultant Rate % p.a.	6.58	Interest Charge Frequency	Monthly
Payment Details			
Finance Term	15years.		
Payment Amount	\$2,513.00	Payment Frequency	Monthly
Payment Type	Principal Interest & fees		
Facility Fee(s)			
Facility Fee Type	Loan Service Fee	Amount & Accrual Cycle	\$35.00 per month
Facility Fee Type	Line Fee	Amount & Accrual Cycle	Nil

**The following specific conditions apply to this Borrower's Facilities:-**

**Specific Conditions for Loans to Self Managed Superannuation Funds**

**1. Additional definitions**

In these Specific Conditions:

**Guarantor** means Andrew Robert Pierce, Heather Lynne Byrne and the Property Trustee.

**Property Trustee** means Mews Bowral Pty Ltd ACN 603 671 487 as trustee for The Holding Trust – 8/11 Bundaroo Street, Bowral NSW.

**Purchased Property** means The Mews 8/11-13 Bundaroo Street, Bowral NSW 2576.

**Superannuation Fund** means The HB and AP Superannuation Fund.

**Superannuation Trustee** means How Heavenly Pty Ltd ACN 169 433 587, the trustee of the Superannuation Fund.

**2. Redraw**

Despite any other conditions of this Agreement, redraw is not available on this Facility.

**3. Limited recourse**

- (a) Despite any other condition of this Agreement, this Agreement relates solely to money payable in respect of the loan made to the Superannuation Trustee under this Business Finance Agreement (including interest and all costs and charges associated with that loan), but does not impose on the Superannuation Trustee as trustee for the Superannuation Fund an obligation to pay any other money. For example, the Superannuation Fund is not obliged to pay all money which it owes us for any reason as specified in the *Memorandum of Common Provisions*.
- (b) Despite any other condition of this Agreement or any other document, our rights and the Guarantors' rights against the Superannuation Fund on default are limited to recourse against the Purchased Property and in the absence of fraud or misrepresentation by the Superannuation Trustee, Westpac and Guarantors have no recourse whatsoever against the Superannuation Trustee or the Superannuation Fund for payment of all amounts referred to in the *Memorandum of Common Provisions* other than recourse against the Purchased Property.
- (c) Subject to sub-clause (d), Westpac or a Guarantor must not take any step pursuant to the rights conferred by this Agreement to:
  - (i) have an administrator appointed to the Superannuation Trustee;
  - (ii) have a receiver, receiver and manager, trustee, other controller (as defined in the Corporations Act), liquidator, provisional liquidator or similar official appointed to the Superannuation Trustee, other than a

**The following specific conditions apply to this Borrower's Facilities:-**

- receiver of all or part of the Purchased Property only;
- (iii) have the Superannuation Trustee wound up, or prove in any winding up of the Superannuation Trustee;
  - (iv) carry out any distress or execution on any property of the Superannuation Fund other than the Purchased Property;
  - (v) exercise any:
    - (A) right of set-off;
    - (B) right to combine or consolidate accounts; or
    - (C) banker's lien, against the Superannuation Trustee, other than in respect of the Purchased Property;
  - (vi) make any other claim or institute any proceedings of any kind as against any property or assets of the Superannuation Trustee other than the Purchased Property.
- (d) The other provisions of this clause do not:
- (i) prohibit or restrict Westpac or a Guarantor from obtaining, or undertaking proceedings to obtain, an injunction or other court order to restrain any breach of this Agreement by the Superannuation Trustee;
  - (ii) prohibit or restrict Westpac or a Guarantor from obtaining, or taking proceedings to obtain, declaratory or other such relief in relation to any provision of this Agreement with regards to the Superannuation Trustee; or
  - (iii) affect Westpac or a Guarantor's rights to:
    - (A) enforce this Agreement over the Purchased Property in accordance with the terms of this Agreement and the registered mortgage over the Purchased Property;
    - (B) for the sole purpose of enforcing its rights against the Purchased Property, proceed against the Property Trustee or the Superannuation Trustee to the extent necessary to enforce its rights against the Purchased Property or to obtain the benefit of the recourse to the Property Trustee or the Superannuation Trustee allowed by this clause; or
    - (C) enforce any rights it may have under any other document.
    - (D) enforce any rights it may have against the Superannuation Trustee for fraud or misrepresentation.

**4. Own enquiries**

**The following specific conditions apply to this Borrower's Facilities:-**

We make no warranty or representation in relation to the structure under which the Property Trustee and the Superannuation Fund has acquired the Purchased Property. The Superannuation Fund acknowledges that it has made its own enquiries in relation to the structure and has no claim whatsoever against us in relation to any aspect of the structure. For example, the Superannuation Fund has no claim against Westpac if the entry of the structure, this Business Finance Agreement, or the transaction reflected by this document makes the Superannuation Fund non-complying with any law or regulation. We can enforce this Business Finance Agreement in full despite any such non compliance.

**5. Acknowledgement by Superannuation Trustee**

The Superannuation Trustee acknowledges that despite any review of the Superannuation Trust Deed or the Property Trust Deed carried out by Westpac in respect of this transaction, we make no representation that the Superannuation Fund Trust Deed or the Superannuation Fund itself complies with the *Superannuation Industry (Supervision) Act*.

**Other Specific Conditions for Business Finance Agreement – Business Loan**

In respect of the Property The Mews 8/11-13 Bundaroo Street, Bowral NSW 2576, you must provide to Westpac in form and substance satisfactory to it a valuation prepared [on its instructions] by a valuer approved by Westpac and addressed to Westpac with confirmation from the valuer that Westpac can rely on it.

You must pay all Costs associated with the preparation of the valuation report prior to the initial drawdown date of any Facility.


The Facilities for this Borrower will be secured by the following:-	
Status	Details
<b>Offered</b>	Guarantee and Indemnity from Andrew Robert Pierce & Heather Lynne Byrne limited to the loan amount of \$286,000.00.
<b>Offered</b>	Guarantee and Indemnity by Mews Bowral Pty Ltd ACN 603 671 487 as trustee for The Holding Trust – 8/11 Bundaroo Street, Bowral NSW limited in recourse to the property located at The Mews 8/11-13 Bundaroo Street, Bowral NSW 2576.  Supported by:
<b>Offered</b>	Mortgage by Mews Bowral Pty Ltd ACN 603 671 487 as trustee for The Holding Trust – 8/11 Bundaroo Street, Bowral NSW over the property located at The Mews 8/11-13 Bundaroo Street, Bowral NSW 2576.

## Details of Fees & Charges

### What are the set up costs for this finance?

<b><u>Lender</u></b>	
Establishment Fee	\$ 986.00
<b>Total (excludes ongoing fees)</b>	<b>\$ 986.00</b>

<b><u>Government</u></b>	
Loan Security Duty (estimate)	\$ 1,085.00
Registration Fee - Land Titles Office (estimate)	\$ 214.00
<b>Total estimate</b>	<b>\$ 1,299.00</b>

<b><u>Other</u></b>	
Valuation Fee (estimate)	\$ To be Advised
Solicitors Fee (estimate)	\$ 2,200.00
<b>Total estimate</b>	<b>\$ To be Advised</b>

### Do property valuation fees apply?

We may, at any time, obtain a valuation of any new security property or an updated valuation of any existing security property from a Licensed Valuer. If we do, you will have to pay for the valuation. We will advise you before we do so. The cost may be debited to one of your accounts.

### Is the amount of these fees and charges likely to vary?

The fees and charges quoted above are indicative of what is payable to us and/or the Government.

Should we be required to pay additional Government charges in relation to the security documentation and they are not quoted above, then you will be required to cover these costs. Any fees or charges not paid by you (or authorised for payment) after acceptance of this offer may be debited to any of your accounts.

If the Facilities or Securities are complicated in nature, we may instruct our solicitors to prepare the Securities. If so, you will have to pay their costs and disbursements. An estimate of the amount payable will be provided to you on request.

If you increase, extend or vary a Facility, additional fees and charges may apply.

### What happens if the Agreement does not proceed?

- You will be responsible for payment of any legal fees and disbursements incurred up to that time; and
- You may be required to pay, or we may keep (or debit any of your accounts with) any other fees and charges incurred, which would have been payable under the Agreement.



If, after accepting this offer, you decide not to proceed, we are entitled to retain the Establishment Fee, but part of the Establishment Fee may be refunded to you. As you will appreciate, the funds retained will be used to compensate us for work completed up to the point of you notifying us that the Facilities are no longer required.

Please note, if you had elected to add the Establishment Fee to the amount of your Facility, and after accepting this offer you decide not to proceed, you may still be required to pay part of the Establishment Fee. The Lender may debit any of your accounts for this amount.

### **How are the ongoing fees and charges on my Facilities calculated?**

The Finance Details set out each fee applicable to your Facilities, and the amounts or rates of those fees. The method of calculation and charging for these fees is detailed below.

#### **Business Loans**

**Loan Service Fee** is a flat fee, calculated monthly in arrears. It is charged to your account quarterly in arrears on the last Business Day of March, June, September and December.

**Line Fee** is calculated as a percentage of the Facility limit. It is charged monthly in advance from the first Business Day of the first full month after the Facility is established. There is no refund for the month the account is closed.

**Administration Fee** is applicable to fixed rate loans only. It is a flat fee currently \$300, but subject to change. It is charged to your loan account whenever a prepayment (payment above the agreed repayment schedule) is made on a fixed rate loan.

**Break Cost** is applicable only to fixed rate loans. Full details of how the cost is calculated is contained in the “To help you better understand fixed interest rates” explanatory handout. It is debited to your loan account where there is a cost payable by you.

## Terms of Finance Offer

### **What do I need to do before the finance will be available to me?**

This offer of finance is subject to the following conditions. You need to:

- accept this offer (See “How can I accept this finance offer?”)
- pay the Establishment Fee
- satisfy our valuation requirements
- complete and sign any new security documentation, and any other documents we ask you to sign, to our satisfaction including, in the case of Invoice Finance, the Invoice Finance Agreement
- in order for us to accept a guarantee as security, the Guarantor will need to meet with one of our representatives without you being present. The Guarantor will also need to obtain independent legal advice from an independent lawyer (neither yours nor ours) who will provide us with a certificate to the effect that the Guarantor fully understands and agrees to the terms of the new guarantee. (please note that we will not be responsible for the cost of that advice - the lawyer’s costs are the responsibility of you or the guarantor). A Guarantee Document Preparation Fee also applies.

We need not provide any finance to you, unless we are satisfied that no Default Event (as defined in the General Conditions Schedule or, in the case of Invoice Finance, the Invoice Finance Agreement) is continuing, or would result from the finance being provided.

### **Do I have to provide Security?**

This is not an agreement to give Security. However, unless a Facility is stated as unsecured in the Finance Details, we will not provide any Facility until you do so.

### **When will my finance arrangements be reviewed?**

We may review each Facility other than the Invoice Finance Facility:

- annually and
- at any other time after giving notice to you.

Refer to the General Conditions Schedule for further information.

In the case of Invoice Finance, we may review the Facility in accordance with the Invoice Finance Agreement.

### **What should I know about interest rates, margins and Term Premium for Facilities other than Commercial Bill Line Facilities?**

Where an interest rate applies to a Facility:

- interest accrues and will be calculated on the daily balance owing in the loan account from the first day of drawing to the date of repayment
- where either monthly interest is specified in the Finance Details or where no interest charge frequency is specified in the Finance Details (and the Borrower has not otherwise paid interest only in advance for the relevant period), interest is payable on the last Business Day of each calendar month

- quarterly interest (where applicable) will be payable on the last Business Day of March, June, September and December
- half yearly interest (where applicable) will be payable on the last Business Day of March and September
- interest may be debited to the loan account without notice to you.

You agree to pay:

- interest on each Facility at the overall rate stated in the Finance Details (see the “Resultant Rate”). The Resultant Rate is made up of the Rate or base rate plus any margins and any Term Premium stated in the Finance Details
- interest on overdue amounts including excesses above Facility Limits at the *Unarranged Lending Rate* (as determined by the Lender from time to time).

Where there is a “Rate” specified in the Finance Details it is based upon BBSY determined as set out in the General Conditions Schedule (unless we notify you before you enter into the facility that it is based on another external reference rate). Where there is a “base rate” named in the Finance Details it is as defined in the General Conditions Schedule.

Where the rate or base rate is variable we will notify you of variations to our current rates (other than rates linked to an external reference rate such as BBSY), and our *Unarranged Lending Rate* either by advertisement appearing in a national newspaper or in writing to you or any other method allowed under any applicable law or code. (see General Conditions Schedule).

Any Business One Margin or Business Loan Margin incorporated in your Resultant Rate is determined by taking into account the term of the Facility, our internal and external funding costs (without including our costs of the external reference rate or market linked rate applying to your Facility) and any other matter we consider relevant adopting commercially reasonable procedures and is calculated daily and is payable with any interest.

Any Margin Rate incorporated in your Resultant Rate is calculated on the balance outstanding of your facility and is payable with any interest.

We may vary any margin at any time. If you have paid Interest Only in Advance any change to the Margin Rate will take effect at the conclusion of the Interest Only in Advance Period. We will notify you of the amount of the change either by advertisement appearing in a national newspaper or in writing to you or any other method allowed under any applicable law or code. (see “Variations” in the General Conditions Schedule).

Any change in a rate, base rate, or margin means your Resultant Rate changes. You can call us at any time to find out your current Resultant Rate.

Any Term Premium incorporated in your Resultant Rate will be based upon the term of your Facility. It is calculated on the balance outstanding of your facility using a simple interest calculation and applies in addition to the fixed or variable rate and is payable with any interest.

Details of our current interest rates are available on our website or on request.

### **Can the amount of my fees and charges change?**

Fees and charges quoted in the Finance Details are based on the finance product selected. Any changes to amount outstanding, or to terms and conditions, may result in a change to the amount of those fees. See “How are the ongoing Fees and Charges on my Facilities calculated?” (or, in the case of Invoice Finance, the Invoice Finance Agreement) for more details.

We may vary the fees and charges payable, or introduce new fees and charges, as explained in the General Conditions Schedule (or, in the case of Invoice Finance, the Invoice Finance Agreement).

Goods and services tax (GST) is a tax payable in respect of taxable supplies (as defined in the GST law).

Some fees and charges may be varied as a result of GST in the manner outlined above.

Where, as provided in the General Conditions Schedule (or, in the case of Invoice Finance, the Invoice Finance Agreement) you have to:

- indemnify us against an amount; or
- pay or reimburse us for an amount we will pay or have paid to someone else (a Supplier) and the cost to us includes GST payable to the Australian Tax Office by the Supplier,

the amount you will pay us, or that we may charge to any of your accounts, will include any GST or other tax paid or payable by us or the Supplier.

However, to the extent that we are entitled to claim an input tax credit or a reduced input tax credit in respect of any supply which is paid or reimbursed by you, and the benefit of that credit is not reflected in the amount you have paid, it will be passed on to you later.

#### **Where are the ongoing fees charged?**

Those fees may be charged to any of your accounts. Generally this will be the Facility account or the principal transaction account of the borrower.

#### **What happens if there is a change in law?**

Whenever we determine that as a result of a Change in Law any of the following occurs in connection with our commitment to provide any Facility (subject to the terms of this Agreement) or in connection with financial accommodation provided or to be provided under any Facility or this Agreement:

- our costs are increased;
- an amount received or receivable by us is reduced; or
- our return on capital or other effective return is reduced (including because more capital needs to be allocated to any Facility and cannot be used elsewhere),

we may notify you. You must pay us on demand the amounts certified by us to be necessary to compensate us for the increase or reduction. That certificate will give an outline of the calculation of the amount demanded and will be conclusive and bind you in the absence of manifest error.

A **Change in Law** is the introduction of, or a change in, any law, official directive, ruling or request or a change in its interpretation or application. If it does not have the force of law, it must be one with which responsible Australian banks would comply. It includes any with respect to capital adequacy, special deposit, liquidity, reserve, prime assets, tax or prudential requirements (except a change in tax on overall net income).

#### **How can I make repayments?**

Refer to 'How can I make my payments'

#### **Are my Facilities repayable on demand?**

Yes, unless otherwise stated in the Finance Details.

**How often will I receive statements of account?**

We will send you a statement of your loan account every six months or more frequently as agreed between us.

**Does the Code of Banking Practice apply?**

*If any one borrower is a small business as defined by the Code:*

Each relevant provision of the Code of Banking Practice will apply to your finance from the date we adopt that provision.

We do not automatically apply every provision of the Code to certain customers and guarantors dealing with our equipment finance business, for reasons relating to the speed with which they prefer to effect those transactions. Those customers can, however, elect to receive either the full disclosure benefits of the Code or the benefit of best practice, non-Code based disclosure.

The relevant descriptive information referred to in the Code of Banking Practice is set out in our Terms and Conditions booklets:

- *Deposit Accounts for Personal Customers Product Disclosure Statement - incorporating Terms and Conditions for using your account*
- *Deposit Accounts for Business Customers Product Disclosure Statement - incorporating Terms and Conditions for using your account*

These booklets include the following information:

- our account opening procedures;
- our obligations regarding the confidentiality of your information;
- complaint handling procedures;
- general descriptive information regarding bank cheques;
- a recommendation that you inform us promptly if you are in financial difficulty; and
- a recommendation that you carefully read the terms and conditions applying to the relevant banking service (which in relation to your business finance means you should carefully read your Business Finance Agreement before signing it).

Copies of these booklets are available on request.

*If none of the borrowers are a small business as defined by the Code:*

No.

**If I am borrowing with someone else, can I determine my liability?**

If there is more than one borrower, each of you is individually liable for the full amount of the Facilities, unless this Agreement provides otherwise. We will allow a borrower to terminate their liability in respect of future advances or financial accommodation on giving us written notice. This right only applies where we can terminate any obligation we have to provide further credit to any other borrower under the same Facility.

**How can I make my payments?**

You can make any repayment of amounts lent under this Agreement or payment of any other amounts under this Agreement:

- by periodical payment from an account in your name you conduct with us. You can choose this option by completing the details in the Acknowledgement and Acceptance section. Current periodical payment fees are quoted in our Banking Services brochure, which you can obtain from any branch, or by calling Business Telephone Banking on 132 142; or
- by periodical payment from an account with another financial institution – you will need to organise this with that financial institution; or
- at any of our branches in Australia. Please let your Business Banking Manager know if you require a deposit book; or
- by use of Business Internet Banking or Business Telephone Banking.

Some of the options listed above may not be available to you, depending on your Facility. Your Business Banking Manager can assist you in selecting the right payment option for your Facility.

If you arrange to make payments by direct debit and we debit your account where there are insufficient funds in it, then the payment may be reversed and you will be regarded as not having made your payment.

If you ask us to cancel a request to arrange direct debit payments to your loan account from an account with another financial institution we will do so promptly. However you will need to make other arrangements to make your loan repayments.

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

Where the interest rate is other than a fixed rate and the Payment Amounts are stated in the Finance Details schedule of this Agreement, those amounts are calculated on certain assumptions (including that there is no change in interest rates, and payments are made on the due date). It is unlikely these assumptions will all turn out to be true in most cases. Where there is a change with your loan (for example, an increase or decrease in interest rates) you may need to speak to the Lender about increasing or decreasing the Payment Amount to stay within the nominated Finance Term. The Lender will not be responsible for informing you of any increase or decrease in the Payment Amount that may be necessary to maintain the nominated Finance Term.

### **Can I stop my obligations in respect of further advances?**

If you are jointly and severally liable under a credit Facility, we will allow you to terminate your liability in respect of future advances or financial accommodation on giving us written notice. This right only applies where we can terminate any obligation we have to provide further credit to any other debtor under the same credit Facility, for example any obligation we may have to pay unpresented cheques under an overdraft Facility.

### **How can I accept this finance offer?**

You have 30 days from the date of this offer to accept it, unless we extend the date.

You will need to complete, sign, date and return the second copy of this Finance Agreement to this office. When we receive your acceptance, the Agreement will commence and will replace all previous agreements between us in relation to the Facilities.

We may withdraw this offer at any time before you accept it, if we become aware of anything we consider changes the basis on which the offer was made.

If you do not draw any Facility (except for Overdraft or Line of Credit Facilities) within 3 months after you accept the offer, we may cancel that Facility unless we have agreed otherwise.

Signed for and on behalf of Westpac Banking Corporation by:

Helen Sutton  
Relationship Manager  
Relationship Manager.Westpac Premium  
0402793709

# Acknowledgement & Acceptance

## Acknowledgements And Acceptance of Business Finance Terms and Conditions

Each Borrower:

1. accepts the offer dated 12 March 2015
2. acknowledges receipt of, has read and understood the General Conditions Schedule (except where this Agreement provides an Invoice Finance Facility only) and any Product Schedules
3. \*encloses the Invoice Finance Agreement signed in duplicate
4. requests that you prepare any Securities and authorises you to register the Securities \*(and, for Invoice Finance, the Invoice Finance Agreement) on any register you consider appropriate. (I/We acknowledge that I/we must pay all registration fees even if settlement does not occur)
5. \*encloses a cheque for the total amount of fees payable (I/We will forward a cheque for any valuation fees, registration fees applicable, once advised of the amount.)  
\*authorises you to debit the following account(s) for the fees payable (including any valuation fees, registration fees applicable):

Account Number	_____	Account Number	_____
Branch	_____	Branch	_____
Amount \$	_____	Amount \$	_____

6. \*requests that you debit my/our account number \_\_\_\_\_ at \_\_\_\_\_ branch for the balance of the purchase moneys payable at settlement. \*(up to the sum of \$\_\_\_\_\_), and pay this amount as my/our solicitor/agent/conveyancer directs.
7. \*authorises you to debit my/our account and pay my/our solicitor's/agent's/conveyancer's account, as instructed at settlement.
8. a)

\*authorises you to debit the following account(s) conducted with you for the Payment Amount(s) as outlined in the Finance Details section of this Agreement:

Loan Account to be credited

Account to be debited

Facility: A

Account Name: \_\_\_\_\_

Account Number: \_\_\_\_\_

Branch Name: \_\_\_\_\_

Please note that you may only nominate an account to be debited that is held in the name of at least one borrower. If you wish an account in another name to be debited, you will need to arrange for that account holder to establish a periodical payment authority separately.



b)

\*authorises you to debit the following account conducted by with you for the interest charge as described in the Interest Details section of the Finance Details schedule:

Loan Account to be credited

Account to be debited

Facility: A

Account Name:

Account Number:

Branch Name:

Please note that you may only nominate an account to be debited that is held in the name of at least one borrower. If you wish an account in another name to be debited, you will need to arrange for that account holder to establish a periodical payment authority separately.  
(\*delete & initial whichever is not required)

9. confirms that they do not hold any assets as the trustee of a trust unless the Agreement states that it is a trustee;
10. where the offer includes a Fixed Interest Rate Facility, declares that they have read and understood and agree to the Fixed Rate Acknowledgement.
11. acknowledges that each Borrower is liable for the whole amount of the Facility. This means that you can require any borrower to pay all the principal, all the interest and all other amounts. If the other Borrower or Borrowers do not pay any amount, each Borrower acknowledges that it will have to pay the full amount itself.

SIGNED for and on behalf of How Heavenly Pty Ltd ACN 169 433 587 as trustee for The HB and AP Superannuation Fund

\_\_\_\_\_  
Director

Print Name \_\_\_\_\_

\_\_\_\_\_  
Secretary

Print Name \_\_\_\_\_

DATED: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

The Solicitor, Settlement Agent or Land Broker acting for me/us is:-

Name: .....

Address: .....

Phone/Fax: .....



## **BUSINESS LOAN - FIXED RATE**

This Schedule sets out additional terms and conditions of your fixed rate Business Loan which are not included in the Finance Details.

### **Interest Rate**

The fixed rate quoted in the Finance Details is indicative only. The exact fixed rate may be confirmed within 14 days before date of final drawing. The Lender may quote you a new fixed rate if the loan is not fully drawn within 14 days after the rate is accepted by you.

### **Conclusion of Fixed Rate Period**

At the end of the fixed rate period you may ask the Lender to quote you another fixed rate for a further period (if available). If you do not select a new fixed interest rate, your loan will automatically change to a variable rate Business Loan and the interest rate will automatically change to the Lender's variable base rate plus any margin, current at the time. Please contact us at this time if you wish to discuss your options.

### **Portability**

If you want to replace any of the security for your loan with other security approved by the Lender, please contact the Lender. If the Lender agrees to your request, you will need to pay a fee.

### **Interest Only in Advance Option**

If the Finance Details states that an Interest Only in Advance option applies to your loan, then you will pay interest at the Resultant Rate in advance for the period specified in the Finance Details (the "Interest Only in Advance Period"). The prepayment amount quoted in the Finance Details must be paid on or before the commencement of the Interest Only in Advance Period. The amount quoted may change if the Lender has to quote you a further fixed interest rate because you have not fully drawn the loan within the time specified.

The Lender may need to make an adjusting interest entry to another account in your name at the end of the Interest Only in Advance Period if the end of that period falls on a day when the Lender is not open for business. You will be required to nominate another account in your name, acceptable to the Lender, for this purpose.

The Lender may accept payments of interest in advance in subsequent periods, but will not be obliged to do so.

This option is not available while the interest rate on your loan is variable.

### **Drawdown**

Your loan is to be fully drawn in one amount unless the Finance Details advises otherwise.

When you are ready to draw the loan, or if the loan is being progressively drawn, when you wish to arrange your final progressive drawing, please contact us within 14 days before drawdown is due to confirm the exact rate which will apply for the fixed rate period of your loan.

**AFTER WE TELL YOU THE EXACT FIXED INTEREST RATE FOR THIS LOAN, PLEASE COMPLETE & RETURN THE ATTACHED "ACCEPTANCE OF FIXED INTEREST RATE" FORM.**

This will:

- ensure quick access to your loan funds, and
- confirm your acceptance of the fixed rate we have quoted.

**IT IS IMPORTANT THAT YOU READ AND MAKE SURE YOU UNDERSTAND THE  
ATTACHED EXPLANATORY HANDOUT “TO HELP YOU BETTER UNDERSTAND FIXED  
INTEREST RATES” BEFORE ACCEPTING THIS OFFER.**

**“TO HELP YOU BETTER UNDERSTAND FIXED INTEREST RATES”  
EXPLANATORY HANDOUT - LOANS**

**What is a fixed interest rate loan?**

It is a loan where the interest rate is fixed (stays the same) for an agreed period. The fixed interest rate period may be shorter than the overall loan term.

At the end of the fixed interest period the loan will revert to a variable interest rate. Alternatively you may choose one of the following, subject to the terms of the loan offer:

- fix the interest rate for another period at the rate then available (conditions apply)
- reduce the amount of the loan
- repay the loan

**What is the best type of Facility - variable or fixed?**

The answer depends upon your individual financial circumstances and your opinion on interest rate movements in the future. There are risks involved.

No one can accurately forecast future interest rates. However, there are a number of sources of information that may help you in coming to your own conclusion. These include economic papers produced by the government, the Reserve Bank and comment by economic writers in the newspapers. The Lender's staff are not able to advise you on possible future interest rate movements.

If you think that interest rates will fall during your proposed fixed interest rate period, then a variable interest rate Facility may be your preferred option.

If you think there is a risk that interest rates will rise during this period, then the fixed rate interest rate Facility may be your preferred option.

It is your decision which option is best for you. You should discuss your decision with your Accountant or Financial Adviser.

**What are the main advantages of fixed interest rate borrowing?**

Your interest rate is fixed for the chosen period. During that time you are unaffected by interest rate increases. As repayments are a known cost you can budget more effectively.

**What are the main disadvantages of fixed interest rate borrowing?**

Interest rates can fall leaving you to continue paying the agreed fixed interest rate throughout the fixed interest rate period. Your repayment amount is set. If you make a lump sum payment or repay the loan early there may be a cost (see below).

**Can I change from a variable interest rate to another interest rate?**

Yes, this is called a “Switch”, however you may be liable to pay a switching fee. A switching fee is charged when changing from one interest rate type to another. It does not apply to changes made within 14 days after a fixed interest rate period ends.

The switching fee applies when the following changes are made during the overall loan term:

- fixed interest rate to a variable interest rate
- fixed interest rate to another fixed interest rate
- variable interest rate to a fixed interest rate.
- This switching fee will be in addition to any break costs or fees that may be incurred when you switch a fixed interest rate loan to another fixed interest rate or to a variable interest rate.

**What if I wish to prepay my fixed interest rate loan?**

If you do any of the following before the end of a fixed rate period:

- prepay all or part of your loan (that is, repay it ahead of the due date); or
- switch all or part of your loan from the fixed interest rate to a new fixed interest rate or to a variable interest rate,

then you may need to pay an amount to the Lender (a “cost”). This amount depends on the interest rate movements and the remainder of the fixed rate period left to run.

This cost will apply regardless of the reason for the prepayment or switch, and whether or not the prepayment or switch is carried out at your request. The Lender may debit any such cost to your loan account.

The Lender generally arranges its own funding position on the assumption that it will receive those payments. As a result, if you make a prepayment it will change that funding position. The Lender may make a loss from re-arranging its own funding. The estimated amount of that loss will be passed on to you as a break cost.

An Administration Fee is applicable to any partial or full prepayment of your Facility during any fixed interest rate period, which the Lender may debit to your loan account.

### **How is the prepayment amount calculated?**

To calculate whether you need to pay the Lender a break cost, the Lender will use a formula. The formula is a pre-estimate of the Lender’s loss in the value, at the time of prepayment, of receiving payments early when compared to the value, at the time of prepayment, of the payments it would have received had the prepayment not occurred.

The formula does not necessarily reflect the actual transaction that the Lender may enter into at the time of prepayment. Nor does it necessarily reflect a specific transaction that the Lender enters into when it fixes your interest rate, to manage its own funding position. The Lender manages its funding position on a portfolio basis. There will not necessarily be a specific transaction referable to your loan.

Among other factors, that formula takes into account:

- the Wholesale Interest Rate for the fixed interest rate period which applied on the first day of the fixed interest rate period
- the Wholesale Interest Rate for the part of the fixed interest rate period left to run, using rates which apply at the time of prepayment (the "current Wholesale Interest Rate")
- the amount of principal prepaid
- the amount of any unpaid interest, fees, charges and any default interest which has been debited
- the timing, dollar amount and frequency of payments required under this Agreement
- the portion of the fixed interest rate period left to run.

"Wholesale Interest Rate" is the rate at which the Lender can obtain funds from the Money Market on the relevant day for the relevant term applicable. For the purposes of the formula, the Wholesale Interest Rate does not include any applicable margin.

When using the formula the Lender may assume that the interest rates which apply on the day it makes the calculation will be the current rates on the date of prepayment.

In general terms you will pay the Lender a *cost*, if the Lender's current Wholesale Interest Rate is *lower* than the original Wholesale Interest Rate.

### **Prepayment Examples**

The following examples are to help you understand how the prepayment formula works.

1. Say you take out a fixed rate loan of \$100,000 (Principal and Interest - based on a 10 year term) in January 2008, your fixed interest rate is 11% p.a. over five years. You make monthly repayments of

\$1,322 approximately. The original wholesale rate at drawdown was 10% p.a. You then prepay the loan after three years on an instalment date in January 2011.

If the two year wholesale fixed interest rate in January 2011 (the prepayment rate) is 8% p.a. you will pay the Lender a cost. The cost will be \$2,645.

2. For prepayment of the outstanding loan based on a 10 year Facility (principal and interest) with a fixed rate period of 5 years

Prepayment examples after the 1st, 2nd and 3rd years. Principal of Facility \$100,000.

Original Principal	Outstanding Balance	Monthly Payment based on 10 year term	Years Remaining of fixed rate period	Original Wholesale Rate	Wholesale Prepayment Rate p.a.	Cost to Customer
\$100,000	\$79,603.00	\$1,322.00	2	10.00%	8.00%	\$2,645.00
\$100,000	\$87,089.00	\$1,322.00	3	10.00%	8.00%	\$4,047.00
\$100,000	\$93,866.00	\$1,322.00	4	10.00%	8.00%	\$5,478.00

### What happens if you agree to take up a fixed rate loan but don't take it up?

If you agree to take out a fixed rate loan the Lender will hold the rate open for 14 days from the date you accept the fixed interest rate. If the loan is not drawn in full, within 14 days after you accept the rate, the Lender may quote you a new fixed rate, if available.

However, you may have to pay the Lender a cost in relation to the amount of the undrawn loan if you decide not to take up the loan after accepting the fixed interest rate. That cost will be calculated on the same basis as a break cost, as if you had drawn down the loan and repaid the amount in full.

## FIXED RATE ACKNOWLEDGEMENT

**Warning:** It is advisable to, and the Lender recommends that you, seek financial advice on all aspects of fixed rate borrowing and prepayment before making a commitment.

By accepting the Lender's fixed rate loan offer, you acknowledge that:

1. you have read, have had read out to you or translated for you the brochure *To help you better understand Fixed Interest Rates* carefully;
2. someone from the Lender has told you that before you accept the Lender's offer of finance you should get advice from your financial adviser (such as an accountant);
3. you have got that advice or understand that if you do not get advice, that is your risk because:
  - no one can predict whether interest rates will rise or fall;
  - you cannot rely on the Lender to advise you, nor expect the Lender or any of its employees to manage your interest rate exposure;
4. you understand that if you enter into a fixed rate Facility you will not have the benefit of a lower interest rate, if the Lender's variable interest rate falls during that period;
5. you understand that where you have a **fixed interest rate Facility** you may be required to pay a break cost to the Lender if:
  - that Facility is not drawn in full within 14 days of fixing the interest rate;
  - that Facility is cancelled before drawing;
  - all or part of that Facility is repaid ahead of time; or
  - all or part of that Facility is switched to another interest rate,

during any fixed rate period. This amount depends on interest rate movements and the remainder of the fixed rate period left to run.



## ACCEPTANCE OF FIXED INTEREST RATE

I/We refer to the Business Finance Agreement or Letter of Variation dated \_\_\_\_\_ and subsequent discussions.

I/We confirm that the fixed interest rate of \* \_\_\_\_\_ % per annum is acceptable to me/us.

I/We also understand that indicative margins and fees specified in the Finance Details may change and will be confirmed to us prior to drawdown and will apply to the Facility for the present.

#Please credit the proceeds from drawdown of my/our loan account:

Account Name: \_\_\_\_\_

Account Number: \_\_\_\_\_

Branch: \_\_\_\_\_

to:

Account Name: \_\_\_\_\_

Account Number: \_\_\_\_\_

Branch: \_\_\_\_\_

Yours faithfully,

\_\_\_\_\_

\_\_\_\_\_

All borrowers must sign.

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

\* Please write in the quoted fixed interest rate.

# Delete this section if not applicable and initial.



# GENERAL CONDITIONS SCHEDULE

## 1 READING THIS SCHEDULE

### 1.1 USING THIS SCHEDULE

This Schedule sets out terms that apply to all borrowers.

This Schedule should be read with this Agreement and forms part of it.

Where this Schedule conflicts with any other term of this Agreement, the other term will prevail, except as set out in clause 4 ("Lender's Powers") below.

### 1.2 TERMS USED IN THIS SCHEDULE

*The following definitions apply to this Agreement.*

**"Administration"** includes bankruptcy, administration (including any arising out of insolvency, mental illness or incapacity), compromise or arrangement with creditors, assignment for creditors, receivership, winding up, dissolution or anything similar.

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

**"BBSY"**, for a period, is the bid rate for that period as shown on the Reuters Screen page "BBSY" at 10.30 am Sydney time on the first day of the relevant period. If there is no such rate for that period, or the basis on which BBSY is calculated or displayed is changed and, in our opinion, it ceases to reflect the basis of our cost of funding, BBSY will be the rate we determine acting in good faith and in a commercially reasonable manner.

**"Business Day"** means a weekday on which banks are open for business in your state. A Business Day ends at 4.00 pm (5.00 pm on Friday) local time in your state. "Your state" is the state or territory of your address specified in this Agreement, or if that is outside Australia or there is no such address, New South Wales.

**"Business Development Rate"** means the base rate determined and set by the Lender from time to time as the Lender's business development rate (or a name we substitute for that name). Details of current rates will be published from time to time and are available on our website [www.westpac.com.au](http://www.westpac.com.au) or by calling us on 132 142.

**"Business Equity Access Rate"** means the base rate determined and set by the Lender from time to time as the Lender's business equity access rate (or a name we substitute for that name). Details of current rates will be published from time to time and are available on our website [www.westpac.com.au](http://www.westpac.com.au) or by calling us on 132 142.

**"Corporations Act"** means the Corporations Act 2001 (Cwlth).

**"Default Event"** has the meaning given in clause 4.2 ("What is a Default Event?") below.

**"Default Interest Rate"** means, unless otherwise set out in this Agreement, Westpac Banking Corporation's unarranged lending rate as published from time to time (or any other rate the Lender specifies).

**“Encumbrance”** means any:

- security interest under the PPSA or security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, or title retention or flawed deposit arrangement; or
- right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- third party right or interest or any right arising as a consequence of the enforcement of a judgement, or any agreement to create any of them or allow them to exist.

**“Facility”** means a finance facility provided to you under this Agreement.

A **“guarantee”** includes an indemnity.

**“law”** means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).

**“Lender”** means Westpac Banking Corporation (ABN 33 007 457 141) and its successors and transferees.

**“Lender Arrangement”** means any document, agreement or arrangement (whether existing now or in the future).

- to which any one or more of you are, or become, party with the Lender; or
- under which obligations arise from any one or more of you to the Lender,

in each case, whether or not:

- other parties are involved;
- it arises as a result of an assignment or transfer; or
- it is in writing.

It includes this Agreement.

**“Market Linked Debit Interest Rate”** base rate is set each Monday by taking the average (rounded up to two decimal places) of the 30 day bid rate as shown on the Reuters Screen page “BBSY” at 10.30 am Sydney time for each of the seven days up to and including the Wednesday before the day the rate of interest is set. If during the seven day period it is not possible to determine the BBSY 30 day bid rate for any particular day, the rate for that day will be the rate applying on the preceding day for which it was possible. If in the reasonable opinion of Westpac, the rate derived above will not be a fair market rate or cannot be calculated, the rate will be the rate reasonably determined by the Lender having regard to market indices then available.

**“Overdraft Business Rate”** means the base rate determined and set by the Lender from time to time as the Lender’s overdraft business rate (or a name we substitute for that name). Details of current rates will be published from time to time and are available on our website [www.westpac.com.au](http://www.westpac.com.au) or by calling us on 132 142.

**“Property”** means any property subject to a Security.

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

A **“representative”** of the Lender means any of the Lender’s directors, any of the Lender’s employees whose job title includes the word “manager”, “counsel”, “head of”, “team leader”, “director” or “supervisor”, or any other person the Lender authorises.

**“Related Entity”** has the meaning given to it in the Corporations Act.

**“Security”** means any Encumbrance or guarantee the Lender holds from or against you or anyone else in relation to obligations under any Lender Arrangement, now or in the future.

It includes the rights of the Lender against you under this Agreement or any other Lender Arrangement.

**“Small Business Loan Rate”** means the base rate determined and set by the Lender from time to time as the Lender’s small business loan rate (or a name we substitute for that name). Details of current rates will be published from time to time and are available on our website [www.westpac.com.au](http://www.westpac.com.au) or by calling us on 132 142.

**“Small Business Overdraft Rate”** means the base rate determined and set by the Lender from time to time as the Lender’s small business overdraft rate (or a name we substitute for that name). Details of current rates will be published from time to time and are available on our website [www.westpac.com.au](http://www.westpac.com.au) or by calling us on 132 142.

**“Westpac Group”** means the Lender and its Related Entities.

**“Westpac Trade Finance Interest Rate”** means the rate so called and determined by Westpac from time to time. Information about current rates is available on request from your Relationship Manager.

**“you”** means the person described in this Agreement as the borrower.

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

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

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

\*\*\*\*\*

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

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

## **2 YOUR PAYMENT OBLIGATIONS**

### **2.1 WHAT YOU MUST PAY**

You promise to pay the following amounts to the Lender.

**(a) All money**

All money which you owe to the Lender for any reason.

This applies whether the money is or becomes owed:

- now or in the future;
- by you alone or together with any one or more others; or
- actually or contingently,

and whether or not it is currently contemplated.

*For example, this will include:*

- *the amount of any loan or accommodation;*
- *interest, fees, costs, liquidated or unliquidated damages, compensation, expenses and charges including government duties and charges;*
- *money owed as a result of an assignment to the Lender;*
- *at any time money which will become owing to the Lender by you only if particular circumstances occur, even though there may not be an existing obligation at that time to pay that money (for example, where a claim against the Lender by another party may lead to a claim against you); and*

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

**(b) Preparation costs and expenses**

All reasonable amounts which the Lender reasonably spends or incurs in relation to the negotiation, preparation, stamping and completion of this Agreement or any Security or any waiver, amendment, discharge, release or consent of, or under, any of them. This includes legal fees on a full indemnity basis.

**(c) Enforcement costs and expenses**

All reasonable amounts which the Lender reasonably pays or incurs:

- in relation to the actual or contemplated enforcement of, or exercise of rights under, this Agreement or any Security; or
- in preserving or maintaining any Property after a breach occurs.

*For example:*

- *outgoings (for example, rates and taxes), insurance premiums and other amounts paid by the Lender, any of its representatives or any receiver or receiver and manager under or in relation to this Agreement or the Security;*
- *amounts claimed against the Lender and its representatives or any receiver or receiver and manager;*
- *real estate agents', brokers' and auctioneers' commissions and fees, advertising expenses and valuers' fees; and*
- *legal fees and costs on a full indemnity basis (even if a court does not specifically award costs on that basis).*

**(d) Stamp duty**

All stamp, transaction and similar duties and charges in relation to this Agreement, any Security, and any further document, transaction, payment or receipt under it.

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

**(e) Interest and default interest**

Interest on all amounts payable by you under this clause 2 ("Your Payment Obligations") (including interest).

Where this Agreement provides for interest on an amount, interest will accrue on that amount as provided in this Agreement. However, interest accrues at the Default Interest Rate:

- on any amount overdue for payment, from the time the amount is overdue for payment until it is paid; and
- if there is a Default Event, on the total amount you owe to the Lender under this Agreement from the date specified in any notice the Lender gives you that there is a Default Event until you are notified that the Default Event is no longer continuing.

These interest charges are calculated daily or at any other intervals the Lender chooses and must be paid when the Lender specifies.

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

Unless it debits your account more often, the Lender will be taken to have debited your account with accrued interest under this paragraph each month or other period it selects. That interest will then itself bear interest.

## **2.2 INDEMNITY**

You indemnify the Lender against all other losses, costs, liabilities and expenses which:

- the Lender or any of its representatives; or
- any receiver or receiver and manager under a Security,
- suffers or incurs as a direct or indirect result of:
- a Default Event;
- the exercise of any right under, or enforcement of, this Agreement or any Security;
- any proceedings, enquiry or order (including any subpoena or order to produce documents) relating wholly or partly to you, anything done or funded under this Agreement, the Property, or any of your business or activities; or
- its interest in, or control or power with respect to, you or the Property, including under any law relating in any way to planning, the environment or health.

This may include anything of the kind referred to in the examples under clause 2.1(c).

## 2.3 BREAK COSTS

You promise to pay the Lender's break costs if you have a fixed rate facility of any type or a floating rate cash advance facility under this Agreement where the rate is set for certain periods, and for any reason:

- you do not fully draw it after having given a drawdown notice; or
- all or any part of the facility is or is required to be repaid or terminated during a period for which interest rates are set. This is called a prepayment.

Break costs are in addition to any administration fee.

**Break costs** are the amount which the Lender determines is its cost or loss resulting from:

- liquidation or re-employment of deposits or other funds required or contracted for by it to fund the facility; or
- termination or reversing any agreement or arrangement entered into to fix, hedge or limit its effective costs.

The Lender funds itself on a portfolio basis. It may not enter into specific transactions to fix or hedge its cost in relation to your transaction or in relation to your prepayment or termination. If so, it may instead determine **break costs** with the use of a formula. **Break costs** will be the amount so determined.

The formula is available on request and is a pre-estimate of the Lender's loss. It compares:

- the value to the Lender at the time of prepayment or termination of receiving payments early; to
- the value to the Lender, at that time, of payments it would have received had the prepayment not occurred.

## 2.4 SWITCHING FEE

A switching fee may also apply if you switch from one facility to another. If you switch from a fixed rate facility you also promise to pay break costs under clause 2.2 as if you had prepaid the amount switched.

## 2.5 TAX

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

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

You will pay the Lender an amount equal to any goods and services tax or similar tax liability that the Lender has in connection with any payment to the Lender or supply by it.



Where you have to indemnify the Lender against an amount or reimburse the Lender for any amount, that amount will be inclusive of anything payable by the Lender on account of any goods and services tax or other tax.

## **2.6 CURRENCY**

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

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

- (b) If your Facility is drawn in a currency other than Australian dollars you need to be aware of the risks arising from exchange rate movements that could lead to exchange loss. Foreign exchange markets can be volatile. You may suffer actual losses if there are adverse movements in the Australian dollar. Any movement in the Australian dollar will change the Australian dollar equivalent of the foreign currency drawing under the relevant Facility. If it is an adverse movement in the Australian dollar the Australian dollar equivalent of the total amount owing under that Facility will increase.
- (c) If that occurs, you may be required to provide additional Security, reduce the Resultant Limit and/or prepay part of the total amount owing under the Facility to ensure that the total amount owing is less than the Resultant Limit for that Facility.
- (d) You may wish to consider and obtain independent advice on the use of risk mitigation products to assist in limiting these risks. If you would like more information on these risks mitigation products please speak with your Financial Markets Representative.

## **2.7 WHEN YOU MUST PAY**

Except where this Agreement says otherwise, all amounts are payable on demand or when the Lender debits your account for them.

If a Facility has a "Finance Term" (see the Finance Details), you must repay the outstanding principal and pay all other amounts you owe to the Lender under the Facility at the end of the Finance Term.

In any event, if you, or any person who has given any Security, die or cease to be of full legal capacity, the Lender may require you or your estate to pay all principal and all other amounts which you promise to pay under this clause 2. You or your estate must immediately pay them even if they are not yet otherwise payable.

Where a payment falls due on a day which is not a Business Day, you must make the payment on the preceding day on which the Lender is open, except when you have arrangements for the payment to be made automatically from another account. In that case the payment must be made when the Lender would normally debit that account for that payment under its then normal procedures.

You may also be required to make a payment as set out in clause 4.10 ("Review by Lender") or clause 4.11 ("Top-up Requirements") below.

## **2.8 HOW YOU MUST PAY**

Amounts are payable at the address of the branch of the Lender at which your main account is held or as otherwise specified by the Lender. You must pay them in cleared funds and without any deduction except as set out in 2.5 ("Tax") above. If you do not have any account with the Lender, and no address is specified, then payments may be made at any branch of the Lender.

The Lender may debit any of your accounts for any amount payable under this Agreement. In doing so the Lender may overdraw that account.

### **3 YOUR OTHER OBLIGATIONS**

#### **3.1 WHAT YOU TELL THE LENDER**

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

**(a) Binding agreement**

This Agreement:

- is binding and enforceable against you; and
- does not breach any obligation binding on you.

**(b) Environmental and other claims**

There is and has been nothing relating to you, any Property or your business or assets, (*for example, any contamination*) which:

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

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

**(c) Defaults**

No Default Event has occurred.

**(d) Solvency**

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

**(e) Information**

All information you have given the Lender is true and complete. It is not misleading, by omission or otherwise.

**(f) Trustees**

If you are a trustee and sign this Agreement as trustee of a trust:

- This Agreement and any Lender Arrangement will bind you both personally and as trustee of the trust.

Where you sign this Agreement as trustee, as trustee you are not liable to pay amounts you owe in your own right or as trustee of another trust. Clause 2.1 ("What You Must Pay") only includes amounts you owe as trustee of the trust.

- You confirm the following.
  - The trust is validly formed. Any relevant trust document is valid and complies with the law.
  - Any copy of the trust document you have given the Lender is a true and complete copy and discloses everything about the trust.
  - You are properly appointed as sole trustee of the trust (with anyone else who signs this Agreement as trustee).
  - You have always fully complied with the terms of the trust, and your duties and powers. No one has said that you have not done so.
  - You have a full right of indemnity from the trust assets in respect of this Agreement and any Lender Arrangement.
  - You have properly signed this Agreement and any Lender Arrangement under the terms of the trust and your duties and powers as trustee, or if there is any doubt and all beneficiaries have full legal capacity, you have obtained their consent.
  - This Agreement, any Lender Arrangement and the transactions entered into under them are for proper trust purposes.
  - You have done everything required under the trust document to enter into this Agreement and any Lender Arrangement and the transactions they contemplate.
  - None of the trust assets have been re-settled or set aside.
  - The trust has not terminated nor has any event for the vesting of the assets occurred.
- You promise the following.
  - You will comply with the terms of the trust and your duties as trustee of the trust.
  - You will use all funds raised under this Agreement and any Lender Arrangement exclusively for proper trust purposes.
  - You will not do anything which may result in the loss of your right of indemnity from the trust assets or the termination of the trust.
  - You will remain sole trustee of the trust (with anyone else who signs this Agreement as trustee).
  - If, despite the above, you are replaced or joined as trustee, you will make sure the new trustee becomes bound to the Lender's satisfaction by this Agreement and any Lender Arrangement, or a document and arrangement of identical effect.
  - You will not re-settle, set aside or distribute any of the assets of the trust without the Lender's consent unless compelled to do so by the current terms of the trust document.

**(g) Corporations**

If you are a corporation, you confirm the following.

- Your directors and secretary have complied with all the requirements of your constitution and all relevant law to enter into and execute this Agreement and carry out the transactions they contemplate. You have the corporate power to do so.
- The names of your directors and the secretary are as disclosed to the Lender in writing.
- You are not a subsidiary of, nor controlled by, a public company within the meaning of the Corporations Act unless you have otherwise specified in writing.
- You will obtain a commercial benefit from entering into this Agreement and the transactions they contemplate, which your directors have resolved to enter into in good faith for your benefit and for proper purposes.
- The person(s) who sign(s), or witness(es) the fixing of your common seal to, this Agreement or a power of attorney under which this Agreement is executed, are two of your directors or a director and a secretary, or your sole director and secretary, and have the authority to do so.
- This Agreement is duly executed on your behalf.

**3.2 YOUR OTHER OBLIGATIONS**

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

**(a) Business**

You must:

- conduct your business (including keeping accurate books of account and collecting debts owed to you) in a proper, orderly and efficient manner; and
- not without the Lender's consent, stop payments generally, cease conducting your business or change the general character of any business you conduct (or threaten to do any of these things).

**(b) Records**

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

**(c) Information**

Give the Lender promptly any information it reasonably requests.

Give the Lender copies of your financial statements (including the notes), within 120 days of the end of each of your financial years.

**(d) Notices of default and other events**

Notify the Lender promptly of any Default Event, any actual or threatened litigation affecting you or anything else the Lender requires notice of.

**(e) Tax**

Pay when due all your tax.

**(f) Law**

Comply with the law.

**(g) Tax Consolidated Group**

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

**(h) Financial restrictions**

You must:

- not, without our consent:
  - provide financial accommodation to; or
  - 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, not, without our consent, pay any dividend, make any distribution or provide any loan otherwise than in the ordinary course of your ordinary business;
- 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; and
- if you are a corporation, ensure that your capital is not reduced or made capable of being called up only in certain circumstances.

If you are a corporation, you must ensure that none of your subsidiaries does anything which you are prohibited from doing under this clause 3.2(h) (“Financial restrictions”) on the basis each reference to “you” is to be read as a reference to the subsidiary.

## **4 THE LENDER’S POWERS**

### **4.1 GENERALLY**

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

- Inspect any Property or your books and records, and obtain a valuation or an environmental audit (whenever the Lender thinks it advisable).
- Appoint accountants (“*Investigating Accountants*”) to investigate and report to the Lender on the affairs and financial position of you or your business.
- Do what you promise to do but fail to do.

*For example, this might include taking out insurance or paying insurance premiums, rates and taxes and other amounts.*

- Pay amounts which it understands to be due under other mortgages or charges over any Property and other liabilities relating to any Property.

- Pay any loan or loans to be made under this Agreement as your solicitor, agent or conveyancer directs the Lender.
- Complete this Agreement and any Security and fill in any blanks (*for example, the date, title details, other interests noted on the title, your address and your interest in the Property*).
- Give any information about you and any Lender Arrangement to anyone who gives a Security.

## 4.2 WHAT IS A DEFAULT EVENT?

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

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

A **Default Event** also occurs if:

- anyone enforces Security or takes out a distress or execution against any asset of you or anyone who gives a Security;
- a person is appointed to investigate or manage your affairs or the affairs of anyone who gives a Security;
- for any reason, all or a material part of a Lender Arrangement or Security is terminated or of no or limited force and effect, or you or anyone who gives a Security alleges that it is so;
- any court, government or governmental agency, justice of the peace, police officer or other official does anything relating to any property (*for example issuing a notice, making an order, resuming, seizing, freezing, restraining dealing with, confiscating or forfeiting any property, or revoking any Authorisation*) which, in the opinion of the Lender may materially adversely

affect the Security or your financial condition or your ability to perform the Lender Arrangements;

- for any reason any Authorisation which forms a material part of the Property, or which is important to you or your business, expires without renewal or is terminated or revoked, or its issuer is entitled to terminate or revoke it;
- for any reason any other party to a document or agreement which forms a material part of the Property terminates it or treats it as repudiated, or is entitled to do so;
- in the opinion of the Lender there is a material adverse change in or affecting any Security, or the business, capital, assets or financial condition of any one or more of you or anyone who gives a Security; or
- anything else occurs which you agree is a **Default Event**, or which is described as an event of default or default event or similar in any Lender Arrangement or Security.

There will also be a **Default Event** if any of the above (in this clause 4.2) occurs with respect to any person (other than you) who provides any Security.

#### **4.3 WHAT HAPPENS ON DEFAULT?**

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

- Require you to pay to the Lender all outstanding principal and all other amounts which you promise to pay under clause 2 ("Your Payment Obligations") above. You must immediately pay them even if they are not yet otherwise payable.
- Convert into Australian dollars on its usual terms any money you owe in another currency, in which case you will owe the amount in Australian dollars.
- Appoint an Investigating Accountant at your cost, with whom you must co-operate.
- Take legal action (*for example, sue you for any money which you have not paid when due*).

Despite anything in this Agreement, if a Default Event occurs or a guarantor stops or limits his or her obligations, the Lender need not make a loan or provide any other form of finance under this Agreement.

#### **4.4 SET OFF**

If any one or more of you have any money in any account with the Lender or are owed money by the Lender, the Lender can use it to pay amounts payable or secured under this Agreement, but need not do so. If the Lender does this, the balance of your account will reduce by the amount used for this purpose.

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

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

#### **4.5 COMBINING ACCOUNTS**

If there is a Default Event under this Agreement or a Lender Arrangement, the Lender may use any money you have in another account with the Lender towards repaying any amount you owe to the

Lender under this Agreement (this is known as “combining accounts”). The Lender may combine accounts without giving you any notice but the Lender will tell you promptly afterwards.

#### **4.6 USE OF MONEY**

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

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

- If the amount becomes actually owing, the amount becomes payable or the bill matures, the Lender will apply the money in the account in payment of your liability to it.
- If it ceases to be contingently owing, and there is no other amount owing, the Lender will pay the balance of the money in the account to you or any other person entitled to it.

An amount is *contingently owing* if it may become owing if something happens or is discovered, (for example, your obligations under a guarantee or indemnity).

#### **4.7 RIGHTS AND POWERS SEPARATE**

The Lender can, but need not, do anything under this Agreement, even after a delay, and may do it more than once.

The Lender can exercise all other rights and powers it has under law even if they overlap with any in this Agreement.

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

#### **4.8 TRANSFER**

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

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

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

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

#### **4.9 DELEGATION OF POWERS**

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

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



#### **4.10 REVIEW BY THE LENDER**

The Lender may conduct scheduled reviews as set out in this Agreement, or unscheduled reviews at any time after having given notice to you.

After a review, if the Lender determines there has been or will be a change in its credit risk, it may notify you.

In that notice the Lender can change the conditions of a facility including its pricing. If this Agreement states a facility is provided subject to scheduled reviews and does not have a specified termination date, it can terminate the facility.

The changes in the notice will be effective automatically at the end of the period stated in the notice. That period will be at least 30 days unless you agree otherwise.

If you notify the Lender within that period that you do not accept the changes, the facility will be repayable on demand by the Lender.

The Lender may not alter any specified termination date for a facility, or any fixed rate then current, unless you have agreed, or a Default Event has occurred.

#### **4.11 TOP-UP REQUIREMENTS**

Whenever, in the reasonable opinion of the Lender:

- the value of Property has declined; or
- the amount secured by the Security has increased for any reason (*for example, because currencies have fluctuated*),

so that the ratio of the Property value to the amount secured has declined, then the Lender may require you to pay within 10 Business Days sufficient of the amount secured to ensure the ratio is satisfactory to the Lender or is as otherwise specified in this Agreement.

However, you need not pay that amount if you provide additional Security within the period specified by the Lender. That additional Security must be:

- satisfactory to the Lender; and
- sufficient to ensure that the ratio of the value of the Property and the additional Security to the amount secured is satisfactory to the Lender, or as otherwise specified in this Agreement.

For this clause 4.11, the value of anything is as reasonably determined by the Lender.

#### **4.12 VARIATION**

The Lender may vary one or more of:

- the interest rate or discount rate (yield rate) or base rate and any margins;
- the default margin;
- the frequency with which interest is debited; and
- the existing fees and charges and their frequency and time for payment,

and it may introduce new fees, margins and charges.

All of these changes can be made without your consent.

The Lender will notify you of the changes as follows:

- any change in the interest rate except where the interest rate is linked to an external reference rate such as BBSY or any margin, or in the amount of existing fees or charges and their frequency and time for payment – the Lender will notify you either by advertisement in a national newspaper or in writing or any other method allowed under any applicable law or code on or before the day the change takes effect; or
- any change to the frequency with which interest is debited, or the introduction of any new fee, margin or charge (other than a government charge) – the Lender will provide written notice to you at least 30 days before the change takes effect, except that such notice is not required where you cannot reasonably be located.

The Lender will notify you of the introduction or variation of a government charge payable directly or indirectly by you by written notice to you or by advertisement, unless the introduction or variation is published by a government, governmental agency or representative body.

Advertisements will appear in a national newspaper.

#### **4.13 OTHER VARIATIONS TO AGREEMENT AND RIGHTS OF LENDER**

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

- vary the terms of this agreement, which variations will be notified to you as required by any applicable law or code;
- give or withhold approvals and consents;
- be satisfied or unsatisfied;
- form opinions;
- make determinations; and
- exercise its rights and powers.

#### **4.14 FURTHER STEPS**

You agree to do anything (such as obtaining consents, signing and producing documents and getting documents completed and signed) which we ask and consider necessary for the purposes of:

- (a) providing more effective security over any Property;
- (b) ensuring that each Lender Arrangement is enforceable and each Security is perfected (including, where possible, by control in addition to registration) and otherwise effective;
- (c) enabling the Lender to apply for any registration, or give any notification, in connection with a Security so that it has the priority the Lender requires;
- (d) enabling the Lender to exercise its rights in connection with a Lender Arrangement;

- (e) binding you and any other person intended to be bound under a Lender Arrangement;
- (f) showing whether you are complying with a Lender Arrangement.

#### **4.15 FURTHER INFORMATION**

You warrant that your use of any Facility we provide will not breach any law of Australia or any other country.

Where the Lender considers it necessary in order for it to meet its regulatory and compliance obligations:

- you must provide the Lender with any information it reasonably requests;
- the Lender will disclose information it holds to regulatory and law enforcement agencies, other financial institutions, third parties and members of the Westpac Group; and
- the Lender may delay, block or refuse to provide any of its services.

The Lender will not be liable to you or any other person for any loss or damage of any kind that may be suffered as a result of the Lender exercising its rights under this clause 4.15.

#### **4.16 ILLEGALITY OR IMPOSSIBILITY**

This clause 4.16 applies if the Lender determines that:

- a change in any law; or
- a change in the interpretation or administration of any law by an authority; or
- any law,

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

The suspension or cancellation:

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

If the illegality or impossibility related to:

- a drawing under a loan Facility, by giving a notice to you, the Lender may require repayment of all or part of the affected drawing and interest accrued on that part;
- a bill accepted by the Lender under a bill acceptance/discount Facility, by giving a notice to you, the Lender may require payment of an amount equal to all or part of the total face value of the affected bill;
- a letter of credit, performance bond or guarantee issued by the Lender under a Facility, by giving a notice to you, the Lender may require payment 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 the Lender by you in respect of that document.

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).

## **5 GENERAL**

### **5.1 NOTICES**

Any representative of the Lender can give a demand or notice for the Lender.

A demand or notice under this Agreement will be served on you if:

- it is served personally;
- it is left at your last address known to the Lender;
- it is sent by mail to your last address known to the Lender; if so it is to be regarded as having been delivered in the ordinary course of post, even if it never arrives; or
- it is sent by facsimile transmission or other electronic means to any number or address you give to the Lender.

The Lender may serve court documents on you in the same way.

You must send all notices or correspondence relating to this Agreement to the Lender at the address given in this Agreement or as otherwise specified by the Lender. If no address is given or specified by the Lender, then the address will be the address given in the covering letter for this Agreement.

The Lender need not give you any notice required under the PPSA (including a notice of verification statement) unless the requirement for the notice cannot be excluded.

### **5.2 DISCLOSURE OF INFORMATION AND CONFIDENTIALITY**

Information you provide to the Lender may be disclosed:

- (a) if you consent (you may not unreasonably withhold your consent); or
- (b) if the Lender reasonably believes the disclosure is required by any law, stock exchange or rating agency (except this paragraph does not permit the Lender to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7) of the PPSA applies) if required by any stock exchange or if allowed or required by law; or
- (c) to any person in connection with the Lender exercising rights or dealing with rights or obligations under any Lender Arrangement (including in connection with preparatory steps such as negotiating with any potential assignee or potential participant of the Lender's rights or other person who is considering contracting with the Lender in connection with a Lender Arrangement); or
- (d) to the Lender's officers and employees and to legal advisers, auditors and other advisers; or
- (e) to any of the Lender's Related Entities; or
- (f) if the information is generally and publicly available; or

- (g) to anyone who gives or proposes to give a Security; or
- (h) if the Lender considers the disclosure appropriate in connection with the operation or administration of this Agreement.

### **5.3 INDEMNITIES**

The indemnities in this Agreement are continuing obligations, independent of your other obligations under this Agreement. It is not necessary for the Lender to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

### **5.4 CONSENT TO TELEPHONE RECORDING**

You consent to the Lender recording its telephone conversations with you. There is not necessarily a warning tone when the Lender does so.

### **5.5 EFFECT OF LAW**

This Agreement is subject to laws limiting the Lender, to the extent they cannot be excluded.

Otherwise all laws which limit the Lender's power or require notices to be given are excluded.

### **5.6 READING DOWN DOCUMENT**

A provision of this Agreement which is prohibited or is unenforceable in any jurisdiction is only ineffective in that jurisdiction and only to the extent it is prohibited or unenforceable. The other provisions and other jurisdictions are not affected.

### **5.7 GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the law of the state or territory of the address of the Lender in this Agreement.

You accept the jurisdiction of its courts and agree to any court in its capital city.

### **5.8 STATEMENTS**

A written statement by a representative of the Lender as to amounts owing under this Agreement is sufficient evidence against you unless you prove it is wrong.

### **5.9 FINANCE**

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

### **5.10 REDRAW FACILITY**

If you repay all or part of a loan or other facility, you cannot redraw it, unless this Agreement provides that you can redraw it.

**No reliance on Lender's enquiries and checks**

You know that if the Lender or its representative inspects any building work on any Property, it is doing so for itself and not you. You should not rely on that inspection.

The Lender and its representatives are not responsible to you if any building work has not been properly done, even if the Lender or the representative has said it is satisfied as to the work, and the Lender lends against the work.

The same applies to any search, enquiry, review, inspection or valuation which is checked, carried out or obtained by the Lender or its representatives with respect to any other aspect of any Property or your business or affairs.

In particular, if you are buying any Property, you are responsible for making sure you get good title. If you have one, your lawyer or conveyancer should do this. You should not rely on the Lender or its representatives.

**No reliance generally**

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