

Finance Lease Standard Terms And Conditions

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Notice

This document does not contain all of the terms of the *agreement*. The rest of the *agreement* terms are set out in the *schedule* signed by *you*.

By signing the *schedule* you offer to enter into an *agreement*.

An *agreement* comes into effect when *we* accept *your* offer to enter into this *agreement*. The *schedule* sets out how *we* accept *your* offer.

You should read these *standard terms and conditions* and the *schedule* carefully. *You* should keep these documents for *your* reference.

Banking Code of Practice

The Banking Code of Practice (**BCOP**) is an industry code which sets standards of good banking conduct for banks, their staff and their representatives. The *BCOP* will apply to this *agreement* if *you* are an individual or a small business (as defined in the *BCOP*).

Financial Difficulty

If the *BCOP* applies and *you* are experiencing financial difficulty, then *you*, or your representative, should contact *us* as soon as possible. *We* will discuss your situation and the options available to help *you*.

The sooner *you* contact *us*, the sooner *we* can try to help.

A number of important terms used in this document are defined in clause 33. These terms are printed like this. Some other key words are also explained. You should refer to clause 33 in reviewing these standard terms and conditions.

FINANCE LEASE STANDARD TERMS AND CONDITIONS**1 HIRING OF GOODS**

1.1 These *standard terms and conditions* and the *schedule* set out the terms upon which *we* hire the *goods* to *you*.

1.2 The *agreement* incorporates:

- (1) these *standard terms and conditions*; and
- (2) the *schedule* signed by *you*.

2 TERM OF THIS AGREEMENT

2.1 This *agreement* is for the whole of the *term*.

2.2 This *agreement* commences on the *commencement date*.

3 RENT AND OTHER PAYMENTS

3.1 *You* must pay the entire *rent* by the *rental instalments* specified in the *schedule* on each *rent payment date*.

3.2 *Rental instalments* must, unless *we* otherwise agree in writing, be paid by direct debit or other electronic means.

3.3 *You* must also pay all *fees* payable in connection with this *agreement*, including, without limitation, the *fees* set out in the *schedule*.

3.4 *You* may obtain information on current standard *fees* and charges that may be payable under this *agreement* on request.

4 DELIVERY OF GOODS

4.1 *You* are responsible (unless otherwise agreed in writing) for:

- (1) obtaining delivery of the *goods*; and
- (2) paying all delivery and installation charges.

4.2 *You* must immediately notify *us* of any delay in or non-delivery of the *goods*.

4.3 Any delay in or non-delivery of the *goods* or any damage to the *goods* during delivery or installation does not affect *your* obligations under this *agreement* including *your* obligation to pay *rent*. *You* acknowledge that *we* have not given any warranty as to the anticipated date of delivery of the *goods* or that the *goods* will be delivered and that *we* have no liability for non-delivery of the *goods*.

5 LOCATION AND USE OF GOODS

5.1 The *goods* must be kept in *your* possession and control at all times.

5.2 The *goods* must be ordinarily kept at the *premises* or such other place as *we* may approve, acting reasonably.

5.3 The *goods* must not be taken outside of Australia.

5.4 *You* must immediately notify *us* in writing of any *goods* that become located outside Australia.

5.5 *You* must notify *us* if *you* wish to change the place at which the *goods* are ordinarily garaged or kept.

5.6 You must whenever reasonably requested by us:

- (1) notify us of the location of the *goods*;
- (2) produce the *goods* to us or allow us (and use your best endeavours to ensure others allow us) to enter the place where the *goods* are kept to:
 - (i) inspect the *goods*;
 - (ii) confirm the terms of this *agreement* are being complied with; or
 - (iii) exercise any rights under this *agreement*.

5.7 You must only use the *goods* in accordance with:

- (1) all applicable laws;
- (2) the supplier's and the manufacturer's specifications, instructions and recommendations;
- (3) any requirements of the insurers of the *goods*; and
- (4) your business operations and the purpose for which you told us that you intended to use the *goods*.

5.8 You must:

- (1) keep the *goods* registered or licensed whenever it is necessary to do so to use or operate the *goods*; and
- (2) where applicable, use only qualified personnel to operate and use the *goods*.

5.9 You assume all risks and liabilities arising from the use and possession of the *goods*.

5.10 You agree that:

- (1) you will comply with all *OHS laws* in relation to the *goods*;
- (2) the *goods* are and will during the *term* of this *agreement* be and remain under your control and are not and, unless we exercise our rights and powers under this *agreement* or the law, will not be under our control; and
- (3) you will indemnify and keep us indemnified against any liability we may incur or any claim that may be made against us in respect of any breach or alleged breach of any *OHS law*, except where such liability or claim arises from the mistake, error, fraud, negligence or wilful misconduct of us, our employees, our agents or a receiver we appoint.

6 OWNERSHIP OF THE GOODS

6.1 The *goods* remain our property. You are a bailee and have no title or interest in the *goods*.

6.2 You must not create any *security interest* over the *goods* or allow any other person to acquire an interest in the *goods*.

6.3 You must not do anything which could have a material impact on our rights in respect of the *goods*.

6.4 You must not conceal the *goods*, alter them or any identifying number or mark (including any serial number) on them.

6.5 You must not grant a lease or licence of any *goods*.

6.6 You must not waive any rights or release any person from any obligation in connection with the *goods*.

6.7 You must not cause or permit any other personal property in which another person has a *security interest* or other interest or right to become an accession to the *goods* or commingled with any *goods*, or affix any of the *goods* to land or buildings, without our prior consent (which will not be unreasonably withheld).

6.8 You must not sell, transfer or otherwise dispose of your rights in respect of the *goods* or attempt to do so without our prior written consent (which will not be unreasonably withheld).

6.9 Any replacement or repair or addition to the *goods* forms part of the *goods* and becomes our property.

7 SECURITY INTEREST IN GOODS

7.1 You acknowledge that our interest in the *goods* provided for by the transaction contemplated by this *agreement*:

- (1) secures the payment of all moneys and the performance of all obligations owing or assumed by you under this *agreement*; and
- (2) is a *security interest*.

7.2 Our *security interest* in the *goods* is effective and attaches to the *goods*:

- (1) when you sign this *agreement*; or
- (2) immediately after you acquire any right or interest in the *goods*, if you have not acquired the *goods* when you sign this *agreement*.

- 7.3 We may, at *your* expense, take all steps as we reasonably consider advisable to register, amend or remove the registration of, protect, perfect or record *our security interest* in the *goods*, or to better secure *our* position in respect of this *agreement* under the *PPS law*.
- 7.4 If we ask, *you* must deposit with *us* any documents of title (including chattel papers) relating to the *goods* or other documents which evidence *your* rights in the *goods*.
- 7.5 Without affecting the priority of *our security interest* under this *agreement*, *you* must take any action necessary to register, perfect, preserve and maintain any *security interest* in the *goods* which *you* hold, or have the benefit of, under and in accordance with the *PPS law*.
- 7.6 *You* must procure the removal of any registration in relation to any *security interest* that affects the priority of *our* interest in the *goods*.
- 7.7 *You* must immediately notify *us* if *you* become aware of any person taking steps to register, or registering, a financing statement in relation to the *goods*.
- 8 REPAIR AND MAINTENANCE OF GOODS**
- 8.1 *You* must at all times keep the *goods* properly serviced, in proper working order and condition and in good and substantial repair.
- 8.2 *You* must maintain and service the *goods* in accordance with the supplier's and the manufacturer's specifications and any requirements of any insurers.
- 8.3 *You* must not without *our* consent make any replacement, alteration or addition of any nature to the *goods* which may lead to a reduction in the value of the *goods*.
- 8.4 *You* must provide *us* with a written statement disclosing all defects in the *goods* whenever reasonably requested (including after this *agreement* has expired or terminated if *you* have possession or *control* of the *goods* and *you* have any outstanding obligations to *us*).
- 8.5 All repairs to and maintenance of the *goods* must be carried out by suitably qualified personnel at *your* expense.
- 9 LOSS OR DAMAGE TO THE GOODS**
- 9.1 *You* bear the entire risk of *loss* of the *goods* or damage to the *goods*.
- 9.2 *You* must notify *us* as soon as possible when the *goods* are substantially lost, damaged, impounded, immobilised or forfeited or seized.
- 9.3 If the *goods* are totally lost or damaged, impounded, immobilised or forfeited or seized, then we may at *our* option *terminate* this *agreement* . If that occurs, then:
- (1) *you* must pay an amount equal to the *termination amount* and any other amounts payable on *termination* of this *agreement*, and
 - (2) we will give *you* credit, if and when received, for any insurance or other moneys received by *us* in relation to the loss, damage or seizure.
- 9.4 If the *goods* are damaged but we do not *terminate* this *agreement*, then:
- (1) *you* must ensure that the *goods* are restored at *your* expense to good working order and condition;
 - (2) replacement parts and *goods* form part of the *goods* under this *agreement*;
 - (3) any proceeds of insurance must be applied towards repair or replacement of the *goods*; and
 - (4) until applied under clause 9.4(3) we may hold any proceeds of insurance.
- 10 INSURANCE**
- 10.1 *You* must effect and maintain at all times during the *term* or any holding over:
- (1) insurance of the *goods* for their full replacement value; and
 - (2) such other insurance that we may reasonably require.
- 10.2 Insurances must:
- (1) be on terms approved by *us* acting reasonably;
 - (2) be with an insurer approved by *us* acting reasonably;
 - (3) note *our* interest as owners of the *goods*; and
 - (4) be for such risks as we may reasonably specify.

10.3 You must pay all insurance premiums and other charges in relation to the insurance.

10.4 When requested by *us*, you must provide satisfactory evidence to *us* that:

- (1) the insurances referred to in this clause have been effected;
- (2) all premiums in respect of such insurance are paid up and current; and
- (3) such other information in relation to the insurance as *we* may require.

10.5 You must not:

- (1) vary any insurances without *our* consent (which will not be unreasonably withheld);
- (2) do or permit to occur anything which may prejudice any insurance or any claim under that insurance; or
- (3) enforce, conduct, settle or compromise any claim under any insurance without *our* consent (which will not unreasonably be withheld).

10.6 You must immediately notify *us* of any event which may lead to a claim under any insurances. You must comply with all *our* reasonable directions in respect of any such claim.

10.7 We are entitled to receive all moneys payable to you or to *us* under any insurance in respect of damage to or *loss* of the *goods*.

11 REPRESENTATIONS AND WARRANTIES

11.1 You represent and warrant to *us* that:

- (1) you have full power and authority and have done all things necessary to permit you to enter into this *agreement*;
- (2) the signing or performing of your obligations under this *agreement* will not cause you to be in breach of any other arrangements that you may have and do not require any consent or approval from any other person;
- (3) all documentation provided by you to *us*, including any copy of invoices issued to *us* by the supplier or seller of the *goods* are true and correct copies;
- (4) all information (including, where a VIN number in respect of the *goods* is provided, the VIN number) provided by you or on your behalf to *us* is true and correct and all of the financial information provided by you to *us* provides a true and fair view of your financial position; and

(5) the *goods* are commercial property and are not and do not form part of the inventory of your business.

11.2 You warrant to *us* that the representations in this clause are true and correct at the *commencement date* and will remain so during the *term*.

12 EXCLUSION OF CONSUMER GUARANTEES

12.1 You acknowledge that:

- (1) we agreed to acquire the *goods* for the sole purpose of supplying the *goods* to you under this *agreement*;
- (2) all negotiations in relation to the supply of the *goods* have been conducted between you (or persons acting on your behalf) and the supplier; and
- (3) your obligations under this *agreement* continue notwithstanding any break down or defect in the *goods*.

12.2 To the extent permitted by law;

- (1) all *consumer guarantees* in relation to the *goods*;
- (2) any liability for *loss* or damage caused directly or indirectly by the *goods*; or
- (3) any liability for any statement regarding your rights under or in respect of this *agreement* including in relation to any law relating to taxation,

are excluded except:

- (1) where we are not permitted to exclude our liability under the *Australian Consumer Law* or any other legislation;
- (2) in respect of any liability arising from the mistake, error, fraud, negligence or wilful misconduct of *us*, *our* employees, *our* agents or a receiver we appoint.

You must obtain your own independent legal, financial and taxation advice in relation to this *agreement*.

12.3 Where this *agreement* relates to the hiring of *goods* (other than *goods* of a kind ordinarily acquired for personal, domestic or household use or consumption), then, to the extent if any that we may have any liability to you in respect of any *consumer guarantee*, that liability is limited at our option to:

- (1) the replacement of the *goods* or supply of equivalent *goods*;

- (2) the cost of repair of the *goods*; or
- (3) the payment of the cost of replacing the *goods* or acquiring other equivalent *goods*.

13 RETURN OF GOODS

13.1 *You* must at *your* own cost return the *goods* on the *termination* or *expiration* of this *agreement* to the place reasonably specified by *us*.

13.2 The *goods* when returned must be in good working order and repair (fair wear and tear excepted) and in accordance with the terms of this *agreement*.

13.3 *You* must sign any documents and do anything *we* reasonably require to properly return the *goods* to *us* including:

- (1) returning all operating manuals and documents;
- (2) transferring to *us* all *licences*, approvals, consents, authorisations and certificates of registration relating to the *goods*; and
- (3) a statement specifying any defects in the *goods* in accordance with clause 8.4.

13.4 If upon *expiration* *you* fail, for any reason, to deliver the *goods* to *us* at the place specified by *us*, then:

- (1) *you* continue to hold the *goods* on the terms and conditions of this *agreement* except to the extent set out in this clause; and
- (2) the *agreement* may be terminated at any time by either *us* or *you* giving seven (7) days' *notice*.

14 WHEN DEFAULT OCCURS

14.1 An *event of default* occurs if any one or more of the following occur:

- (a) *you* fail to pay any amount due under this *agreement* by the due date for payment;
- (b) if *you* are an individual:
 - (i) *you* become bankrupt;
 - (ii) *you* are unable to pay *your* debts as they fall due; or
 - (iii) *you* make any arrangement with *your* creditors;
- (c) if *you* are a company:
 - (i) proceedings are commenced to wind up the company;

- (ii) a receiver, manager, receiver and manager, administrator, *controller*, provisional liquidator or liquidator is appointed to the company or any part of the company's assets; or

- (iii) the company is, or is deemed or presumed by law or a court to be, *insolvent*;

- (d) *you* no longer have legal capacity;

- (e) enforcement proceedings are taken against *you* or *your* assets by another creditor;

- (f) *we* reasonably believe that *you* have not complied with the law or any requirement of any competent authority, and such non-compliance has or may have a material adverse effect on the *goods* or the assets of *you*;

- (g) it becomes unlawful for *you* or *us* to continue with this *agreement*;

- (h) *you* give *us* information, or make a representation or warranty to *us*, that is materially incorrect or misleading (including by omission), and is such that *we* would not have entered this *agreement*, or would only have entered this *agreement* on different *terms*, if *we* had known the correct information;

- (i) *you* use the lease for a purpose not approved by *us*;

- (j) *you* use the lease for an illegal or improper purpose, or to finance an illegal or improper activity;

- (k) *your* assets are dealt with, or attempted to be dealt with, in breach of the *terms* of this *agreement* without *our* prior written consent (which will not be unreasonably withheld), including:

- (i) any of the *goods* becomes subject to a *security interest* without a priority agreement being in place between *us* and the other security holder on terms acceptable to *us*, acting reasonably;

- (ii) any of the *goods* becomes subject to a *security interest* without *our* prior written consent (which will not be unreasonably withheld); or

- (iii) the amount secured by any *security interest* over the *goods* is increased without *our* prior written consent, which will not be unreasonably withheld;

- (l) *you* do not provide financial information required by *us* in connection with this *agreement*;
- (m) *you* do not maintain any insurance required by *us* in connection with this *agreement*;
- (n) if *you* are a company:
- (i) *you* do not maintain a licence or permit necessary to conduct any business conducted by *you*;
- (ii) legal or beneficial ownership, or management *control*, of *you* changes without *our* prior written consent (which will not be unreasonably withheld); or
- (iii) without *our* prior written consent (which will not be unreasonably withheld), the status, capacity or composition of *you* changes, including where you cease to carry on all or a material part of *your* business, or dispose of all or a material part of *your* assets;
- (o) if *you* are an individual, *you* are sentenced to jail for a term of longer than 12 months;
- (p) the *goods* are:
- (i) materially damaged or destroyed, or threats of material damage or destruction are made, and *we* reasonably consider that the *goods* cannot or will not be expected to be reinstated within a reasonable time and without material loss of any material income from the *goods*; or
- (ii) taken out of *your* control;
- (q) there is a material reduction in the value of the *goods*;
- (r) any repairs necessary to keep the *goods* in good repair are not made in a timely fashion;
- (s) if *you* are a trustee of a trust, there is a change of trustee, a termination of the trust, or any material change to the terms of the trust without *our* prior written consent (which will not be unreasonably withheld); and
- (t) any other event specified to be an *event of default* for the purposes of this *agreement* occurs.
- 14.2 Subject to clauses 14.5 to 14.8, at any time after an *event of default* occurs, *we* can take any of the following actions:
- (1) *terminate* this *agreement* and *your* right to possession of the *goods*;
- (2) require *you* to repay the *termination amount* and any other amount payable on *termination*;
- (3) take possession of and deal with the *goods* on *termination*;
- (4) exercise any right or power conferred by law, this *agreement* or any *security*; and
- (5) suspend further performance of *our* obligations under this *agreement*.
- 14.3 Without limiting *our* rights under this *agreement* in any way, *you* must promptly notify *us* in writing if an *event of default* occurs.
- 14.4 If *we terminate* this *agreement* pursuant to clause 14.2, then:
- (1) *we* are entitled to immediately repossess the *goods*;
- (2) *you* consent to *us* and *our* agents entering upon any land or *premises* (including private property) where the *goods* are or where *we* reasonably believe the *goods* are for the purpose of such repossession; and
- (3) *we* are no longer required to perform any of *our* obligations under this *agreement*.
- 14.5 Except for a default under clause 14.1(a), if *you* are an individual or a *small business*, *we* will only act on an *event of default* if the event by its nature is material, or *we* reasonably consider that the event has had, or is likely to have a material impact on:
- (a) *your* ability to meet *your* financial obligations to *us* (or *our* ability to assess this);
- (b) *our* security risk (or *our* ability to assess this); or
- (c) *our* legal or reputational risk where the *event of default* in clause 14.1(g), 14.1(h), 14.1(i) or 14.1(j) occurs.
- If *you* are a *small business*, *we* will not commence enforcement action if an *event of default* as described in clauses 14.1(j), 14.1(o), 14.1(p), 14.1(q), 14.1(r), 14.1(s) or 14.1(t) occurs.

14.6 If *you* are an individual or *small business* and an *event of default* occurs, we will not:

- (1) *terminate* this *agreement* and require *you* to repay the *termination amount* and any other amount payable on *termination*;
- (2) take enforcement against *you*; or
- (3) enforce any *security* held to secure payments under this *agreement*,

unless

- (4) we have given *you* at least 30 days written notice of the *event of default*; and
- (5) if the *event of default* is remediable, *you* have not remedied that *event of default* within 30 days.

14.7 If an *event of default* is remediable, and *you* remedy that *event of default* within 30 days, we may take any action specified in clauses 14.6(1), 14.6(2), or 14.6(3) if an *event of default* of the same type has arisen during that period.

14.8 We do not need to give *you* a default notice or wait 30 days before commencing enforcement action if:

- (1) the *event of default* is unable to be remedied;
- (2) it is reasonable for *us* to do so to manage a material and immediate risk relating to the nature of the relevant *event of default*, *your* particular circumstances, or the value of the *goods* or any *security*; or
- (3) we have already given *you* a notice to remedy a non-monetary *event of default* and *you* have not remedied that *event of default*.

14.9 We will tell *you* if we report any payment default of *yours* under this *agreement* to a credit reporting body. *You* can also independently obtain a copy of *your* report directly from a credit reporting body.

14.10 If an *event of default* occurs:

- (1) We do not need to act as soon as an *event of default* occurs and can take action at any time after the *event of default* occurs.
- (2) We do not lose any rights or forgive any *event of default* unless we have done so in writing.
- (3) We can exercise *our* rights with or without taking possession of the *goods*.
- (4) If we hold more than one *security*, we can enforce any of the *securities* first or all of them at the same time.

(5) *Our* rights and remedies under this *agreement* may be exercised by any of *our* employees or any other person we authorise.

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

15 RESIDUAL VALUE

15.1 If upon *termination* or *expiration* of this *agreement* *you* return the *goods* to *us* then *you* must pay to *us* on demand the amount of money by which the *residual value* exceeds the value of the *goods*. If the value of the *goods* exceeds the *residual value* *you* have no claim or interest in such surplus.

15.2 If upon *expiration* or *termination* of this *agreement* *you* fail to return the *goods* to *us* then *you* must pay to *us* on demand the *residual value* of the *goods* and perform all obligations owing or assumed by *you* under this *agreement*. If we subsequently obtain possession of the *goods* then we will apply the sum representing the value of the *goods* in reduction or satisfaction of *your* indebtedness under this *agreement* (or in repayment of any payment made by *you* under this *agreement*) but *you* have no interest or claim in any surplus.

15.3 If this *agreement* is terminated prior to the expiry of the *term* then the *residual value* for the purpose of this clause is the *present value* using the *early termination rate* at the date of *termination* of the amount specified in the *schedule* as the *residual value*.

15.4 Any payment by *you* under this clause is in addition to other amounts payable under this *agreement* and is to compensate *us* for any *losses* (including *our* reasonable costs) *we* may incur.

16 TERMINATION PRIOR TO EXPIRY OF THE TERM

16.1 *You* may terminate *your* obligations under this *agreement* prior to the end of the *term* by paying *us* the *termination amount* and any other amounts payable under this *agreement*.

16.2 If this *agreement* is terminated by *us*, *you* must in addition to other amounts payable under this *agreement* pay *us* on demand the *termination amount*.

- 16.3 Amounts payable under clause 16 are in addition to any other amounts payable under this *agreement*, including clause 15.
- 16.4 Payments under clauses 16.1 and 16.2 are to compensate *us* for any losses (including *our* reasonable costs) that we incur because this *agreement* was terminated before the expiry of the term.
- 17 OVERDUE INTEREST AND COSTS**
- 17.1 *You* must pay *us* any reasonable *costs* incurred by *us* arising out of any default by *you* under this *agreement* or arising out of *our* enforcing *our* rights under this *agreement* including *our* rights upon *expiration* or *termination* of this *agreement*.
- 17.2 If *you* fail to pay any money payable under this *agreement* when due (or on any judgment in respect of which those moneys become merged) then *you* must pay interest at the *overdue rate* on that amount.
- 17.3 Interest at the *overdue rate* is calculated from the date such moneys become payable until the date of actual payment and is payable on demand.
- 17.4 Notwithstanding any other clause in this *agreement*, *you* are not required to indemnify *us* in respect of any amount to the extent which such liability or claim arises from the mistake, error, fraud, negligence or wilful misconduct of *us*, *our* employees, *our* agents or a receiver *we* appoint.
- 18 REMEDY OF BREACHES BY YOU**
- 18.1 If *you* breach any of *your* obligations under this *agreement* *we* may take such steps as *we* consider reasonably necessary to remedy such breach.
- 18.2 *You* acknowledge that *we* may, acting reasonably, do anything *you* should have done under this *agreement* which *you* have not done or which *we* reasonably consider *you* have not done properly.
- 18.3 Any *costs* reasonably incurred by *us* in exercising *our* rights under clause 18.1 or 18.2 must be reimbursed by *you* to *us* and such amounts shall incur interest at the *overdue rate* from the date of payment by *us* until the date of repayment by *you*. *We* may require *you* to pay these costs immediately (including by using any direct debit or similar authority *you* have given *us*), collect them with your regular *rental instalments*, or require them to be repaid by one or more instalments.
- 19 DUTIES AND TAXES**
- 19.1 *You* must pay all duties, taxes and *fees* which in any way relate to this *agreement*, any supply made under this *agreement* or any transaction contemplated by this *agreement*.
- 19.2 Unless *GST* is expressly included a payment under this *agreement* for any supply made under or in connection with this *agreement* does not include *GST*. To the extent that any supply made under or in connection with this *agreement* is a taxable supply, the *GST* excluded consideration otherwise payable or provided for that supply is increased by an amount equal to that consideration multiplied by the rate at which *GST* is imposed in respect of such supply and subject to receipt of any tax invoice if required, is payable at the same time.
- 19.3 If payment to a party under this *agreement* is a payment by way of reimbursement or indemnity and is calculated by reference to the *GST* inclusive amount of such *loss*, cost or expense incurred by that party, then payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that *loss*, cost or expense before any adjustment is made for *GST* pursuant to clause 19.2.
- 19.4 Payments under this clause must be made at the time that the act or supply giving rise to such liability occurs.
- 20 APPLICATION OF MONEYS AND STATEMENTS**
- 20.1 To the extent permitted by law and subject to any order of application of payments prescribed by the *PPS Act*, *we* will apply all moneys received by *us* in respect of this *agreement* in the following order:
- (1) first, in payment of *our costs*;
 - (2) secondly, in payment of any other expenses in relation to the *goods* that *we* incur exercising *our* rights under this *agreement*, and
 - (3) thirdly, towards payment of the amounts due to *us* under this *agreement*.
- 20.2 Where the *BCOP* applies to this *agreement*, *we* will give *you* a periodic statement of transactions covering a period of not more than 12 months. Each such statement will be provided within a reasonable time after the end of the relevant period. *You* may request a statement of transactions on *your* account by contacting *us*. *We* may charge *you* a fee for hard copy statements that are not repeat statements.
- 20.3 *We* may not send a statement of transactions if:
- (1) it is impractical for *us* to do so;
 - (2) *we* are not required to by law; or
 - (3) *you* have been in default under the *agreement* during the statement period and *we* have commenced enforcement proceedings.

21 TRUSTEE

- 21.1 The provisions of this clause apply if *you* enter into this *agreement* as the *trustee* of a *trust*.
- 21.2 Each *trustee* enters into this *agreement* both in its personal capacity and its capacity as *trustee* of the *trust*.
- 21.3 Each *trustee* warrants to *us* that:
- (1) it is the sole *trustee* of the *trust*;
 - (2) no action has been taken to remove or replace it as *trustee*;
 - (3) the *trustee* has full power under the *trust* deed to enter into this *agreement* and to perform its obligations under this *agreement*;
 - (4) all necessary actions have been taken to authorise the entering into and performance of this *agreement*;
 - (5) This *agreement* is entered into as part of the due and proper administration of the *trust* and is for the benefit of the beneficiaries;
 - (6) The *trustee* has the right to be fully indemnified out of the *trust* fund and no action has been taken to restrict the limit of that right;
 - (7) The *trust* has not terminated nor has any event for the vesting of the *trust* assets occurred; and
 - (8) *Our* rights under this *agreement* rank in priority with the claims of the beneficiaries under the *trust*.
- 21.4 Except with *our* prior written consent (which will not be unreasonably withheld):
- (1) the *trust* deed must not be varied;
 - (2) the *trustee* must not retire as *trustee* of the *trust* or appoint any new or additional *trustee* ; and
 - (3) the *trustee* must perform *its* obligations under the *trust* and not be in default.
- 21.5 Except as provided for in clause 21.6 the *trustee* must not distribute, transfer or set aside any part of the income or the capital of the *trust*.
- 21.6 Until the first to occur of:
- (1) written *notice* from *us*; or
 - (2) the occurrence of an *event of default*,
- the *trustee* may distribute the income but not the capital of the *trust* in accordance with the *trust* deed.

22 FARM GOODS

- 22.1 If the provision of any legislation relating to farmers, farm business or operations or farming equipment or machinery (**applicable legislation**) applies to this *agreement* and:
- (1) *we* are required to give any *notice* in addition to that provided for in this *agreement* or provide *notice* for a longer period than provided for in this *agreement*;
 - (2) the maximum amount *we* may recover from *you* is subject to any limitation or retention;
 - (3) any of *our* rights against *you* is subject to any restriction or limitation
 - (4) *we* enter into a farm debt mediation with *you*;
- then
- (5) *we* must give *you* the *notice* which complies with the applicable legislation;
 - (6) the maximum amount *we* can recover from *you* is the lesser of the amount specified in the applicable legislation and the amount provided for in this *agreement*; and
 - (7) *we* must exercise *our* rights under this *agreement* subject to *your* rights under the applicable legislation; and
 - (8) before *we* enter into a farm debt mediation with *you*, *we* must inform *you* of *your* possible right to instead make a complaint to *our* external dispute resolution provider, and *we* will otherwise consent for the external dispute resolution provider to consider the complaint where *we* do reach an *agreement* after *we* attempt farm debt mediation.
- 22.2 *You* must disclose to *us* (if *you* have not already done so) if:
- (1) *you* are or become a farmer within the meaning of the applicable legislation;
 - (2) the *goods* are or are intended to be used in connection with a farming business or operation within the meaning of the applicable legislation; or
 - (3) the *goods* are or become farm equipment or farm machinery within the meaning of the applicable legislation.

23 COMMISSION

- 23.1 *You* acknowledge that where *you* have been introduced to *us* by a *broker*.

- (1) the *broker* has not acted as *our* agent to negotiate and enter into this *agreement*;
- (2) the *broker* is not authorised to make any representations or warranties to *you* on *our* behalf regarding this *agreement* or impose any obligations on *us*;
- (3) *we* may pay commissions or *fees* or remuneration to that *broker*; and
- (4) in calculating the *rental instalments* payable by *you* under this *agreement*, payments to the *broker* may be taken into consideration.

24 GENERAL

- 24.1 Acceptance of any payment by *us* after *we* have become aware of any default under this *agreement* or any *event of default* is without prejudice to the exercise by *us* of *our* powers under this *agreement*. Acceptance does not operate as an election by *us* either to exercise or not exercise any of *our* rights or powers under this *agreement*.
- 24.2 *You* must promptly give *us* information or documents *we* reasonably ask for about:
- (1) *your* financial position; and
 - (2) the *goods*.
- 24.3 *We* may at any time:
- (1) without the need to give *you* *notice*, assign this *agreement* to a related body corporate (as that term is used in the *Corporations Act*) of ours;
 - (2) without the need to give *you* *notice*, assign, novate, grant participation rights in, or otherwise create any *trust* or rights in respect of this *agreement* or the *goods* or *our* rights under this *agreement* pursuant to any securitisation or similar arrangements; or
 - (3) otherwise assign, charge or deal with the *goods* or *our* rights under this *agreement*. *We* will give *you* *notice* of any such assignment and obtain *your* consent if any such assignment may be materially detrimental to *you*.
- 24.4 *You* must not assign or charge the *goods* or *your* rights under this *agreement* without *our* prior written consent.
- 24.5 All *your* obligations under this *agreement* survive the *expiration* or *termination* of the *agreement* to the extent required for their full observance and performance.
- 24.6 To the extent permitted by the *PPS law*, *our* rights, powers and remedies under this *agreement* prevail to the extent they are inconsistent with the provisions of the *PPS law*.
- 24.7 If any law requires *you* to make any deduction or withholding from any payment in respect of this *agreement* then:
- (1) *you* must pay to *us* such additional payments as are necessary to ensure that after the withholding or deduction *we* receive the sum equal to the sum *we* would have recovered if no deduction or withholding had been made; and
 - (2) *you* indemnify *us* against any failure by *you* to make such deduction or withholding.
- 24.8 No failure or delay on *our* part to exercise any rights or powers under this *agreement* will operate as a waiver of that right or power. *We* may only waive *our* rights under this *agreement* in writing signed by an *authorised officer*.
- 24.9 *You* must at *your* expense do any further act and execute any further documents which *we* may reasonably request to protect *our* title to the *goods* and *our* rights and remedies under this *agreement*.
- 24.10 *You* authorise *us* to:
- (1) fill in any blanks in this *agreement* and any document signed in connection with this *agreement*; and
 - (2) make any amendments to any of the documents in clause 24.10(1)
- to accurately reflect or give effect to the terms of this *agreement* which have been agreed with *us*.
- 24.11 *We* may, in granting any consent or approval under this *agreement*, impose such conditions as *we* reasonably determine. *You* must comply with any such terms or conditions.
- 24.12 *You* must give *us* at least 7 days prior written *notice* if *you* change name or address.
- 24.13 *We* may close an account if that account is in credit. At the time of doing so, *we*:
- (1) will, if appropriate, give reasonable *notice* of the closure;
 - (2) will pay *you* the amount of the credit balance; and
 - (3) may charge an amount that is *our* reasonable estimate of the *costs* of closing the account.

25 PROPER LAW

- 25.1 This *agreement* is governed by the laws of the *state* and the laws of the Commonwealth of Australia.
- 25.2 You irrevocably submit to the non-exclusive jurisdiction of the courts of the Commonwealth of Australia and the *state*.

26 SECURITY

Where it is agreed that *your* obligations under this *agreement* are to be secured by any *security* then moneys secured by that *security* include all moneys owing under this *agreement* or in consequence of the *termination* of this *agreement*.

27 SET-OFF AND COMBINATION OF ACCOUNTS

- 27.1 Subject to any restrictions imposed by the *BCOP*, we may at any time at *our* discretion apply and set-off any amounts owing by *us* to *you* for any reason against any amounts owing or which may become owing by *you* to *us* on any account including but not limited to this *agreement*.
- 27.2 We will promptly inform *you* if we exercise *our* rights of set-off contained in this clause or if we combine any accounts.
- 27.3 Any payment by *you* must be made free of any abatement, reduction or set off or any deduction or withholding.

28 NOTICES

- 28.1 A *notice* required to be given to *you* under this *agreement* may be given by *us* in any of the following ways:
- (1) in person;
 - (2) by delivery; or
 - (3) electronically.
- 28.2 A *notice* may be given in person:
- (1) by handing a written *notice* to *you*; or
 - (2) by orally advising *you* in person or over the telephone of the substance of the *notice*.
- 28.3 A *notice* may be given by delivery, by delivering it or posting it addressed to *you* at *your postal address*.
- 28.4 A *notice* may be given electronically by sending it by email or SMS to *you* at *your electronic address*.
- 28.5 A *notice* may be given by any other method permitted or required under the *BCOP*.

- 28.6 If *you* are a company, a *notice* may be given to *you* by giving that *notice* in any manner permitted by this clause 28 to any person shown on the records at the Australian Securities and Investment Commission as a director of that company.

- 28.7 Subject to any laws that may provide otherwise, a *notice* will be taken to have been given:
- (1) if the *notice* is given in person, at the time it is given;
 - (2) if the *notice* given by delivery (other than by posting), upon delivery;
 - (3) if the *notice* is given by delivery by posting, 2 business days after posting; or
 - (4) if the *notice* is given electronically, on the day it is sent.

However, a *notice* given electronically will not be taken to have been given if we receive notification from the recipient's electronic service provider that transmission or delivery was not successful.

- 28.8 Where "*you*" consist of more than one person, we may give *you* *notice* by giving that *notice* in any manner permitted by this clause to any one of *you*.
- 28.9 A *notice* may be given on behalf of *us* by an *authorised officer*.
- 28.10 Subject to any law that provides otherwise, a *notice* from *you* to *us* must be in writing and sent to *us* at *our* address in the *state* shown in the *schedule*.

29 VARIATION OF STANDARD TERMS AND CONDITIONS

- 29.1 Acting reasonably, we can change any term of this *agreement* (such as introduce new terms, or change or delete any existing term):
- (1) that deals with the pricing of this *agreement* (excluding *your rental instalments*), including fees and charges;
 - (2) that deals with the day *you* make rental *instalments*;
 - (3) to accommodate a change in law or market practice;
 - (4) to accommodate a change in technology or other ways of communication;
 - (5) to accommodate a change in payment methods;

- (6) to accommodate a change in how *we* make disclosures to customers or present *our* documents (including this *agreement*);
- (7) to deal with any unforeseen event that may arise; or
- (8) to make any other change.
- 29.2 If *we* make a change which is unfavourable to *you*, *we* will provide at least 30 days prior written notice (including by electronic means) before any update to this agreement.
- 29.3 If *we* make a change which is not unfavourable to *you* (e.g. the change reduces your obligations, or extends the time for payment), *we* will notify *you* in writing (including by electronic means) of the change before the change takes effect.
- 29.4 *You* will be notified of any such changes in accordance with any of the methods provided in clause 28. If any law or industry code regulates the making of a change, then *we* will only make the change to the extent permitted by, and subject to the requirements of, that law or code.
- 29.5 *We* may give you a shorter *notice* period, or no *notice*, of an unfavourable change if:
- (1) it is reasonable for *us* to manage a material and immediate risk; or
 - (2) there is a change to, or introduction of a government change that you pay directly, or indirectly, as part of your banking service. In that case, *we* will tell you about the introduction or change reasonably promptly after the government notifies us of it (however, *we* do not have to tell you about it if the government publicises the introduction or change).
- 29.6 If *you* are not satisfied with any material change to this *agreement* which is unfavourable to *you*, *you* may terminate this *agreement* in accordance with clause 16.
- 30 FURTHER ASSURANCES**
- 30.1 *You* must at *your* own cost and when reasonably requested by *us*:
- (1) do anything (including providing information, obtaining consents or waivers, or executing new documents, amendments to this *agreement* or consents) which *we* consider necessary or desirable to:
 - (a) provide more effective or better *security* to *us* over the *goods* or any part of the *goods* or proceeds of the *goods* in any relevant jurisdiction and in a manner not inconsistent with this *agreement* with any additional terms reasonably required by *us* having regard to the nature of that part of the *goods* or proceeds of the *goods* and the type of additional *security interest* being created;
 - (b) enable *us* to register this *agreement* or *our* interest in the *goods* (including enabling *us* to prepare and register a financing statement or financing change statement), with the agreed priority (and if required, to renew the registration);
 - (c) ensure that, any *security interest* created under, or provided for, by this *agreement*:
 - (i) attaches to the *goods*; and
 - (ii) is enforceable, perfected and otherwise effective;
 - (d) stamp, protect, perfect, record or better secure *our* positions under this *agreement* in any relevant jurisdiction;
 - (e) if *you* are in default, enable *us* to evidence that *we* are in *control* and possession of the *goods* for the purposes of the *PPS Act*;
 - (f) overcome any defect or adverse effect arising from the *PPS law*;
 - (g) enable *us* to exercise *our* rights or powers in respect of the *goods*, proceeds of the *goods* or any *security interest* in the *goods* or those proceeds or perform any of *our* obligations under the *PPS law*; and
 - (h) ensure that any person interested in the *goods* does likewise; and
 - (2) take or defend such legal proceedings as *we* may consider advisable for the protection or recovery of the *goods*.

31 CONFIDENTIALITY

31.1 Subject to clause 31.2, a party to this *agreement* may not disclose:

- (1) any information of a kind referred to in section 275(1) of the *PPS Act*; or
- (2) the existence or content of this *agreement*.

31.2 A party to this *agreement* may disclose information or documents referred to in clause 31.1 as follows:

- (1) in the case of *us*, in assigning or enforcing or seeking to assign or enforce this *agreement* or in a proceeding arising out of or in connection with this *agreement* or to the extent that disclosure is regarded by *us* as necessary to protect *our* interests;
- (2) if required under a binding order of a *government agency* or any procedure for discovery in any proceedings;
- (3) if required under any law or any administrative guideline, directive, request or policy;
- (4) as required or permitted by this *agreement*;
- (5) to the party's advisers and consultants;
- (6) in the case of *us*, to a ratings agency or to a potential assignee, transferee or sub-participant or to any person with whom *we* may enter into a transaction, including a securitisation; or
- (7) with the prior consent of the other party, which must not be unreasonably withheld.

31.3 Clause 31.2(3) does not require *us* to disclose any information of the kind referred to in section 275(1) of the *PPS Act*.

31.4 Subject to clause 31.2, *you* agree that *you* will not authorise the disclosure of any information as contemplated by section 275(7)(c) of the *PPS Act*.

31.5 This confidentiality clause survives the *termination* of this *agreement*.

32 CONTRACTING OUT OF CERTAIN PROVISIONS OF THE PPS ACT

32.1 *You* have no rights under, or by reference to, sections 125, 142 and 143 of the *PPS Act* and waives *your* rights to:

- (1) receive any *notice* under sections 95, 121 (4), 130 and 135 of the *PPS Act*,

- (2) receive a statement of account under section 132(4) of the *PPS Act*;

- (3) receive details of the amounts paid to other secured parties in a statement of account provided by the Chargee under section 132 (1) of the *PPS Act*; and

- (4) receive any other *notice* or copies of any documents under the *PPS Act* (including a copy of, or *notice* of, any verification statement confirming registration of a financing statement or a financing change statement relating to any *security interest* created under, or provided for by, this *agreement*) unless the *notice* is required by the *PPS Act* and cannot be excluded.

33 DEFINITIONS

33.1 In this *agreement* unless the contrary intention otherwise appears:

- (1) *agreement* means this contract incorporating these *standard terms and conditions* and the *schedule*;

- (2) *Australian Consumer Law* means the *Australian Consumer Law* under the Competition and Consumer Act 2010 (Cth);

- (3) *authorised officer* means any:
 - (a) director or secretary of *us*;
 - (b) any employee of *us* whose title includes the term manager; or
 - (c) any other person from time to time authorised by *us* as an *authorised officer*;

- (4) *BCOP* means the version of the Banking Code of Practice to which *Macquarie Bank* has subscribed;

- (5) *broker* means any *broker*, dealer or other person who may act, as *your* agent or otherwise, to negotiate and arrange this *agreement* or is otherwise an intermediary or referrer to *us* in relation to this *agreement*;

- (6) *business day* means a day other than a Saturday, Sunday or a national public holiday;

- (7) *commencement date* means the date determined as set out in the *schedule*;

- (8) *consumer guarantee* means any *consumer guarantee* under the *Australian Consumer Law* or any other warranty or representation whether express or implied and includes any direct or consequential liability in respect of any of the foregoing;
- (9) *control*:
- (a) in relation to an asset or business, means "*control*" as defined in the *PPS Act*; and
- (b) in relation to an entity, means the direct or indirect power over the board membership, management or policies of the entity, whether or not the power arises in equity or at law, or by statute, deed, *agreement*, arrangement, understanding, practice, the ownership of any interest in shares or stock of the corporation or otherwise;
- (10) *controller* has the meaning it has in the *Corporations Act*;
- (11) *Corporations Act* means the *Corporations Act 2001* (Cth);
- (12) *costs* includes charges and expenses and *costs* including all *costs* of:
- (a) perfecting, protecting or preserving *our security interest* under this *agreement* and *our* intended priority;
- (b) compliance with *our* obligations under the *PPS law*;
- (c) legal advisers on a full indemnity basis;
- (d) repossession, repair, storage and inspection of the *goods*;
- (e) obtaining a valuation of the *goods*;
- (f) disposal of the *goods*;
- (g) obtaining any other advice in relation to the repossession, storage, repair or disposal of the *goods*; and
- (h) taking any other actions to enforce any rights under this *agreement* or the *PPS law*;
- (13) *early termination rate* has the meaning given in Item 9 of the *schedule*;
- (14) *electronic address* means:
- (a) any facsimile number;
- (b) any mobile phone number or other telephone that can receive short message service (**SMS**) messages; and
- (c) any email address,
- as specified in the *schedule* or otherwise notified to *us* in any other document provided to *us* in connection with this *agreement*, or such amended *electronic address* as may be notified to *us* from time to time in writing;
- (15) *encumbrance* means any:
- (a) *security interest* under the *PPS Act*;
- (b) *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;
- (c) right, interest or arrangement (including a right of set-off) which gives a person a preference, priority or advantage over other creditors; or
- (d) an *agreement* to create any of the above, or allow them to exist;
- (16) *event of default* means any event described in clause 14.1;
- (17) *expiration* in relation to this *agreement* means the expiry of the *term*;
- (18) *fees* means those *fees* listed in Item 10 of the *schedule* and any other *fees* reasonably imposed by *us* in relation to agreements of a type similar to this *agreement* and without limiting that provision it includes *fees* relating to the entering into, administration, collection, enforcement, cancellation or *termination* of this *agreement*;
- (19) *goods* means all or any part of the *goods* described in the *schedule* and includes any accessories attached to those *goods* and all manuals, log books, maintenance records and licenses held in conjunction with the *goods* and any alterations, additions or modifications of the *goods* or any *goods* acquired in the substitution for the *goods*;
- (20) *government agency* means any government or governmental, semi governmental or judicial entity or authority in any *state*, country or other jurisdiction, including any self-regulatory organisation established under a statute or stock exchange;

- (21) *GST* and *GST Law* has the same meaning they are given in "A New Tax System (Goods and Services Tax) Act 1999 (Cth) except that *GST Law* also includes any applicable rulings issued by the Commissioner of Taxation;
- (22) *insolvent* means:
- (a) the person is or is deemed or presumed *insolvent* under any applicable law;
 - (b) its assets are subject to any arrangement, assignment, moratorium, composition, winding up or other action for the protection of creditors, other than to carry out a reconstruction or amalgamation while solvent on terms approved by *us*;
 - (c) a resolution has been proposed or an order has been applied for that may if passed or granted result in either of (a) or (b) above;
 - (d) a judgment, decree or order of an Australian court in favour of a creditor of the person remains unsatisfied;
 - (e) a receiver is appointed to any property of the person;
 - (f) under the *Corporations Act*:
 - (i) the person has (or states that it has) had a *controller* appointed to its property; or
 - (ii) it has failed to comply with a statutory demand under s 459F (1);
 - (g) it is otherwise unable to pay its debts when they fall due; or
 - (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction;
- (23) *licence* means a *licence*, certificate, permit, consent, authority or other document needed or desirable to allow:
- (a) *you* to execute this *agreement*; or
 - (b) any activity to be carried out by *you* or in connection with *your* business or any *goods*,
- and includes variations, renewals, additions to or substitutions for any of them;
- (24) *loss* in relation to the *goods* includes any circumstances where the *goods* are destroyed, or damaged so that it is not economic to repair the *goods* and also any circumstance where *you* are not able to obtain and maintain possession of the *goods* including where the *goods* are stolen or seized;
- (25) *Macquarie Bank* means Macquarie Bank Limited ABN 46 008 583 542;
- (26) *net proceeds of sale* means the *net proceeds of sale* received by *us* less all *costs* in connection with that *sale*;
- (27) *notice* means any *notice*, demand or consent;
- (28) *OHS laws* means any laws, regulations or standards relating to occupational health and safety;
- (29) *overdue interest* means interest calculated and payable as provided for in clause 17;
- (30) *overdue rate* has the meaning given in Item 9 of the *schedule*;
- (31) *partnership* means, for *you* (if applicable), the *partnership* named in the *schedule*, as constituted from time to time;
- (32) *postal address* means:
- (a) the address specified in the *schedule* for that entity or such other address as may be from time to time notified to *us* in writing; or
 - (b) in addition for a company, either of its registered office or its principal place of business as notified to the Australian Securities and Investment Commission;
- (33) *PPS Act* means the *Personal Property Securities Act 2009* (Cth), as amended from time to time;
- (34) *PPS law* means:
- (a) the *PPS Act*;
 - (b) regulations made from time to time under the *PPS Act*; and
 - (c) any amendment made to any other legislation as a consequence of the *PPS Act*, including, without limitation, amendments to the *Corporations Act*;

- (35) *premises* means the place where the *goods* are used or ordinarily located as set out in the *schedule*;
- (36) *present value* of an amount is calculated by discounting that amount on a monthly basis at the rate specified for the period of whole months by which that amount is brought forward. Calculations are made on a compounding monthly rate of return basis regardless of the actual payment period;
- (37) *rent* means the total of the *rental instalments* specified in the *schedule*;
- (38) *rent payment date* means the dates for payment of *rental instalments* as set out in the *schedule*;
- (39) *rental instalment* means the instalments as set out in the *schedule*;
- (40) *residual value* means subject to clause 15.3 the *residual value* specified in the *schedule*;
- (41) *sale* means any *sale* by *us* of the *goods*. Such *sale* may be by auction, tender, consignment, public *sale*, private *sale* or such other method as *we* determine;
- (42) *schedule* means the *schedule* which incorporates these standards terms and conditions;
- (43) *security* means any *security interest* given by *you*, or any other person to secure *your* obligations under this *agreement*. It includes the *security interest* granted by *you* under this *agreement*;
- (44) *security interest* means:
- (a) a mortgage, charge, pledge, lien or other security interest securing the payment of money or performance of any obligation of any person or any other *agreement*, *notice* or arrangement having a similar effect;
 - (b) a right, interest or an arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
 - (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment; or
 - (d) anything that is defined to be a 'security interest' under the *PPS law*;
- (45) *small business* has the same meaning as in the *BCOP*, as updated from time to time;
- (46) *standard terms and conditions* means these *standard terms and conditions*;
- (47) *state* means the *state* or territory of *your* address specified in the *schedule*;
- (48) *term* means the *term* of this *agreement* as set out in the *schedule*;
- (49) *termination* means a *termination* of this *agreement* prior to the expiry of the *term* and *terminate* has a similar meaning;
- (50) *termination amount* means at a relevant time the amount which is the total of:
- (a) all *rental instalments* and other amounts which have accrued due at that time but which are then unpaid; and
 - (b) *overdue interest* calculated as provided for in clause 17; and
 - (c) the sum of the *present value* calculated at that date using the *early termination rate*, of each *rental instalment* which has not then accrued due but would have accrued due if this *agreement* had continued for the remainder of the *term*;
- (51) *trust* means each *trust* in respect of which *you* are a *trustee*. It includes but is not limited to the trusts specified in the *schedule*;
- (52) *trustee* means each person who enters into this *agreement* on behalf of a *trust*;
- (53) *value of goods* means an amount determined at *our* option as either:
- (a) the *net proceeds of sale* of the *goods*; or
 - (b) the amount certified to be the bona fide market value of the *goods* at a date no later than 4 months after repossession of the *goods* by *us* by a dealer in *goods* of a similar description or a licensed or other competent valuer selected by *us*.
- (54) *we*, *us*, *our* means the person shown as owner in the *schedule* and its successors and assigns; and
- (55) *you*, *your* means the person described in the *schedule* as *you*, *your* successors and permitted assigns.

- 33.2 Each *term* referred to in the *schedule* has, subject to succeeding paragraphs, the meaning given to it in the *schedule*.
- 33.3 If there is more than one of *you* named in the *schedule* then the liability of each of *you* is joint and several.
- 33.4 Words importing the singular number include the plural and vice versa. Any gender includes any other gender.
- 33.5 References to legislation include all regulations orders proclamations, *notices* and other requirements under that legislation and include the legislation as consolidated amended, modified or re-enacted.
- 33.6 Clause headings are for reference purposes only.
- 33.7 "Include", "includes" and "including" are not words or limitations.
- 33.8 A reference to a thing includes all or any part of that thing.
- 33.9 A reference to a person includes a reference to an individual, person, a *trust*, *partnership*, joint venture or other incorporated association and corporation or an authority as the case may be and includes that person's executive administrators, successors and permitted assigns.
- 33.10 If any payment is due on a day that is not a *business day*, the payment will be due on the next *business day*. If any payment due is on the 29th, 30th, or 31st or a month with no such date, the payment will be due on the last day of that calendar month (or no the following *business day* if the last day of the calendar month is not a *business day*).
- 33.11 References to clauses are references to clauses of these *standard terms and conditions*.
- 33.12 Unless the contrary intention appears, a reference in this *agreement* to "chattel paper", "commercial property", "financing statement", "financing change statement", "inventory", "proceeds", "verification statement" and "VIN number" have the respective meanings given to them under the *PPS Act*.
- 33.13 Nothing in this *agreement* is to be construed as:
- (1) an *agreement* that a *security interest* provided for by this *agreement* attaches at a later time than the time specified in section 19(2) of the *PPS Act*; or
 - (2) an *agreement* to subordinate a *security interest* provided for by this *agreement* in favour of any person.