



# Personal Loan Terms And Conditions

## IMPORTANT INFORMATION:

This is an important document and you should read all of it carefully. This document, the Laiki Loan Agreement, any documents which accompany your Loan Agreement, the Laiki Fees and Charges Booklet and any Security documents and other documents between us and you form the Entire Contract between you and us.

When you sign the Loan Agreement and return it to us, you become personally liable to us for all the amounts which are payable under the Loan Agreement and related agreements. We can claim those amounts from you as well as exercise our rights in relation to any Security. If we exercise our rights against you it may mean the loss of your family home if it constitutes the Security or part of the Security which you have provided.

We recommend that before you sign the Loan Agreement, you obtain independent legal advice. You may also wish to consider seeking independent financial advice before you sign.

LAIKI BANK (AUSTRALIA) LIMITED

ABN 44 093 488 629



**LAIKI BANK**  
For you, for life!

# Table of Content

- 1. Introductory Statement**
- 2. Definitions**
- 3. Interpretation**
- 4. Declarations and Acknowledgements**
  - 4.1 Declarations by Individuals
  - 4.2 Declarations by Companies
  - 4.3 General
- 5. What Must Happen Before We Make the Loan**
- 6. Undertakings**
- 7. Trusts**
- 8. Partnerships**
- 9. The Loan Account**
  - 9.1 Funding the Loan
- 10. Payments**
  - 10.1 What You Must Pay
  - 10.2 Method of Repayment
  - 10.3 Repayments
  - 10.4 Crediting of Payments or Repayments
  - 10.5 Variations to Repayments
  - 10.6 Early Repayment and Extra Repayments
  - 10.7 Final Repayment
- 11. Interest**
  - 11.1 Loan Interest (The Annual Percentage Rate)
  - 11.2 Fixed Annual Percentage Rate
  - 11.3 Variable Annual Percentage Rate
  - 11.4 Default Interest
  - 11.5 Debiting of Interest
  - 11.6 Switching Interest Rate Options
  - 11.7 Interest Payable in Respect of a Judgement or an Order
- 12. Fees and Charges**
  - 12.1 General Expenses
  - 12.2 When You Must Pay Fees and Charges
  - 12.3 Commissions
  - 12.4 Break Costs
  - 12.5 Calculation of Break Costs
- 13. Variation of Loan Particulars**
  - 13.1 Changes to the Annual Percentage Rate
  - 13.2 Other Changes to Fees
14. Statements
- 15. Construction Loans**
  - 15.1 Interest Payments During and After the Construction Period
  - 15.2 Your Obligations
  - 15.3 Building and Construction – Other Requirements
  - 15.4 Completion of Construction
- 16. Line of Credit**
  - 16.1 Operation of Your Line of Credit Loan
  - 16.2 Term and Termination
- 17. Split Loans**
  - 17.1 Portions
  - 17.2 Determination of Allocation Between Portions
- 18. Home Loan Offset Accounts**
- 19. Redraws**
  - 19.1 Provisions Applying to Accounts with a Redraw Facility
- 20. Default**
  - 20.1 When are You in Default
  - 20.2 What Happens if a Default Occurs?
  - 20.3 What Happens Next
- 21. Enforcement Expenses**
  - 21.1 What You Must Pay



21.2 What Types of Costs are Enforcement Expenses?

21.3 When You Must Pay Enforcement Expenses

## 22. Insurance

22.1 Your Obligations

22.2 Insurance Claims

22.3 Mortgage Insurance

## 23. Rights and Obligations

23.1 Suspension of Your Rights

23.2 Your Obligation to Perfect the Entire Contract

23.3 What You Must Give Us

23.4 Our Other Rights and Preserving and Restoring Our Rights

23.5 Our Rights to Review Entire Contract

## 24. General

24.1 How We Apply Money We Receive

24.2 We Are Protected

24.3 Third Parties' Protection

24.4 Joint and Several Liability

24.5 Certificates Issued By Us

24.6 Our Consent

24.7 Set-Off

24.8 Power of Attorney

24.9 Assignment and Disclosure of Your Information

24.10 Variation

24.11 Waiver

24.12 Communications and Notices

## 25. Applicable Laws and Courts

## 26. Application of Other Laws

## 27. Exclusion of Other Laws

# 1. Introductory Statement

1.1 Your Entire Contract with us is made up of your Loan Agreement, the documents which accompany your Loan Agreement, these Terms and Conditions, the Laiki Fees and Charges Booklet and any security documents and other documents between us and you which evidence the agreement in relation to the Loan and Security.

1.2 What we call the Entire Contract includes your Loan Agreement and any Security document and other documents between us which evidence the agreement in relation to the Loan and the Security. Also, terms and conditions may apply to your Loan because they are implied by Law such as parts of the Code of Banking Practice and, depending on the purpose of the Loan, parts of the Consumer Credit Code.

1.3 Where this document is regulated by Credit Law it does not contain all the information required by law to be given to you.

1.4 Words and expressions commencing with a capital letter are defined in Clause 2.

# 2. Definitions

In these Terms and Conditions, unless the context otherwise requires:

**Amount Owing** means all or any of the following:

- (a) all money which is:
  - (i) presently owing and payable by you to us;
  - (ii) presently owing, but not presently payable by you to us; or
  - (iii) contingently owing by you to us.
- (b) all money owing or remaining unpaid to us in any manner or on any account by you whether alone or jointly with any other person or whether as principal or as surety;
- (c) all money which any other person owes to us because of something that we do or do not do at your express or implied request;
- (d) all money which we have advanced or paid or become liable to pay to or for or on account of you, whether requested to do so or not;
- (e) all money which may become owing or for which we may become liable by reason (wholly or partly) of past events involving you (including, but not limited to, anything done or omitted to be done by us or you) or

which may reasonably foreseeably become owing on any account or in any manner by reason of the relation of banker and customer or by operation of Law or equity, including all money which we pay, whether voluntarily or not, because some payment of, or transaction relating to, money previously paid to us is or is claimed to be void, voidable or a preference;

- (f) all money you owe us or may owe us because we issued a Bank Guarantee or other undertaking for you or at your request;
- (g) all money you owe us or may owe us because we draw, issue, accept, endorse, purchase, discount or pay any bill of exchange or promissory note for you at your request;
- (h) all stamp and other duties, fees, taxes and charges payable in connection with the Entire Contract and any transaction under it and any interest, penalties, fines and expenses in connection with it;
- (i) our recoverable costs including any receivers costs and remuneration in arranging, registering, administering (including enforcing or taking any other action in connection with our or any receiver's rights), releasing or terminating any Security or any agreement under the Entire Contract;
- (j) we may charge a reasonable administration fee against your account for any action taken by us in relation to the Entire Contract or enforcing any Security.

**Annual Percentage Rate** is the total of the Standard Rate of Interest plus or minus any applicable Differential.

**Authorised Officer** means any Person authorised by us.

**Bank Guarantee** means an undertaking we give upon your request to a third party to meet obligations either you or any other party have to that person.

**Break Costs** means costs as detailed in Clauses 12.4 and 12.5

**Business Day** means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday.

**Construction** means building work, demolition, excavation or earthworks on any part of the Security Property.

**Construction Contract** means a binding contract made between you and a Person who is to provide goods and/or services in relation to the Construction.

**Construction Loan** means the amount that we lend to you for the purpose of the Construction.

**Construction Period** means when a Construction Loan is approved, the period we specify beginning from the Settlement Date.

**Credit Law** means any law which governs the provision of consumer credit generally including the Consumer Credit Code 1994 and the regulations made under it, as amended from time to time.

**Credit Limit** means the amount of credit you are allowed to draw in relation to a Line of Credit account as stated in the Loan Agreement or as otherwise stated by us in writing from time to time.

**Daily Percentage Rate** is the rate of interest calculated by dividing the Annual Percentage Rate by 365.

**Date of First Advance** is the Settlement Date.

**Default** occurs when any one or more of the situations set out in Clause 20 occur in relation to you or any other Person who is a party to the Entire Contract or a Security Provider.

**Default Interest** means default interest payable in accordance with Clause 11.4.

**Default Interest Rate** is the interest rate which is applied to the overdue amount of the Amount Owing, which becomes immediately payable when you are in Default.

**The Differential** is the differential rate specified in the Loan Agreement. It may be a positive or negative Differential.

**Disclosure Date** means the date referred to in the Loan Agreement and is the date of disclosure of financial information in accordance with Credit Law.

**Drawing** means a drawing of a part of the Loan where the Loan is to be drawn progressively such as progress payments for Construction Loans and includes a drawing under any Line Of Credit facility approved by us.

**Entire Contract** means the Loan Agreement, these Loan Terms and Conditions, any Future Loan Agreement, the Mortgage, or other Security and other agreements relating to the Loan including any priority agreement entered into by us in respect of the Security and any Guarantee and Indemnity.

**Enforcement Expenses** are those expenses incurred by us when you are in Default and are detailed in Clause 21.

**Excess Credit** means any credit in excess of the Credit Limit.

**Financial Statements** means a balance sheet and trading profit and loss account.

**Personal Financial Statement** means a statement of assets and liabilities and income and expenditure.

**Guarantee and Indemnity** means any Guarantee specified in the Loan Agreement.

**Guarantor** means any Person or Persons who has given a Guarantee.

**Home Loan Offset Account** means an account whose balance will be used to offset the Home Loan's outstanding balance for interest calculation purposes.

**Law** means Acts, Regulations, Codes and rules made under them, common law and equity principles and any amendments or replacements of them current at the relevant time.

**Line of Credit** means any line of credit facility which is made available to you under the Loan Agreement.

**Loan** means the credit described in the Loan Agreement.

**Loan Account** means an account in your name, your trust name or in your company name, from which we debit the Loan or any Drawing and includes a sub-account where a Loan is split into Portions each having different Loan Particulars.

**Loan Agreement** means that document containing some of the terms and conditions relating to the Entire Contract entitled "Loan Agreement" and which should be read in conjunction with these Loan Terms and Conditions and the Laiki Fees and Charges Booklet.

**Loan Application** means your application to us for credit.

**Loan Particulars** means all variables of the Loan such as the Annual Percentage Rate, Loan Term and Conditions.

**Loan Service Account** means the account nominated by you to enable direct debit repayments to be made.

**Loan Statement** means the statement we may issue you in respect of your Loan in accordance with Clause 14.

**Loan Term** means the term of the Loan as specified in the Loan Agreement.

**Mortgage** means the mortgage that you have agreed to grant in the Loan Agreement over the Security Property.

**Mortgagor** means the Person or Persons who have granted the Mortgage.

**Notice** is defined in Clause 24.12.

**Person** includes, where appropriate, an individual, body corporate, corporation, unincorporated association, authority and the Person's executors, administrators, successors and permitted assigns.

**Prepayment** means any payment that you make before it is due to be made including a payment made as a consequence of our exercising our rights following a Default by you.

**Receiver** means a Person appointed as such by us pursuant to the provisions of any Law or in accordance with the Entire Contract and includes a receiver and manager.

**Redraw Facility** is a facility under which you are entitled to redraw the amount of any repayments made by you which are in addition to the repayments required by us. Such extra repayments must be made with our prior written consent, and must have not already been redrawn.

**Repayment** means those amounts specified in the Loan Agreement, or as advised by us from time to time, and includes any interest, government taxes applicable to the repayment and any other amounts that we notify you of.

**Security** means any security (including any Guarantee and Indemnity) we require from you or from any other Person as a condition of making the Loan as stated in the Loan Agreement, and includes any security substituted for it at our request or with our written consent from time to time.

**Security Property** means the property mortgaged or charged to us by the Security.

**Security Property Particulars** means all matters relating to the Security Property about which a mortgagee or proposed mortgagee of such a property would reasonably be concerned, including its valuation, the applicable survey and title particulars.

**Security Provider** means any Person providing the Security.

**Settlement Date** means the date we provide the Loan to you.

**Standard Rate of Interest** is the rate of interest per annum applying to the Loan from time to time (as at the Disclosure Date, the Standard Rate of Interest is the rate so specified in the Loan Agreement).

**State and Territory** means each and every State and Territory of Australia.

**these Terms and Conditions** means the terms and conditions set out in this document.

**we, our and us** means Laiki Bank (Australia) Limited A.B.N. 44 093 488 629 or its assignees or successors and where the context permits includes its Authorised Officers, agents and contractors.

**Without Arrangement Interest Rate** means the rate of interest applied to a Line of Credit facility when you are in Default or the rate of interest applied when you are in Excess Credit.

**you and your** refers to each Person named in the Loan Agreement as the Borrower including the Person's executors,

administrators, successors and agreed assigns, and where the context permits or requires, includes that Person's agents, solicitors and accountants. If there are more than 1, you means each of you severally and any two or more of you jointly.

### 3. Interpretation

In these Terms and Conditions:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any matter or thing includes the whole of it or any part of it;
- (c) a document includes any amendment or replacement of it;
- (d) headings are for convenience only and do not affect the interpretation of these Terms and Conditions;
- (e) reference to a clause is to a clause in these Terms and Conditions; and
- (f) the words including, includes such as and for example do not limit the meaning of the words to which an example or sample may relate and are not to be interpreted as words of limitation.

### 4. Declarations And Acknowledgements

#### 4.1 Declarations by Individuals

You declare as follows:

- (a) you have full power to enter into the Loan Agreement and you will not be breaching any Law, contract or other obligation binding upon you by doing so;
- (b) if you are an individual, you have the capacity to enter into the Loan Agreement at the time that the Loan Agreement is signed;
- (c) all information (including all financial statements, accounts and valuations) relating to you, any Security Provider or Security Property, provided is true in all material respects and is not, by omission or otherwise misleading in any way;
- (d) neither you nor any Security Provider have withheld from us any relevant information (we would regard as relevant anything which would have caused us not to enter into the Loan Agreement);



- (e) neither you nor any Security Provider have entered into the Loan Agreement in reliance upon any advice, opinion, warranty, representation or undertaking from us;
- (f) both you and any Security Provider have relied on its own investigations and enquiries in relation to the Entire Contract and you or any Security Provider have not relied on any information, advice or opinion given by us;
- (g) neither you nor any Security Provider have been pressured or unduly influenced or coerced by any person to enter into the Loan Agreement;
- (h) there is no existing Default by you or any Security Provider or anything which, after the lapse of time, could become a Default by you or any Security Provider;
- (i) it is to your benefit to enter into the Loan Agreement;
- (j) there is no court proceedings, arbitration or proceedings against you and none is threatened, which could adversely affect your ability to pay the Amount Owing, or adversely affect your ability to comply with the Loan Agreement;
- (k) you are not aware of any court proceedings, arbitration or proceedings against, or threatened against, the Security Provider, which could adversely affect the Security Provider's ability to pay the Amount Owing or to comply with the Security Provider's obligations under the Security;
- (l) if you are an individual, you are over the age of 18;
- (m) you have never been declared bankrupt or insolvent and your estate has never been assigned for the benefit of creditors;
- (n) you have never been a director of a company in respect of which a receiver, manager or a liquidator has been appointed;
- (o) there is no unsatisfied judgment entered in any court against you or any company of which you are a director; and
- (p) neither you nor any company of which you are or have been a director has ever owned property in respect of which foreclosure or other mortgagee's powers have been exercised.

#### 4.2 Declarations by Companies

If you or any Security Provider is a company, you and any Security Provider make the following further declarations to us:

- (a) the copy of the Constitution that you have given us is a true and correct copy of the Constitution;

- (b) you are not breaching your Constitution by entering into this Loan Agreement;
- (c) you are not in liquidation, receivership or administration;
- (d) you are duly incorporated in accordance with the Laws of the place of your incorporation;
- (e) you have the corporate power, and all necessary action has been taken, including corporate approvals and the passing of resolutions to allow you to enter into the Entire Contract and to own your own property ("All Relevant Approvals");
- (f) All Relevant Approvals will be renewed as required from time to time for the Entire Contract to continue to be binding upon you;
- (g) you will not without our prior written consent call up or receive, in advance of calls, any of your uncalled capital;
- (h) you will carry on your business in a proper and efficient way; and
- (i) any financial statements that you have given us are a true and clear reflection of your financial position.

#### 4.3 General

- (a) You acknowledge that the Entire Contract constitutes a valid and legally binding obligation on each Person who is a party to it.
- (b) You acknowledge that we rely upon your declarations and that they are relevant to our decision to enter into the Loan Agreement and the transactions contemplated by it.
- (c) You will be taken to have repeated these declarations every time we advance monies under the Loan Agreement, and you must immediately give us notice of anything that happens at any time which would make the repetition of these declarations untrue, incorrect or misleading.
- (d) Each of the above declarations and acknowledgements will commence from the date of the Loan Agreement until the Loan is fully and finally paid.

### 5. What Must Happen Before We Make The Loan

We will advance the Loan or allow you to make a Drawing only:

- (a) if you have satisfied all conditions which we have told you in writing must be satisfied before we are obliged to extend credit to you, including the conditions and requirements set out in your Loan Agreement and any letters or checklists from us or our solicitors

such as a building insurance policy for an amount specified by us or if you are a company, a copy of your company constitution;

- (b) if you have delivered to us all signed documents relating to the Security, including the Entire Contract, Mortgage and any other document requested by us;
- (c) if there is no Default and no Default by a Security Provider under any Security;
- (d) if we ask you, you open and maintain an account acceptable to us with an approved deposit taking institution under the Banking Act 1959 and you provide us with and maintain a valid and enforceable direct debit authority which allows us to draw from the Loan Service Account the amounts which you have agreed to pay us under your Loan Agreement;
- (e) if we require a Security, we hold the Security and all things have been done and all monies paid to render the Security valid, enforceable and binding upon the Security Provider;
- (f) where we require lenders' mortgage insurance, the insurer accepts the insurance risk for the amount that we require;
- (g) if we are satisfied with the valuation of any Security Property;
- (h) where you or the Security Provider is a trustee and you enter into the Loan Agreement or the Security Provider provides the Security (as the case may be) in a trust capacity, you provide us with a true, complete and current copy of the instrument creating the trust and any variations and amendments created and we obtain legal advice that all legal formalities relating to the trust are in order and you or the Security Provider (as the case may be) have the requisite power, respectively, to enter into the Loan Agreement or give the Security;
- (i) if we have no reason to believe that any declaration made by you or on your behalf, or made by any Security Provider, is false, incorrect, untrue or misleading;
- (j) if we do not become aware of any non-disclosure of information by you or on your behalf or made by any Security Provider;
- (k) if we have no reason to believe that your financial position has changed adversely since the date of the Loan Application with the result that you may not be able to repay the Loan or the Amount Owing;
- (l) if you arrange to draw the Loan, or the first Drawing where the Loan is to be drawn progressively occurs within 90 days (or such longer period as we may state in writing to you) of the date of the Loan Agreement; and

- (m) if at the time that you request a Drawing, the Amount Owing does not at that time or immediately following the Drawing, exceed the Credit Limit.

### 6. Undertakings

You undertake to keep doing the following until the Loan is fully and finally repaid:

- (a) you will promptly, fully, honestly and in accordance with our request, disclose your financial position to us when and as often as we ask you to do so;
- (b) you will comply, to our satisfaction, with all Laws, notices and orders and all contractual and other obligations which relate to the Entire Contract and you must do so both on your own and jointly with any other person who is a Borrower under the Loan Agreement;
- (c) you will comply with any relevant time limit where the Entire Contract specifies a time within which you must do something or where there is no time limit, you must do the thing promptly;
- (d) you will inform us promptly if you become aware of anything which may affect your or our respective rights and obligations under the Entire Contract;
- (e) you will ensure that there is enough money in the Loan Service Account to meet the debits made or to be made pursuant to the Entire Contract;
- (f) you will not alter, cancel or close any Loan Service Account nominated by you without notifying us in writing and obtaining our consent to the alteration, cancellation or closure;
- (g) where you are prohibited from doing something under the Entire Contract, you must not allow or facilitate the doing of that thing;
- (h) where you are obliged to do something under the Entire Contract this includes an obligation to ensure that the obligation is satisfied by you or any other relevant Person;
- (i) you will not do anything which may adversely affect our rights under the Entire Contract including anything which may lower the value of any Security Property or which may adversely affect your ability to repay the Amount Owing;
- (j) where you or any Security Provider is a company, to provide us within nine (9) months after the end of each financial year, a copy of the Financial Statements for that financial year of that company (all Financial

Statements must be prepared by an accountant and be in a form acceptable to us);

- (k) where you or any Security Provider is an individual, to provide us promptly when requested by us, a signed Personal Financial Statement and copies of such income tax returns and assessments as we may require (all Personal Financial Statements) must be prepared by an accountant and be in a form acceptable to us); and
- (l) you will use the Loan only for the purpose for which you nominated in your Loan Application.

## 7. Trusts

Where you or any Security Provider enter into the Loan Agreement in a trust capacity whether disclosed to us or not:

- (a) unless we give you our prior consent otherwise, you must be and remain the only trustee of the relevant Trust (“the Trust”);
- (b) you must remain at all times liable to us under the Loan Agreement in your own right and in your capacity as trustee of the Trust;
- (c) you undertake that at all times you have an unrestricted right of indemnity from the Trust’s assets in respect of the Loan Agreement and we must remain entitled to obtain the benefit of that indemnity in priority to the rights of any beneficiary of the Trust;
- (d) you undertake to comply with the terms of the Trust;
- (e) you declare that you have signed the Loan Agreement with the consent of the beneficiaries of the Trust and for the benefit of the beneficiaries of the Trust;
- (f) you declare that the Trust has been properly constituted and that the trust deed, a true and correct copy of which has been provided by you, is valid and enforceable;
- (g) you acknowledge that you have the relevant power and authority under the terms of the Trust to accept the Loan Agreement and to Mortgage the property of the Trust; and
- (h) you undertake to keep us informed of all proposals or developments relating to the Trust including any proposal to:
  - (i) revoke or terminate the Trust;
  - (ii) amend the Trust’s terms;
  - (iii) remove or replace you as trustee or to add a new or additional trustee; or
  - (iv) to distribute in any way any part of the Trust’s capital.

## 8. Partnerships

Where you are a Partnership, the Entire Contract will remain binding:

- (a) notwithstanding any change which may take place in the partners; and
- (b) notwithstanding that the Partnership no longer carries on business.

## 9. The Loan Account

You authorise us to:

- (a) open the Loan Account in your name;
- (b) debit the Loan Account with:
  - (i) the Loan and any Drawing; and
  - (ii) any other amount you are obliged to pay us under the Entire Contract, but have not paid us.

From time to time, we may make adjustments to the Loan Account including to interest charged, where such adjustments are required to accurately reflect our mutual rights and obligations. For example, we may reverse an earlier credit where a cheque deposited to the Loan Account has been dishonoured by the paying institution or where there has been an administrative error.

### 9.1 Funding the Loan

We make the Loan available to you by:

- (a) a single drawing, unless we agree to fund the Loan by Drawings as detailed in the Loan Agreement or as agreed between us and you; and
- (b) paying the Loan or a Drawing in accordance with the Loan Agreement, such as pursuant to your written instructions given in accordance with the Loan Agreement.

## 10. Payments

### 10.1 What You Must Pay

- (a) You owe us and must pay us the Amount Owing in immediately available funds, and subject to any applicable Law that cannot be excluded, without set-off or counterclaim and without deductions for any tax or other government charges.
- (b) You must pay us the Repayment amount monthly over the Loan Term as set out in the Loan Agreement. This amount may vary from time to time.

### 10.2 Method of Repayment

You must make your Repayments to us and Repayments are to be made in Australian dollars or in such other currency as we consent beforehand to receive from you:

- (a) at the time or times and in the manner provided for in the Loan Agreement; or
- (b) if not specified in the Loan Agreement, on the same day of each month as the Date of First Advance commencing in the month following the Date of First Advance.
- (c) If a Repayment is due on a day that is not a business day, the Repayment must be made on the next Business Day.
- (d) If any Repayment is due on a day which is the 29th, 30th or 31st of a month with no such date, the Repayment must be made on the first day of the next month. For example, if the Date of First Advance is the 31st day of December, your February Repayment will be due on 1st March as 31st February is a date which does not exist.
- (e) Repayments must be made by direct debit from an account acceptable to us with an approved deposit taking institution under the Banking Act 1959, unless we agree to some other method of Repayment with you.
- (f) We may change the due date and manner of Repayments by giving you notice in writing from time to time.

### 10.3 Repayments

- (a) Repayment of the Amount Owing may be by one, or more than one, method as stated in the Loan Agreement including:
  - (i) interest only Repayments for a period of the Loan Term; and
  - (ii) principal and interest Repayments.
- (b) If the Loan requires a minimum periodic Repayment which varies according to the amount of the Loan or credit limit at the time and the variable Repayment is notified to you (as may be applicable to Lines of Credit), the Repayment so notified must be made by you by the date stated in the relevant notification.
- (c) You cannot make a Repayment by drawing on the Loan Account.
- (d) Repayments, including interest only payments, include interest, government taxes applicable to the Repayment and any other amounts we notify you of.
- (e) If monthly Repayments are set by us, the interest

component of each Repayment may not equal the actual interest debited to the Loan Account for that month because of the different number of days in each month.

- (f) If you ask, we may consent to accepting Repayments from you at a frequency other than monthly.

### 10.4 Crediting of Payments or Repayments

- (a) Any payment or Repayment received by us after 4pm on any day, may be taken by us to have been made at 9am on the next Business Day.
- (b) Where any payment or Repayment made by you is dishonoured, we will treat that payment or Repayment as not having been made. Any applicable interest will continue to accrue on the balance calculated as if the credit had not been made.
- (c) Where any payment or Repayment received by us has been made by way of cheque, the proceeds from that cheque will only be available to you once that cheque has cleared.

### 10.5 Variations to Repayments

We may vary the amount of the Repayments specified in the Loan Agreement when the Loan Particulars change or for any other reason and at any time to ensure that the Repayments are sufficient for you to repay the Amount Owing by the end of the Loan Term.

### 10.6 Early Repayment and Extra Repayments

- (a) You may repay the loan in full at any time by paying us the Amount Owing.
- (b) If, in respect of a fixed Annual Percentage Rate Loan, you elect to make partial early Repayments totalling more than \$10,000 in any calendar year or make a full early Repayment, we may require you to pay administration fees and applicable Break Costs as set out in this Entire Contract.
- (c) Any early Repayments made may only be withdrawn by you if you have a Redraw Facility.
- (d) A failure to make a Drawing within any relevant time limit set by us will be deemed an early Repayment.

### 10.7 Final Repayment

You must pay the Amount Owing on the date specified in the Loan Agreement as the Final Repayment Date.

## 11. Interest

### 11.1 Loan Interest (The Annual Percentage Rate)

- (a) You must pay us interest on all amounts debited to the Loan Account until those amounts are paid.
- (b) Loan interest accrues daily and begins to accrue from the date we first debit an amount to the Loan Account.
- (c) Loan interest is calculated on the unpaid daily balance of the Loan Account at the Daily Percentage Rate then current, based on a 365 day year.
- (d) Any interest charges debited to your Loan will form a part of the Amount Owing on which subsequent interest charges will be calculated.

### 11.2 Fixed Annual Percentage Rate

If the Loan has a fixed Annual Percentage Rate for a period:

- (a) the Annual Percentage Rate stated in the Loan Agreement is the Annual Percentage Rate which is current as at the Disclosure Date;
- (b) the Annual Percentage Rate applicable to the Loan will not vary during this fixed rate period unless Default Interest is payable by you;
- (c) prior to the end of your fixed rate period, we may notify you of any further fixed and variable rate periods which may be available to you, along with details of the applicable Annual Percentage Rates and repayment amounts for each option;
- (d) if you wish to continue under a fixed rate option offered by way of clause 11.2(d), you must notify us in writing prior to the expiry of your fixed rate period;
- (e) at the end of a fixed interest rate period, the Annual Percentage Rate on the Loan changes to a variable Annual Percentage Rate unless we agree with you otherwise prior to the end of the fixed interest rate period; and
- (f) the fixed Annual Percentage Rate begins on the Settlement Date.

### 11.3 Variable Annual Percentage Rate

If the Loan has a Variable Annual Percentage Rate:

- (a) the Loan has a variable Annual Percentage Rate for the Loan Term except to the extent that in the Loan Agreement states that there is a fixed interest rate period;
- (b) the Annual Percentage Rate stated in the Loan Agreement is the Annual Percentage Rate which is current as at the Disclosure Date or in the case of a

Loan which is not regulated by Credit Law, the date of our offer to you;

- (c) The Annual Percentage Rate may change as detailed in clause 13.1;
- (d) if we set a maximum Annual Percentage Rate on the Loan for a period, then that rate and the period are stated in the Loan Agreement. The Annual Percentage Rate will not increase above the maximum rate during that period unless Default Interest is payable by you; and
- (e) if the Loan has a minimum Annual Percentage Rate for a period, then that rate and the period are stated in the Loan Agreement. The Annual Percentage Rate will not decrease below the minimum rate during that period.

### 11.4 Default Interest

Where you are in Default of your obligations under the Entire Contract:

- (a) you must pay us Default Interest at the Default Interest Rate on any amount you fail to pay under the Entire Contract by the due date for payment of that amount;
- (b) Default Interest accrues daily on the overdue amount commencing from the due date for payment of that amount until that amount is paid. If for any reason your entire loan amount becomes due, Default Interest at the applicable Default Interest Rate is payable on the entire outstanding amount of the loan.
- (c) your payment of Default Interest does not alter your obligation to pay any further Repayments when they fall due in accordance with the Loan Agreement.

### 11.5 Debiting of Interest

We debit the Loan Account:

- (a) on each monthly anniversary of the Date of First Advance;
- (b) on the day that a Loan Account is closed; and
- (c) on the day the Amount Owing is repaid in full, with all applicable interest accrued up to and including the day prior to the debiting, with the effect that interest is capitalised.

### 11.6 Switching Interest Rate Options

If you wish to switch your interest rate option you must:

- (a) notify us in writing that you wish to switch your interest rate option and which interest rate option you are seeking to switch to; and

- (b) obtain our written consent to the requested switch.

We do not have to consent to any request you make to change from a fixed Annual Percentage Rate Loan to a variable Annual Percentage Rate Loan or from a variable Annual Percentage Rate Loan to a fixed Annual Percentage Rate Loan or to change any of the Loan Particulars. Where we do consent to such changes we may impose additional conditions and may also require the payment of a switching fee and any relevant Break Costs.

### 11.7 Interest Payable in Respect of a Judgement or an Order

If your liability to pay us any money becomes converted into any judgment or order, then you must pay us interest on the amount of that liability:

- (a) as an independent obligation; and
- (b) from the date the payment was due to be made until it is paid to us at the rate of interest which is the higher of that payable under the judgment or order and the Default Interest Rate.

## 12. Fees And Charges

### 12.1 General Expenses

The fees and charges that are payable by you in connection with your Loan Agreement ("General Expenses") include:

- (a) our expenses of negotiating, preparing, signing, stamping, and completing the Entire Contract;
- (b) our expenses of giving a consent, waiver, release or discharge in connection with the Entire Contract;
- (c) our expenses of producing title documents in connection with the Entire Contract;
- (d) taxes, duties, fees, government charges, fines and penalties which may be payable or assessed in connection with the Entire Contract or a transaction under the Entire Contract including government financial institutions duty and debits tax;
- (e) the costs, charges and expenses we incur if we have to answer an enquiry by any authority involving you or the Loan;
- (f) any fee that we may properly pay in relation to the Entire Contract such as dishonour fees if any cheque in payment of the Amount Owing is dishonoured;
- (g) solicitors' or experts' costs;
- (h) any establishment fees and any other fees previously disclosed to you;

- (i) lenders' mortgage insurance premiums;
- (j) any new charge or fee notified to you;
- (k) any reasonable expenses we reasonably incur in the event that we are required to enforce the Loan Agreement or the Security following Default;
- (l) our expenses whether or not we fund the Loan, including those due to or payable prior to any termination of the Entire Contract by you before the Loan is first funded such as valuation fees; and
- (m) our expenses of exercising any right, power, remedy or obligation under the Entire Contract.

### 12.2 When You Must Pay Fees and Charges

- (a) You must pay for anything that you have an obligation to do under the Entire Contract.
- (b) General Expenses are payable on the day that we pay them or on the day they are due, whichever is the earliest.

### 12.3 Commissions

In some circumstances, a commission may be payable by or to us in relation to the introduction of your credit business or business financed by the Entire Contract.

### 12.4 Break Costs

Break Costs are payable by you if your Loan, or a portion of your Loan has a fixed rate period and any one or more of the following occur:

- (a) you change from the fixed rate option to a variable rate option during the fixed rate term;
- (b) the Amount Owing, or the balance of the portion that has a fixed rate period is repaid during the fixed rate period by you; or
- (c) the Amount Owing, or the balance of the portion that has a fixed rate period is repaid during the fixed rate period because you are in Default.

### 12.5 Calculation of Break Costs

- (a) Break Costs are the amount determined by us as being our costs and losses as a result of the portion of your Loan that has a fixed rate or any part of that portion of the Loan being repaid early.
- (b) In calculating this amount, we need not refer to any



specifically matched borrowing of money to make the Loan (because there may be no matched borrowing), nor need we refer to an average cost of money (because different parts of money may be allocated to different purposes).

If in doubt about Break Costs, ask before entering into the Loan Agreement.

## 13 Variation Of Loan Particulars

### 13.1 Changes to the Annual Percentage Rate

(a) We may change the Annual Percentage Rate applying to a variable Annual Percentage Rate Loan from time to time, and no later than the day when the change takes effect we will either:

- (i) give you written notice of any change; or
- (ii) advertise the change in leading daily newspapers in each State and Territory.

(b) After the Loan is first drawn we will not change the Annual Percentage Rate applying to a fixed Annual Percentage Rate Loan during a fixed interest rate period.

### 13.2 Other Changes to Fees

(a) From time to time we may change:

- (i) the amount of, the type of, the frequency of payment of or the basis for calculating our General Expenses;
- (ii) except during a fixed interest rate period, the amount of, the frequency of payment of or the basis for calculating interest;
- (iii) the frequency of repayments or interest debits; and
- (iv) any other items or other terms and conditions relating to your Loan.

(b) We will give you thirty days' prior written notice of the change referred to in Clause 13.2(a) unless the change reduces your obligations or extends the time for payment of any amount under the Entire Contract, and in the case of General Expenses and other account keeping fees, we may give you prior written notice by advertisement in a leading daily newspaper in each State or Territory.

(c) We will confirm any newspaper notice and give notice of any change we make that reduces your obligations or extends the time for payment of any amount under the Entire Contract before or when we send you the next Loan Statement.

(d) We will only give you notice of any change to any, or of any new, government tax applicable to your Loan or accounts if the relevant government does not publicise

the change or imposition of the tax.

(e) We may from time to time vary the amount or the limit of the Loan and accommodation available to you under the Entire Contract and the repayment of the Amount Owing, even if so varied, will continue to be secured by any Security given to us until it is discharged.

## 14. Statements

During the Loan Term we will send you a statement of the Loan Account at a frequency as stated in the Loan Agreement. If no statement frequency is nominated in your Loan Agreement, statements of account will be issued to you every six months.

We recommend that you review these statements and notify us immediately if there are any errors which appear.

## 15. Construction Loans

This Clause 15 applies if the Loan is a Construction Loan.

### 15.1 Interest Payments During and After the Construction Period

- (a) During the Construction Period your Repayments are interest only calculated in accordance with Clause 11.
- (b) After the Construction Period your Construction Loan will continue as a variable Annual Percentage Rate Loan with Repayments of principal and interest in accordance with Clause 11.

### 15.2 Your Obligations

If the Loan is for the purpose of Construction, in addition to any special conditions that may be set out in your Loan Agreement, you must:

- (a) commence construction by the date stipulated by us in the Entire Contract;
- (b) provide us, in form and in terms and content satisfactory to us:
  - (i) a copy of the Construction Contract made between you and a builder who is acceptable to us;
  - (ii) a copy of the council approved plans and specifications for the Construction ("Plans and Specifications");
  - (iii) a copy of the relevant builder's certificate of registration or current builder's licence issued by a responsible authority;
  - (iv) if we ask, a legally enforceable document addressed to us by the relevant builder (and/ or any other Person reasonably nominated

by us) containing such undertakings in our favour as we may reasonably require in relation to the Construction;

- (v) full particulars of costs and progress at each stage of the Construction;
- (vi) if we ask, a report from a licensed surveyor approved by us, given both at the commencement and at the completion of the Construction, displaying the position of the Construction on the property and certifying that the Construction, including all walls, fences, drains and sewers, is wholly within the boundaries of the property;
- (vii) if we ask, a certificate from an architect (or other expert) approved by us, given at the completion of the Construction, stating that the Construction:

(A) is complete and complies with all Laws, orders, notices, licences and permits applicable to the Construction or issued by any competent authority in relation to the Construction;

(B) complies with the Plans and Specifications; and

(C) is safe and is fit for use for its intended purpose; and

(viii) a certificate by a valuer approved by us stating at each stage of the Construction or when reasonably required by us what part of the Construction has been completed and the value of that work;

(c) obtain all necessary approvals before you carry out or commence the Construction or enter into a contract to do so;

(d) ensure that the Construction:

(i) is performed and completed in a timely, proper, professional and tradesmanlike manner, to our satisfaction and in accordance with the Plans and Specifications; and

(ii) does not encroach on adjoining land;

(e) ensure that the Construction is adequately insured:

(i) by a reputable insurer approved by us; and

(ii) in respect of all applicable risks, including workers' compensation, public risk, industrial special risks, contractor's risk and liability insurance and other risks which a prudent Person would seek to insure against ("Construction

Insurance"); and

(iii) that the Construction Insurance policies are maintained and renewed;

(f) comply with your obligations under the Construction Contract and notify us immediately if there is any likelihood that you will not be able to do so;

(g) tell us if there is a default under the Construction Contract or if anything happens which, with the lapse of time, will become a default if it is not remedied;

(h) not terminate the Construction Contract without first obtaining our written consent;

(i) enforce the performance of the Construction Contract against whomever you are entitled to enforce it and pursue any rights under the Construction Contract that you may have against whomever you are entitled to;

(j) not, without our prior written consent, consent or agree to the variation of the Construction Contract or the Plans and Specifications nor waive any breach or non-performance of the Construction Contract;

(k) give us a copy of any notice, demand or requirement you receive from any Person (other than us) relating to the Construction; and

(l) open, maintain and allow us to inspect books of account in which you accurately and fully record all transactions relating to the Construction and its performance.

### 15.3 Building and Construction - Other Requirements

You agree that:

(a) if we do something we are entitled to do in relation to the Construction you must pay the reasonable costs and expenses incurred by us in doing so;

(b) we are not liable to you for any loss you incur if we approve of or consent to something in relation to the Construction;

(c) we have no duty of care to you if we monitor the Construction or its progress and we do not have to keep you informed of what comes to our attention. We will only monitor the Construction for our purposes;

(d) if we ask, you must assign to us the benefit of any warranty, insurance, indemnity or guarantee you hold in respect of the Construction as further security for payment of the Amount Owing and, in that event, we will assign such benefits back to you only when the



- Amount Owing is satisfied in full; and
- (e) when you receive a progress claim relating to the Construction:
- (i) we will not be required to advance any Drawing in respect of that progress claim until:
- (A) you give us a copy of the progress claim together with a completed draw-down request in the form and with such detail as we require;
- (B) you give evidence satisfactory to us that all your own funds which you represented to us would be contributed to the Construction have been so contributed;
- (C) as we request, either your valuer or our valuer approves and verifies the progress claim which must include confirmation that the Construction is to the stage that is being represented; and
- (D) you comply with any other conditions we reasonably require and notify you of in writing; and
- (ii) we may, in our absolute discretion, pay the Drawing:
- (A) directly to the Person who has provided the services or goods covered by the progress claim, if that Person has not been paid, or to you; and
- (B) except with regards the final Drawing, in an amount being the undrawn balance of the Loan less an estimate by your or our valuer, as we request, of the cost to complete the Construction.

#### 15.4 Completion of Construction

On completion of Construction, you agree that you will obtain copies of any necessary certificates from any relevant body confirming compliance with that relevant bodies approvals or compliance. These copies are to be provided to us within 3 months of completion.

## 16. Line Of Credit

This Clause 16 applies if the Loan is a Line of Credit.

#### 16.1 Operation of Your Line of Credit Loan

- (a) A Line of Credit may be operated, if we consent, with either one or both of debit card or cheque book operational on the Loan Account.

- (b) You must ensure that any Drawing pursuant to a Line of Credit Facility does not make the balance in debit from the Loan Account greater than the Credit Limit plus any Excess Credit for which you have our prior written consent.
- (c) Any Excess Credit for which you do not have our prior written consent, must be repaid immediately.
- (d) The Without Arrangement Interest Rate will apply to any Excess Credit accessed with or without our consent.
- (e) If we consent to Excess Credit at any time, the conditions we may impose on such Excess Credit may include:
- (i) that the Excess Credit be repaid within a certain period; or
- (ii) that payments made to the Loan Account are first applied by us to the Excess Credit and any interest charged on it.
- (f) Notwithstanding any term to the contrary, the Amount Owing pursuant to a Line of Credit facility is payable to us upon our demand.
- (g) If we reduce the Credit Limit on the Loan Account, any debit balance in excess of the Credit Limit will be Excess Credit to which it will be taken that we have not consented.
- (h) Until we make a demand for the total of the Amount Owing, we may set minimum monthly repayments payable by you. Subject to you making the minimum monthly repayments, you may repay the Amount Owing at any time.
- (i) You may conduct the Loan Account with a credit balance. When this occurs, the terms and conditions regarding our savings transaction accounts will apply.

#### 16.2 Term and Termination

As there is no Loan Term for a Line of Credit Facility, the facility may be terminated by either you or us at any time and the Amount Owing will be immediately due and payable by you. The repayment of the Amount Owing consequent upon or subsequent to such termination will not be considered a prepayment of the Loan.

## 17. Split Loans

#### 17.1 Portions

- (a) The Loan may be split into a number of portions ("Portion"). The Loan Particulars for each Portion are at our sole discretion and where applicable, are stated in the Loan Agreement.

- (b) Unless a contrary intention appears, each Portion is treated under the Loan Agreement as a separate Loan granted to you with its own Loan Particulars and Loan Account.

#### 17.2 Determination of Allocation Between Portions

- (a) While interest and our General Expenses specific to a Loan will be debited to the relevant Loan Account, we may debit any other amounts payable by you to whichever Loan Account we choose at our sole discretion.
- (b) If you do not specify the proportion in which a Loan payment or Repayment is to be allocated between two Portions, then we may credit whichever Loan Account we choose.
- (c) Portions with identical repayment types and periods, Annual Percentage Rates, and interest periods may be combined, or their Amounts Owing may be altered between them, with our prior written consent and on payment by you of the applicable administration fee as advised from time to time.

## 18. Home Loan Offset Accounts

#### 18.1 Provisions Applying to Home Loan Offset accounts

- (a) You may only link a Home Loan Offset account to variable Annual Percentage Rate Home Loan Accounts, excluding Home Equity Loan Accounts.
- (b) If you open a Home Loan Offset account with us and link it to the Loan Account, we calculate interest on the Loan Account in accordance with Clause 11.1 except that it is calculated on the difference between the sum of the debits in the Loan Account on the day of calculation and the credit balance on that day in your mortgage reduction facility account.

## 19. Redraws

#### 19.1 Provisions Applying to Accounts with a Redraw Facility

- (a) If you have a variable Annual Percentage Rate Loan, we may consent to providing you with a Redraw Facility for any period until the Amount Owing is repaid, but we are not obliged to do so.
- (b) A Redraw Facility is not available for fixed Annual Percentage Rate Loans, or fixed interest rate periods, and if a variable Annual Percentage Rate Loan changes to a fixed interest Loan, any Redraw Facility then available will be terminated.
- (c) Any drawing by you pursuant to a Redraw Facility will be treated as a Drawing and will be subject to the

same conditions which apply to Drawings, such as the conditions stated in Clause 5.

- (d) We may suspend or cancel your Redraw Facility at our absolute discretion and such suspension or cancellation will have immediate effect. This will not affect your obligation to repay the Amount Owing which includes the amounts drawn pursuant to the facility. We will notify you of such cancellation or suspension as soon as possible after it occurs.
- (e) Drawings by you pursuant to a Redraw Facility can be for any amount above \$2,000 but are limited to the total amount of any repayments made by you which are extra to the repayments required by us, and which have not already been redrawn.
- (f) Drawings under a Redraw Facility are made in accordance with our requirements of which we notify you from time to time, and for each such Drawing you must pay the applicable administration fee, which as at the date of the Loan Agreement is stated in the Financial Summary Table.

## 20. Default

#### 20.1 When are You in Default?

You will be in default when:

- (a) you fail to pay us the Amount Owing when due;
- (b) you do not pay on time any amount due under the Entire Contract;
- (c) you fail to do anything you are obliged to do under the Entire Contract;
- (d) you do something that you are obliged not to do under the Entire Contract;
- (e) if we, in our reasonable opinion, believe that there is evidence that you may be or are insolvent under Law or that you may be or are unable to properly manage your financial affairs or that you may be or are unable to observe your obligations under the Entire Contract including your seeking to make an arrangement with your creditors under bankruptcy Laws or a Receiver, manager or guardian being appointed in respect of your Property, you or your business, as the case may be;
- (f) any information or warranty given by you to us or to someone on our behalf in any way related to the Entire Contract is incorrect, misleading or untrue at any time when there is an Amount Owing;



- (g) you become bankrupt or your assets are assigned to the benefit of a creditor;
- (h) you do not fulfil any undertaking given by you to us under the Entire Contract within the time given, or if no time is given, within a reasonable time;
- (i) you breach the terms of any other agreement that you have with us;
- (j) in our reasonable opinion the value of any Security given to us to secure the Amount Owing would be or is diminished or such Security would be or is put into jeopardy for any reason at all including but not limited to the death or insolvency of a Security Provider or the termination of a Security;
- (k) we are unable to register a Security, if this is required by us, within a reasonable time;
- (l) any Construction is, in our opinion, not proceeding to our satisfaction including that it is or will not be completed within a reasonable time or not in a proper and workmanlike manner or not in accordance with its Plans and Specifications;
- (m) the Entire Contract is or becomes unenforceable according to its terms;
- (n) you give up to us any Security Property and do not notify us that you wish it returned within any time limit imposed by Law, or if no time limit is imposed, then within a reasonable time;
- (o) we are of the reasonable opinion that there has been an act of fraud in relation to the Loan or the Entire Contract;
- (p) you do not maintain appropriate fire and general insurance over any Security Property;
- (q) you are a company and any one or more of the following occur:
  - (i) you are deregistered;
  - (ii) you cease to carry on business;
  - (iii) there is a change in ownership or control; or
  - (iv) a receiver, administrator or liquidator is appointed to manage your affairs; or
- (r) you are a trustee of any trust and an application has been made to the court in relation to the Trust.

## 20.2 What Happens if a Default Occurs?

In the event of a Default, we may immediately take any one or more of the following actions without notice to you:

- (a) suspend any right to draw on any payments available under a Redraw Facility;
- (b) reduce any limit on a Line of Credit account to zero, making any Amount Owing immediately payable by you;
- (c) make the Amount Owing under any Loan facility type immediately due and payable and apply the Default Interest Rate to the Amount Owing;
- (d) exercise any of our rights under the Entire Contract; or
- (e) apply the Without Arrangement Interest Rate to the Amount Owing for any Line of Credit account.

## 20.3 What Happens Next

- (a) If in our reasonable opinion there is a Default by you, then subject to any applicable Laws and their requirements that cannot be excluded:
  - (i) we may notify you in writing of the Default by you ("Default Notice");
  - (ii) we may state a period of time in the Default Notice in which we allow you to remedy the Default by you. If we do this, the period of time will be as set out in any Law that cannot be excluded and if none is so set out, then it will be what we believe is reasonable in the circumstances but in any case not exceeding 32 days; and
  - (iii) we may state in the Default Notice how the Default by you may be remedied to our satisfaction.
- (b) If:
  - (i) after issuing a Default Notice we become aware of circumstances which, in our opinion, could significantly and detrimentally affect our ability to recover the Amount Owing and if we are not legally obliged to give you a Default Notice even though we may have given you one, we may withdraw the Default Notice; or
  - (ii) we are not legally obliged to give you a Default Notice; or
  - (iii) during the period in the Default Notice you do not remedy the Default to our satisfaction or if in our opinion the Default cannot be so remedied during that period, then the Amount Owing is immediately due and payable without further demand, and without being liable to you for what we do or do not do or how we do it, we may do any one or more of the following things in any order, at any time and according to any conditions determined by us, including doing anything in your name:
    - (A) demand payment of the Amount Owing from you or a Security Provider;
    - (B) sue you or a Security Provider for the Amount Owing;
    - (C) exercise any rights under Law or under the Entire Contract that we may have;
    - (D) bring or defend any action or legal proceedings in your name or otherwise in relation to any of our rights stated in this clause;
    - (E) take over any Construction including demolishing, changing or stopping it, using our or your tradesmen or both;
    - (F) employ, contract, appoint or delegate to, others and replace or terminate such employments, contracts, appointments or delegations, to carry out those of our rights and powers as determined by us;
    - (G) not fund the Loan; or
    - (H) do anything and spend such money as we think necessary or desirable, and impose any requirement on you, with the aim to reduce or extinguish the Amount Owing, or with the aim to remedy or reduce the effect of the Default, or to protect us against any risk or loss relating to the Entire Contract.

## 21. Enforcement Expenses

### 21.1 What You Must Pay

You must pay the reasonable expenses we incur as a result of enforcing our rights or protecting our interests in connection with the Entire Contract ("Enforcement Expenses").

### 21.2 What Types of Costs are Enforcement Expenses?

Enforcement Expenses include expenses relating to:

- (a) exercising, enforcing, protecting, or waiving, or attempting to exercise, enforce or protect any right or interest we have under the Entire Contract;
- (b) our internal administrative costs;
- (c) performing an obligation which you or any other person should have performed under the Entire Contract;
- (d) investigating the enforcement or protection of any right or interest, such as by seeking advice from a solicitor or a consultant or expert; and

- (e) commencing the enforcement or protection of any right or interest, such as by sending an arrears letter.

## 21.3 When You Must Pay Enforcement Expenses

You must pay Enforcement Expenses when we incur them. We may debit these amounts to your Loan Account.

## 22. Insurance

### 22.1 Your Obligations

- (a) In relation to all insurances required under your Entire Contract including any lenders' mortgage insurance and Construction insurance, you must:
  - (i) ensure that nothing is done or not done that could prejudice the insurance cover or any claim under such cover;
  - (ii) ensure that where the insurance specifically insures your interest it also insures our interest, noting our interest as mortgagee;
  - (iii) notify us if anything occurs which gives rise, or might give rise, to an insurance claim;
  - (iv) ensure that all premiums and other amounts payable under the policy are paid before the due date;
  - (v) provide to us the original or a copy of the policy documents for each period of insurance;
  - (vi) provide to us the original or a copy of the certificate from the insurer confirming that the insurance is current; and
  - (vii) provide to us any other document we require showing that you have complied with your obligations under this clause or that we believe is necessary or desirable to help us to exercise any rights relating to insurance.

- (b) If you do not take out and maintain any insurance requested by us, we may arrange an insurance policy on your behalf, and any costs incurred by us in doing so will be an Enforcement Expense.

### 22.2 Insurance Claims

If an insurance claim is made in relation to such insurances, you must:

- (a) notify us as soon as it is made;

- (b) notify us whether the claim has been accepted fully, in part or not at all; and
- (c) comply with any of our requirements which are notified to you including:
  - (i) allowing us to take over your rights under the insurance; and
  - (ii) ensuring that the proceeds of the claim are paid or used as we direct including payment of the proceeds to us.

### 22.3 Mortgage Insurance

You acknowledge that in relation to any lenders' mortgage insurance taken out by us, even if you pay the premium for such insurance:

- (a) such insurance protects us should we suffer loss arising from a Default by you and does not protect you in any way; and
- (b) you may be liable to the insurer if we successfully claim against the insurance and the sale proceeds are insufficient to recover the whole insured amount.

## 23. Rights And Obligations

### 23.1 Suspension of Your Rights

- (a) For so long as any part of the Amount Owing remains outstanding, you must not without our prior written consent:
  - (i) recover any amount, in competition with us, from any other Person who is a party to the Entire Contract ("Any Other Relevant Party");
  - (ii) claim the benefit, or seek the transfer, of any Security from Any Other Relevant Party;
  - (iii) take over any of our rights as a creditor; or
  - (iv) require us to have recourse to a Security or right before we have recourse to you or any other Security.
- (b) You waive in our favour any right you have against us or Any Other Relevant Party which would reduce your liability to us or the amount we can recover from you or from Any Other Relevant Party.

### 23.2 Your Obligation to Perfect the Entire Contract

- (a) You must do anything we may reasonably require you to do to:
  - (i) complete or perfect the Entire Contract;
  - (ii) allow us to exercise our rights under the Entire Contract; and

- (iii) comply with any obligation you have under the Entire Contract.
- (b) The things you may be required to do include obtaining consents, replying to enquiries, producing receipts and other documents, having forms signed and completed and using your best efforts to have third parties sign such documents or do such things.
- (c) You agree that we may complete any blanks in the Entire Contract to perfect the Entire Contract and the Security.

### 23.3 What You Must Give Us

- (a) If we ask, you must give us originals (or, if we agree, copies) of receipts for all payments you are obliged to make under or relating to the Entire Contract.
- (b) Whether or not we ask you must give us originals (or, if we agree, copies) of any order, notice or other document you receive from any governmental or other authority which may adversely affect our rights under the Entire Contract.
- (c) You must provide us with documents and information as and when requested by us:
  - (i) to satisfy us that your obligations under the Entire Contract are being met to our satisfaction;
  - (ii) to satisfy us that any declarations made by you under the Entire Contract are true, correct and not misleading; and
  - (iii) to help us to ascertain whether there is a Default or anything that could with time become a Default.

### 23.4 Our Other Rights and Preserving and Restoring Our Rights

- (a) Any amounts payable by you pursuant to the Entire Contract may be debited by us to the Loan Account or drawn from the Loan Service Account or such other account you hold with us as we think reasonable in our absolute discretion or, if we ask, you must pay them to us as we direct.
- (b) We may do anything that any Person ought to have done under the Entire Contract but which was either not done or not done to our satisfaction.
- (c) An Authorised Officer may exercise the rights and powers which are conferred on us under the Entire Contract or by Law.
- (d) We may enforce a Security given for the Amount Owing before we enforce other rights, remedies or Securities which may be available to us.

- (e) If we do not exercise or if we delay in exercising a right or remedy completely or at all at any particular time, we may still do so at a later time.
- (f) If you are a company, then in addition to our other rights and powers under the Entire Contract:
  - (i) we may appoint accountants ("Investigating Accountants") to investigate and report to us upon your affairs and financial position and that of any subsidiary company;
  - (ii) you must give the Investigating Accountants all assistance they may reasonably request from you; and
  - (iii) you must pay us the costs and expenses of any Investigating Accountants when we demand payment and we may add such costs and expenses to the Amount Owing.
- (g) Our rights to enforce the Entire Contract will not be prejudiced if we receive a payment or a Security or we receive a payment or Security which is subsequently dishonoured or is found to be unenforceable, such as under Laws relating to insolvency.
- (h) If such a payment or Security is dishonoured or is found to be unenforceable, we and you will be restored to the rights and obligations we respectively would have had if:
  - (i) no such payment or Security had been made or given including our right to charge Default Interest from the date the relevant payment was due; and
  - (ii) no release, settlement or discharge had been given or made in reliance upon such payment or Security.
- (i) The rights, powers, remedies, authorities and discretions which the Entire Contract confers upon us are not exhaustive and do not by implication prevent us from exercising whatever rights, powers, remedies, authorities and discretions we may have under Law.
- (j) The Entire Contract and our rights under the Entire Contract will not be adversely affected by any of the following:
  - (i) any period of grace or other indulgence we allow you or any other Person;
  - (ii) any delay, omission or mistake on our part;
  - (iii) death, retirement, amalgamation, incorporation, any change in the legal capacity or otherwise of any Person who is a party to the Entire Contract or who may have provided any other Security in relation to the Amount Owing;

- (iv) any change which may occur from time to time in the name, membership or business of a firm, partnership, committee or association;
- (v) a judgment against you or another Person;
- (vi) our assent to any arrangement or appointment relating to your possible or actual insolvency;
- (vii) any variation we make or agree to make to the Entire Contract or any variation we agree to in respect of any Person's obligations under the Entire Contract; or
- (viii) any irregularity in the signing of the Entire Contract or any deficiency in your powers to enter into the Entire Contract.
- (k) Any termination by us of the Loan Agreement or termination of any Loan Account is without prejudice to the rights accrued prior to such termination.

### 23.5 Our Right to Review Entire Contract

Clause 23.5 applies only where the Loan is not regulated by Credit Law.

- (a) Unless otherwise notified by us in this Agreement, we may review the Entire Contract at any time after the date of this Agreement but not more frequently than annually unless otherwise specified by us in this Agreement.
- (b) If, after a review, we believe in our absolute discretion that:
  - (i) (A) the value of any Security is; or
  - (B) your capacity to meet Repayments is; or
  - (C) before the next review is due, your capacity to meet Repayments is likely to become; materially less than it was at the time your Loan was approved by us; and
- (ii) you have, on 2 or more occasions in any 12 month period, not maintained regular Repayments; or
- (iii) there is anything else which we reasonably believe could affect your ability to perform your obligations to us or the ability of any such Security Provider to perform its obligations to us or the value to us of any Security;

- (iv) require you to provide us with any additional Security we reasonably request; and/or
  - (v) require you to repay part of the Amount Owing on the Loan; and/or
  - (vi) require you to repay all of the Amount Owing on the Loan.
- (c) If we do any of the things in this clause 23.5 we will notify you in writing. If we require you to repay the any part of the Amount Owing (which includes part or all of the Amount Owing) on the Loan under this Clause 23.5, we will give you 45 days notice in writing.

## 24. General

### 24.1 How We Apply Money We Receive

- (a) We will have an absolute discretion (without the need to communicate our election to anyone) to apply any money we receive under the Entire Contract at any time to reduce any part of any Amount Owing we elect.
- (b) If the money we receive comprises the proceeds of an insurance claim, we may use that money to remedy the damage or defect or to reduce the loss in respect of which the insurance monies were received.
- (c) We may use money held in the surplus account to reduce the Amount Owing as soon as any part of the Amount Owing is due to be paid. We may retain funds in the surplus account, and we will have no obligation to pay them to you or any other Person, so long as we reasonably believe that those funds may be needed by us, then or in the future, to reduce the Amount Owing.

### 24.2 We Are Protected

- (a) Neither we nor any Receiver whom we appoint under the Entire Contract or pursuant to any Law are liable to you for anything done or not done or for any delay, in the exercise or attempted or purported exercise of any power, right, duty, authority or discretion we have or the Receiver has under the Entire Contract or under Law and you release us and any such Receiver from all actions and claims you might otherwise have had in relation to such matters.
- (b) If we or any of our employees, contractors or agents inspect or make any report regarding any Security Property such as a valuation, they do so for our purposes and not on your behalf, even if you pay or are liable to pay the fee for the inspection or report. Any reports made are our exclusive property.
- (c) We and any of our employees, contractors or agents are not responsible for and make no representation to you about the condition of the Security Property, including

the standard or value of it or any building on it or the uses to which the Security Property may be put, if we act in any way such as by funding the Loan after having received any report relating to the Security Property.

- (d) We are not liable for any decision you make in relation to the Loan, such as the type of interest or Loan you have chosen or your decision to enter the Loan Agreement and you acknowledge that in making any decisions in relation to the Loan, you have not relied on any representations, predictions or statements of opinions which you believe have been made by us or any of our employees, contractors or agents.

### 24.3 Third Parties' Protection

An Authorised Officer may give receipts for money received under the Entire Contract, and such a receipt will release the Person making payment from:

- (a) any obligation to enquire whether any Default by you has been made under the Entire Contract or whether any part of the Amount Owing is or is not payable or owing at that time; and
  - (b) liability for, or for the application of, the money paid or for which the receipt is given.
- ### 24.4 Joint and Several Liability
- (a) Where the Loan is made to more than one Person, each of you are liable in your own right individually and any two or more Persons will be liable jointly under the Entire Contract.
  - (b) The liabilities and obligations under the Entire Contract will also attach to any successors or assigns.

### 24.5 Certificates Issued By Us

An Authorised Officer may sign a certificate which states as at any particular time or date:

- (a) the Amount Owing; or
- (b) the occurrence of a Default by you; or
- (c) the occurrence or existence of any other act, matter, thing or state of affairs relevant to the Entire Contract, and a certificate so signed will to the fullest extent permitted by Law be conclusive evidence (otherwise it will be sufficient evidence) of the matter certified.

### 24.6 Our Consent

Where our consent is required under the Entire Contract before something is permitted to happen, we will not withhold our consent unreasonably but we may give our consent conditionally, in which case you must ensure that the conditions are satisfied, including our requirement for

any undertaking in our favour or the payment to us of a fee to reimburse us for our costs of investigating and considering any request to give such consent.

### 24.7 Set-Off

- (a) If we have a monetary liability to you ("our Liability"), we may satisfy our Liability by setting it off against the Amount Owing. Our right under this clause is in addition to any other right we have to combine your accounts or to set-off amounts in them.
- (b) We may exercise this power:
  - (i) without giving you prior notice or making a demand upon you; and
  - (ii) whether our liability is current or is dependent upon the occurrence of some event.
- (c) If we exercise this power, we will have no further obligation to you in respect of our Liability to you to the extent that our Liability is set-off against the Amount Owing.

### 24.8 Power of Attorney

- (a) You appoint the following Persons, namely:
  - (i) us;
  - (ii) each of our Authorised Officers; and
  - (iii) each of our assigns separately to be your attorney ("your Attorney").
- (b) You authorise your Attorney to do the following in your name:
  - (i) do any or all of the things you must do under the Entire Contract, or which you have done, but not to our satisfaction;
  - (ii) give effectual receipts and releases;
  - (iii) delegate his or her powers, to another Person (including this power of delegation) and revoke any such delegation; and
  - (iv) exercise his or her powers even if he or she has a direct or indirect or personal interest in the outcome of the exercise of those powers.
- (c) You may not revoke the appointment you make under Clause 24.8(a).
- (d) You must, upon being asked by us to do so, promptly approve anything done by your Attorney.

### 24.9 Assignment and Disclosure of Your Information

- (a) We may, without telling you and whether or not you agree:
  - (i) assign or deal with any of our rights under the Entire Contract as we think fit and free of any equity, set-off or counter-claim; and
  - (ii) for this purpose, disclose to the proposed Person to be assigned our rights any documents or information.
- (b) Subject to all applicable Laws which cannot be excluded, we may disclose to any Person information relating to the Entire Contract if we reasonably believe that such disclosure would assist to resolve any difficulties or disputes relating to the Entire Contract in the course of normal banking practice.
- (c) You must not transfer or otherwise dispose of or deal with your rights or obligations under the Entire Contract unless we have given our prior written consent for you to do so.

### 24.10 Variation

Except as provided by any Law that cannot be excluded, you may not vary the Entire Contract unless it is in writing and signed by us in acceptance.

### 24.11 Waiver

Any term of the Entire Contract is not waived or taken to be waived by us unless the waiver is in writing and is signed by us.

### 24.12 Communications and Notices

- (a) We may give you any notice, approval, consent, demand or other communication required or permitted by Law or under the Entire Contract (a "Notice"):
  - (i) personally or, if you are one of two or more Borrowers or Security Providers of the Loan, then in accordance with any form of nomination for receipt of notices you have given to us;
  - (ii) by leaving it at your home or business address last known to us or by mailing it to such an address by pre-paid post;
  - (iii) by sending it by facsimile transmission to your home or business facsimile number (if any) last known to us; or
  - (iv) in any other way permitted by Law.

- (b) Any Notice we send you will have effect from the time you receive it (or are taken to have received it, whichever is the earliest) unless a later time is stated in the Notice.
- (c) A Notice will be taken to have been received by you:
  - (i) at the time of delivery, if the Notice is delivered personally;
  - (ii) at the time the Notice would in the ordinary course of post be delivered, if the Notice is mailed;
  - (iii) when we receive a report from our facsimile machine showing us that the Notice has been sent successfully, if the notice is sent by facsimile transmission; or
  - (iv) in relation to the other ways permitted by Law, as provided by the relevant Law.
- (d) Any Notice must be in writing and may be signed and sent by our solicitors or by any of our Authorised Officers.
- (e) If a Law which cannot be excluded requires us to send or serve notices differently to the way described in these provisions, we will comply with that Law instead of with these provisions.
- (f) You must tell us as soon as possible if you change your name or address.

## 25. Applicable Laws And Courts

- (a) The Law of the place where the Loan Application was submitted to us applies to the Loan Agreement.
- (b) Both you and we submit to the jurisdiction of the courts of that place and of New South Wales and will not object to any action being brought in those courts or any courts of appeal from them.

## 26. Application Of Other Laws

- (a) If any provision of the Entire Contract is invalid, unenforceable or breaches a Law which cannot be excluded, it will be taken to be read down to the extent that the provision will remain valid, enforceable and will not breach the Law, but if this is not possible then it will be taken to be omitted from the Entire Contract and the remaining provisions will continue in full force and effect.
- (b) Without limiting the generality of the foregoing, if these Terms and Conditions are regulated by Credit Laws because you are an individual and because when you entered into the Loan Agreement you intended to use the Loan wholly or predominantly for personal,

domestic or household purposes, these Terms and Conditions are not to be read as:

- (i) excluding, modifying or restricting any of the rights or powers imposed or conferred on us or on you under Credit Law or any other credit legislation that we notify you of during the currency of the Loan Agreement except to the extent that that Law allows;
- (ii) varying the provisions of a regulated contract or a regulated guarantee to which it relates in a way not permitted by Credit Law;
- (iii) requiring or securing (or attempting to do so) the payment of an amount or the performance of an obligation beyond that permitted by Credit Law; or
- (iv) including a provision which is not permitted under Credit Law and these Terms and Conditions are to be read down to the extent needed to prevent it having any of the above effects. If this cannot be done, these Terms and Conditions take effect as if they did not contain any of these provisions.

## 27. Exclusion Of Other Laws

To the extent permitted by Law, any Law which:

- (a) restricts or hinders the exercise of our rights, powers, remedies, authorities and discretions under the Entire Contract; or
- (b) lessens or otherwise varies your obligations under the Entire Contract; or
- (c) imposes additional burdens or obligations upon us, is excluded.

Some of the information in the information statement below will only apply if your loan is regulated by the Consumer Credit Code.

## Information Statement

### Things You Should Know About Your Proposed Credit Contract

This statement tells you about some of the rights and obligations of yourself and your credit provider.

It does not state the terms and conditions of your contract.

**If you have any concerns about your contract, contact your credit provider and, if you still have concerns, your Government Consumer Agency, or get legal advice.**

## The Contract

### 1. How can I get details of my proposed credit contract?

Your credit provider must give you a pre contractual statement containing certain information about your contract. The pre contractual statement, and this document, must be given to you before-

- your contract is entered into; or
- you make an offer to enter into the contract, whichever happens first.

### 2. How can I get a copy of the final contract?

If the contract document is to be signed by you and returned to your credit provider, you must be given a copy to keep.

Also, the credit provider must give you a copy of the final contract within 14 days after it is made. This rule does not, however, apply, if the credit provider has previously given you a copy of the contract document to keep.

If you want another copy of your contract write to your credit provider and ask for one. Your credit provider may charge you a fee. Your credit provider has to give you a copy -

- within 14 days of your written request if the original contract came into existence 1 year or less before your request; or
- otherwise within 30 days of your written request.

### 3. Can I terminate the contract?

Yes. You can terminate the contract by writing to the credit provider so long as –

- you have not obtained any credit under the contract; or
- a card or other means of obtaining credit given to you by your credit provider has not been used to acquire goods or services for which credit is to be provided under the contract.

However, you will still have to pay any fees or charges incurred before you terminated the contract.

### 4. Can I pay my credit contract out early?

Yes. Pay your credit provider the amount required to pay out your credit contract on the day you wish to end your contract.

### 5. How can I find out the pay out figure?

You can write to your credit provider at any time and ask for a statement of the pay out figure as at any date you specify. You can also ask for details of how the amount is made up.

Your credit provider must give you the statement within 7 days after you give your request to the credit provider. You may be charged a fee for the statement.

### 6. Will I pay less interest if I pay out my contract early?

Yes. The interest you can be charged depends on the actual time money is owing. However, you may have to pay an early termination charge (if your contract permits your credit provider to charge one) and other fees.

### 7. Can my contract be changed by my credit provider?

Yes, but only if your contract says so.

### 8. Will I be told in advance if my credit provider is going to make a change in the contract?

That depends on the type of change. For example-

- You get at least same day notice for a change to an annual percentage rate. That notice may be a written notice to you or a notice published in a newspaper.
- You get 20 days advance written notice for-

- a change in the way in which interest is calculated;
- a change in credit fees and charges; or
- any other changes by your credit provider; except where the change reduces what you have to pay or the change happens automatically under the contract.

**9. Is there anything I can do if I think that my contract is unjust?**

Yes. You should first talk to your credit provider. Discuss the matter and see if you can come to some arrangement. If that is not successful you could apply to the court. Contact the Government Consumer Agency or get legal advice on how to go about this.

## Insurance

**10. Do I have to take out insurance?**

Your credit provider can insist you take out or pay the cost of types of insurance specifically allowed by law. These are compulsory third party personal injury insurance, mortgage indemnity insurance or insurance over property covered by any mortgage. Otherwise, you can decide if you want to take out insurance or not.

**11. Will I get details of my insurance cover?**

Yes, if you have taken out insurance over mortgaged property or consumer credit insurance and the premium is financed by your credit provider. In that case the insurer must give you a copy of the policy within 14 days after the insurer has accepted the insurance proposal.

Also, if you acquire an interest in any such insurance policy which is taken out by your credit provider then, within 14 days of that happening, your credit provider must ensure you have a written notice of the particulars of that insurance.

You can always ask the insurer for details of your insurance contract. If you ask in writing your insurer must give you a statement containing all the provisions of the contract.

**12. If the insurer does not accept my proposal, will I be told?**

Yes, if the insurance was to be financed by the credit contract. The insurer will inform you if the proposal is rejected.

**13. In that case, what happens to the premiums?**

Your credit provider must give you a refund or credit unless the insurance is to be arranged with another insurer.

**14. What happens if my credit contract ends before any insurance contract over mortgaged property?**

You can end the insurance contract and get a proportionate rebate of any premium from the insurer.

## Mortgages

**15. If my contract says I have to give a mortgage, what does this mean?**

A mortgage means that you give your credit provider certain rights over any property you mortgage. If you default under your contract, you can lose that property and you might still owe money to the credit provider.

**16. Should I get a copy of my mortgage?**

Yes. It can be part of your credit contract or, if it is a separate document, you will be given a copy of the mortgage within 14 days after your mortgage is entered into.

However, you need not be given a copy if the credit provider has previously given you a copy of the mortgage document to keep.

**17. Is there anything that I am not allowed to do with the property I have mortgaged?**

The law says you cannot assign or dispose of the property unless you have your credit provider's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or cannot do with the property.

**18. What can I do if I find that I cannot afford my repayments and there is a mortgage over property?**

See the answers to questions 22 and 23. Otherwise you may-

- if the mortgaged property is goods - give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;
- sell the property, but only if your credit provider gives permission first;

OR

- give the property to someone who may then take over the repayments - but only if your credit provider gives permission first.

If your credit provider won't give permission contact your Government Consumer Agency for help.

If you have a guarantor, talk to the guarantor who may be able to help you.

You should understand that you may owe money to your credit provider even after mortgaged property is sold.

**19. Can my credit provider take or sell the mortgaged property?**

Yes, if you have not carried out all of your obligations under your contract.

**20. If my credit provider writes asking me where the mortgaged goods are, do I have to say where they are?**

Yes. You have 7 days after receiving your credit provider's request to tell your credit provider. If you do not have the goods you must give your credit provider all the information you have so they can be traced.

**21. When can my credit provider or its agent come into a residence to take possession of mortgaged goods?**

Your credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the Consumer Credit Code.

**24. Can my credit provider take action against me?**

Yes, if you are in default under your contract. But the law says that you cannot be unduly harassed or threatened for repayments. If you think you are being unduly harassed or threatened, contact your Government Consumer Agency or the Trade Practices Commission, or get legal advice.

**25. Do I have any other rights and obligations?**

Yes. The law will give you other rights and obligations. You should also READ YOUR CONTRACT carefully.

IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR GOVERNMENT CONSUMER AGENCY OR GET LEGAL ADVICE. PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.

## General

**22. What do I do if I cannot make a repayment?**

Get in touch with your credit provider immediately. Discuss the matter and see if you can come to some arrangement. You can ask your credit provider to change your contract in a number of ways. For example-

- to extend the term of the contract and either reduce the amount of each payment accordingly or defer payments for a specified period; or
- to simply defer payments for a specified period.

**23. What if my credit provider and I cannot agree on a suitable arrangement?**

If you have been unemployed, sick or there is another good reason why you are having problems with your contract, then your contract may be able to be changed to meet your situation. You may be able to apply to the court. Contact your Government Consumer Agency or get legal advice on how to go about this.

There are other people, such as financial counsellors, who may be able to help.

