

## TERMS AND CONDITIONS

The Borrower and Lender agree to the following terms and conditions:

### 1. Financial Accommodation

1.1. In accordance with the Borrower's request, the Lender will provide to the Borrower financial accommodation in the form of either a line of credit (**the Line of Credit**) or a loan (**the Loan**) in the amount identified in the Financial Table on the terms and conditions set out in this Funding Agreement.

1.2. The Line of Credit is to be used by the Borrower to purchase Goods from the Lender's Business Partners.

### 2. Definitions and Interpretation

2.1 In this document unless the context otherwise requires:

**Annual Percentage Rate** is the rate shown in the Financial Table.

**Borrower** means the person or entity named on the front page of this document as the borrower.

**Code** means the National Credit Code.

**Credit Limit** is the amount listed in the Financial Table.

**Debt** means all monies for which the Borrower is liable to the Lender under the terms of this Funding Agreement including, without limitation, all amounts outstanding in respect of the Line of Credit, Loan, interest and all fees and charges and includes monies actually or contingently payable by the Borrower to the Lender under this Funding Agreement.

**Default Interest Rate** is the Annual Percentage Rate plus 5%.

**Enforcement Expenses** means the costs incurred by the Lender in enforcing this Agreement and includes but is not limited to legal costs, recovery and enforcement costs and disbursements incurred by the Lender in respect to enforcing this Funding Agreement and costs and expenses incurred by the Lender in preserving or maintaining the Goods, and in connection with the sale or disposal of the Goods.

**Event of Default** has the meaning given to it in clause 8.1.

**Funding Agreement** means this document and includes without limitation the sections entitled Application for Funding, the Financial Table and Terms and Conditions.

**GST** means any tax, levy, charge, or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar affect to, the GST Act.

**Insolvency Event** means the happening of any of the following events:

- (a) the Borrower enters, or resolves to enter, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any class of its creditors.
- (b) the Borrower is or is deemed or presumed by law or a court to be insolvent.
- (c) the Borrower is unable to pay its debts as they fall due or is unable to certify that it can pay the debts as they fall due.
- (d) the Borrower takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to the Borrower.
- (e) a controller is appointed to or over or takes possession of all or a substantial part of the assets or undertaking of the Borrower.
- (f) an application is made to a court for an order, or an order is made appointing a liquidator, provisional liquidator in respect of the Borrower (or proceedings are commenced, or a resolution passed or proposed in a notice of meeting for any of those things); and
- (g) proceedings are initiated with a view to obtaining an order for the winding up or similar process of the Borrower, or an order is made, or any effective resolution is passed for the winding up of the Borrower.

**Late Payment Fee** is the amount shown in the Financial Table (Late Fee).

**Lender** means COOGANS GROUP PTY LTD ACN 632 052 352

**Lender's Business Partners** means a business or businesses as advised by the Lender to the Borrower from whom the Borrower can purchase Goods with the Line of Credit.

**Loan Amount** is the amount specified in the Financial Table.

**Loan** means the loan provided to the Borrower by the Lender pursuant to the terms of this Funding Agreement.

**Minimum Repayment Amount** means the minimum that the Borrower is required to pay the Lender each month calculated in accordance with clause 4.17.

**Monthly Account Keeping Fee** is the amount shown in the Financial Table.

**Paper Statement Fee** is the amount shown in the Financial Table.

**Payment Dishonour Fee** is the amount shown in the Financial Table.

**PPSR** means the Personal Property Security Register created by the *Personal Property Securities Act (2009) Cth.*(PPSA)

**Price** means the sale price for the Goods as set by the Lender's Business Partner in its sole discretion.

**Property** means any property or asset including real property in which the Borrower has an interest at the time of execution of this Agreement or in the future either solely or jointly or as tenant in common and all present and after-acquired personal property which is owned solely or jointly by or in the possession of the Borrower.

**Security** means the security listed in the Security section of the Financial Table as well as the security referred to in each of clauses 3 and 7 herein.

**Statement Date** means the date on which the Lender issues a Statement.

**Statement** means the statement issued on the Statement Date by the Lender to the Borrower in accordance with clause 4.8.

**Statement Period** is the period of one month or any other period as shown on a Statement.

**Total Outstanding Amount** means the total amount outstanding in respect of the Line of Credit facility or the Loan and includes, without limitation, all funds loaned, all credit provided, interest, fees, and charges payable by the Borrower pursuant to the Funding Agreement.

- 2.2 In this document unless the context otherwise requires:
- a) clause and subclause headings are for reference purposes only.
  - b) the singular includes the plural and vice versa.
  - c) reference to a person includes any other entity recognised by law and vice versa.
  - d) where a word or phrase is defined its other grammatical forms have a corresponding meaning; and
  - e) any reference to a party to this document includes its successors and permitted assigns.

### 3. Purchase of Goods & Services

#### *Limitation of Liability*

- 3.1 The Lender will not, in any circumstances, be liable or responsible for any claims, liabilities, costs, expenses, loss, damage or defect arising (either directly or indirectly) from or in connection to the purchase of Goods or Services by the Borrower.
- 3.2 The Borrower acknowledges that:
- a) the Lender has not provided any warranties, assurances, promises or representations regarding quality, fitness for use, suitability or merchantability of the Goods or Services; and
  - b) they have relied entirely on their own judgment.

#### *Security Interest*

- 3.3 The Borrower hereby consents to the Lender registering on the PPSR a security interest under this agreement.
- 3.4 The Borrower hereby waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

### 4. Line of Credit

#### *Credit Limit*

- 4.1 This clause 4.3 applies if the Lender has provided to the Borrower a Line of Credit.
- 4.2 The Borrower may utilise the Line of Credit to purchase Goods the Lender's Business Partners up to the value of the Credit Limit.
- 4.3 The Credit Limit is the maximum amount of funding which the Lender agrees to provide to the Borrower. The Credit Limit includes all interest, fees, and charges.
- 4.4 If the Borrower at any time exceeds the Credit Limit, then the Borrower must immediately pay the amount of the excess to the Lender. The Lender does not need to ask for any excess amounts to be paid by the Borrower. The Borrower is responsible for the Credit Limit being exceeded.
- 4.5 The Lender may at any time and without first notifying the Borrower, and in its absolute discretion, reduce the Credit Limit or the Line of Credit facility or stop providing funding all together. The Lender can take these steps even if there has been no Event of Default by the Borrower.
- 4.6 The Borrower may at any time request that the Lender increase the Credit Limit on the Line of Credit. Any increase in the Credit Limit is at the sole discretion of the Lender.

#### *Account, Statements and Fees*

- 4.7 The Lender will open and maintain an account in the name of the Borrower recording all debit and credit transactions, monies advanced to the Borrower, monies paid by the Borrower, interest charged on the Line of Credit facility and all fees and charges payable by the Borrower.
- 4.8 The Lender will issue to the Borrower a monthly statement showing all debits and credits to the Line of Credit facility (including, without limitation, the interest charged and all fees and charges) as well the Total Outstanding Amount and the Minimum Repayment Amount.
- 4.9 The Lender is not required to issue a Statement if:
- a) there have been no amounts credited or debited to the Line of Credit during the relevant Statement Period; or
  - b) the Total Amount Outstanding on the Line of Credit is less than \$10; or
  - c) the Borrower has been in default of the Funding Agreement for 120 days.
- 4.10 The Borrower will pay to the Lender the Monthly or Annual Account Keeping Fee for each month or year in which the Line of Credit is provided to the Borrower.
- 4.11 The Lender may at any time and its sole discretion waive the Monthly Account Keeping Fee.
- 4.12 The Lender will forward a Statement to the Borrower to either:
- a) the email address nominated by the Borrower in the Funding Agreement; or
  - b) any other email address notified by the Borrower to the Lender.
- The Borrower acknowledges the risks associated with the use of electronic means to receive statements and is willing to accept such risks.
- 4.13 The Borrower may request that the Lender post Statements to the Borrower. The Borrower will pay to the Lender the Paper Statement Fee for each Statement provided to the Borrower in printed form whether by post or in person.
- 4.14 The Borrower will pay to the Lender or alternatively reimburse the Lender for any government charges or duties which may be payable in respect of the Line of Credit facility. The Lender may debit any applicable government charges or duties to the Line of Credit facility.
- 4.15 The Lender may debit the Monthly Account Keeping Fee, the Paper Statement Fee, the Late Payment Fee, and any Payment Dishonour Fee to the Line of Credit Facility.

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4.16 The Lender may charge the Borrower, and the Borrower will pay the Lender, any other fees which the Lender deems reasonable provided that the Lender has first notified the Borrower of such fees.

## *Minimum Repayment Amount*

4.17 The Borrower must pay the Minimum Repayment Amount on or before the due date shown on the Statement. The Minimum Repayment Amount is calculated as follows:

If the Total Outstanding Amount at the end of the Statement Period on the Line of Credit is:

- a) greater than \$1000 then 3% of the account balance as at the Statement Date plus the full amount of any arrears outstanding from previous months and any amounts exceeding the Credit Limit and all fees and charges debited to the account in accordance with clause 4.16.
- b) between \$30 and \$1000 then \$30 plus the full amount of any arrears from the previous month and any amounts exceeding the Credit Limit and all fees and charges debited to the account in accordance with clause 4.16; and
- c) if less the \$30 then the Total Outstanding Amount.

## *Payments*

4.18 The Borrower may at any time pay the Total Outstanding Amount.

4.19 The Borrower may make any payments to the Lender by way of a Payment or any other method of payment which the Lender has notified the Borrower that it is prepared to accept.

4.20 Subject to clause 9.5, all payments made by the Borrower to the Line of Credit facility will be applied as follows:

- a) first in full payment of interest charges.
- b) second in full payment of all fees and charges; and
- c) third in payment of the principal amount outstanding.

4.21 If the Borrower makes a payment to the Lender by Payment and that Payment is dishonoured, then the Borrower will pay the Lender the Payment Dishonour Fee.

4.22 If the Borrower does not pay the Minimum Repayment Amount by the due date as shown on the Statement, then the Borrower will pay to the Lender the Late Payment Fee. The Late Payment Fee is payable for every month (or part of any month) that the Minimum Repayment Amount remains outstanding. For the avoidance of any doubt nothing in this clause obviates the Borrowers liability to pay the Minimum Repayment Amount by the due date.

## *Card*

4.23 The Borrower will be provided with a card for use when seeking to access the Line of Credit. The Card is linked to the Borrower's mobile phone number, purchases are approved by the purchaser via the mobile phone. The Borrower is responsible for advising the Lender if their phone is missing or if the number has changed.

4.24 The Borrower must not allow any other person to access the Line of Credit or use the card provided to it by the Lender.

4.25 The card will contain an expiry date. The Borrower is not permitted to use the card after the expiry date. The Borrower must immediately destroy any expired card by cutting the card and disposing of it securely.

4.26 The Borrower must not use the card if the card has been suspended, cancelled or if this Funding Agreement has been terminated or the Borrower has otherwise been instructed not to use the card.

4.27 The Card can only be used through the Lender's Business Partners as listed on the Lenders web site.

## *Interest*

4.28 The Borrower must pay to the Lender interest at the Annual Percentage Rate on each amount of credit provided or advance given to the Borrower under the Line of Credit facility.

4.29 Interest on the Line of Credit will be calculated by applying the Annual Percentage Rate to the outstanding daily balance on the Line of Credit. The daily percentage rate is the Annual Percentage Rate specified in the Financial Table divided by 365.

4.30 If an Event of Default occurs the Lender may apply the Default Interest Rate instead of the Annual Percentage Rate for the purposes of calculating interest under clauses 4.28 and 4.29.

4.31 Interest charges will be debited:

- a) monthly (except on the first repayment date in which case interest will be debited for the period commencing on the date that credit is advanced and ending on the first repayment date) on each repayment date and if there is no such date in any month the interest for that month will be due on the last day of that month; and
- b) on the day that the Borrower repays the Total Outstanding Amount.

## *Closing the Line of Credit*

- 4.32 The Borrower may at any time close the Line of Credit facility by notifying the Lender in writing and paying to the Lender in clear funds the Total Outstanding Amount.
- 4.33 The Lender may at any time and for any reason may do either or both of the following:
- demand that the Borrower repay the whole or part of the balance and all other amounts owed under the Funding Agreement; and
  - cancel the Funding Agreement.

## *Errors*

- 4.34 The Borrower is responsible for checking all debits and credits on the Statement. If the Borrower forms the view that there are errors on the Statement, it must notify the Lender of the same within 10 days of the Statement Date. If following receipt of a notification from the Borrower, the Lender determines that:
- there is an error, and an amount is not chargeable to the Line of Credit facility then the Lender will correct the error and if necessary, credit an amount back to the Line of Credit; or
  - there is no error in the amount debited to the Line of Credit then the Borrower will be liable to pay for the debit.

## *Special Promotion*

- 4.35 The Lender's Business Partner of the Lender may from time to time make available to the Borrower a special promotion whereby:
- no interest will accrue on a specific purchase using the Line of Credit for a specific period and payment does not need to be made in respect of that purchase for a specified amount of time (known as "deferred payment"); or
  - no interest will accrue on a specific purchase using the Line of Credit for a specific period provided that periodic payments are made as specified by the Lender by specific dates in respect of the purchase (known as "interest free promotion").
- 4.36 Any special promotion offered by the Lender's Business Partner will specify:
- the Goods the subject of the special promotion.
  - the period in which the purchase of Goods must be made.
  - whether the special promotion includes the matters referred to in clause 4.35; and
  - any other terms which are applicable to the special promotion.
- 4.37 All special promotions offered by the Lender's Business Partner and the Borrower has agreed to take up will be subject to the terms and conditions of this Funding Agreement and the terms of the special promotion.
- 4.38 The Statements issued to the Borrower by the Lender in respect of the Line of Credit will separately identify any special promotion which has been granted to the Borrower and will set out the amounts which the Borrower is required to pay and the date by which payment needs to be made.

## *Variation*

- 4.39 Subject to the Code, the Lender may at any time unilaterally vary the terms applicable to the Line of Credit including without limitation varying:
- the Annual Percentage Rate and if the variation does not reduce the Borrower's obligations pursuant to the Funding Agreement, the Lender will notify the Borrower of the variation not later than the day on which the change takes effect.
  - the amount of the Annual Fee, the Monthly Account Fee, the Cash Advance Fee, and the Payment Dishonour Fee.
  - the amount or method of calculation, number, frequency, or time for payment of repayments.
  - the Credit Limit (except for increasing the Credit Limit); and
  - the amount and type of fees and charges and when they are payable, including by imposing new fees and charges or varying the method of calculation of a fee or charge.
  - and the Borrower will be notified of the variation in the next Statement.

## **5. The Loan**

- 5.1 This clause applies if the Lender has provided to the Borrower a Loan.
- 5.2 The Loan Amount is the maximum amount of funding which the Lender agrees to provide to the Borrower and includes all interest, fees, and charges.
- 5.3 The Borrower must repay the Loan Amount together with interest and charges as specified in the Financial Table to the Lender in accordance with the repayments specified in the Financial Table being by way of regular monthly instalments in the amount notified by the Lender to the Borrower with such instalment payments to be paid on the dates notified by the Lender to the Borrower.
- 5.4 The Borrower agrees that in addition the Lender may charge the Borrower, and the Borrower will pay the Lender, any other fees which the Lender deems reasonable provided that the Lender has first notified the Borrower of such fees.
- 5.5 The Borrower may at any time request that the Lender increase the Loan Amount. Any increase in the Loan Amount is at the sole discretion of the Lender.
- 5.6 The Borrower must repay to the Lender all amounts outstanding in respect of the Loan under the terms of this Funding Agreement on the Loan Repayment Date.
- 5.7 An early repayment adjustment may be made for the loss Coogans expects to make due to the loan being repaid earlier than anticipated. The early repayment adjustment is levied to put Coogans back into the same financial position it would have been

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- in had the loan not been prepaid. The early repayment adjustment is the greater of the remaining loan interest less Coogans cost of cash, or the amount specified on the Loan Financial Table.
- 5.8 Redraw facility allows the lender to make overpayments and re-draw those extra funds. The maximum redraw is \$500, a re-draw fee is applied, refer the Loan Financial Table.
- 5.9 The Borrower must pay to the Lender interest at the Annual Percentage Rate on the Loan.
- 5.10 Interest on the Loan will be calculated by applying the Annual Percentage Rate to the outstanding daily balance of the Loan and calculated by reference to the repayment schedule. The daily percentage rate is the Annual Percentage Rate specified in the Financial Table divided by 365.
- 5.11 If an Event of Default occurs the Lender may apply the Default Interest Rate instead of the Annual Percentage Rate for the purposes of calculating the interest payable by the Borrower in respect of the Loan.
- 5.12 Interest will be charged to the account at the commencement of the Loan Agreement.
- 5.11 The Borrower acknowledges that the Lender will not provide periodic Statements during the term of this Agreement.
- 5.12 The Borrower may at any time pay the Total Outstanding Amount., refer clause 5.7.
- 5.13 The Borrower may make any payments to the Lender by way the method of payment which the Lender has notified the Borrower that it is prepared to accept.
- 5.14 Subject to clause 9.5, all payments made by the Borrower to the Loan will be applied as follows:
- a) first in full payment of interest charges.
  - b) second in full payment of all fees and charges; and
  - c) third in payment of the principal amount outstanding.
- 5.15 If the Borrower makes a payment to the Lender and that payment is dishonoured then the Borrower will pay the Lender the Dishonour Fee.
- 5.16 If the Borrower does not pay the Repayment Amount as specified in the Financial Table, then the Borrower will pay to the Lender the Late Payment Fee. The Late Payment Fee is payable for every month (or part of any month) that the Minimum Repayment Amount plus any arrears remains outstanding.

## 6 Information

- 6.1 The Borrower must immediately inform the Lender if he/she has changed its address, email, or telephone number.
- 6.2 The Borrower warrants that all statements made, and documents provided by The Borrower when applying for funding under this Funding Agreement are true and correct to the best of the Borrower's knowledge.
- 6.3 The Borrower acknowledges that the Lender has relied on the information supplied by the Borrower as being true and correct and will continue to do so.

## 7. Security

- 7.1 As security for all monies owed by the Borrower to the Lender under this Funding Agreement, the Borrower hereby mortgages and/or charges all the borrower's interest (whether proprietary, legal, equitable, or beneficial) in any Property to the Lender.
- 7.2 The Borrower must take out comprehensive insurance over any property that is used as security and the Lender must be named as the Interested Party / Finance Provider.
- 7.3 The Borrower acknowledges that the Lender can lodge a caveat over any Property to which clause 7.1 applies.
- 7.4 The Borrower will at the request of the Lender sign a mortgage in registrable form to give effect to clause 7.1.
- 7.5 The Borrower hereby appoints the Lender as the Borrowers attorney to execute any mortgage or charge (whether registrable or not) giving effect to clauses 7.1 above.
- 7.6 The security provided in this clause 7 is in addition to the security provided to the Lender pursuant to clauses 7.7 and 7.8.
- 7.7 The Borrower acknowledges that the Lender may require in some circumstances a guarantor to enter into a contract of guarantee of the Borrower's liabilities under the Funding Agreement in a form satisfactory to the Lender.
- 7.8 The Borrower consent to the Lender registering a specific security interest on the PPSR for all serial numbered goods, including to but not limited to vehicles, trailers, boats, caravans, and recreational vehicles.
- 7.9 If the Borrower is an individual,
- (a) the Borrower hereby charges all present and after acquired property to the Lender under this Funding Agreement and
  - (b) consents to the Lender registering a general security interest on the PPSR.
- 7.10 If the Borrower is a company:
- (a) it hereby charges all its circulating and non-circulating assets to the Lender as security for all monies owed to the Lender under this Funding Agreement and consents to the Lender registering on the PPSR a general security interest over all circulating and non-circulating assets of the Borrower.
  - (b) if the Lender requires, the Company will procure that each of its directors execute an individual guarantee and indemnity in the form required by the Lender.

## Security Interest

- a) The Borrower hereby consents to the Lender registering on the PPSR a security interest under this agreement.
- b) The Borrower hereby waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

## 8. Default

- 8.1 An Event of Default will occur if any of the following occur:
- a) there is default (other than by the Lender) in the performance of any term, agreement, or condition contained in or implied by this Funding Agreement.
  - b) any indebtedness or obligation of the Borrower to any person including the Lender is not paid, met, or satisfied when due or becomes due and payable before its specified maturity or any creditor of the Borrower becomes entitled to declare any indebtedness of the Borrower due or the Borrower defaults under any charge or security in favour of any person.
  - c) an Insolvency Event occurs.
  - d) the Borrower, being an individual, dies, is made, or declared bankrupt, becomes incapable of managing their own affairs, or is jailed.
  - e) if the Borrower is a company, any action is initiated by any competent authority with a view to striking the Borrower's name off any register of companies.
  - f) any distress or execution is levied or enforced against any of the Borrower's assets or property.
  - g) the Borrower or any person on behalf of the Borrower breaches any undertaking at any time given to the Lender.
  - h) in the Lender's opinion there is a material adverse change in the Borrower's financial condition.
  - i) any representation, warranty, reply to requisition, or any financial or other information provided to the Lender in connection with the Facility is or becomes untrue, false, or misleading; and
  - j) all or any part of this Funding Agreement, becomes void, illegal, invalid, unenforceable, or of limited or reduced force effect or value.
- 8.2 A determination by the Lender in its absolute discretion that an Event of Default has occurred will be final and binding on the Borrower. The Borrower must promptly inform the Lender in writing upon the happening of any of the events described in clause 8.1.
- 8.3 Despite any other provision of this Funding Agreement, at any time after an Event of Default occurs how and when the Lender in its absolute discretion decides, the Lender may sign anything and do anything the Lender considers appropriate to recover the Debt. The Lender may do this despite any omission, neglect, delay, and without liability for loss, or need to account to the Borrower.
- 8.4 Upon an Event of Default occurring, and without limitation, the Lender may do any one or more of the following:
- a) cancel the Line of Credit facility or the Loan; and
  - b) demand and require immediate payment of the Debt.
  - c) recover the Debt from the Borrower; and
  - d) enforce any Security.
- 8.5 Any restriction, requirement for notice, or lapse of time stipulated or required by any statute is negated so far as is lawful. The Lender need not give notice to the Borrower before exercising a right, power, or remedy under this document unless notice is required by a statutory provision which cannot be excluded. Where a statutory provision stipulates that a notice must be given then if no period of notice is prescribed, one day is fixed as the requisite period.
- 8.6 Subject to clause 8.5, and subject to the Code and any other applicable law, upon an Event of Default occurring:
- (a) the Lender will give the Borrower a notice stating that the Borrower is in default and giving 30 days from the date of the notice to remedy the default.
  - (b) if the Borrower does not correct the default within 30 days of the date of the notice, then, without further notice the unpaid balance of the Loan Amount will become due and payable and the Lender may take action to recover payment of the Total Outstanding Amount.

## 9. General Provisions

- 9.1 If any payment made to the Lender pursuant to or relating to this Funding Agreement constitutes consideration for a taxable supply for the purposes of GST, the amount to be paid for the supply will be increased so that the net amount retained by the Lender after payment of that GST is the same as if the Lender was not liable to pay GST in respect of that supply.
- 9.2 This Funding Agreement will be governed by the law of the State of Tasmania and the parties submit to the non-exclusive jurisdiction of the Courts of Tasmania.
- 9.3 No failure to exercise and no delay in exercising the Lender's rights, powers, or privileges under this document operates as a waiver. No waiver of the Lender's rights, powers, or privileges under this document is effective unless made in writing. The Lender may exercise all its rights at any time and more than once.
- 9.4 A certificate signed by or on behalf of the Lender or its solicitor as to a matter or as to an amount payable to the Lender in connection with this Funding Agreement is conclusive and binding on the Borrower as to the amount stated in it and any other matter of a factual nature unless the matter or amount is capable of determination by the Lender in its discretion in which case the Lender must not act arbitrarily, capriciously, or unreasonably.

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- 9.5 All money payable by the Borrower under this Funding Agreement must be paid in cleared funds without set-off or counterclaim and free of all deductions as and where the Lender directs on or before 12:00 noon local time on the due date or if none on demand. Payments will be credited to the Borrower only when received by the Lender. The Lender will have an absolute discretion (without the need to communicate its election to anyone) to apply at any time any payment received by it in reduction of any part of the Debt it elects. Any surplus money received by the Lender will not carry interest.
- 9.6 The Borrower fully indemnifies the Lender from and against any expense, loss, loss of profit, damage, or liability (as to the amount of which the Lender's certificate will be conclusive) including but not limited to Enforcement Expenses which the Lender may incur because of an Event of Default occurring, because of any prepayment (including prepayment demanded by the Lender consequent on an Event of Default occurring), or otherwise in connection with this Funding Agreement.
- 9.7 If the Borrower does not agree with any decision made by the Lender in respect of the Line of Credit facility or the Loan, they may contact the Australian Financial Complaints Authority Ltd (AFCA). The Lender will be bound by any determination made by AFCA. The Borrower is not bound by any determination made by AFCA. AFCA are external complaints bodies and can be contacted at:  
GPO Box 3  
Melbourne Vic 3001  
www.afca.org.au  
AFCA Telephone: 1300 931 678
- 9.8 The Lender may assign, novate, or participate in its rights and/or obligations under this Funding Agreement. The Lender may disclose to a potential assignee, novatee, participant, or any other person information about the Borrower. The Borrower must not assign, novate, transfer, or deal with its rights or obligations under this Funding Agreement.
- 9.9 If any term, agreement, or condition of this Funding Agreement or the application of any term, agreement, or condition of this document to any person or circumstance is or becomes illegal, invalid, or unenforceable in any jurisdiction it will be severed and neither the remaining terms, agreements, and conditions nor the application, validity, or enforceability of the severed term, agreement, or condition in any jurisdiction will be affected.
- 9.10 So far as is lawful, the provisions of all statutes and regulations at any time operating directly or indirectly to:  
a) lessen, modify, or affect the Borrower's obligations in favour of the Lender; or  
b) stay, postpone, or otherwise prevent or prejudicially affect the exercise of all or any of the Lender's rights, powers, and remedies conferred by this document,  
are negated and excluded from and will not apply to this document.  
All powers, rights, and remedies conferred on the by law, in equity, or by any statute will be in addition to those contained in this document and will not curtail, diminish, or qualify any of them.
- 9.11 The Lender may at any time carry out a review of the Borrower's financial position. The Borrower will provide to the Lender any information reasonably required by the Lender to complete such review.
- 9.12 The Borrower confirms that prior to signing this Funding Agreement it has received copies of and has read and understood the information statement "Things You Should Know About Your Proposed Credit Contract", the Financial Table and the Funding Agreement.
- 9.13 All payments made by the Borrower under the Funding Agreement will be paid in full and free of any right to set off or counterclaim or any deduction of any kind.
- 9.14 The Borrower will pay all of the Lenders Enforcement Expenses costs and disbursements in respect to enforcing this Funding Agreement including but not limited to all legal costs associated with enforcing the Funding Agreement.
- 9.15 A binding contract will be formed between the Lender and the Borrower upon the Lender approving the Borrower's request for funding and advancing any money or providing any financial accommodation to the Borrower. The contract is comprised of these terms and conditions, the Financial Table and any other documents contemplated by the terms and conditions which the Lender has provided to the Borrower.

## Notices

- 9.16 Any notices or statements to be given or demands to be made on the Borrower under this Funding Agreement:
- 9.16.1 may be signed on behalf of the Lender by the Lender or any of the Lender's officers, authorised persons or solicitors;  
and
- 9.16.2 may be served either:
- i) by delivering it to the Borrower personally.
  - ii) electronically by way of email to the email address nominated by the Borrower in this Funding Agreement or any their email address notified by the Borrower to the Lender.
  - iii) by leaving it at or sending it by ordinary post to the address nominated by the Borrower in this Funding Agreement or any other address notified by the Borrower to the Lender; or
  - iv) by leaving it at or sending it by ordinary post to the Borrower's address last known to the Lender.

- 9.17 The Borrower consents to the Lender communicating with them electronically and authorises the Lender to act on instructions received from the Borrower electronically.
- 9.18 The Borrower must ensure that the Lender has a current email address for the Borrower and must ensure that they check that the email and communications from the Lender are not blocked.

## *The Code*

- 9.19 This clause applies to the extent that the Code and other applicable laws apply to this Funding Agreement. If:
- 9.19.1 the Code or other law would otherwise make a clause of this Funding Agreement illegal, void, or unenforceable; or
- 9.19.2 a clause of this Funding Agreement would otherwise contravene a requirement of the Code or law or impose an obligation or liability which is prohibited by the Code or law,
- this Funding Agreement is to be read as if that clause were varied to the extent necessary to comply with the Code or law or if necessary omitted.

## *Financial Difficulty*

- 9.20 The Borrower must inform the Lender of any material adverse change to the Borrowers financial position or if the Borrower is unable to meet any payments which they are required to make under this Funding Agreement.

## **10. Privacy**

- 10.1 For the purposes of this clause 10, "Personal Information" has the same meaning as defined in the Privacy Act 1988 (as amended from time to time) **(the Privacy Act)**.
- 10.2 The Borrower consents to and authorises the Lender to:
- (a) disclose the Borrower's personal information contained in this Contract and as permitted by the Privacy Act to a credit reporting body in accordance with the requirements of the Privacy Act.
- (b) collect the Borrower's personal information and any other information permitted by the Privacy Act from a credit reporting body in accordance with the Privacy Act.
- (c) use the information collected under clauses 10.2 (a) and (b) for the duration of the Funding Agreement to:
- (i) collect any payments that are overdue; and
- (ii) review the credit worthiness of the Borrower.
- (d) disclose the Borrower's personal information to credit reporting agencies in relation to:
- (i) any default by the Borrower under the Funding Agreement; or
- (ii) any serious credit infringement by the Borrower,
- as authorised under the Act.
- (e) to disclose the Borrower's personal information to a debt collector in order to assist in the collection of any payments that are overdue in respect of any credit provided to the Borrower.
- (f) to collect and disclose personal information about the Borrower from and to any credit provider that may be named in a credit report issued by a credit reporting body, for any of the following purposes:
- (i) to review the credit worthiness of the Borrower.
- (ii) to help the Borrower avoid defaulting on its credit obligations; or
- (iii) to collect any overdue payments.
- (g) to collect and use the Borrower's personal information for the purpose of sending direct marketing communications to the Borrower. The Borrower may, at any time, request not to receive direct marketing material communications from the Lender by calling the Lender (03) 62 331 888.
- 10.3 The Borrower acknowledges and understands that the personal information in clause 10.2 may include any information about the Borrower's credit worthiness, credit standing, credit history or credit capacity that credit providers are authorised to give or receive from each other under the Privacy Act.
- 10.4 The Borrower acknowledges that the Lender may be required to collect the Borrowers personal information if required or authorised by or under an Australian law or a court/tribunal order.
- 10.5 The Borrower understands that they must give the Lender access to any of their personal information in their possession if none of the exemptions under the Privacy Act apply.



| BEFORE YOU SIGN  | IMPORTANT THINGS, YOU MUST KNOW   |
|--|---|
| <ul style="list-style-type: none"> <li>● READ THIS FUNDING AGREEMENT so that you know exactly what contract you are entering into and what you will have to do under the contract.</li> <br/> <li>● You should also read the information statement: "THINGS YOU SHOULD KNOW ABOUT YOUR PROPOSED CREDIT CONTRACT".</li> <br/> <li>● Fill in or cross out any blank spaces.</li> <br/> <li>● Get a copy of this Funding Agreement.</li> <br/> <li>● <b>Do not sign</b> this Funding Agreement if there is anything you do not understand.</li> </ul> | <ul style="list-style-type: none"> <li>● You can withdraw this offer at any time before the credit provider accepts it. When the credit provider does accept it, you are bound by it. However, you may end the contract before you obtain credit, or a card or other means is used to obtain goods or services for which credit is to be provided under the contract, by telling the credit provider in writing, but you will still be liable for any fees or charges already incurred.</li> <br/> <li>● You <b>do not</b> have to take out consumer credit insurance unless you want to. However, if this Funding Agreement says so, you must take out insurance over any mortgaged property that is used as security. If you take out insurance, the credit provider cannot insist on any particular insurance company.</li> <br/> <li>● If this Funding Agreement says so, the credit provider can vary the annual percentage rate (the interest rate), the repayments and the fees and charges and can add new fees and charges without your consent.</li> <br/> <li>● If this Funding Agreement says so, the credit provider can charge a fee if you pay out your contract early.</li> <br/> <li>● If you do not think that you are able to meet your obligations under this contract, you may give the credit provider a hardship notice (in writing or orally) explaining why you cannot meet your obligations under this contract.</li> </ul> |