

# COMMERCIAL LOANS

## Terms & Conditions



Effective from 25 October 2020

## Important Information

This booklet contains the Terms and Conditions of our Commercial Loans.

The Contract for the Loan is made up of the relevant sections of these Terms and Conditions and a Schedule setting out the particulars of the Loan. By signing and returning the Schedule to us you agree to be bound by the relevant terms and conditions of the Contract as set out in both documents.

NB: This booklet does not contain all the information we are required to give you before you enter into the Contract. Other information is contained in the Schedule. Please read both documents carefully.

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## Part A

### General Terms and Conditions applying to all loans

#### 1 Interpretation

*What some important words mean*

- 1.1 The following definitions apply to each Part of this booklet and to the Schedule:

**Amount of Credit** means the amount which is described in the Schedule as the “Amount of Credit”, “Maximum Amount of Credit” or “Credit Limit” (as relevant).

**Annual Percentage Rate** means the interest rate or rates applicable to your Contract as set out in the Schedule (but subject to change as described or authorised by the Schedule or these Terms and Conditions).

**Bank, we, our, us or bcu** means Police & Nurses Limited ABN 69 087 651 876 (trading as bcu) and its successors and assignees.

**Business Day** means a weekday other than a bank holiday or a national holiday in Australia.

**Contract** means the Schedule you sign and Part A of this booklet and any other Parts of this document as specified in that Schedule.

**External Administrator** means a receiver, receiver and manager, administrator, liquidator, provisional liquidator, controller or bankruptcy trustee.

**Guarantor** means the person identified as such in the Schedule.

**Insolvent** means being an insolvent under administration, or insolvent, or having a controller appointed (each as defined in the *Corporations Act 2001* (Cth)), in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent), or otherwise unable to pay debts when they fall due.

**Loan** means that part of the Amount of Credit we provide to you under the Contract. If the Schedule specifies that the Amount of Credit is split between different Commercial Loan products, in that case Loan means, that part of the Amount of Credit we provide to you under

the Contract in respect of each Commercial Loan product separately.

**Loan Account** means the account we open in your name to record transactions under the Contract. We may open more than one Loan Account under this Contract, in that case Loan Account means each of them separately.

**National Credit Code** means the National Credit Code set out in Schedule 1 to the *National Consumer Protection Act 2009* (Cth), Chapter 7 of the *National Consumer Credit Protection Regulations 2010* (Cth) and any amendments to, replacements of or statutory instruments or determinations issued under them from time to time.

**Offset Account** means a deposit account with the Bank which the Bank advises is eligible to be nominated as an Offset Account to be linked to a Loan Account. You will only be entitled to nominate an Offset Account if the Schedule states or the Bank otherwise agrees that you can, and if the Offset Account is in the same name and capacity as the Borrower, or if there is more than one Borrower, in the same name(s) and capacity(ies) as any one or more of the Borrowers (and no other person).

**Schedule** means the Schedule which records the particulars of the Contract and includes a Financial Table.

**Security** means the security (including any mortgage or guarantee) stated in the Schedule (or any security substituted for it with our consent).

Security Interest, in relation to:

- (a) any personal property (as defined in the *Personal Property Securities Act 2009* (Cth) (PPSA) has the same meaning as in the PPSA; and
- (b) any other property means any Security for the payment of money or a performance of an obligation, including a mortgage, charge, lien, pledge, trust, power, title retention or flawed deposit arrangement. It also includes a guarantee or indemnity.

**Small Business** means a business having fewer than:

- (a) 100 full time employees (or equivalent) people if it involves the manufacture of goods; or
- (b) in any other case, 20 full time (or equivalent) people.

**Tax** means:

- (a) any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or
- (b) any income, stamp or transaction duty, tax or charge,
- (c) which is assessed, levied, imposed or collected by any Governmental Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.

**Unpaid Balance** means the difference between all amounts credited and all amounts debited to a Loan Account.

**You/Your** means the Borrower named in the Schedule and your has a corresponding meaning. If more than one person comprises the Borrower, you means each of them separately and all of them jointly.

**Working out when something must be done**

- 1.2** Except in the case of clause 9.2, where the Contract says something will or must be done on or by a particular day (including a payment you are required to make) and:
- (a) that day is the 29th, 30th or 31st of any month
  - (b) that thing will or must be done on or by the 28th day of the month;
  - (c) if clause 1.2(a) does not apply and that date is not a Business Day - that thing will or must be done on or by the next Business Day unless that Business Day is in the next calendar month, in which case it will or must be done on or by the preceding Business Day.

## 2 What makes up your contract?

- 2.1** The Contract for your Loan comprises the Schedule you sign, this Part A and any other Parts of this booklet as specified in that Schedule. If you have more than one Loan Account under this Contract the terms of Part A apply separately to each Loan Account. Other parts of this booklet will apply to the particular Loan Account if the Schedule specifies that they will.
- 2.2** To the extent of any inconsistency between the Schedule and any of this booklet the terms of Schedule will prevail.

- 2.3** To the extent of any inconsistency between Part A and any of Parts B, C, D, E or F as apply to your Contract, the terms of Parts B, C, D, E or F as apply will prevail.

## 3 Customer Owned Banking Code of Practice

If you are an individual or a Small Business, we will comply with the Customer Owned Banking Code of Practice in our dealings with you. You may obtain a copy of the code by contacting us on 1300 228 228.

## 4 How we will work with you and what we expect from you

The Bank will act reasonably and fairly towards you, taking into account your and our respective business interests. That includes whenever we are:

- (a) considering any request you make;
- (b) deciding whether to give our consent or to exercise a right, discretion or remedy; or
- (c) setting any conditions for doing any of those things.

It is worth noting that even if the Bank does not make a decision about something straight away, the Bank may still do so later on. This includes where the Bank delays or defers doing so, including on an extended or temporary basis.

## 5 Your Loan and Loan Account

- 5.1** The Bank will provide the Amount of Credit in accordance with the Contract and your written instructions.
- 5.2** The Loan must be used for the purpose stated in the Schedule.
- 5.3** If no part of the Amount of Credit is advanced to you within 90 days of the date you sign the Schedule, the Bank may terminate the Contract without notice. This clause 5.3 does not apply to an 'All-in-One' Line of Credit or business overdraft.
- 5.4** The Bank may open an account in your name for the purpose of the Contract (Loan Account). If the Schedule specifies that the

Amount of Credit is split between different Commercial Loan products the Bank will open a Loan Account for each of those Loans.

- 5.5** For each Loan Account we open under this Contract we will debit the account with the relevant Loan and any interest charges in respect of the Loan.
- 5.6** Any fees and charges (including initial fees and charges) and enforcement expenses payable under this Contract may be debited to any Loan Account under this Contract in any proportion the Bank chooses in its absolute discretion. However, you may request that the Bank debit all or some fees and charges to a certain Loan Account, If you do the Bank will consider your request but will not be bound to agree to it.
- 5.7** You must repay the Loan, interest charges and all other amounts debited to a Loan Account in accordance with the Contract.
- 5.8** The Bank may close your Loan Account if the balance of the Loan Account is zero.
- 5.9** You can request us, in writing, to split a Loan into two or more Loans or to combine two or more Loans into one Loan. If we agree, you will be required to sign any documentation we require.

## **6 Things that must happen before you get your Loan**

- 6.1** The conditions precedent in this clause 6 apply to all our Commercial Loan products. Additional conditions precedent may apply to specific Commercial Loan products and, if relevant to you, these are set out in the Schedule or in other Parts of this Contract.
- 6.2** The Bank need not provide any part of the Amount of Credit unless and until:
- (a) you complete all necessary documentation to open the Loan Account(s) and provide the Bank with suitable identification (if required);
  - (b) the Security is, to the extent appropriate to the form of security, in registrable form, is stamped, has priority for all amounts that may become payable under the Contract unless the Bank agrees otherwise in writing and is signed;
  - (c) if applicable, you complete a direct debit authority as required by clause 12;
  - (d) the Bank has received:

- (i) a copy of any insurance policy if required by the Security and, if requested by the Bank, evidence of currency of the insurance; and
  - (ii) written settlement and disbursement instructions from you in respect of the Loan at least three (3) days before you want the settlement and/or disbursement to occur;
- (e) you pay to the Bank those fees and charges that are described as the Initial Fees and Charges in the Schedule (unless the Bank agrees to their payment out of the Amount of Credit);
- (f) you (and any Guarantor if applicable) obtain independent legal or financial advice (if requested to do so by the Bank) and provide evidence of this;
- (g) where the Security required to be given under the Contract is a mortgage given by you which we already hold at the date of the Contract, by signing the Schedule you acknowledge that the Security extends to cover your obligations under the Contract and, if relevant, that the Contract is an “agreement covered by this mortgage” within the meaning of that phrase under the mortgage;
- (h) where the Security required to be given under the Contract is a guarantee, or a guarantee and a mortgage from the Guarantor and the Security is already held by the Bank at the date of the Contract, the Guarantor has, if requested to do so, by the Bank, signed the Guarantor’s Consent to Extension of Liability in the Schedule; and
- (i) you provide the Bank with such other documents or authorities that the Bank reasonably requires.

**6.3** If you or the person providing the Security:

- (a) is unable to comply with any term or condition of the Contract or Security (as relevant);
- (b) fails to make a material disclosure;
- (c) has a material adverse change in their circumstances which, in the Bank’s reasonable opinion, is likely to affect their ability to meet their obligations under the Contract or Security (as relevant) and makes it undesirable for the Bank to proceed with making available any part or any further part of the Amount of Credit; or

- (d) there has occurred any event or circumstance which, in the Bank's reasonable opinion, may significantly reduce the value of the property, the subject of the Security;

the Bank may, where relevant, refuse to provide any part or any further part of the Amount of Credit. A material adverse change for the purposes of this clause 6.3 includes, but is not limited to, termination of employment, insolvency or death.

## 7 What is your Annual Percentage Rate?

- 7.1 The Annual Percentage Rate that applies to a Loan Account may include, or be based on, one or more of the Bank's Commercial Loan product interest rates. Any interest rate that applies to your Contract is specified in the Schedule.

## 8 Changing your Annual Percentage Rate to a fixed rate

- 8.1 Unless your Loan Account is governed by the terms and conditions of a Construction Loan during the period in which progress payments are being made, an 'All-In-One' Line of Credit loan or a business overdraft you may apply to change your Annual Percentage Rate from a variable rate to a fixed rate or from a fixed rate to a different fixed rate. If you to change to a different fixed interest rate during a fixed rate period you may need to pay us Fixed Rate Adjustment Costs (see clause 49).
- 8.2 The Bank, in its absolute discretion, may agree to your request to change your rate under this clause 8 If the Bank does agree the Bank will send you a new offer varying this Contract. If you accept that offer you must continue to make repayments that would be due (without the variation) until the Bank tells you otherwise.

## 9 How are interest charges calculated?

- 9.1 Interest charges will accrue daily and will be calculated on the Unpaid Daily Balance of a Loan Account at the Daily Percentage Rate where:

- (a) Daily Percentage Rate means the applicable Annual Percentage Rate divided by 365; and
- (b) Unpaid Daily Balance means the Unpaid Balance at the end of a day.

If your Loan Account has a credit balance on any day the Unpaid Daily Balance for that day will be treated as zero.

- 9.2 The interest charges (calculated to the end of the day prior to the debiting) will be debited to the Loan Account monthly in arrears on the last day of each month (see also clause 1.2)
- 9.3 On the date of termination of the Contract, interest charges (calculated to the end of the day prior to the debiting) will also be debited to the Loan Account and will be payable on that date.
- 9.4 Interest charges debited to a Loan Account form part of the Unpaid Balance upon which interest charges are calculated, that is interest charges will be subject to interest charges.
- 9.5 If you are in default, interest charges are higher (see clause 10). In such a case, we will exclude from the Unpaid Daily Balance, used for the purposes of calculating interest under this clause 9, any amount on which interest charges are higher. We will charge interest on this amount in accordance with clause 10 instead.

## 10 When can default interest apply?

- 10.1 The Bank may charge you default interest on any overdue amount (that is any amount payable under the Contract which you fail to pay by its date for payment). The overdue amount could include the entire amount of the Unpaid Balance and any other amount owing under the Contract if this amount becomes due for payment in accordance with clause 23.2.
- 10.2 Default interest is charged at a rate equal to 2% per annum above the Annual Percentage Rate applying to the Loan Account at the time (the Default Rate) and accrues daily on the

overdue amount from the day it was due for payment until the amount is paid at the Default Rate divided by 365.

- 10.3** The Bank will debit default interest (calculated to the end of the day prior to the debiting) to the Loan Account monthly in arrears on the same day that other interest charges are debited pursuant to clause 9.
- 10.4** You must pay us on demand any default interest which is debited to your Loan Account. Default interest debited to the Loan Account will form part of the overdue amount and will attract interest at the Default Rate.
- 10.5** Your Loan is not regulated by the National Credit Code. If you fail to pay an amount payable under the Contract by its due date for payment, the Bank may charge you default interest, until that amount is paid, not on the overdue amount but, instead, on the entire amount of the Unpaid Balance.

## 11 Your payment obligations

- 11.1** You must make the repayments in the amounts and when required by the Schedule or otherwise by the Contract or the Bank. In working out when a payment is due you should have regard to the requirements of clause 1.2.
- 11.2** The Bank may change the amount of your minimum monthly payment in line with a change to your Annual Percentage Rate or fees and charges or otherwise as necessary to ensure that the Loan and all other amounts debited to your Loan Account are paid on the day the last scheduled repayment is due. We will notify you in accordance with clause 17 if we change your minimum monthly payment.
- 11.3** All payments you make must be made in Australian dollars and must be made before the end of a Business Day. Any payment which is made after the end of a Business Day may not be treated as received, or credited to the Loan Account, until the next Business Day.
- 11.4** You can pay the minimum monthly payment amounts stated in the Schedule by weekly or fortnightly instalments if we agree to let you do so. Except for during the fixed rate period of a Loan Account (if applicable), you may also, in any month, make a payment which exceeds, or payments which in aggregate exceed, the amount of the minimum monthly payment required by the Schedule (including making a payment equal to the Unpaid Balance of a Loan Account). However if you do, this does not affect your obligation to pay in full the minimum monthly payment required by the Schedule for the Loan in any subsequent month unless the Bank agrees in writing to change the repayment arrangements or the Unpaid Balance of the Loan Account is zero.
- 11.5** You must pay the Unpaid Balance of the Loan Account on the day the last scheduled repayment is due or, if the Contract is terminated before that day, on the day of termination.
- 11.6** The Bank can apply any payments you make in respect of a Loan Account to any amount you owe under the Loan in any order the Bank determines.
- 11.7** If you have more than one loan contract with the Bank, or more than one Loan Account under this Contract, and you make any payment to the Bank, without telling the Bank in writing to which account the payment is to be applied (or if you do tell the Bank but are in default under this Contract), the Bank can apply it to any or all of the loan contracts or Loan Accounts in any way the Bank thinks fit.
- 11.8** A payment will not be treated as made until the date it is credited by the Bank to the Loan Account. If your cheque or other payment instrument is not honoured in full when first presented, the payment will not be treated as a valid payment until the Bank receives cleared funds in the full amount of the cheque or other payment instrument.
- 11.9** If you are unable to make a minimum monthly payment required by the Schedule, the Bank may, but is not required to, agree to defer that repayment for a specified period. If the Bank agrees to defer a repayment, the Bank will write to you before the date the repayment is required to be made advising you of the deferral and the new payment due date. You will have to pay interest on this amount calculated in accordance with clause 9 until it is paid.

## 12 Payment methods you can use

- 12.1** Repayments may be made by direct debit, direct credit or any other payment method approved by us from time to time.
- 12.2** If you are making repayments by direct debit you must provide the Bank with a periodic debit authority instruction in such form as required by the Bank (if you have not already

done so) for the minimum periodic repayment amount. In this instruction you must authorise the Bank to debit your minimum periodic repayment amount to your nominated financial institution account. The account must be suitable to allow an automatic debit and you agree to maintain sufficient cleared funds in that account to enable the debits to be made pursuant to your periodic debit authority.

### 13 Your actual obligations may differ from the Schedule

The actual amounts you must pay under the Contract may be different from the amounts (if any) set out in the Schedule. This is because the information in the Schedule is based on assumptions made on the Disclosure Date stated in the Schedule and those assumptions may change. For example, where repayment amounts are stated in the Schedule, they have been calculated by reference to the then current applicable interest rates on the assumption that interest rates will not change for the (then contemplated) term of the Contract and on the further assumption that you will make the repayments in the amounts and at the intervals specified in the Schedule. If your Annual Percentage Rate is determined by a reference rate, the amount of the relevant reference rate may even change between the Disclosure Date stated in the Schedule and the time that the Loan is provided to you.

### 14 Fees and charges

**14.1** You must pay the Bank the fees and charges that are or may become payable under the Contract and must do so when required by the Schedule or otherwise by the Contract or the Bank. The Bank may debit the fees and charges to the Loan Account when they are payable. If there is more than one Loan Account under the Contract, the fees and charges will be debited to the Loan Accounts in accordance with clause 5.6.

**14.2** If Security is required, no part of the Amount of Credit will be advanced to you under the Contract unless you pay the Bank the fees and charges that are required to be paid when the Security is signed. This includes any reasonable costs and expenses (including the Bank's internal administrative costs, professional consultant fees and taxes) in relation to:

- (a) preparing, stamping, registering and discharging the Contract and any Security;
- (b) taking steps to enforce the Contract including protecting or waiving any of the Bank's rights under it or any Security;
- (c) valuing any property which is the subject of the Bank's Security; and
- (d) doing anything you or a Guarantor failed to do under the Contract, the guarantee or any Security.

**14.3** If the Bank incurs any government Tax, duty or other charge imposed by law in respect of the Contract, the Security or the operation of the Loan Account, you must pay the Bank an amount equal to the charge calculated in accordance with the methods prescribed from time to time by relevant legislation. The amount payable by you may differ from the amount stated in the Schedule in respect of a government Tax, duty or other charge imposed by law.

**14.4** If you terminate the Contract before obtaining the Amount of Credit, the Bank may retain, or require payment of, fees and charges incurred before the termination.

**14.5** Information on the Bank's current Fees and Charges can be found by calling us on 1300 228 228 or by accessing the Bank's website at [bcu.com.au](http://bcu.com.au).

### 15 You indemnify us

**15.1** You indemnify us (and our officers, employees, contractors and agents), and must pay to us on demand amounts equal to any loss, damage or costs arising as a result of or in connection with:

- (a) any of the payment and reimbursement obligations listed in clauses 11 and 14 and
- (b) preserving or enforcing our rights (or reasonably considering or attempting to do so) under the Contract or the Schedule.

**15.2** You don't have to pay, reimburse or indemnify us to the extent our fraud, negligence or misconduct (or the fraud, negligence or misconduct of our officers, employees, contractors and agents) contributed to the relevant loss, damage or costs being incurred.

NOTE: We need not have incurred an expense or made a payment before enforcing a payment, reimbursement obligation or indemnity.

**15.3** You indemnify us against any claim, damage, loss, liability or expense arising or incurred as a result of:

- (a) the loss or destruction of any Security property;
- (b) any liability to pay any Tax on or in respect of any payments under the Contract or any Security property (except where such Tax is payable by us);
- (c) the reasonable exercise of any right we have;
- (d) any act or omission by any Guarantor;
- (e) your possession, use or ownership of the Security property;
- (f) any payment by you becoming void, voidable or unenforceable;
- (g) any compulsory acquisition, divestiture or purchase of the Security property;
- (h) any of your representations, warranties or acknowledgments being or becoming untrue or misleading in any material respect; and
- (i) any other thing in respect of the Contract or the Security property,

except to the extent that the claim, damage, loss, liability or expense has been met under another provision of the Contract or resulted from any of our own acts or omissions.

**15.4** Each indemnity in this clause:

- (a) is a continuing obligation notwithstanding;
- (b) any settlement of account; or
- (c) the occurrence of any other thing,
- (d) and remains in full force and effect until all money owing under the Contract has been paid in full; and
- (e) is a separate and independent obligation of yours and no one indemnity limits the generality of any other indemnity.

**15.5** You must pay us on demand any amounts which we reasonably calculate is owing to us under any indemnity in the Contract.

## 16 Will you get a statement of account?

**16.1** The Bank will send you a statement of account for an 'All-In-One' Line of Credit Loan or a business overdraft Account every month and for all other Loan Accounts at least every six months. If you hold more than one Loan Account under the Contract, we may send separate details for each Loan Account that you hold in a single consolidated statement of account.

**16.2** You may opt-in to receive eStatements. If you do, your statements will be available for you to review via your Internet Banking Service. We will send you an email to tell you when you have a new statement to view. If you do opt-in to receive electronic communications we will no longer send you a physical statement of account.

## 17 When we can change your Contract and how we will tell you

**17.1** The Bank can change the Contract, or any part of it, at any time without your consent, as set out in this clause 17, for one or more of the following reasons:

- (a) to comply with any change or anticipated change in any relevant law, code of practice, guidance or general banking practice;
- (b) to reflect any decision of a court, ombudsman or regulator;
- (c) to reflect a change in our systems or procedures, including for security reasons;
- (d) to respond to changes in the cost of providing credit (including by changing interest rates); or
- (e) to make the Contract clearer or to add features.

**17.2** The Bank can:

- (a) change the amount, frequency or time of a repayment;
- (b) change the manner in which interest is calculated or applied;
- (c) impose a new fee or charge;
- (d) change the amount, method of calculation, frequency or time for payment of a fee or charge (except for in

relation to those payable under clause 49 and 50);

- (e) except for during any fixed rate period, change the Annual Percentage Rate or any discount margin; or
- (f) change any other term or condition that applies to the Contract.

**17.3** If your Loan is regulated by the National Credit Code and/or subject to the Customer Owned Banking Code of Practice, the Bank will give notice of changes by the times and methods set out in the following table. If your Loan is not regulated by the National Credit Code or subject to the Customer Owned Banking Code of Practice, the Bank may give notice of changes in accordance with the following table but is not required to do so.

Change	Does the change reduce your obligations* or extend the time for payment?	Minimum number of days notice	Method of notification
Change to the discount margin or Annual Percentage Rate which is not a reference rate or based on a reference rate	No	Day of change	In writing or by press advertisement in the Australian or another national newspaper with details provided before, with or on your next statement
	Yes	Period of notification will be chosen by the Bank	Method of notification will be chosen by the Bank
Change to a reference rate or an Annual Percentage Rate based on a reference rate	No	Day of change	New reference rate notified in writing or by press advertisement in the Australian or another national newspaper
	Yes	Period of notification will be chosen by the Bank	Method of notification will be chosen by the Bank
Change to the way interest is calculated or applied	N/A	20 days	In writing
Increase a fee or introduce a new fee	N/A	20 days	In writing or by press advertisement in the Australian or another national newspaper with details provided before, with or on your next statement
Decrease a fee	N/A	No later than your next statement after the change has taken effect	Details will be provided before, with or on your next statement
<ul style="list-style-type: none"> <li>• Change the frequency or time for payment of a fee;</li> <li>• Change the amount, frequency, time for payment, or method of calculation of instalments or minimum repayments; or</li> <li>• Change any other term or condition in the Contract</li> </ul>	No	20 days	In writing
	Yes	No later than your next statement after the change has taken effect	Details will be provided before, with or on your next statement

\*Examples of reduced obligations are where an applicable interest rate, fee or repayment is reduced.

- 17.4** If the Annual Percentage Rate changes, the Bank may, in accordance with clause 11.2, change the amount of your minimum monthly payment either immediately or at a later date. If the Annual Percentage Rate increases and the amount of your minimum monthly payment is not increased, you will still be required to pay the Unpaid Balance of your Loan Account at the end of the Loan term.

## 18 Changes you and the Bank agree

Any change to the Contract to which the Bank agrees with you will only take effect if the agreement is in writing signed by you and the Bank, and if any agreed preconditions are satisfied (for example, any consent of any Guarantor is provided).

## 19 What you must do about Security

- 19.1** The Schedule specifies the Security which must be given to the Bank.
- 19.2** You agree to ensure that the obligations of any person who has provided Security to the Bank are observed and performed.
- 19.3** If the Schedule specifies personal property to be financed, in consideration of, amongst other things, the Loan provided by the Bank for your purchase of the property, you grant a Security Interest:
- (a) in the property; and
  - (b) any income and other proceeds derived from the property including from any sale or other disposal and from any insurance claim in respect of the property,
  - (c) **(Collateral)** to the Bank to secure payment of the Unpaid Balance and performance of your other obligations under the Contract. You do this as beneficial owner unless the Schedule indicates that you enter into this agreement as Trustee of a Trust, in which case, you do this as Trustee of the Trust. Despite any provision of the Contract or any other document, this Security Interest is not subject to any declaration of trust, defeasance or condition not specified in the Contract.

## 20 Exclusion of the PPSA provisions

- 20.1** To the extent the law permits:
- (a) you waive your right to receive any notices the Bank is required to give under the PPSA;
  - (b) for the purposes of sections 115(1) and 115(7) of the PPSA (if applicable to enforcement of a Security under the Contract:
    - (i) the Bank does need to comply with sections:
    - (ii) 95 (Notice to Secured Party of removal of accession);
    - (iii) 121(4) (Notice to grantor of enforcement of Security Interest in liquid assets);
    - (iv) 123 (Notice of seizure of collateral);
    - (v) 125 (secured party actions when disposing of or retaining collateral);
    - (vi) 129 (purchase of collateral by Secured Party);
    - (vii) 130 (notice of disposal of collateral);
    - (viii) 132(3)(d) (content of statement of account on disposal);
    - (ix) 132(4) (statement of account if no disposal of collateral);
    - (x) 134 and 135 (proposal of secured party to retain collateral);
  - (c) sections 142 (redemption of collateral) and 143 (reinstatement of security agreement) are excluded.
- 20.2** You agree that you have waived your right under section 157(1) of the PPSA to receive notice of a verification statement if the Collateral is described in the registration as commercial property (pursuant to section 157(3) of the PPSA).
- 20.3** When the Loan is repaid in full, there is no amount owing to the Bank under the Contract and the Security does not secure other obligations, the Bank will, on request, discharge the Security. A discharge fee will apply as specified in the Schedule.

## 21 What you must do about insurance

- 21.1** You must arrange and maintain the insurances required by the Security document(s) at your own cost. If you do not pay a premium for any insurance required by any Security, we may debit it to the Loan Account and you must repay that amount to us on demand.
- 21.2** You must notify the Bank immediately if anything happens which might cause the making of a claim under any such insurance policy, the cancellation or lapsing of the insurance policy, or the denial or reduction of a claim under the insurance policy.

## 22 Your warranties (ie. things you promise us)

- 22.1** You warrant that all statements made and documents provided in connection with the application to the Bank for the Loan and all representations which you have made or may make to the Bank during the term of the Contract are true and correct.
- 22.2** You acknowledge and agree that the Bank has relied upon the correctness of those statements, documents and representations in entering into the Contract and will continue to do so in its dealings with you and that if any of the statements or representations you made are, or become, incorrect, you will inform the Bank.
- 22.3** You undertake and agree not to breach the terms of any Security, any other obligations secured by any Security or any other contract you have with the Bank.
- 22.4** *(For Company Borrowers only)* In addition to clause 22.1, 22.2 and 22.3, you represent and warrant that:
- (a) you have the power and authority to enter into, to perform and to comply with your obligations under the Contract, that in doing so you do not contravene your constitution, any law or regulation or any agreement to which you are a party and/or which is binding on your assets; and
  - (b) at the time of entry into the Contract, you are able to pay your debts as they fall due.

**22.5** *(For Trust Borrowers only)* In addition to clauses 22.1, 22.2 and 22.3, and, if relevant, clause 22.4

- (a) you represent and warrant that you have the power and authority to enter into, to perform and to comply with your obligations under the Contract, you are the only trustee of the trust identified in the Schedule, that no action has been taken to remove or replace you as trustee of that trust and that you have an unrestricted right to be fully indemnified out of the trust assets; and
- (b) you undertake and agree not to breach any obligations as trustee of the trust identified in the Schedule and not to do or fail to do anything which causes you to be removed as trustee or the trust to be wound up or any of its assets to be administered by a court.

**22.6** You acknowledge that the Bank relies on the above warranties and you agree to tell the Bank immediately if anything happens which prevents you from repeating them before any advance.

## 23 What happens if you are in default?

- 23.1** You will be in default under the Contract if:
- (a) you do not pay any amount due under the Contract by its due date for payment;
  - (b) you do not comply with any of your other obligations under this Contract;
  - (c) you breach your undertaking under this Contract not to breach any other agreements you have with the Bank;
  - (d) you breach your undertaking under this Contract not to breach any terms of any Security or your undertaking to comply with any other obligations secured by any Security;
  - (e) you give us incorrect or misleading information in connection with the Contract before or after you sign the Contract;
  - (f) you are a corporation and you become insolvent, or steps are taken to make you so; or
  - (g) you are a trustee and you breach your undertaking under this Contract not to breach any obligation as trustee

of the trust identified in the Schedule, you cease to be the only trustee of that trust, any action is taken to remove you as trustee, for any asset of the trust to be administered by a court or for the winding up of the trust or if the trust is found, or conceded by you, not to have been properly constituted.

**23.2** If you are in default, the Bank may give you a notice stating that you are in default. If you do not, or cannot, correct the default within the period given in the notice, or required by law, then at the end of that period and without further notice to you:

- (a) the Unpaid Balance and any other amount owing under the Contract will become immediately due for payment (to the extent it is not already due for payment); and
- (b) the Bank may sue you for that amount and exercise any and all of its rights under the Contract and the Security.

**23.3** If the Bank is required by law to first give you notice to remedy your default, you will be deemed to have failed to remedy the default specified in the notice if, at the end of the time allowed by the notice, you have remedied that default but have committed another of the same type.

**23.4** If we believe, on reasonable grounds, that we were induced by fraud on your part to enter into this Contract or we have made reasonable attempts to locate you but without success, we need not give you a default notice as described above. The outstanding balance of your Loan Account will become immediately due and payable and we may take any of the steps referred to in paragraphs (a) and (b) of clause 23.2 without notice.

**23.5** If an obligation to pay the Bank an amount becomes merged in a court order or judgment, you must pay interest on that amount as a separate obligation. The interest rate to be applied will depend upon whether the amount the subject of the order or judgment is an amount to which clause 10 applies (being an amount that was due and payable under the Contract which was unpaid). The interest payable will be calculated as follows:

- (a) if the amount is one to which clause 10 applies, the interest rate applied will be the higher of the Default Rate we may charge on overdue amounts under clause 10 and the rate (if any) otherwise payable under or in respect of the court order or judgment;

- (b) if it is not an amount to which clause 10 applies, the interest rate will be the higher of the Annual Percentage Rate and the rate (if any) otherwise payable under or in respect of the court order of judgment; and
- (c) the interest will accrue daily on the amount from its payment due date until it is paid at the relevant rate divided by 365.

We will debit the Loan Account monthly in arrears with the interest accrued up to the end of the day prior to debiting.

## 24 Enforcement expenses you must pay

**24.1** If:

- (a) you or any person providing any Security breaches any term or condition of the Contract or any Security document; and
- (b) the Bank or its agents incur enforcement expenses in enforcing the Bank's rights under the Contract or any Security;

you must pay to the Bank the enforcement expenses reasonably incurred by the Bank or its agents. The Bank will debit these expenses to the Loan Account and they will be due and payable immediately.

**24.2** Enforcement expenses include the Bank's internal and external expenses in enforcing or taking any action to recover any amounts owing, dealing with the property the subject of a Security or otherwise in connection with its rights under the Contract or a Security.

**24.3** The Bank's internal expenses include but are not limited to the Bank's internal lawyers' fees and expenses and internal administration costs. The Bank's external expenses include but are not limited to barristers' fees, lawyers' fees and expenses (on a full indemnity basis), receivers' fees and charges, valuers' fees, real estate agents' commissions, licensed debt recovery agents' fees and commissions, process servers' fees, enquiry and other Bank agents' fees and charges.

## 25 Our certificates

You agree that a certificate which has been signed by a Bank officer is admissible evidence of any fact or matter stated in the certificate (including, for example, that a default has

occurred under the Contract or the Security, or that an amount is due and payable by you to the Bank under the Contract) and that, unless the contrary is established, it is conclusive evidence.

## 26 Our right to combine accounts

- 26.1** The Bank may, at any time and without prior notice, combine your accounts: that is, transfer any credit balance of any other account you hold with us, to your Loan Account.
- 26.2** In addition, if:
- (a) you fail to pay any amount that you owe to the Bank on the date that amount is due for payment; and
  - (b) you have Available Redraw Funds in any Loan Account or any other loan account you hold with us;
- the Bank may, at any time and without prior notice, apply those Available Redraw Funds to the payment of the overdue amount.
- 26.3** If we exercise our rights under clause 26.1 or clause 26.2 we will inform you promptly.

## 27 Miscellaneous conditions

- 27.1** To the extent permitted by law, the Bank can appoint agents to do anything the Bank can do under the Contract or the Security.
- 27.2** If there is more than one Borrower and there is more than one copy of the Contract signed by any or each of you, then each signed copy taken together is part of the same Contract.
- 27.3** If the Bank obtains a valuation or inspection report in respect of a property the subject of a Security, that report is for the Bank's own internal use only and is the Bank's exclusive property. The Bank is not obliged to disclose the report or any of its detail to you or any person. In providing the Loan to you, the Bank makes no representation to you about the property's condition, construction or value.
- 27.4** If the Contract allows the Bank to do something on a day then the Bank can do that thing on that day or any later day unless the Bank is required by law to do it on that day.
- 27.5** The rights of the Bank under this Contract will not be prejudiced by any indulgence granted to you. The rights, interest, remedy or power

of the Bank under this Contract can only be waived in writing, and a waiver of your breach will not affect the Bank's rights and remedies in relation to any continuing, recurring or subsequent breach of this Contract.

- 27.6** If the Bank decides not to exercise a right, remedy or power, this does not mean it cannot exercise it later. In addition the Bank is not liable for any loss caused by exercising or attempting to exercise a right, remedy or power or by not exercising it, whether or not it is caused by the Bank's negligence.
- 27.7** You must not reduce or seek to reduce your liability to the Bank under this Contract by claiming that you or any other person has a right of set-off or counter claim against the Bank (except to the extent you have a right of set-off granted by law which the Bank cannot exclude by agreement). We may set-off, against any amount you owe us, any amount we owe you.
- 27.8** You must not, at any time, pay an amount to the Bank which would cause the Loan Account to have a credit balance. Should that occur, you agree to withdraw that credit balance. We will not pay interest on a credit balance.
- 27.9** The Bank and you agree to keep any information provided to each other and the Contract, any Security and any guarantee confidential.
- 27.10** The Bank and you will only disclose that information:
- (a) to the Bank's respective officers, employees, legal and other advisers and auditors;
  - (b) to an External Administrator of you or the Bank;
  - (c) to third parties with the consent of the other party (such consent not to be unreasonably withheld);
  - (d) if required by the rules of any relevant financial market or
  - (e) if required by law.
- 27.11** The Bank may also disclose that information:
- (a) if the Bank is assigning or otherwise dealing with its interest under the Contract, any Security and any guarantee or proposing to do so;
  - (b) to register or maintain the Bank's Security;

- (c) to enforce the Bank's rights under the Contract, any Security and any guarantee; or
- (d) to any Security provider (or to a person the Bank believes may become a Security provider), but on the same confidential basis set out above

## 28 Keeping us informed

**28.1** You must inform the Bank immediately of any change in your name or address (including email address). You can do this by contacting us on 1300 228 228.

**28.2** You must notify us immediately in writing if:

- (a) there is a material adverse change in your personal or financial circumstances;
- (b) anything happens which makes any of the statements made by you to us in your application for the Loan to be untrue or misleading; or
- (c) anything happens which materially reduces the value of the property the subject of the Security.

## 29 What is the applicable law?

The Contract is governed by the laws of the State or Territory in which the primary Security is located. You submit to the non exclusive jurisdiction of the courts of that place.

## 30 We can assign our rights

The Bank may assign, transfer, novate or otherwise deal with its rights, obligations or interests under the Contract, guarantee or any Security in any way the Bank considers appropriate.

## 31 You cannot assign your rights without our prior written consent

You cannot assign your rights under the Contract without the Bank's prior written consent.

## 32 GST

**32.1** Unless otherwise specified, all amounts referred to in the Contract or the Schedule are exclusive of GST.

**32.2** If the Bank is liable to pay GST or a similar tax on a supply (as defined in relevant GST legislation) made in connection with the Contract or the Schedule, you must pay the Bank an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

## 33 Disclosure of your information

You agree that information about you (including, if relevant, documents concerning you, the Contract and any Security) may be given to and obtained from:

- (a) an assignee or proposed assignee of the Contract or any Security;
- (b) any person who has provided a Security to the Bank;
- (c) a related entity of the Bank;
- (d) any agent, broker, External Administrator or contractor providing services to the Bank in connection with the Contract, its administration, or the marketing of the Bank's services eg. postal services or debt collection;
- (e) any person, to the extent necessary in the view of the Bank, in order to carry out any instruction you give to the Bank; and
- (f) if the Schedule states that a commission is payable to or by the Bank, the person to or by whom such commission is payable including for the purpose of calculation of the commission payable.

## 34 Severance

If any part or provision of the Contract is or becomes void or unenforceable in any State or Territory the Contract is to be read as if that provision were varied to the extent necessary to comply with the relevant law or, if necessary, as if it were omitted.

## 35 How we serve notices

- 35.1** To the extent permitted by law, any notice or document given by us under this Contract, or required by law to be given by us, may be given in writing and can be delivered personally or by pre-paid post to the address you nominate for delivery of notices and documents, or by facsimile or email to your nominated address for those purposes, or if no such address has been nominated by you, your address as last known to us (or if you are a corporation, your registered office). Unless required by law a notice given by us need not be signed but if required by law to be signed, or if signed when not so required, it can be signed by any officer of the Bank.
- 35.2** A notice, statement or demand from the Bank will be considered to have been received by you:
- (a) if left at your address, on the date delivered or the date it bears, whichever is the later;
  - (b) if sent by post, on the date it would have been delivered in the ordinary course of post or the date it bears, whichever is the later; and
  - (c) if sent by facsimile or other electronic transmission, on the date it bears or the date the transmitting machine reports it was sent, whichever is the later.

## 36 Anti-money laundering

- 36.1** You warrant that the payment of monies in accordance with your instructions by the Bank will not breach any laws in Australia.
- 36.2** You agree that the Bank may delay, block or refuse a payment in circumstances where the Bank believes, on reasonable grounds, that making a payment may breach any law in Australia or any other country, and the Bank will incur no liability if it does so.

## Part B

### Specific conditions applying to some commercial loans only

*NB: A Specific Condition set out in this Part B will only apply to your Contract if the Schedule states or that the Bank otherwise agrees that it applies. The clause numbers of the Specific Conditions (if any) which*

*apply to your Loan are listed in your Schedule under the heading "Specific Conditions".*

## 37 Redraw facility

- 37.1** If the Schedule states or the Bank otherwise agrees that redraw is available for a Loan Account, then subject to clause 37.2, you can redraw (that is reborrow) all or part of your Available Redraw Funds. Your Available Redraw Funds equal the aggregate of the amounts paid by you to the Bank in excess of the amounts of the minimum periodic repayments which were required to have been made under the Contract in respect of that Loan (less any amounts you have previously redrawn or any amount by which we reduce your Available Redraw Funds). Your right to redraw is at our discretion (see clause 37.5). A request for a redraw must be made in writing by completing and signing our "Loan Redraw Request Form" or alternatively, if you have signed a "Redraw Authority Nomination" for the Loan Account, you can also access Available Redraw Funds via Internet Banking. All amounts you redraw are debited to the Loan Account and will be subject to interest charges in accordance with clause 9.
- 37.2** The Bank will not provide a redraw:
- (a) if the Loan has been fully repaid;
  - (b) for any period that the interest rate under the Loan is fixed or for the Construction Period of a Construction Loan;
  - (c) the amount you ask to redraw is less than the minimum amount you can redraw as specified in the Schedule, or as advised by us from time to time;
  - (d) if you are in default under the Contract;
  - (e) if the Loan has not yet been fully advanced or deemed to be fully advanced;
  - (f) if you do not provide the Bank with instructions on how your redraw is to be applied;
  - (g) if you do not pay the fees for the redraw (as indicated in the Schedule);
  - (h) if you have cancelled your right to redraw (see clause 37.4); or
  - (i) if we have cancelled your right to redraw (see clause 37.5).
- 37.3** You acknowledge and agree that, if there is more than one Borrower, by signing the

Redraw Authority Nomination, you each authorise any co-Borrower to access alone any Available Redraw Funds pursuant to your right to redraw.

**37.4** You acknowledge and agree that you, or any of you if there is more than one Borrower, can cancel your right to redraw at any time.

**37.5** The Bank can:

- (a) impose conditions on approving any request for a redraw;
- (b) refuse any request for a redraw at any time;
- (c) reduce your Available Redraw Funds for any reason, including but not limited to, when there has been a release of Security or when repayments have been varied in accordance with clause 37.6; and
- (d) cancel your right to redraw at any time.

We can do any of these things without your prior consent and without prior notice. However, if we do, we will give you notice after we do so (if we have not already given you prior notice).

**37.6** If you have Available Redraw Funds in a Loan Account you may, if you seek and obtain our prior approval, miss a payment or make a reduced payment on the day the payment is due for that Loan Account. We will approve your request only if the amount of Available Redraw Funds is greater than the amount of the payment or that part of the payment you seek to miss. If we approve your request we will reduce your Available Redraw Funds by the amount of the missed payment.

## 38 Offset Account

**38.1** If the Schedule states or the Bank otherwise agrees that you are entitled to, and you do, nominate an Offset Account to be linked to a Loan Account, your interest charges on the Loan Account will be reduced each day by the Offset Amount except for during any fixed rate period. The Offset Amount will be calculated by multiplying 20% of the credit balance of the Offset Account on the day by the Daily Percentage Rate (except to the extent that the credit balance of the Offset Account is greater than the amount of the Unpaid Daily Balance of the Loan Account).

**38.2** The Bank will not pay interest on the credit balance, or any part of the credit balance, of

an Offset Account you nominate to be linked to the Loan Account even if the amount of the credit balance of the Offset Account exceeds the amount of the Unpaid Balance of the Loan Account.

**38.3** The Bank has the right to withdraw the availability of any Offset Account nomination pursuant to clause 38.1 above in its discretion at any time.

## Part C Terms and conditions applying to construction loans

*NB: Part C will only apply to your Contract if the Schedule states or the Bank otherwise agrees that it applies.*

## 39 Construction Loans

**39.1** These provisions apply where the loan purpose, or part of that purpose, is to carry out Construction on or for the benefit of the property that we approve in connection with your loan application. Construction includes, but is not limited to, building and changes to structures, earthworks and excavation, demolition and removal of materials of all kinds.

**39.2** The Bank may, in its discretion, provide the Amount of Credit progressively in conjunction with the progress of the Construction. If so, we will generally make 5 progress payments but the Bank may, in its discretion, make a greater number or lesser number (whether or not you request us to do so). We can refuse to make any further payments if, at any time, anything occurs which, in our opinion, adversely affects the property the subject of the Security, or if the Construction is not progressing satisfactorily.

**39.3** You agree that, notwithstanding that a redraw facility may be available for your Loan Account, you cannot make a redraw during the Construction Period of a Construction Loan. The Construction Period means the period which commences on the day any part of the Loan is first advanced to you for your Construction Loan and ends on the day we make the final progress payment under the Loan.

## 40 Pre-conditions

Before any part of the Amount of Credit is advanced under the Contract in respect of the Construction, you must deliver the following documents to the Bank and the Bank must approve them:

- (a) a copy of the local shire, departmental or council building approval and plans and specifications for the Construction (Specifications);
- (b) a copy of the builder's insurance policy relevant to the Construction showing the Bank's interest as mortgagee; and
- (c) if you are an owner builder:
  - (i) a current building licence; and
  - (ii) a progress payment schedule and Construction timetable.

## 41 What you also agree

You agree:

- (a) to ensure that Construction is commenced within 2 months from the date of the Contract and that it is completed within 12 months of the first progress payment;
- (b) to ensure that the Construction is completed in accordance with the Specifications, in a good and workmanlike manner and within a period acceptable to the Bank;
- (c) to notify the Bank if the builder ceases Construction at any time and for any reason;
- (d) to apply the monies which you have told the Bank you will apply towards the Construction as your contribution and to do so within the time required by the Bank and agree that, if you fail to do so, the Bank need not provide any part of the Amount of Credit to you;
- (e) the Bank may, or may appoint a valuer to, inspect the Construction at any time to assess its value;
- (f) to perform your obligations under the building contract;
- (g) not to vary or terminate the building contract without our prior written consent;

- (h) not to expend monies in excess of the costings approved by the Bank for the Construction without our prior written consent. You acknowledge that the Bank will not provide additional finance to fund the Construction which exceeds the costings approved by the Bank for the Construction; and
- (i) that the Bank is not liable for any defect, failure, loss or damage resulting from or arising out of the Construction, whether or not the Bank carries out any inspections.

## 42 Progress payments

**42.1** Each progress payment by the Bank will be conditional upon:

- (a) receipt by the Bank of your authorisation to make the progress payment in the form required by the Bank;
- (b) receipt by the Bank of an invoice or written claim from the builder for the Construction which has been completed (and not the materials on site) in respect of which each progress payment is sought;
- (c) such satisfactory inspection of the Construction as may be required by the Bank (including by a valuer acceptable to the Bank);
- (d) you not being in default under the Contract; and
- (e) compliance with any other conditions we impose.

**42.2** The provision of the final progress payment will be conditional upon you providing your written authorisation for the release of the final amount and your provision

**42.3** to the Bank of a copy of an insurance policy in respect of the completed building which complies with the requirements of the Security and any other requirements of the Bank.

## Part D

### Terms and conditions applying to 'all-in-one' line of credit loans and business overdrafts

*NB: Part D will only apply to your Contract if the Schedule states or the Bank otherwise agrees that it applies.*

## 43 Credit Limit

- 43.1** The Credit Limit is the amount specified as the “Credit Limit” in the Schedule or such lesser amount as the Bank may notify from time to time. It is the maximum Amount of Credit you may obtain under your ‘All-In-One’ Line of Credit Loan or business overdraft.
- 43.2** The Bank can reduce the Credit Limit at any time, whether or not you are in default under the Contract. If you are not in default, the Bank will tell you in writing if it reduces the Credit Limit.
- 43.3** You may request a change in the Credit Limit at any time provided that the request is made by all Borrowers, where there is more than one of you. The Bank is under no obligation to agree to increase the Credit Limit.

## 44 What you can draw

- 44.1** When your Loan Account is opened you are not obliged to draw any part of the Credit Limit but may draw the entire Credit Limit or part of it. You can draw down amounts of credit at any time up to the Credit Limit and redraw amounts of credit you have repaid but the Unpaid Balance of the Loan Account must never exceed your Credit Limit.
- 44.2** The Credit Limit does not change simply because we may debit an amount to the Loan Account that causes the Unpaid Balance of the Loan Account to exceed the Credit Limit.

## 45 You must repay on demand

- 45.1** The Bank can at any time demand that you pay to it the Unpaid Balance (and any amounts accrued or charged but not yet debited to the Loan Account) whether or not you have breached the Contract.
- 45.2** If the Unpaid Balance of the Loan Account at any time exceeds the Credit Limit, you must pay the excess amount to the Bank immediately. Interest will be payable on the amount of the excess at the Default Rate in accordance with clause 10 for as long as this excess is not repaid.
- 45.3** Except where your Unpaid Balance exceeds the Credit Limit, you are not required to (but may) make payments to your Loan Account.

**45.4** Until we require payment of the Unpaid Balance interest and other fees and charges will be debited to the Loan Account.

**45.5** If the Bank demands payment of the Unpaid Balance:

- (a) the Credit Limit is cancelled;
- (b) you must immediately pay to the Bank the Unpaid Balance (and any amounts accrued or charged but not yet debited to the Loan Account); and
- (c) you cannot, and must not attempt to, access or draw down any further credit from the Loan Account.

## Part E

### Terms and conditions applying to fixed rate commercial loans

*NB: Part E will only apply to your Contract if the Schedule states or the Bank otherwise agrees that it applies.*

## 46 What does it mean to have a fixed rate?

**46.1** The fixed rate disclosed in the Schedule as applying to your Loan may change between the Disclosure Date and the date the Loan is advanced. Further, if we agree to vary the Contract so that it becomes subject to a fixed rate, the fixed rate may change between the Disclosure Date and the date the Bank gives effect to that variation. If the fixed rate changes from the Disclosure Date in either event, the rate that applies for the fixed rate period will, subject to clause 46.2 change accordingly, but then is fixed for the chosen fixed rate period of your Loan.

**46.2** If:

- (a) you ask to cap the fixed rate and we agree;
- (b) you pay the Rate Lock Fee; and
- (c) in the capped rate period, the Loan is advanced (or, as relevant, the variation to a fixed rate is effected by the Bank),

the rate that applies for the fixed rate period of your Loan will be the lesser of the capped rate and the fixed rate at the date the Loan is advanced (or, as relevant, the variation to a fixed rate is effected by the Bank).

## 47 No redraw

If you have a redraw facility on your Loan you cannot make any redraws during the fixed rate period.

## 48 What happens if you want to make early repayment

You can pay the full amount of the Unpaid Balance of your Loan Account early at any time but, should you do so, you may be required to pay Break Costs (see clause 50). You must not pay the Loan in part (that is less than the full amount of the Unpaid Balance) before the end of the fixed rate period otherwise than by the payments and at the times required by the Schedule. That is, you must not, during the fixed rate period, prepay, the amount of a minimum monthly payment before it is due for payment. If you do prepay an amount you may be required to pay Fixed Rate Adjustment Costs (see clause 49).

## 49 When do Fixed Rate Adjustment Costs apply?

### 49.1 If:

- (a) you do not fully draw the Amount of Credit referable to your Fixed Rate Commercial Loan, as specified in the Schedule;
- (b) during a fixed rate period you prepay an amount (except if you repay the full amount of the Unpaid Balance of your Loan Account); or
- (c) during or before a fixed rate period you ask, and we allow you, to switch to a variable rate or a different fixed rate, or a different repayment term;

you may be required to pay Fixed Rate Adjustment Costs.

### 49.2 Fixed Rate Adjustment Costs are calculated in accordance with clause 49.

## 50 When do Break Costs apply?

### 50.1 If during a fixed rate period of a Fixed Rate Commercial Loan:

- (a) you exercise your right to repay the Unpaid Balance of your Loan Account early and in full; or
- (b) the Bank makes demand for payment of the Unpaid Balance of your Loan Account in full pursuant to the terms and conditions applicable in the event of default;

you may be required to pay Break Costs.

### 50.2 Break Costs are calculated in accordance with clause 51.

## 51 Calculation of Fixed Rate Adjustment Costs and Break Costs

**51.1** You acknowledge that when the Bank agrees to lend you money at a fixed rate, the Bank does so on the understanding that you will make the fixed rate payments stipulated in the Schedule for the whole of the fixed rate period. The Bank arranges its own funding at a fixed rate based on this assumption.

**51.2** You further acknowledge that, if any of the events described in clause 49.1 or 50.1 occur, the Bank will have to adjust its fixed rate funding and the Bank may incur a loss from this adjustment. You must compensate the Bank for the loss we incur by paying us Fixed Rate Adjustment Costs or Break Costs (as relevant). The Fixed Rate Adjustment Costs and Break Costs are each calculated using the same formula. That formula produces an estimate of our loss.

**51.3** To calculate whether we have made a loss, we refer to the inter-bank lending rate known as the "Wholesale Market Swap Rate" published in the Australian Financial Review.

**51.4** If the Wholesale Market Swap Rate for the term of the fixed rate period on the date your Loan was advanced is greater than the Wholesale Market Swap Rate for a term equal to the remaining fixed rate period on the day the adjustment (due to the relevant event referred to in clause 49.1 or 50.1) occurs, the Bank will incur a loss.

**51.5** To calculate the amount of the Bank's loss the formula we use seeks to calculate the present day value of the "foregone interest" on the affected amount of money by comparing the two rates referred to in clause 51.4. The following worked example illustrates the application of the calculation.

## Simplified Illustrative Example

Say, for example:

- You borrowed \$250,000 from us on 15 May 2020 fixed for 3 years. We will assume for this example you elect to pay interest only, therefore there will be no reduction in the principal loan amount (\$250,000). On 15 May 2020 the Wholesale Market Swap Rate for 3 year fixed terms was 5.35%.
- Two years later on 15 May 2022 you repay the loan in full (ie. 1 year early). The Wholesale Market Swap Rate for the remaining 1 year period on 15th May 2022 is 2.68%.
- We are still obliged to pay the original swap rate of 5.35% to cover the loan for the remaining 1 year period and we have effectively lost 2.67% (5.35% - 2.68%) for that period.

The simplified Break Cost Calculation for this example would be:

- 1 Loan \$250,000 fully outstanding prepaid in full 1 year early
- 2 Difference between Wholesale Market Swap Rates: 5.35% less 2.68% = 2.67%
- 3 Remaining fixed term of the contract: 1 year 4.  $\$250,000 \times 2.67\% \times 1 = \$6675$
- 4 The \$6675 is reduced to a present day value at the prevailing Wholesale Market Swap Rate

*Break Costs to pay = \$6,500.00*

**51.6** For more information on how we calculate Fixed Rate Adjustment Costs and Break Costs call us on 1300 228 228.

**51.7** Fixed Rate Adjustment Costs and Break Costs may be debited to your Loan Account.

**WARNING** Fixed Rate Adjustment Costs and Break Costs may be significant if interest rates fall during the fixed rate period of your Loan.

## Part F Complaints

### Dispute Resolution

The Bank offers its members both an internal and an external dispute resolution process that are readily accessible and free.

### When does a Dispute arise?

A dispute arises if you make a complaint to the Bank about a product or service and you are not satisfied with the response that you receive.

### Internal Dispute Resolution

To use our internal dispute resolution procedure you should address a letter, email or fax detailing the dispute to "Member Advocate" at:

Mail      bcu, PO Box 1563,  
              Coffs Harbour, NSW 2450  
Phone     1300 228 228  
Email     member.engagement@bcu.com.au

If the Member Advocate is able to resolve the dispute he or she will promptly notify you in writing of the outcome and provide reasons for the outcome. If you are still not satisfied with the outcome of a dispute, you can refer the matter to our external dispute resolution scheme.

You are not obliged to pursue a dispute with the Bank using its internal dispute resolution procedure. If you do use the internal dispute resolution procedure, you may commence legal proceedings before, after or at the same time as using the internal dispute resolution procedure.

The Bank's participation in the internal dispute resolution procedure is not a waiver of any rights it may have under the law or under any contract between you and the Bank. An example of a contract between you and the Bank may be a loan contract, a guarantee, the terms and conditions of an account, or the terms and conditions of a Visa card or ATM card.

### External Dispute Resolution

External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints.

You must attempt to resolve your complaint with us before contacting our external dispute resolution scheme. If we have made a formal proposal to resolve the complaint, and you have told us that the proposal is not acceptable to you or at least 45 days has elapsed since you first make your complaint (whichever occurs sooner), you can contact our external dispute resolution provider.

Our external dispute resolution provider is:

Name            Australian Financial Complaint  
                      Authority Limited (AFCA)  
Mail              GPO Box 3  
                      Melbourne VIC 3001

Phone 1800 367 287 (9am to 5pm AEST)  
International +61 3 9613 7366  
Fax (03) 9613 6399  
Email [info@afca.org.au](mailto:info@afca.org.au)  
Website [afca.org.au](http://afca.org.au)

Further information regarding AFCA including their Terms of Reference is available from their office or on their website.

## **Complaints about breaches of the Customer Owned Banking Code of Practice**

If you believe that we have breached the Customer Owned Banking Code of Practice, you can make a complaint to us. If we are unable to resolve the complaint to your satisfaction and the complaint involves a claim that you have suffered loss or detriment, you may refer to the matter to our external dispute resolution scheme, AFCA. If you have not suffered loss or detriment, you can report your complaint to the Customer Owned Banking Code Of Practice Compliance Manager.

Name Compliance Manager  
Code Compliance Committee  
Phone 1800 367 287  
Website [cobccc.org.au](http://cobccc.org.au).

## Contact Us

PO Box 1563,  
Coffs Harbour, NSW 2450

**1300 228 228** | [bcu.com.au](https://www.bcu.com.au)

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