



Bank of Melbourne

# Lease Agreement

Terms and Conditions - General

Date: November 2016

### **Important Note**

#### **About each Lease Agreement**

*A lease agreement* comes into existence in relation to *goods* on the terms of these Terms and Conditions - General and the *goods schedule* applicable to those *goods* when you have signed the *goods schedule* and it has been accepted by us. Each *lease agreement* is a separate agreement between you and us.

The Terms and Conditions - General and each *goods schedule* should be read together

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# Lease Agreement Terms and Conditions – General

## Part A - The *goods*

### Ownership and interest

- 11 Subject to clause 1.8, the *goods* always remain our property during and after the term of the *lease agreement*. You only have a right to use them.
- 12 You must ensure that any replacement part or add on (including anything installed in or affixed to the *goods* for the purposes of the *PPSA*) becomes our property.
- 13 You must protect our interest in the *goods*, including making clear to others that we own them.
- 14 You must not place, or allow to be placed, on the *goods* any plates or marks that are inconsistent with our ownership. If we ask, you must allow us to put plates on them that state that we own them and that we prohibit any dealing in them (and provide us with access to the *goods* to enable us to do so).
- 15 Despite our ownership in the *goods*, as you have selected and have possession of the *goods*, you bear the entire risk of loss arising in connection with the possession, use, storage, maintenance and repair of the *goods*, unless the loss is caused by us. (This includes loss arising because of theft, destruction or damage and loss arising out of claims of injury.)
- 16 You must not part with possession of the *goods* without our consent.
- 17 You must not create another *security interest* over the *goods* or any *security interest* over the *lease agreement* or allow one to arise (including a lien for repairs or storage) without our consent.

- 1.8 We may enter into the *lease agreement* as principal or agent. We may also transfer the *goods* or our interest in the *lease agreement*, or give another person an interest in or form of security over either of them, without getting your consent. You agree that we may disclose any information or documents we consider reasonably necessary to help us exercise this right.
- 1.9 You may ask us to lease additional *goods* to you. If we agree to do so, the *goods schedule* for the additional *goods* and these Terms and Conditions - General will constitute a further lease between you and us (unless we say otherwise). If we grant you a further lease under this clause:
- (a) we will not give you a further copy of these Terms and Conditions - General unless you ask for a copy; and
  - (b) the *goods schedule* may refer to information contained in a prior lease if this information has not changed.

### **Delivery and installation**

- 2.1 You are responsible for:
- (a) obtaining the *goods*; and
  - (b) having them delivered and installed; and
  - (c) having them put in good working order.
- 2.2 We will be taken to have delivered the *goods* to you and you will be taken to have accepted them when you obtain them under 2.1(a).
- 2.3 You must not attach the *goods* to any property without our consent. If they are attached to land, they do not become fixtures and we can still remove them in accordance with the *lease agreement*.

### **Re-location**

- 3.1 Except when *goods* are a motor vehicle you must not change the place where the *goods* are used or ordinarily kept without our prior written consent, which will not be unreasonably withheld.

- 3.2 If the *goods* are a motor vehicle you must not change the place where the *goods* are housed without our prior written consent, which will not be unreasonably withheld.

## **Use**

- 4.1 You must use the *goods* predominantly in your business operations and for the purpose for which they are designed.
- 4.2 You must ensure that the *goods* are used in accordance with the supplier's and manufacturer's instructions and recommendations, in compliance with all laws that apply to the *goods* or their use (including by maintaining registration of *goods* where appropriate and complying with occupational health and safety legislation including when that legislation places an obligation on us) and only by suitably qualified operators.
- 4.3 We cannot interfere with your use of the *goods* unless the *lease agreement* allows us to do so.

## **Maintenance**

- 5.1 You must take proper care of the *goods* and keep them in good working order and in good repair (fair wear and tear excepted).
- 5.2 You must ensure that the *goods* are serviced and maintained in accordance with the supplier's specifications and our or any insurer's reasonable requirements. You must do all things necessary to maintain the supplier's and manufacturer's warranties.
- 5.3 You must not say or imply that we will pay for any work done to the *goods*.
- 5.4 You must keep all maintenance records and all other records relating to the inspection, commissioning or alteration of the *goods* and make these records available to us upon request. You acknowledge receiving all relevant maintenance records and other records for the *goods* from us. You must produce a copy of your maintenance records for the *goods* whenever we reasonably request it.
- 5.5 You must maintain all log books or other records customarily maintained for such *goods*.

## Access

- 6.1 After we give you reasonable notice (except where we consider you are in default or the *goods* are at risk), you must allow us or our representative, at reasonable times, during normal business hours to enter the place where the *goods* are to:
- (a) inspect the *goods*; or
  - (b) check whether the terms of the *lease agreement* are being complied with; or
  - (c) exercise any of our rights under the *lease agreement*.
- 6.2 We must give you prior notice of entry unless we reasonably believe that this could materially impair our rights in relation to the *goods*.
- 6.3 You must tell us in writing if any third party makes a claim in connection with the *goods* which is inconsistent with your or our rights and interest in the *goods*.

## Loss or damage

- 7.1 You must tell us if any of the *goods* are:
- (a) stolen; or
  - (b) lost; or
  - (c) seized; or
  - (d) destroyed; or
  - (e) damaged or impaired to such an extent that you or the insurer decides that repair is impractical or uneconomic.
- 7.2 If any of these events happen, and you and we agree to the affected *goods* being replaced (which agreement must be in writing) the replacement *goods* will then be the subject of this lease.
- 7.3 We are entitled to receive all amounts which are payable to you by any insurer or other person because any of the events in clause 7.1 happens.
- 7.4 If within 30 days after the event in clause 7.1 happens, you and we have not agreed to a replacement, then on the next payment date after the 30 day period, you must pay us in addition to any *rent instalment* or other amounts due on that date:



- (a) the *termination value* on that date; less
- (b) any money we have received from an insurer or other person because the event in clause 7.1 happened.

Without limiting any other clause of this lease, you must also pay on its due date any *rent instalment* or other amount that falls due during the 30 day period. If, before the next payment date after the event in clause 7.1 happens, you and we have agreed not to replace the affected *goods*, then on that payment date, you must pay in addition to any *rent instalment* or other amount due on that date, the amount referred to in (a) less the amount referred to in (b).

- 7.5 This lease terminates when you make payment under 7.4.
- 7.6 If we receive money from the insurer or any other person after you have paid us the amount due under clause 7.4, we will refund to you, up to the amount you paid us, the amount we receive less all money then payable by you under this lease.

## Part B - Rent, costs and other amounts

### Rent

- 8.1 You must pay the *rent instalments* on the payment dates to our address stated in the *goods schedule*. If we notify you of a different address, you must pay them to that address. Once paid, these amounts are not refundable for any reason.
- 8.2 If your *rent instalments* are due on the 29th, 30th or 31st of a month, and a particular month does not have that date, you must pay your *rent instalment* on the last day of that month.

### Duties, taxes, fees and charges

- 9.1 When we ask, you must pay us our reasonable costs in connection with and all stamp and other duties, fees, taxes and charges payable in connection with:
  - (a) our purchase of the *goods*; and
  - (b) any *lease agreement* and any guarantee of it.
- 9.2 We will notify you of any new or varied fee or charge by writing to you or advertising the change in a national newspaper at least 30 days before the change takes effect.
- 9.3 In clauses 9.4 to 9.7, the expressions “consideration”, “GST”, “input tax credit”, “recipient”, “supplier”, “supply” and “tax invoice” have the same meaning given by the *GST law*.
- 9.4 Unless expressly stated otherwise in the *lease agreement*, all amounts and payments are exclusive of GST.
- 9.5 If GST is payable on any supply made under the *lease agreement* by a party (“Supplier”) to another party (“Recipient”) the Recipient must, subject to clause 9.6, pay to the Supplier in addition to and at the same time as the consideration is payable or to be provided for the supply, an additional amount calculated by multiplying the value of that consideration by the prevailing GST rate.
- 9.6 The Supplier must issue a valid tax invoice to the Recipient before any payment for a supply made by the Supplier under the *lease agreement* is due.

- 9.7 Any reference to a cost or expense in the *lease agreement* excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party is entitled to an input tax credit.

### **No deductions from payments**

10. You must not withhold any payment under the *lease agreement*, or make a deduction from it for any reason including, because:
- (a) the *goods* are damaged, do not operate efficiently or at all, do not conform to specifications or are not in your possession; or
  - (b) you claim to have a set-off, counterclaim, or other right against us or any other person.

### **Overdue payments**

- 11.1 You must pay interest calculated on daily balances on any amount which you do not pay on time for the period it is unpaid.
- 11.2 The rate of interest applying to each daily balance is the *lease rate* plus 3% per annum.
- 11.3 Each month (or at any other time we choose), we may add to the amount you owe us any interest payable under 11.1 which is overdue (this is known as 'capitalising' or 'compounding' the interest). You will then be liable for interest under 11.1 on the total amount.
- 11.4 You must pay all interest payable under 11.1 or 11.3 when we specify.
- 11.5 Your obligation to pay an amount on the date it becomes due is not affected by 11.1 to 11.4.
- 11.6 If any amount you must pay under the *lease agreement* becomes merged in a court order, you must pay interest on that amount as a separate obligation. The interest is payable from the date we first ask you for the amount until that amount is paid. This obligation is not affected by the court order. The rate is the rate in 11.2 or the rate in the court order, whichever is higher.
- 11.7 Clauses 11.1 to 11.6 apply equally to the guarantor. In relation to any amount owed to us by the guarantor, each reference to 'you' in these clauses is taken to be a reference to the guarantor.

## Indemnities

12.1 You indemnify us against any liability or loss (other than that caused by our breach of the *lease agreement*) arising from and any reasonable *costs* (including on account of funds borrowed, contracted for or used to fund any amount payable by us in connection with our purchase of the *goods* or the *lease agreement* and legal fees and expenses other than those caused by our fraud, gross negligence or wilful misconduct) reasonably incurred in connection with:

- (a) our exercising a right under the *lease agreement*; or
- (b) our doing anything you or the guarantor should have done under the *lease agreement*; or
- (c) you or the guarantor not doing what you or the guarantor should have done under the *lease agreement*; or
- (d) our having to seize or store the *goods*; or
- (e) our owning the *goods* (including registering or notifying any person of our interest as owner); or
- (f) a person being injured or killed or property being damaged directly or indirectly by the *goods* or their use; or
- (g) a claim for patent, trademark or copyright infringement, for strict liability, or for any other reason being made against us in connection with the *goods* or their operation; or
- (h) the *lease agreement* terminating in relation to some or all of the *goods* before the end of the term stated in the *goods schedule*.

Our loss under this paragraph (h) may include an amount we call 'break costs'. Break costs are an amount representing our reasonable estimate of our loss arising as a result of a termination referred to in this paragraph (h). This loss can occur when the lease rate is a fixed rate and usually arises because of changes in market interest rates.

Our break costs are our calculation of the sum (if positive) of the difference between:

- (i) the present value of each rent instalment that we would have been entitled to receive under the lease agreement, over the remainder of the term, at the lease rate, if no early termination had occurred; and
- (ii) the present value of each rent instalment, that we would have been entitled to receive under the lease agreement, over the remainder of the term, as in paragraph (a), but substituting an interest rate or discount rate (as appropriate) determined by reference to the wholesale market rate(s) prevailing at the time of the early termination.

The wholesale market rate(s) used to calculate the present value of a rent instalment and the interest rate or discount rate (as appropriate) to be applied under (b) are determined by us in good faith adopting commercially reasonable procedures. This may include considering:

- (i) any market information we consider relevant from either internal or external sources (for example, market rates (which need not be mid-market rates), margins and yield curves);
  - (ii) if the information required to determine wholesale market rates is not available for the date of the break event, information for a date following the break event as would be commercially reasonable to consider; and
  - (iii) without double counting, when it is reasonable to do so, any interest rate or discount rate used in connection with terminating, liquidating or re-establishing any transaction we maintained in connection with the lease agreement.
- (i) any claim made against us by any party in relation to the *lease agreement* or the *goods*; or

- (j) any proceedings or prosecutions commenced against us or any fine or penalty imposed on us under occupational health and safety legislation in relation to the *goods* or their use.

If we ask, you agree to assume responsibility for the defence of any proceedings relating to any such matters.

- 12.2 Each indemnity in the *lease agreement* is a continuing obligation, separate and independent from your other obligations (including your obligation under 26.3(c)). It continues after the *lease agreement* ends or is terminated. It is not necessary for us to incur expense or make a payment before we enforce a right of indemnity.

### **Commission to brokers**

- 13 You agree to our paying out of money paid or payable by you under the *lease agreement* commission, fees or other remuneration to any broker, agent, dealer or other person who introduces you to us or us to you.

We may give any broker, agent, dealer or other person monetary and non-monetary rewards based on the volume and value of introductions they give us and in calculating the volume and value of introductions we will take the *lease agreement* into account.

## Part C - Insurance

14.1 You must insure at all times against:

- (a) loss or damage to the *goods* caused by fire, theft or accident for no less than the then *termination value* of the *goods* (or such other amount as agreed by us); and
- (b) public liability for bodily injury or damage to property arising in connection with the *goods* for no less than \$10 million or any other amount notified by us; and
- (c) any other risk as we may reasonable direct to protect, directly or indirectly, our interest in the *goods*.

14.2 The insurances must:

- (a) with an insurer registered with the Australian Prudential Regulatory Authority or an insurer reasonably approved by us and on terms reasonably satisfactory to us; and
- (b) note our interest as owner of the *goods*.

14.3 You must not:

- (a) do anything, or fail to do anything, which would allow the insurer to refuse or reduce a claim; or
- (b) vary, cancel or materially alter the insurances without our consent; or
- (c) enforce, conduct, settle or compromise any claim without our consent.

14.4 You must promptly produce evidence of the insurance policies and payment of premiums whenever we reasonably ask for them.

## Part D - Your other duties and obligations

- 15 Whenever we reasonably ask, you must promptly give us promptly any information we reasonably request about:
  - (a) your financial position; or
  - (b) the *goods* or insurances relating to them.
- 16 Anything which you must do under the *lease agreement* must be done at your cost.
- 17 You must ensure that:
  - (a) you do not become insolvent; and
  - (b) you are not in default under a security provided in connection with the *lease agreement*; and
  - (c) you pay on time any amount due under the *lease agreement* or other agreement you have with us; and
  - (d) you give us correct and not misleading information in connection with any *lease agreement*, any guarantee of a *lease agreement* or a security given in connection with a *lease agreement*; and
  - (e) your financial position does not deteriorate so that in our reasonable opinion your ability to meet your obligations under the *lease agreement* or other agreement with us is materially adversely affected.
- 18 If you lose the *goods* or they are stolen, seized or destroyed, you must comply with our reasonable directions in relation to remedial action.



## Part E - Personal Property Securities Act

### PPSA further steps

19. You agree to do anything (such as obtaining consents, signing and producing documents, and getting documents completed and signed) which we reasonably ask and consider necessary for the purposes of:
- (a) providing more effective security over the *goods*, or any other personal property over which we have a *security interest* for payment of money owing to us in connection with the *lease agreement*;
  - (b) ensuring that a *security interest* created under the *lease agreement* is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - (c) enabling us to apply for any registration, or give any notification, in connection with a *security interest* created under the *lease agreement* so that the *security interest* has the priority we require;
  - (d) enabling us to exercise our rights in connection with the *goods*;
  - (e) binding you and any other person intended to be bound under the *lease agreement*;
  - (g) showing whether you are complying with the *lease agreement*.

### PPSA undertaking

- 20 If:
- (a) you hold any *security interest* for the purposes of the *PPSA* and if your failure to perfect such *security interest* would materially adversely affect your business or our *security interest* over the *goods*; or
  - (b) a *security interest* in your favour arises over the *goods* (whether or not as a result of a breach by you under the *lease agreement*),

you agree to implement, maintain and comply in all material respects with, procedures for the perfection of those *security interests*. These procedures must include procedures designed to ensure that you take all reasonable steps under the *PPSA* to continuously perfect any such *security interest* including all steps reasonably necessary:

- (c) for you to obtain, the highest ranking priority possible in respect of the *security interest* (such as perfecting a purchase money security interest or perfecting a *security interest* by control); and
- (d) to reduce as far as possible the risk of a third party acquiring an interest free of our *security interest* (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).

If we ask, you agree to arrange at your expense an audit of the *PPSA* procedures. We may ask you to do this if we reasonably suspect that you are not complying with this clause.

### ***Security interest in chattel paper***

- 21 If a *security interest* in connection with the *goods* in the form of chattel paper (as defined in the *PPSA*) is held by you or arises in your favour (whether or not as a result of a breach by you under the lease agreement), you grant a security interest in the chattel paper to us for the purpose of securing payment of any money you owe us in connection with the *lease agreement*. The *security interest* created by this clause is a charge and you may not transfer, dispose of or otherwise deal with the chattel paper or allow another *security interest* to exist over it. You must deposit with us all original documents of title comprising the chattel paper and any other documents we request relating to the chattel paper.

### **Registration**

- 22 We may, at your expense, apply for any registration, or give any notification, in connection with a *security interest* created under the *lease agreement*.

## **Notification of name change**

- 23 You must notify us in writing of any change in your name at least 14 days before you propose to change your name.

## **Exclusion of certain *PPSA* provisions**

### **24 You agree that:**

- (a) we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the *PPSA*, or any other provision of the *PPSA* notified to you by us after the date of the *lease agreement*, to the extent the law permits them to be excluded;
- (b) we may not exercise rights under section 143 of the *PPSA* to the extent the law permits them to be excluded; and
- (c) we need not give any notice required under the *PPSA* (including a notice of verification statement) unless the requirement to give the notice cannot be excluded.

## Part F - What happens at the end of the lease?

- 25.1 On the date specified in the *goods schedule* as the end of the term, you must return the *goods*. If you want to keep the *goods* you must ask us for our consent at least 10 business days before the date specified as the end of the term.
- 25.2 If you are to return the *goods*, you must, on the date specified in the *goods schedule* as the end of the term:
- (a) return the *goods* to us in good working order, and in good repair (fair wear and tear excepted) to a place we reasonably nominate; and
  - (b) give us any certificates of registration, insurance certificates, log books, instruction and service manuals and other documents relating to them and a signed transfer of all certificates of registration in favour of us or a person we nominate; and
  - (c) pay us the residual value for the *goods*; and
  - (d) pay us any other amount payable under the *lease agreement*.
- 25.3 If you do not return the *goods* and you have not entered into a new lease with us in respect of the *goods*:
- (a) you must continue paying *rent instalments* (on a monthly basis) as if the date specified as the end of term had not occurred and the *lease agreement* had not ended; and
  - (b) if you return the *goods* before the *rent instalment* is due you must still pay us the whole *rent instalment* for that month and we will not be obliged to refund you any part of that rent instalment.; and
  - (c) either of us can give notice to the other at any time to return them. Once either of us gives that notice, you must return the *goods* to us on the next payment date and at that time comply with 25.2. The residual value does not reduce because you decide to keep the *goods* under this 25.3.

## Part G - What happens if you repudiate the lease agreement?

- 26.1 The fundamental provisions of the *lease agreement* are that you must:
- (a) pay all money due on time and as required by the *lease agreement*; and
  - (b) comply with 1.3, 1.6, 1.7, 2.3, 5, 14 and 17.
- 26.2 You will repudiate the *lease agreement* and we may terminate it by notice to you if:
- (a) you do not comply with the fundamental provisions of the *lease agreement* except that for the purposes of this clause you will have complied with the requirement to pay all money due on time and as required by the *rental agreement* if it has been paid within *2 business days* of the due date; or
  - (b) your conduct indicates, in our reasonable opinion, that you no longer intend to be bound by the *lease agreement*; or
  - (c) we reasonably believe you, the guarantor or another person has acted fraudulently in connection with the *lease agreement*, any guarantee of the *lease agreement* or a security given in connection with the *lease agreement*; or
  - (d) you have repudiated any other lease with us.
- 26.3 If we give you this notice of termination, you must promptly:
- (a) return the *goods* to us in good working order, and in good repair (fair wear and tear excepted) to a place we nominate; and
  - (b) give us any certificates of registration, insurance certificates, log books, instructions and service manuals and other documents relating to them and a signed transfer of all certificates of registration in favour of us or a person we nominate; and
  - (c) pay us the *termination value* for all the *goods* calculated as at the day we give you notice, as liquidated damages for our loss of bargain. The *termination value* does not include additional

amounts you may owe us under 12.1(c) because you did not comply with the *lease agreement* or 12.1(h) because we terminated the *lease agreement*. You remain liable for those amounts in addition to the *termination value*; and

- (d) pay us all amounts owing under the *lease agreement* including:
- all arrears of *rent instalments*;
  - any *rent instalment*; and
  - reasonable repossession costs; and due on the day we give you this notice and other payments due up to and on that day.

26.4 We may take possession of the *goods* without terminating the *lease agreement* on your repudiation of it. For one month following the day on which we take possession of the goods, your obligations under the *lease agreement* (including the obligation to pay all money due on time and as required by the *lease agreement*) will continue as if the *goods* remained in your possession and we will not be taken for the purposes of the *lease agreement* to have accepted your repudiation of the *lease agreement* (although we reserve the right to do so). At the end of the one month period, we must either redeliver the goods to you or terminate the lease agreement. We will only be obliged to redeliver the *goods* to you if you have paid all reasonable repossession costs, storage charges and other reasonable costs incurred by us in exercising our rights under this clause and the goods have not been sold. We may terminate the *lease agreement* by notice to you at any time after taking possession of the *goods* under this clause. If you have not paid these costs at the end of the one month period, we may terminate the lease agreement.

26.5 If you repudiate the *lease agreement*, you or the guarantor must provide us on our request with security over all your or the guarantor's assets and undertaking in a form and substance reasonably satisfactory to us.

## Part H - What happens when the *goods* are returned?

- 27.1 As soon as practicable after any *goods* are returned to us (other than pursuant to 26.4) we must either:
- (a) offer them for sale in good faith at a public auction or by tender or private treaty and we need not include any warranty on the condition or suitability of the *goods* or our title to them; or
  - (b) attempt to re-lease them in good faith.
- 27.2 We must pay you the proceeds we receive from selling or re-leasing any of the *goods*, up to their:
- residual value (if the *goods* are returned under 25); or
  - *termination value* (if the *goods* are returned under 26.3 or if we terminate the *lease agreement* under 26.4),
- less:
- (a) all reasonable costs and expenses we incur in selling or re-leasing; and
  - (b) amounts you owe under the *lease agreement* or any agreement you have with us.

## **Part I - What you acknowledge in entering the *lease agreement***

### **About the lease**

28.1 You acknowledge that:

- (a) you have not relied on our skill or judgement in deciding to enter into the *lease agreement*; and
- (b) unless you have told us otherwise, you do not enter into the *lease agreement* as trustee of any trust or settlement; and
- (c) you are not a strata corporation within the meaning of any consumer credit legislation; and
- (d) you have no connection with the supplier of the *goods* unless previously disclosed to us; and
- (e) we are not liable to you for any taxes, charges or imposts imposed on you as a result of your entering into the *lease agreement*; and
- (f) if an authorised signatory signs the *lease agreement* on your behalf, that signatory has been properly and duly authorised by you to sign the *lease agreement* on your behalf.

28.2 You have no right to purchase the *goods* at any time, either before or after the termination of the *lease agreement*.

### **About the goods**

29 You acknowledge that:

- (a) subject to 30.1(a) you alone are responsible for examining the *goods* before accepting them and for satisfying yourself about them, including:
  - (i) their compliance with their description; and
  - (ii) their condition, suitability and fitness for your purposes; and
  - (iii) the validity of any manufacturer's, dealer's, or supplier's warranties or guarantees, and entitlements to patents; and



- (b) if an intermediary or consultant has been engaged in connection with the *lease agreement*, that intermediary or consultant is not our agent and is not authorised to make any representation on our behalf; and
- (c) you are responsible for obtaining and maintaining at all times all licences or registrations required by law in connection with the *goods* or their use; and
- (d) you have satisfied yourself that the *goods* and their supply and use do not constitute a breach of any patent, copyright or other intellectual property; and
- (e) we are not the manufacturer of the *goods* nor a dealer in property of that kind; and
- (f) unless stated otherwise in the *goods schedule*, the *goods* are new; and
- (g) you have sole control of and responsibility for the safe operation and use of the *goods* during the term of the *lease agreement*; and
- (h) you have been supplied with the *goods* by a third party.

### **About legal warranties and limitations**

301 You acknowledge that:

- (a) we have not made any representation, warranty or undertaking about:
  - (i) the condition or quality of the *goods*, their suitability or fitness for purpose or their safety except those implied by legislation including the Competition and Consumer Act 2010 (Cwth) (to the extent it applies and cannot be excluded); or
  - (ii) the taxation and financial consequences of the *lease agreement* and any payments made under it, and none will be implied; and
- (b) under Schedule 2 of the Competition and Consumer Act 2010 (Cth) or another law to a similar effect, you may have the benefit of statutory warranties, guarantees, linked credit provider liability and other rights in respect of the Goods that we cannot contract out of. Apart from these,

and to the full extent permitted by law, we are not liable for any injury to any person or loss or damage to property arising from the possession, operation or use of the *goods* (including any injury, loss or damage arising from our negligence); and

- (c) whether or not the relevant provisions of the Competition and Consumer Act 2010 (Cwth) or any law to a similar effect applies, our liability for anything in relation to the *goods*, their use, or their installation, including damage or economic loss to anyone, is limited as much as it can be. Whatever happens, our liability is limited in our discretion to either:
  - (i) replacing the *goods* with the same or equivalent *goods*, or paying the cost of such replacement; or
  - (ii) repairing the *goods* or paying for their repair.

However, if the supplier of the *goods* has given us warranties for the *goods*, then, to the full extent permitted by law, you may make any claim on the supplier which we could have made.

## **Reliance**

30.2 Your acknowledgments contained in the *lease agreement* take effect as representations and warranties. You enter into the *lease agreement* on the basis of the representations and warranties and agree that the representations do not merge on the execution of the *lease agreement*.

## Part J - Guarantee and indemnity

### Extent of guarantor's obligations

31.1 By signing the *lease agreement*, the guarantor could become liable to pay us:

- under the guarantee in 32;
- under the indemnity in 33;
- costs and other expenses under 34;
- interest under 35.

31.2 The guarantor is liable for all the guarantor's obligations under the *lease agreement* both separately and jointly with any one or more other persons named in the *lease agreement* as "guarantor".

What the guarantor undertakes in giving the guarantee and indemnity in the *lease agreement*

### Guarantee

32.1 The guarantor guarantees that the renter will pay us all amounts payable under the *lease agreement* when they are due. This guarantee continues until all these amounts have been paid in full or the guarantor ends it under 37.

32.2 If we ask, the guarantor must pay us any amount which the renter does not pay us when it is due under the *lease agreement*. We need not ask the renter first to pay us.

### Indemnity

33.1 The guarantor indemnifies us against, and the guarantor must therefore pay us for, loss or costs we suffer or incur if:

- (a) the renter does not, is not obliged to, or is unable to, pay us in accordance with the *lease agreement*; or
- (b) the guarantor is not obliged to pay us an amount under 32; or
- (c) we are obliged, or we agree, to pay an amount to a trustee in bankruptcy or liquidator in connection with a payment by the guarantor or the renter. (For example, we may have to, or may agree to, pay interest on the amount.)

33.2 The indemnity in 33.1 is a continuing obligation, separate and independent from the guarantor's other obligations under the *lease agreement*. It continues after those other obligations end, unless the guarantor ends it under 37.

## **Additional amounts the guarantor must pay**

### **Our costs and other expenses**

34 The guarantor must pay us for:

- (a) our reasonable costs in arranging, administering (including enforcing or taking any other action in connection with our rights) and terminating the guarantee and indemnity contained in the *lease agreement*; and
- (b) all stamp and other duties, fees, taxes and charges payable in connection with the *lease agreement* and the guarantee and indemnity contained in the *lease agreement* and any transaction (such as a payment or receipt) under it, and any interest, penalties, fines and expenses in connection with them.

### **Interest**

35 The guarantor must pay interest calculated on daily balances on any amount the guarantor owes under 32 or 33 from the date we ask the guarantor for the amount until the guarantor pays it. This interest is to be calculated and is payable in accordance with 11.

### **The guarantor's own costs and other expenses**

36 The guarantor must pay for anything which the guarantor must do under the *lease agreement*.

The guarantor may end this guarantee and indemnity

### **The guarantor may end this guarantee and indemnity**

37 The guarantor may end its liability under the guarantee and indemnity contained in the *lease agreement* at any time if the guarantor pays us all amounts payable under the *lease agreement* at that time including any amount which we reasonably determine to be the future or contingent liability of the renter.

The guarantor's liability in respect of other leases is not affected by this clause.

## Changes to rights

### Reinstatement of rights

38 Under law, a trustee in bankruptcy or liquidator may ask us to refund a payment we have received in connection with the *lease agreement* or the guarantee and indemnity contained in the *lease agreement*. To the extent we are obliged to, or we agree to, make a refund, we may treat the original payment as if it had not been made. We are then entitled to our rights against the guarantor under the guarantee and indemnity contained in the *lease agreement* as if the payment had never been made.

### Our rights are protected

- 39.1 Rights given to us under the guarantee and indemnity contained in the *lease agreement* and the guarantor's liabilities under it are not affected by any act or omission by us or by anything else that might otherwise affect them under law relating to guarantees and indemnities, including:
- (a) the fact that we vary or replace the *lease agreement*, such as by extending the term; or
  - (b) the fact that we release the renter or give them a concession, such as more time to pay; or
  - (c) the fact that the renter opens another account with us; or
  - (d) the fact that we release, lose the benefit of or do not obtain any security; or
  - (e) the fact that we do not register any security which could be registered; or
  - (f) the fact that we release any other person who guarantees the renter's obligations under the *lease agreement*; or
  - (g) the fact that the obligations of any person who guarantees the renter's obligations under the *lease agreement* may not be enforceable; or

- (h) the fact that any person who was intended to guarantee the renter's obligations under the *lease agreement* does not do so or does not do so effectively; or
- (i) the death, mental or physical disability or insolvency of any person including the guarantor or the renter.

39.2 The guarantee and indemnity contained in the *lease agreement* does not merge with or adversely affect:

- (a) any other guarantee or indemnity, or mortgage, charge or other security, or right or remedy to which we are entitled at any time; or
- (b) a judgement or order which we obtain against the guarantor in respect of an amount payable under the guarantee and indemnity contained in the *lease agreement*.

We can still exercise our rights under the guarantee and indemnity contained in the *lease agreement* as well as under the judgement, order, other guarantee or security.

### **The guarantor's rights are suspended**

40 As long as an amount payable under the *lease agreement* remains unpaid, the guarantor may not, without our consent:

- (a) reduce the guarantor's liability under the guarantee and indemnity contained in the *lease agreement* by claiming that the guarantor or the renter or any other person has a right of set-off or counterclaim against us; or
- (b) exercise any legal rights to claim to be entitled to the benefit of another guarantee or mortgage, charge or other security given in connection with an amount payable under the *lease agreement* or an amount payable under the guarantee and indemnity contained in the *lease agreement*. (For example, the guarantor may not try to enforce any mortgage we have taken to ensure repayment of amounts payable under the *lease agreement*); or
- (c) claim an amount from the renter or another guarantor of the renter's obligations under a right of indemnity; or

- (d) claim an amount in the insolvency of the renter or another guarantor of the renter's obligations under the *lease agreement* (including a person who has signed the *lease agreement* with the guarantor).

### **What the guarantor acknowledges and declares**

- 41.1 The guarantor acknowledges that the guarantor is responsible for making itself aware of the financial position of the renter and any other person who guarantees the renter's obligations under the *lease agreement*.
- 41.2 The guarantor declares that it does not enter into the *lease agreement* as a trustee, unless the guarantor has told us otherwise in writing.

## **General**

### **When must the guarantor pay?**

- 42 The guarantor must pay any amount payable to us under the *lease agreement* on the date we specify.

### **The guarantor must take further steps**

- 43 The guarantor must promptly do anything we reasonably require (such as obtaining consents, signing and producing documents and getting documents completed and signed) to bind itself under the *lease agreement*.

### **How we may exercise our rights**

- 44 We may claim against the guarantor under the *lease agreement* before we enforce any of our rights:
  - (a) against the renter or any other person; or
  - (b) under another document such as a guarantee or mortgage, charge or other security.  
(For example, we may ask the guarantor to pay us first without our having made the renter bankrupt.)

### **How we may use money paid by the guarantor**

- 45.1 We may use any money paid by the guarantor under the *lease agreement* towards paying any part we choose of the amounts the guarantor owes us under the *lease agreement*.

45.2 We may place in a suspense account any payments we receive from the guarantor for as long as we think prudent.

## **Part K - Other requirements**

### **Our right to act**

- 46.1 We may do anything which should have been done by you or the guarantor under the *lease agreement* but which we reasonably consider you or the guarantor have not done properly.
- 46.2 If you do not return the *goods* when you are required to under the *lease agreement*, we may enter the place where the *goods* are and take possession of the *goods* without prior notice to you.

### **How we may exercise our rights**

- 47.1 We may exercise a right, remedy or power or give or refuse our consent in any way we consider appropriate including by imposing conditions.
- 47.2 If we do not exercise a right, remedy or power at any time, we can still exercise it later.
- 47.3 Our rights, remedies and powers under the *lease agreement* are in addition to any other rights, remedies and powers provided by law independently of it.
- 47.4 Any termination under Part F does not affect any other right or remedy we have for amounts due to us which remain unpaid.
- 47.5 Our rights and remedies may be exercised by any of our directors, any of our employees whose job title includes the word 'manager' or any other person we authorise.

### **How we may use money we receive**

- 48 We may use any money received under the *lease agreement* towards meeting any part we choose of the amounts you owe us.

### **Confidentiality**

- 49 Subject to clause 1.8, each party agrees not to disclose information provided by any other party that is not publicly available or the existence of, or contents of the *lease agreement* except:



- (a) to any person in connection with an exercise of rights or a dealing with rights or obligations under the *lease agreement*;
- (b) to each parties' officers, employees, legal and other advisers and auditors;
- (c) to any party to the *lease agreement* or any related entity of any party to the *lease agreement*, provided the recipient agrees to act consistently with this clause;
- (d) with the consent of the party whose information is being disclosed;
- (e) any disclosure the disclosing party reasonably believes is required by any law or stock exchange (except this paragraph does not permit us to disclose any information of the kind referred to in section 275(1) of the *PPSA* unless section 275(7) of the *PPSA* applies).

### **Our certificates**

50.1 We may give you or the guarantor a certificate regarding any matter concerning the *lease agreement* including:

- (a) the lease rate; or
- (b) any amount payable by you to us; or
- (c) any amount payable by the guarantor to us.

50.2 The certificate is sufficient evidence of the accuracy of its content, unless it is proved to be false.

### **Setting off money owed to you**

51 We may set off any money we owe you against any money you owe us under the *lease agreement*, any other agreement or otherwise. We may set off any money we owe the guarantor against money the guarantor owes to us under the *lease agreement*, any other agreement or otherwise. This clause does not limit other rights we have under the *lease agreement*.

### **Notices and other communications**

52.1 Notices, certificates, consents and other communications in connection with the *lease agreement* must be in writing.

52.2 They must be:

- (a) left at the address last notified; or
- (b) sent by prepaid post to the address last notified; or
- (c) sent by facsimile to the facsimile number last notified.

52.3 If they are sent by post, they are taken to be received on the third day after posting.

52.4 If they are sent by facsimile, they are taken to be received on production of a transmission report by the transmitting machine which indicates that the whole facsimile was sent.

52.5 They take effect from the time they are received unless another time is specified in them.

### **Variation**

53 A term of the *lease agreement*, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

### **Business days**

54 If a date for payment of money under the *lease agreement* is not a business day, the money must be paid on the preceding business day.

### **Applicable law**

55.1 The *lease agreement* is governed by the law of the place where we sign it.

55.2 You and the guarantor submit to the non-exclusive jurisdiction of the courts of that place and courts of appeal from them.

55.3 We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you or the guarantor, as the case may be, by delivering it to your or the guarantor's, as the case may be, address in the *goods schedule* (or any changed address notified to us) or by leaving it there. This does not prevent any other method of service.

## Our right to investigate

56 If we believe acting reasonably in good faith that you are or may be in breach of the *lease agreement*, we may appoint a person to investigate whether this belief is accurate. You must cooperate with and comply with all reasonable requests made by this person. If in fact you are in breach of the *lease agreement* at any time during the investigation (being a material breach, as reasonably determined by us) you must pay all of our reasonable costs associated with the investigation.

## Yield protection

57.1 You acknowledge that we may be entitled to claim a deduction for depreciation in respect of the *goods* under the *Income Tax Assessment Act 1936* (Cwth) and the *Income Tax Assessment Act 1997* (Cwth). If we are entitled to claim a deduction, the *rent instalments* and stamp duty payable in connection with the *lease agreement* will be calculated on the basis that we will be entitled to claim such a deduction.

57.2 You must take all steps necessary to ensure that we are able to claim the deduction for depreciation in respect of the *goods* if we are entitled to do so under the *Income Tax Assessment Act 1936* (Cwth) and the *Income Tax Assessment Act 1997* (Cwth).

57.3 You indemnify us against any loss (including, without limitation, any taxation and penalties imposed on us) if for any reason (other than due to our fault):

- (a) we are not able to claim the whole or any part of the deduction for the depreciation of the *goods* where we are entitled to do so under the *Income Tax Assessment Act 1936* (Cwth) and the *Income Tax Assessment Act 1997* (Cwth); or
- (b) the annual depreciation percentage for the *goods* is varied from the annual depreciation percentage for the *goods* on which we base our calculation of the *rent instalments*; or
- (c) the method of calculating the depreciation of the *goods* is varied from the method we use for calculating the depreciation of the *goods*; or
- (d) any capital gains, sales, consumption or value added tax or duty is or becomes payable by us in respect of the *lease agreement* or the *goods*.

In this clause, the term “loss” includes any reduction in our overall effective rate of return under the *lease agreement* we certify to you as having been incurred by us as a result of the circumstances specified in (a) to (d) above.

In the case of a *lease agreement* that has not been terminated, we can require you to satisfy this indemnity by increasing the *rent instalments* payable under the *lease agreement* on giving you a written notice of our intention to do so. Payment may be made in instalments after reasonable consultation with you.

### **Trustee provisions**

- 58 You acknowledge that if you enter into this lease as trustee of any trust or settlement, the lease is for the benefit of the trust, you have authority to enter into the lease and you have the right to be fully indemnified out of trust assets for obligations incurred under the lease.

### **Authority to complete and amend**

- 59 You and the guarantor authorise us to:
- (a) fill in any blanks in the *lease agreement* and any document signed by us which is connected with the *lease agreement* (such as Corporations Act forms, financing statements, financing charge statements, or transfers for the *goods*) as long as we act in good faith when doing so; and
  - (b) make any amendment to any document described in (a) above, in order to accurately reflect or give effect to the terms of the *lease agreement* which have been agreed between us.

### **Appropriate use of our services**

- 60.1 You warrant, to your best knowledge and belief, that your use of the services we provide will not breach any law of Australia or any other country.
- 60.2 Where we consider it necessary for us to meet our regulatory and compliance obligations:
- (a) you must provide us with any information we reasonably request;

- (b) we will disclose information we hold to regulatory and law enforcement agencies, other financial institutions, third parties and members of the Westpac Group; and
- (c) we may delay, block or refuse to provide any of our services.

We will not be liable to you or any other person for any loss or damage of any kind that may be suffered as a result of us exercising our rights under this clause.

### **Acting Fairly**

- 61. We will act fairly and reasonably in accordance with our legitimate business interests in exercising our rights and discretions under the lease agreement.

## **Part L - Meaning of words**

**business day** means any day (other than a Saturday or a Sunday) we are open for business in the place we sign the *lease agreement*.

**costs** includes charges and expenses; and costs, charges and expenses in connection with:

- (a) legal, accounting, valuation and other advisers and investigators; and
- (b) repossession, repair and inspection of the *goods*.

**goods** means, in respect of a particular *lease agreement*, the *goods* described in the goods schedule applicable to that *lease agreement*.

**goods schedule** means, in respect of a *lease agreement*, the *Goods Schedule* which is part of that *lease agreement*.

**GST law** has the same meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cwth).

**guarantor** means the person or persons named in the *goods schedule* as the guarantor, and if there is more than one, means each of them separately and every two or more of them jointly.

**including** when introducing a list of items, does not limit the meaning of the words to those items or to items of a similar kind.

**insolvent** means insolvent or insolvent under administration (each as defined in the Corporations Act), in receivership, in receivership and management, in liquidation, in provisional liquidation, wound up, administration, subject to any arrangement, assignment or composition, or protected from any creditors under any statute, or dissolved (other than to carry out a reconstruction while solvent).

**lease agreement** means a lease of *goods* on the terms of these Terms and Conditions - General and the *goods schedule* applicable to those *goods*.

**lease rate** means the interest rate implicit in the lease agreement, as reasonably determined by us. It is the implicit rate of interest under the lease agreement.

**payable** in relation to an amount means an amount which is currently payable or will or may be payable in the future.

**person** includes firm, partnership, committee, and incorporated and unincorporated bodies.

**PPSA** means the *Personal Property Securities Act 2009* (CwIth).

**rent instalment** includes related stamp duty for that *rent instalment*.

**security interest** includes any security interest under the *PPSA*, mortgage, pledge, lien, charge, hypothecation, trust arrangement, title retention arrangement or other security interest or encumbrance.

**termination value** for any of the *goods* on a day, means the sum of:

- (a) the present value on that day of the residual value for those *goods*; and
- (b) the present values on that day of the *rent instalments* (other than related stamp and financial institutions duty) which are still to fall due and which are attributable to those *goods*.

The present value of an amount on a day is calculated by discounting that amount at the lease rate.

**we, us, our** means Bank of Melbourne - A Division of Westpac Banking Corporation ABN 33 007 457 141 Australian credit licence 233714 and its successors and assigns.

**you or renter** means the person or persons named in the *goods schedule* as the renter, and if there are more than one, means each of them separately and every two or more of them jointly. 'You' includes your successors and assigns to whom we have consented under 1.7.

The singular includes the plural and vice versa.

A reference to:

- the *lease agreement* (or the lease) means the lease you have with us with respect to the *goods*, unless it is clear from the context that other leases are being referred to; and/or
- a document includes any variation or replacement of it; and/or
- law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under laws made by parliament) and consolidations, amendments, re-enactments or replacements of any of them; and/or
- any thing includes the whole and each part of it; and/or
- the Corporations Act is a reference to the *Corporations Act 2001* (Cwlth).



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