

# **Consumer Loan Terms and Conditions**

Version February 2023

# Bank of Sydney Consumer Loan Terms and Conditions

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## Introduction

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### 1. About these Terms & Conditions

- a) These Bank of Sydney Consumer Loan Terms & Conditions form part of your Credit Contract.
- b) This document does not contain all the precontractual information required to be given to you. You must read this document together with your Loan Agreement.
- c) Capitalised words have a special meaning and are defined at the end of this document.
- d) In addition to your Loan Agreement and these Terms & Conditions form, you must read and comply with:
  - i. the Mortgage Common Provisions;
  - ii. account access terms, if applicable; and
  - iii. any other conditions reasonably imposed by us.

## Using Your Loan

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### 2. Joint borrowers

- a) If there are two or more borrowers, each of you is individually liable, and all of you are jointly liable. This means that we may take legal action against any one of you for all the outstanding amounts.
- b) Each borrower can bind each other borrower. For example, any one of you can authorise a redraw or transaction on any offset account, a split into one or more Loan Accounts, or any other activity in respect of your loan. Each borrower and any Guarantor will be liable even if they did not know about or agree to the transaction.

**IMPORTANT:** This means that each one of you can be required to pay the whole amount owing even if you have some other arrangement among yourselves and even if not all of you benefit equally.

- c) Despite this clause 2, we may require all borrowers and Guarantors to authorise any activity with respect to your loan.

### 3. Before you can drawdown your loan

We are not obliged to make an advance of funds under your Credit Contract until all conditions set out in your Loan Agreement and all of the following conditions being met to our satisfaction (unless waived by us in writing):

- a) you (and any Guarantor providing Security) has provided us with evidence that:
  - i. you own the Mortgaged Property; and
  - ii. each Mortgaged Property is insured to our satisfaction;
- b) we are satisfied that:
  - i. all Securities are acceptable to us;
  - ii. all Securities can be promptly registered where required; and
  - iii. no one else has granted any interest in or claim over any Mortgaged Property (unless such interest or claim is acceptable to us);
- c) you are not in default of any of your obligations under any other loan with us;
- d) you have paid all fees and charges that are due on or before the loan is advanced;
- e) our customer identification requirements have been satisfied;
- f) you have provided us with all other information or documents we reasonably require; and
- g) if your loan is a Construction Loan, you have satisfied the requirements set out in clause 33.

#### 4. Representations made by you

You represent and warrant before you draw down your loan and at all times before the Outstanding Balance is repaid in full that:

- a) all information you have given us concerning the loan and your application for it is true, correct and not misleading;
- b) you have not withheld from us any document or information that may substantially affect our decision to provide you with the loan;
- c) your entry into the Credit Contract and each Security, and the use of the loan, does not breach any contract between you and any other person;
- d) you are not bankrupt; and
  - i. there are no unpaid rates or taxes owing in respect of the Mortgaged Property;
  - ii. the Mortgaged Property will be occupied by you (unless otherwise approved by us);
  - iii. there are no notices or proposals from any government or other authority adversely affecting the Mortgaged Property;
  - iv. there are no defects or disputes relating to the Mortgaged Property; and
  - v. there are no structural alterations or improvements on the Mortgaged Property which require approval by the council or any other authority which have not been approved.

#### 5. Drawing down your loan

- a) Unless your Loan is:
  - i. a Construction Loan; or
  - ii. an Equity Maximiser Loan,you must draw down the total Amount of Credit on the Settlement Date.
- b) If you have a Construction Loan, subject to satisfying our requirements in clause 33, you can draw down the total Amount of Credit in a number of instalments.
- c) If you do not draw down the total Amount of Credit within the period specified in your Loan Agreement, any borrowing of the balance is subject to our approval.

### If your Loan does not proceed to Drawdown

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#### 6. When there is a binding legal contract between you and us

**IMPORTANT:** Until the Settlement Date, we have the right to change the terms of your Credit Contract or to withdraw our offer to lend altogether.

There is no binding legal contract between us until the Settlement Date or such earlier date as we decide. This means that until the Settlement Date:

- a) you are not bound to go ahead; and
- b) we have the right to change the terms of your Credit Contract or to withdraw it altogether and decline to make an advance of funds to you if anything occurs which we reasonably believe makes proceeding with the loan undesirable.

#### 7. Fees and charges if your Loan does not proceed

If your loan does not proceed for any reason (including because it was cancelled by us or because you elected not to drawdown your loan), you may still be liable for any fees and charges specified in your Loan Agreement.

### Your Loan Account

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#### 8. What we can do with your Loan Account

- a) We can debit your Loan Account with any amounts due under your Credit Contract, such as interest and credit fees and charges, and any amounts lent to you or at your request.
- b) If a third party makes a payment to you on our behalf, we can debit your Loan Account on the date that money is made available to you, and interest will accrue on the payment from that date.

- c) We may combine two or more Loan Accounts if they have identical repayment types, interest rates, fixed rate periods (if applicable), interest only periods (if applicable), and loan purposes. We may also combine any offset account with another Loan Account.
- d) If a new Loan Account is created, separate repayment dates and interest debit dates may apply to that new account. If your Loan Account is split into two or more accounts, or if you switch between types of interest rate, you may have to pay interest on the amount switched or split to the date on which the switch or split occurs.

## 9. What you can do with your Loan Account

- a) You may with our approval split your Loan Account into two or more accounts or switch account types. The following are examples of the loan changes you may request. Some or all of these options may not be available to you.
  - i. Convert from variable interest rate to fixed interest rate and vice versa.
  - ii. Split your Loan Account into two or more Loan Accounts.
  - iii. Consolidate one or more Loan Accounts.
  - iv. Convert from interest only repayments to principal and interest repayments and vice versa.
  - v. Convert from one type of Loan Account to another type of Loan Account (for example, from an Equity Maximiser Loan Account to a variable rate Loan Account).
- b) You may request a change prior to the initial advance drawdown, in which case the change takes effect from the Settlement Date. We have full discretion whether or not to approve any change to your loan requested by you.
- c) Fees and charges may apply to loan variation requests if specified in your Loan Agreement (as varied from time to time). If you switch from a fixed rate loan to a variable rate loan during the fixed rate period, fixed rate break costs may also apply.

## Interest

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### 10. Interest charges

- a) You must pay us interest on all amounts debited to your Loan Account from the date the amount is debited. Interest debited to your Loan Account forms part of the Outstanding Balance.
- b) Interest charges are calculated by applying the interest rate to the Outstanding Balance as at the end of each day. The interest rate applied each day is equal to the annual percentage rate applicable to the Loan Account at the time divided by 365.
- c) Interest charges are debited to your Loan Account monthly in arrears on the same day of each month as the Settlement Date and on the Final Repayment Date, regardless of whether or not that day is a Business Day. If the day on which interest is due to be debited is the 29th, 30th or 31st of a month with no such date, interest will be debited on the last day of the calendar month. If a fixed rate period or interest only period ends on a day which is not a Business Day, your fixed rate or interest only period may end on the next Business Day.
- d) In addition to debiting interest to your Loan Account as specified above, we may debit interest whenever the loan is in default, the whole of the Outstanding Balance is repaid, or we increase your Amount of Credit or vary your Credit Contract. Interest charges may also be debited on the date of any switch or split.
- e) Interest accrues on a daily basis from the day we disburse money at your request to make the first advance. This applies whether or not any real estate transaction to which the advance relates (such as a refinance or purchase) occurs on that day.

### 11. The applicable interest rate

- a) If more than one interest rate applies to your loan, we will apply the applicable daily percentage rate to the relevant Loan Account.
- b) You can find out your current interest rate(s) at any time by contacting us. We can change your interest rate(s) at any time except during a fixed rate period.

### 12. Default interest

**IMPORTANT:** If you do not make any payment by the due date, you must pay default interest on the overdue amount until it is paid. There may be other consequences if you default under your loan – refer to the section on 'Default' for more information.

- a) If any amount due by you is not paid on the due date, you must pay default interest on the overdue amount until the overdue amount plus the default interest on that amount is paid. You will also be liable for any default fees specified in your Loan Agreement (as varied from time to time).
- b) Default interest is also payable on the whole of the Outstanding Balance if that amount becomes due for any reason.
- c) Default interest is debited to your Loan Account monthly in arrears on the first day of each calendar month, regardless of whether or not that day is a Business Day.
- d) Acting reasonably, we may change the default rate of interest at any time without your consent. You will be notified of any changes in the default rate in the same way any variations to the interest rate are notified to you.
- e) Default interest is calculated, accrues and is payable in the same way as ordinary interest.

### 13. Interest on judgment

If you become liable by a court order to pay any money due under your Credit Contract, you must pay interest at the higher of the rate ordered by the court or the rate payable under your Credit Contract.

## Fees and Charges

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### 14. Credit fees and charges

You must pay us all the credit fees and charges specified in your Loan Agreement (as varied from time to time). We may debit your Loan Account with effect from the date the fees and charges are payable, and either require you to pay the fee or charge immediately, collect it with your regular repayments, or require it to be repaid by one or more repayments.

### 15. Government charges and GST

- a) You must pay us any government duties, taxes, and other charges on receipts, debits or withdrawals that apply to your loan. This includes (but is not limited to):
  - i. stamp duty;
  - ii. income tax payable by you (if the Commissioner of Taxation requires us to deduct this from your Loan Account);
  - iii. withholding tax; and
  - iv. goods and services tax (GST).
- b) You must pay these duties, taxes and charges whether or not someone else is liable to pay them and whether or not the loan is made. We may debit these duties, taxes and charges to your Loan Account as and when they become payable. We do not need to tell you first.
- c) If any payment to us is for a taxable supply for the purposes of GST or any similar tax, you must also pay to us an additional amount equal to the tax relating to that supply.

### 16. Lenders mortgage insurance

**IMPORTANT:** If we require you to pay for lenders mortgage insurance, this insurance protects us and not you. If you default under your mortgage and the Mortgaged Property is then sold, and the sale proceeds are insufficient to fully repay the Outstanding Balance, you are still responsible for repaying the balance outstanding under the mortgage. There may be other consequences if you default under your loan – refer to the section on 'Default' for more information.

- a) If you are required to pay lenders mortgage insurance under your Credit Contract, this insurance protects us and not you. The amount paid by you for lenders mortgage insurance will not exceed the actual cost of the policy.
- b) If you default under your mortgage, resulting in the sale of the Mortgaged Property, and the sale proceeds are insufficient to fully repay the Outstanding Balance, we may incur a loss. We may recover this loss under our lenders mortgage insurance policy. However, you are still responsible for repaying the amount outstanding under the mortgage because you are not protected by the lenders mortgage insurance policy.
- c) The amount paid by you for lenders mortgage insurance is usually not refundable if you repay your loan early.

## Repayments

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### 17. Payments you must make

- a) You must make all the repayments specified in your Loan Agreement (as varied from time to time). In addition, on the Final Repayment Date, you must pay us the Outstanding Balance.
- b) All payments must be made in full when they are due, without setting off or deducting any amounts you believe we owe you, and without counterclaiming any amounts from us.
- c) The Outstanding Balance must be repaid within 180 days from the date you die (or if there is more than one borrower, the last borrower dies) unless other arrangements are made for the continuation of the loan to our satisfaction. We will discuss this with your executor or beneficiaries and seek to agree a mutually acceptable solution. If there is more than one borrower, and one of the borrowers dies, we may allow the surviving borrower(s) to continue to access the Loan Account.

### 18. When you must make payments

- a) You must make all repayments on or before the due date. You may with our approval make weekly or fortnightly repayments rather instead of making monthly repayments.
- b) If any payment is due on a day which is not a Business Day, the payment must be made on or before the next Business Day (even if that day is in the following calendar month). If a payment is due on a day which is the 29th, 30th or 31st of a month with no such date, the payment must be made on or before the first day of the following calendar month

### 19. Method of payments

- a) Payments are to be made by direct debit or by any other reasonable method we direct. You must sign a direct debit authority to authorise us to debit one of your bank accounts and you must keep that account open. You authorise us to obtain any money due under your Credit Contract by using the direct debit authority.
- b) The amount of each payment may include any applicable direct debit fees, taxes or charges relating to the payment method in addition to your repayment amount.
- c) If an attempted direct debit fails, we may make reasonable further attempts to direct debit your account until the direct debit is successful.
- d) If any payment to us is dishonoured, the payment will be treated as not having been made, and interest will continue to accrue on the unpaid daily balance until actual payment is received by us.

### 20. How your payments are credited and applied

- a) Payments will be credited to your Loan Account only when actually received by us.
- b) We can apply any payment or other credit to any part of the Outstanding Balance in any order we determine.
- c) If you have more than one account with us, and you make a payment without telling us in writing how the payment is to be applied, we can apply it to any one or more of the accounts in any way we think fit.
- d) If any of your Loan Accounts are in arrears while one or more of your other Loan Accounts or other accounts with us have funds available to be drawn, you authorise us to appropriate from any one or more of those accounts to pay some or all of your arrears. We are not obliged to do this.

### 21. If your Loan Account has a credit balance

If you repay us more than the Outstanding Balance, we may place the excess funds into a suspense account, deposit it with a bank, or pay it to you. We may not pay you interest on that amount.

### 22. Deductions

If you are required by law to deduct any amount from a payment due to us, unless we can receive a credit or rebate for that deduction, you must make an additional payment so that the amount we receive is not reduced.

## Early Repayments

### 23. Repaying your loan early

**IMPORTANT:** You may have to pay fees if you repay your loan early. Significant fees (called 'break costs') may be payable if you repay all or part of a fixed rate loan early.

- a) You may repay the whole or any part of the Outstanding Balance at any time. If you do:
  - i. fees may be payable if specified in your Loan Agreement (as varied from time to time), including fixed rate break costs if you repay your loan during a fixed rate period;
  - ii. repayments greater than your scheduled repayment will not be credited to any offset account unless you specifically request so before making the payment; and
  - iii. you may be able to redraw any excess repayments.
- b) If you inform us that you propose to repay your loan in full, we may place a stop on all further debits to your Loan Account to enable us to provide you with a payout figure.
- c) Once you have notified us of your decision to repay early, if you change your mind and decide not to repay, you will be liable to pay our reasonable administrative and processing fees and charges for cancelling your request. We will advise you of these fees and charges in writing and you irrevocably authorise us to debit these amounts to your Loan Account.

### 24. About fixed rate break costs

- a) When you enter into a fixed rate loan with us, we may enter into external finance arrangements in order to ensure that we can continue to provide the fixed rate loan to you for the agreed term. These finance arrangements assume that you will continue to make your fixed rate loan repayments for the agreed term.
- b) If your loan is repaid or otherwise terminated before the end of the fixed rate period, we may incur costs under those finance arrangements. Lenders normally pass on these costs (commonly known as 'break costs') to borrowers. Break costs are an estimate of our loss as a result of you breaking or switching your fixed rate loan.
- c) Break costs are payable irrespective of whether we have entered into specific finance arrangements to fund the loan, and may be calculated by reference to retail interest rates (ie the rate at which lenders can lend money on similar terms) or wholesale interest rates (ie the rate at which lenders obtain funding).
- d) Generally, if our funding rate on the day that you elect to break or switch your fixed rate loan is lower than it was when you entered into the loan, break costs will apply. We do not pay a benefit to you if you break your fixed rate loan at a time when our funding costs are higher than they were on the day you entered into your fixed rate loan.

#### Example

A lender lends \$200,000 to you at 9% per annum for a fixed rate period of three years. The lender enters finance arrangements to fund this loan at 8% per annum (the market rate). You decide to repay the loan early at the end of one year. The market rate has reduced to 5% per annum. The break costs will be an assessment of the cost or loss to the lender as a result of the early repayment.

Using the above figures, the lender could calculate the loss by multiplying the amount repaid early (\$200,000) by the difference in interest rates (3%) for the period starting from the date of repayment to the end of the fixed rate period (2 years) =  $\$200,000 \times 3/100 \times 2 = \$12,000$ . The amount you would have to pay will be slightly less than \$12,000 because the lender is receiving the money at the time of the early repayment rather than over the remaining fixed rate period.

This is an example only to assist your understanding of break costs. We may use various funding techniques, but the underlying principle holds true (even if the formula applied each time is different). Break costs may be payable even if there is no matching borrowing by us.

- e) There are a number of ways we may calculate break costs. We will act reasonably when calculating the break costs that are payable by you and will charge no more than a reasonable estimate of our loss arising from the early repayment plus our average reasonable administrative costs. Because of the changes that occur over time in financial markets, it is not possible to state the method of calculating break costs at the Disclosure Date.

## Redraw

The following provisions do **not** apply to fixed rate loans or Construction Loans.

**IMPORTANT:** We can change, suspend or cancel your redraw facility at any time.

### 25. About your redraw facility

- a) We will tell you if redraw facilities are available. Redraw is not available for fixed rate loans or Construction Loans.
- b) Redraws will be processed as we decide from time to time. If you request a redraw, we have full discretion whether or not to approve your request.
- c) We may change, suspend or cancel the redraw facility at any time. We will tell you if we do any of these things.
- d) Any redraw will be made from the Loan Account specified by you, or if no loan account is specified, the Loan Account determined by us.
- e) If you request a redraw, and for that Loan Account your existing repayments are not sufficient to repay the amount owing under that Loan Account over the remaining term, we may recalculate your future repayments for that Loan Account.

### 26. When you can redraw

Subject to clause 25 & 27, if you have made extra payments above your minimum repayment amount, you may redraw all or any part of those extra payments provided that:

- a) you have not defaulted under your Credit Contract;
- b) your redraw facility has not been suspended or cancelled by us;
- c) no further charge or security interest has been granted over any of the Security; and
- d) no other restrictions are set out in your Credit Contract.

### 27. How much you can redraw

- a) The maximum amount available for redraw is the amount you have repaid early, less the amount of any previous redraws, permanent reductions to the balance of your loan account, and other debits as reasonably determined by us.
- b) The amount you redraw must not be less than the minimum amount specified by us from time to time, and must not be more than the maximum amount available for redraw. If you draw more than the amount available for redraw, you must repay the excess immediately, and we may charge default interest on that amount until it is repaid.
- c) We may reduce the amount you can redraw by the estimated amount of your next scheduled repayment.

### 28. Making redraws

- a) You can obtain a redraw:
  - i. if internet banking is available under your loan, by using internet banking in accordance with our internet banking terms and conditions;
  - ii. by visiting one of our branches; or
  - iii. by any other method we approve from time to time.
- b) You must keep the method of making redraws from your Loan Accounts (including any offset account) confidential to ensure that there are no unauthorised transactions or other dealings with your Loan Accounts.
- c) If you make your request for redraw manually, you should allow at least two Business Days for your redraw to be processed.
- d) If you attempt to redraw more than the amount available for redraw, we may (but are not obliged to) stop or prevent the payment.



## Offset

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The following provisions apply to you if your loan has an offset facility.

**IMPORTANT:** We can change, suspend or cancel your offset facility at any time.

### 29. About your offset facility

- a) We will tell you if offset facilities are available.
- b) We may change, suspend or cancel the offset facility at any time. We will tell you if we do any of these things.
- c) We do not make any representations about the tax effectiveness of any offset account.
- d) Each offset account must be linked to a separate nominated Loan Account.

### 30. Interest charges for offset accounts

- a) Interest payable on each Loan Account linked to your offset account will be calculated on the daily balance of that Loan Account less the balance in the linked offset account.
- b) No interest is payable on any offset sub-account even if the balance exceeds the amount owing under your linked loan account.

### 31. How much you can draw from your offset account

- a) You may draw funds from your offset account(s) in the same way as for redraw as set out in clause 28.
- b) You must ensure that the balance of any offset account does not exceed the amount owing under the linked Loan Account at any time. If the balance of your offset account exceeds the amount owing under the linked loan Account, we may send the excess funds back to you, or apply them towards another one of your Loan Accounts.
- c) You must make sure that you do not allow your offset account to be overdrawn. If your offset account is overdrawn, you must repay the excess immediately, and we may charge default interest on that amount until it is repaid.
- d) We may reduce the amount you can draw from your offset account by the estimated amount of your next scheduled repayment.

## Construction Loans

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The following provisions apply to you if your loan is a Construction Loan.

### 32. About your Construction Loan

**IMPORTANT:** If you have a Construction Loan, we may suspend, reduce or cancel progress payments. For example, we can refuse to make any further advances if anything happens which adversely affects the value of the Mortgaged Property or if the building works are not proceeding satisfactorily.

- a) No building works may be commenced on the Mortgaged Property without our prior written consent (which will not be unreasonably withheld). You must commence and complete construction within the timeframe, if any, specified in the special conditions to your Credit Contract. You must complete the building works expeditiously in accordance with the best skills and practices to our satisfaction, with plans and specifications approved by us, and with the requirements of any responsible authority (such as a local council).
- b) The Amount of Credit will be advanced progressively as and when we see fit to assist in the construction of building works.
- c) We may suspend, reduce or cancel any progress payment, and in particular can refuse to make any further advances if anything happens which in our reasonable opinion adversely affects the value of the Mortgaged Property or if the building works are not proceeding satisfactorily.
- d) Generally, all progress payments will be made directly to the builder or service provider.
- e) If total construction costs are less than the amount we agree to lend you for construction, we may reduce the amount we lend you accordingly.
- f) If any insurer who has provided lenders mortgage insurance cancels, suspends or limits that insurance, and that decision materially impacts our credit or security risk, we may demand repayment of the whole or any part of the Outstanding Balance on not less than 90 days notice,

- g) If you overrun the approved planned expenditure, we may require you to fund the overrun from your own funds before we approve your next drawdown request.
- h) We may not make progress payments for supplies until they are installed or permanently affixed to the mortgaged property.
- i) Any variations to the building works must be funded by you unless we agree otherwise in writing.
- j) We accept no responsibility in respect of the building works irrespective of whether we conduct any inspections, make any comments or requirements, or make any progress payments. You must satisfy yourself that the building works are properly carried out.

### **33. Before you can draw down your Construction Loan**

- a) Before we make any progress payment under your Credit Contract, we may require you to give us the following documents in a form and substance acceptable to us:
  - i. a copy of the building contract, including all variations, between you and the builder in relation to construction, with a completion date acceptable to us and with a licensed builder acceptable to us;
  - ii. a copy of the plans and specifications approved by the relevant authority in relation to construction;
  - iii. home owners warranty insurance (where applicable);
  - iv. a builders all risk insurance policy and a certificate of currency for that policy;
  - v. an identification survey report completed by a licensed land surveyor;
  - vi. a progress payment authority signed by you; and
  - vii. anything else we reasonably require.

You are still liable under your Credit Contract if we make any progress payment without requiring any of these things.

- b) Before we make the final advance at the completion of the building works, we may require a final inspection to be carried out by a licensed valuer.

### **34. Your obligations in relation to construction**

You must:

- a) as soon as the building works are complete, provide to us:
  - i. a general insurance policy noting our interest as mortgagee. The policy must include cover for fire and damage, evidenced by a copy of the certificate of currency (a cover note is not acceptable), and be otherwise on terms acceptable to us; and
  - ii. a final certificate from the local council or other responsible authority confirming that building works have been completed in accordance with all relevant requirements;
- b) ensure that the agreed drawdown schedule is observed and that there are always sufficient undrawn funds under the loan to complete construction;
- c) promptly comply with any condition we impose in relation to any progress payment or the building works; and
- d) not vary or terminate the building contract without our prior written consent (which will not be unreasonably withheld).

## **Line of credit**

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**The following provisions apply to you if your loan includes a line of credit facility.**

### **35. About your line of credit facility**

**IMPORTANT:** We can change, suspend or cancel your line of credit facility at any time.

- a) At any time on not less than 90 days' notice, we may convert the line of credit facility to a term loan under which you must make regular monthly principal and interest repayments.
- b) We may change, suspend or cancel the line of credit facility (including reduce your credit limit) at any time without your consent. We are not liable for any loss suffered by you or anyone else as a result of us changing, suspending or cancelling the line of credit facility.

- c) If we:
- i. reduce your credit limit, you must repay any amount owing in excess of the new credit limit; or
  - ii. cancel the line of credit facility, you must repay the Outstanding Balance of your line of credit account.
- We will endeavour to give you adequate notice before we reduce your credit limit or cancel the line of credit facility, but we reserve the right to act immediately.
- d) We calculate your available funds limit on each day by deducting from your credit limit:
- i. the Outstanding Balance of your line of credit account;
  - ii. any withdrawal amounts or other proposed payments on your line of credit account for which we have received instructions, but which have not yet been debited to the account (not including future periodical payments); and
  - iii. the amount of any payments which have been credited to your line of credit account, but which have not cleared yet.
- e) You must ensure that you do not exceed your credit limit. If you exceed your credit limit without our written consent, the amount by which you have exceeded the credit limit must be repaid immediately, and we may charge default interest on that amount until it is repaid.
- f) If a transaction would cause the balance of your line of credit account to exceed your credit limit, we may, without notice, decline, stop or reverse the transaction. If for some reason we allow the balance of your line of credit account to exceed your credit limit, it does not mean we are increasing your credit limit.
- g) If we consent to you exceeding your credit limit, we may impose one or more of the following conditions:
- i. that the amount by which you have exceeded your credit limit be repaid within a certain period; or
  - ii. that payments made to your line of credit account are first applied by us to the excess amount and any interest charged on that amount.
- h) We have the right to decline any transaction if we are uncertain for any reason of the authenticity or validity of the authorisation. We will not be liable to you or any other person for any loss or damage which you or such other person may suffer as a result of our action.

## Changes we can make to your credit contract

**IMPORTANT:** We can make changes to your Credit Contract at any time (except interest rate changes during a fixed rate period). In making any changes, we will act reasonably. We will endeavour to give you reasonable notice of changes, but we reserve the right to make immediate changes to variable interest rates.

### 36. Types of changes we can make

Acting reasonably, we can change or vary any term of your Credit Contract:

- a) that deals with the pricing of your loan (including your interest rate, credit fees and charges, and repayments, but subject to any specific agreement such as a fixed rate period);
- b) that deals with the day you make repayments or we debit interest to your Loan Account;
- c) to accommodate a change in law or market practice;
- d) to accommodate a change in technology or other ways of communication;
- e) to accommodate a change in payment methods; or
- f) to make any other reasonable change.

### 37. Notification of changes

We will give you:

- a) not less than 30 days notice of a change to the manner in which interest is calculated or applied;
- b) notice of a change to the interest rate(s) applicable to your loan not later than the day on which the change takes effect;
- c) not less than 20 days notice of a change to the amount or frequency of your repayments;
- d) not less than 20 days notice of a change to the fees and charges payable;

- e) notice of a change to any government charge or tax not later than the day on which the change takes effect; and
- f) not less than 30 days notice of any other change we make to your Credit Contract.

We may give you a shorter notice period or no notice if the change is not adverse to you or reduces your obligations. We will give you notice either in writing (including by electronic means) or by publishing a notice in a major newspaper. If notified by newspaper, the change will also be confirmed in your next statement of account. Any variation will take effect from the date specified in the notice of change we give you.

### **38. If you do not agree to a change we make**

If you are not satisfied with any change or variation to your Credit Contract, you may repay your loan in accordance with clause 23.

## **Default**

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### **39. Consequences of a breach of any term**

If:

- a) you breach any term of your Credit Contract or any Other Agreement;
- b) an Event of Default occurs, or
- c) if any Security or guarantee is terminated or is of reduced force and effect,

then:

- d) we will not be obliged to lend you any more money and we can stop any redraws or withdrawals from your offset account; and
- e) we may rectify the breach or Event of Default by performing your obligations under your Credit Contract or any Other Agreement.

**IMPORTANT:** The events which may cause you to default under your loan are listed below. You may default under your loan even if you have made all your payments. If you do not make any payment by the due date, you must pay default interest on the overdue amount until it is paid. If you default, you may lose the Mortgaged Property.

### **40. Monetary Events of Default**

A monetary Event of Default is an Event of Default that occurs as a result of your failure to make a payment. Each of the following is a monetary Event of Default:

- a) you do not pay any money due to us under your Credit Contract or any Other Agreement by the due date for payment; or
- b) you do not pay any amount exceeding \$50,000 to any person other than us by the due date for payment.

### **41. Non-monetary Events of Default**

A non-monetary Event of Default is an Event of Default that occurs even if you have made all your payments. Each of the following is a non-monetary Event of Default:

- a) if you are an individual:
  - i. you become bankrupt;
  - ii. you are unable to pay your debts as they fall due; or
  - iii. you make any arrangement with your creditors;
- b) if you or a Guarantor is a company:
  - i. proceedings are commenced to wind up the company;
  - ii. a receiver, manager, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the company or any part of the company's assets; or
  - iii. the company is, or is deemed or presumed by law or a court to be, insolvent;
- c) you or a Guarantor no longer has legal capacity;
- d) enforcement proceedings are taken against you or a Guarantor, or your or their assets, by another creditor;

- e) early repayment is required under any Other Agreement, or default based action is taken against you or a Guarantor by us under any Other Agreement, in each case due to a non-monetary Event of Default of the kind described in this clause 41;
- f) we reasonably believe that you or a Guarantor has not complied with the law or any requirement of any competent authority, and such non-compliance has or may have a material adverse effect on the assets of you or a Guarantor or any business conducted by you or a Guarantor;
- g) it becomes unlawful for you or us to continue with your Credit Contract or any Other Agreement;
- h) you or a Guarantor gives us information, or makes a representation or warranty to us, that is materially incorrect or misleading (including by omission), and is such that we would not have provided the loan, or would only have provided the loan on different terms, if we had known the correct information;
- i) you use the loan for a purpose not approved by us;
- j) you use the loan for an illegal or improper purpose, or to finance an illegal or improper activity;
- k) the assets of you or a Guarantor are dealt with, or attempted to be dealt with, in breach of the terms of your Credit Contract or any Other Agreement without our prior written consent (which will not be unreasonably withheld), including:
  - i. any of the Mortgaged Property becomes subject to a mortgage or charge without a priority agreement being in place between us and the other security holder on terms acceptable to us, acting reasonably;
  - ii. any of the Mortgaged Property becomes subject to a mortgage or charge without our prior written consent, which will not be unreasonably withheld; or
  - iii. the amount secured by any mortgage or charge over the Mortgaged Property is increased without our prior written consent, which will not be unreasonably withheld;
- l) you or a Guarantor does not provide financial information required by any agreement with us;
- m) you or a Guarantor does not maintain a licence or permit necessary to conduct any business conducted by you or a Guarantor;
- n) you or a Guarantor does not maintain insurance required by any agreement with us;
- o) legal or beneficial ownership, or management control, of you or a Guarantor, or your or their business, changes without our prior written consent, which will not be unreasonably withheld;
- p) without our prior written consent (which will not be unreasonably withheld), the status, capacity or composition of you or a Guarantor changes, including:
  - i. you or a Guarantor ceases to carry on all or a material part of your or their business, or disposes of all or a material part of your or their assets; or
  - ii. if you or a Guarantor is an individual, you or a Guarantor is sentenced to jail for a term of longer than 12 months;
- q) the Mortgaged Property is:
  - i. substantially damaged or destroyed, and we consider in our reasonable opinion that the Mortgaged Property cannot be expected to be reinstated within a reasonable time and without material loss of any material income from the Mortgaged Property; or
  - ii. taken out of your control;
- r) there is a material reduction in the value of the Mortgaged Property;
- s) you, or any person on behalf of you, breach any material undertaking given to us or any condition imposed by us;
- t) any repairs necessary to keep the Mortgaged Property in good repair are not made in a timely fashion;
- u) any amount required to be paid in connection with the Mortgaged Property (including council rates, water rates, land tax or shared title contributions) is not paid within 90 days of the due date; or
- v) any other event agreed in writing by you to be an Event of Default for the purposes of your Credit Contract occurs.

#### **42. When we will act on an Event of Default**

- a) We will only act on a non-monetary Event of Default if the event by its nature is material, or we reasonably consider that the event has had, or is likely to have, a material impact on:
  - i. the ability of you or a Guarantor to meet your or their financial obligations to us (or our ability to assess this);
  - ii. our security risk (or our ability to assess this); or

- iii. our legal or reputational risk where an event in clause 41(f), 41(g), 41(h) or 41(i) occurs.
- b) If you are a Small Business, we will not commence enforcement action if an Event of Default as described in clauses 41(j), 41(q), 41(r), 41(s), 41(t), 41(u) or 41(v) occurs.

#### **43. Notice of enforcement**

- a) We will not:
  - i. require you to repay the Outstanding Balance;
  - ii. take enforcement action against you; or
  - iii. enforce any Security held to secure repayment of your loan,unless:
  - iv. we have given you at least 30 days written notice of the Event of Default;
  - v. if the Event of Default is remediable, you have not remedied that Event of Default within 30 days; and
  - vi. no Event of Default of the same type has arisen during that period.
- b) We do not need to give you notice to repay an overdraft or on-demand facility.
- c) If your loan is **not** regulated by the National Credit Code, we may give you less than 30 days notice or no notice if:
  - i. the Event of Default is unable to be remedied;
  - ii. it is reasonable for us to do so to manage a material and immediate risk relating to the nature of the relevant Event of Default, your particular circumstances, or the value of the Mortgaged Property or any Security; or
  - iii. we have already given you a notice to remedy a non-monetary Event of Default and you have not remedied that Event of Default.
- d) If your loan is regulated by the National Credit Code, we do not need to give you a default notice or wait 30 days before commencing enforcement action if:
  - i. we reasonably believe that we were induced by fraud by you or a Guarantor to enter into your Credit Contract;
  - ii. we have made reasonable attempts to locate you or a Guarantor but without success;
  - iii. a court authorises us to begin enforcement proceedings; or
  - iv. we reasonably believe that you or a Guarantor has removed or disposed of the Mortgaged Property, or that urgent action is necessary to protect the Mortgaged Property.

#### **44. What we can do if an Event of Default occurs**

- a) Subject to clauses 42 and 43, at any time after an Event of Default occurs, we can take any of the following actions.
  - i. Demand and require immediate payment of any money due under your Credit Contract.
  - ii. Call up the loan and require payment of the Outstanding Balance.
  - iii. In the case of a construction loan, complete the building works in any way we consider appropriate. We are not obliged to complete the building works. We may change the plans and specifications, and we may vary or terminate the building contract. We may employ any consultants or other builders we consider appropriate.
  - iv. Exercise any right or power given to us by law, your Credit Contract or any Security, including taking possession of and selling any Mortgaged Property.
- b) We can take action even if we do not do so promptly after the Event of Default occurs. We do not lose any rights or forgive any Event of Default unless we do so in writing.
- c) We can exercise these rights with or without taking possession of any Mortgaged Property. If we hold more than one Security, we can enforce any one of the Securities first or all of them at the same time.
- d) Our rights and remedies under your Credit Contract may be exercised by any of our employees or any other person we authorise.
- e) We are not liable for any loss caused by the exercise, attempted exercise, failure to exercise, or delay in exercising any of our rights or remedies, except where such loss arises from the mistake, error, fraud, negligence or wilful misconduct of us, our employees, our agents or a receiver we appoint.

#### 45. Enforcement expenses

**IMPORTANT:** If you default under your loan, enforcement expenses may be payable. This means that you may have to pay any of our reasonable costs incurred in maintaining the Mortgaged Property, collection expenses, and any other internal or external costs we incur as a result of your default.

- a) Enforcement expenses may become payable under your Credit Contract and any Security if you breach your Credit Contract or an Event of Default occurs. We may debit your Loan Account with our enforcement expenses at any time after they are incurred, and may then require you to pay these costs immediately (including by using any direct debit or similar authority you have given us), collect them with your regular repayments, or require them to be repaid by one or more repayments.
- b) If your loan is regulated by the National Credit Code or similar laws, enforcement expenses payable by you will not exceed our reasonable enforcement costs (including internal costs).
- c) Enforcement expenses include our expenses incurred in preserving, maintaining or selling the Mortgaged Property (including insurance, rates and taxes payable in respect of the Mortgaged Property), collection expenses, expenses resulting from dishonour of a payment, and any internal or external costs we incur as a result of you breaching your Credit Contract or an Event of Default occurring (including legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is higher).
- d) You indemnify us from and against any expense, loss, loss of profit, damage or liability which we incur as a consequence of a breach of your Credit Contract or an Event of Default occurring, except where such loss arises from the mistake, error, fraud, negligence or wilful misconduct of us, our employees, our agents or a receiver it appoints, or is otherwise recovered by us.

### Security and Guarantees

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#### 46. What are the terms and conditions of your mortgage?

Your obligations under any mortgage that you have granted to us are set out in the Mortgage Common Provisions. In addition to your obligations under your Credit Contract, you must comply with your obligations under the mortgage as specified in the Mortgage Common Provisions. You must read the Mortgage Common Provisions carefully. Take particular notice of the things you must do and must not do with the Mortgaged Property.

#### 47. Insuring the Mortgaged Property

- a) You must keep the Mortgaged Property insured for not less than its full replacement value on terms approved by us against loss or damage by fire, storm, tempest and any other risks specified by us. You must also maintain public liability insurance in respect of the Mortgaged Property and any other insurance we reasonably require.
- b) All insurance policies must be with an insurer approved by us, and our interest as mortgagee must be noted until the Outstanding Balance is repaid.
- c) If any loss or damage to the Mortgaged Property occurs, we may enforce any rights under the insurance policy and settle any claim against the insurer. We may require any money paid by the insurer to be paid directly to us. We may apply that money as we see fit, including to repair or rebuild the Mortgaged Property, apply it in repayment of the Outstanding Balance, or hold it as additional security for the loan.
- d) You must provide evidence of currency of the insurance of the Mortgaged Property when requested by us.

#### 48. Valuations of the Mortgaged Property

- a) We may obtain valuations or other reports concerning the Mortgaged Property whenever and as often as we decide. You must assist this process by providing access to and information about the Mortgaged Property when requested by us.
- b) Our processes in relation to external expert valuations will be fair and transparent. Our communication will be clear and we will explain the purpose of the valuation to you.
- c) We accept no responsibility if you rely on these valuations. You should obtain your own valuations of the Mortgaged Property.

#### 49. If you have a Guarantor

We may disclose the following documents to each Guarantor:

- a) a copy of any notice, including correspondence, to us or to you;
- b) any credit report received in relation to you;

- c) any financial statements you have given us;
- d) any notice of demand, or information regarding a dishonour, on any loan with us;
- e) information on any excess or overdrawing;
- f) a copy of your statement of account; and
- g) any other information or document relating to you and your Loan Accounts with us.

## General Provisions

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### 50. Banking Code of Practice

We subscribe to the Banking Code of Practice. We will comply with the requirements of the Banking Code of Practice where those requirements apply to your dealings with us. This code changes from time to time. If you would like to know more about your rights under the Banking Code of Practice, contact us.

### 51. Anti-money laundering and counter-terrorism financing

- a) You must from time to time promptly comply with any of our requirements regarding our verification of identity and customer identification procedures. You must provide us with any information we require about you or anyone authorised to operate your loan account and, if you are a company or trustee, information about beneficial owners of you.
- b) You must not use your loan for the purposes of money laundering or terrorism financing. You indemnify us from and against any loss which we incur as a result of your breach of this obligation, except where such loss arises from the mistake, error, fraud, negligence or wilful misconduct of us, our employees, our agents or a receiver we appoint, or is otherwise recovered by us.
- c) The Outstanding Balance may become payable if we reasonably believe that continuing with your Credit Contract would cause us to breach an applicable law or would represent an unacceptable level of risk for us because:
  - i. we reasonably believe that you have migrated to a country that we determine is 'high risk' given our obligations under anti-money laundering and counter-terrorism financing laws in respect of the services we provide;
  - ii. you fail to provide any information or document to us that we have requested for the purpose of our compliance with applicable laws (including any details necessary for us to verify your nationality in accordance with anti-money laundering and counter-terrorism financing laws); or
  - iii. we reasonably believe that you are 'high risk' given our obligations under anti-money laundering and counter-terrorism financing laws.
- d) If any of the events in clause 51(b) occur, we will endeavour to give you not less than 90 days notice to repay the Outstanding Balance.
- e) We may delay, block, freeze or refuse a transaction from your Loan Account if we have reasonable grounds to believe that the transaction breaches Australian anti-money laundering and counter-terrorism financing laws, other laws or sanctions (or the laws or sanctions of any other country). Where transactions are delayed, blocked, frozen or refused, we are not liable for any loss you suffer in connection with your use of your Loan Account.

### 52. How we may deal with your Credit Contract

**IMPORTANT:** We may disclose information about you to any third party involved in an actual or proposed assignment, novation or dealing by us, and that disclosure may be in a form that may enable that third party to identify you.

- a) We may at any time assign, novate or otherwise deal with our rights and obligations under your Credit Contract, any Security, and any document or agreement entered into or provided under or in connection with your Credit Contract in any way we wish. You must sign anything and do anything we reasonably require to enable any dealing with your Credit Contract, any Security, and any document or agreement entered into or provided under or in connection with your Credit Contract. Any dealing with our rights does not change your obligations under your Credit Contract in any way.
- b) You may not assign, novate or otherwise deal with your rights or obligations under your Credit Contract, any Security, and any document or agreement entered into or provided under or in connection with your Credit Contract.
- c) We may disclose information about you, your Credit Contract or any Security to any person involved in an actual or proposed assignment, novation or dealing by us with our rights under your Credit Contract.



### 53. Notices

- a) Subject to any applicable laws, we may give you any notice, statement, demand, court document (including any collection notice, default notice, court originating process or other court document) or other document connected to your Credit Contract or any mortgage given under your Credit Contract by:
  - i. giving it to you personally;
  - ii. leaving it at or posting it to your last known residential or business address;
  - iii. electronic means to your last known electronic address;
  - iv. any other means permitted by law.
- b) Subject to any applicable laws, you consent to any notice, statement, demand, court document or other document connected to your Credit Contract or any mortgage given under your Credit Contract being given to you by electronic means, including any documents that would otherwise require personal service in accordance with the relevant court rules in force in the jurisdiction in which the Mortgaged Property is located.
- c) Any notice, statement, demand, court document or other document given by us to you will be taken to have been served:
  - i. if posted, when it would be delivered in the ordinary course of post; and
  - ii. if sent electronically, on conclusion of transmission.
- d) Any notice, statement, demand, court document or other document may be signed by any employee, solicitor or agent on our behalf.

### 54. Statements

If you have a line of credit account, we will issue statements to you at least once every three months. Otherwise, for all other Loan Accounts, statements of account will be provided at least once every six months or more frequently if required by law.

### 55. Waivers and exercising our rights

Any failure or delay by us in exercising any of our rights under your Credit Contract does not operate as a waiver, and the single or partial exercise of any right by us does not prevent any further exercise by us of that right or any other right.

### 56. Severability

Any provision of your Credit Contract which is invalid in any jurisdiction will be ineffective in that jurisdiction to that extent, but this will not invalidate or otherwise impact the remaining provisions of your Credit Contract or the validity of that provision in any other jurisdiction.

### 57. Governing law

- a) Your Credit Contract is usually governed by the laws of the Australian state or territory in which you reside. If there are two or more borrowers, and each of you reside in the same Australian state or territory when your Credit Contract is entered into, your Credit Contract is governed by the laws of that state or territory. If there are two or more borrowers who reside in different states or territories, your Credit Contract is governed by the laws of the Australian state or territory in which the main Mortgaged Property (as determined by us) is located.
- b) If any borrower does not ordinarily reside in Australia, your Credit Contract is governed by the laws of the Australian state or territory in which the main Mortgaged Property (as determined by us) is located.
- c) You submit to the jurisdiction of the courts of the Australian state or territory whose laws apply to your Credit Contract and the proper jurisdiction of any other court.

### 58. Updated details

You must promptly tell us if you change your residential, postal or email address, or if there is any information that we need to know about your ability to comply with your Credit Contract.

### 59. Providing financial statements

Within 14 days of our request, you must provide to us any information we reasonably require relating to your business, assets and financial affairs. For example, if you are an individual, we may require a copy of your taxation return or an assets and liabilities statement. In relation to a company, we may require a balance sheet, a profit and loss statement, or both. We may require this information to be certified or audited.

## 60. Counterparts

Your Credit Contract may be executed in any number of counterparts, all of which taken together will constitute one and the same document.

## 61. National Credit Code

Your Credit Contract does not:

- a) exclude, modify or restrict any rights or duty given to, or imposed on, us or you under the National Credit Code or any other credit legislation;
- b) require you to perform an obligation that is prohibited by the National Credit Code or any other credit legislation; or
- c) give us any right which is prohibited by the National Credit Code or any other credit legislation.

However, if a provision has this effect, then the provision is varied to the extent necessary to comply with the National Credit Code or other credit legislation or, if necessary, limited or omitted to the extent it has that effect.

## 62. If you are a trustee

**This clause applies if you are a trustee of a trust.**

- a) If you are at any time the trustee of a trust, you enter into, and are liable under, your Credit Contract in your own right and as trustee of the trust. Accordingly, we can recover against the trust assets as well as against you personally to satisfy your liabilities under your Credit Contract.
- b) You represent and warrant before you draw down your loan and at all times before the Outstanding Balance is repaid in full that:
  - i. all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by you as trustee and have not been varied or revoked;
  - ii. the trust is a valid and subsisting trust;
  - iii. you are the sole trustee of the trust and have full and unfettered power under the terms of the deed establishing the trust to obtain financial accommodation on behalf of the trust;
  - iv. you are entering into your Credit Contract as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
  - v. no restriction on your right of indemnity out of, or lien over, the trust's assets exists, or will be created or allowed to exist, and that right of indemnity will have priority over the right of the beneficiaries to the trust's assets; and
  - vi. other than as disclosed to us, you do not act as trustee of any trust.
- c) An Event of Default occurs if there is a change of trustee, a termination of the trust, or any material change to the terms of the trust without our prior written consent, which will not be unreasonably withheld.

## 63. If we are a trustee

If we are at any time trustee or custodian of any trust, our liability is limited to the assets of that trust which are available to us to satisfy that liability.

## 64. If there is a trustee in bankruptcy or liquidator

If a trustee in bankruptcy or liquidator is appointed to you, they may ask us to refund a payment we have received in relation to your loan. To the extent we are obliged to or agree to make a refund, we may treat the original payment as if it had not been made except for the purpose of calculating interest payable by you.

## 65. Third party systems

Our provision of services and finance is dependent on third party systems and financing. We will not be liable to you for any failure or delay in meeting our obligations to you to the extent they are beyond our reasonable control, including:

- a) any disruption to financial markets;
- b) delays or failures in third party payment and settlement systems; and
- c) any disruption of the internet, interference from third parties over the internet, or in relation to third party IT systems and infrastructure.

## Definitions and Interpretation

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### 66. Definitions

**Amount of Credit** means the amount specified in your Loan Agreement as varied from time to time.

**Business Day** means a day other than a Saturday or Sunday, or a public or special holiday in New South Wales, Australia.

**Construction Loan** means a loan used to finance construction or renovation.

**Credit Contract** means the credit contract which incorporates these Terms & Conditions and includes any variations of that credit contract. The Loan Agreement and these Terms & Conditions together comprise your Credit Contract.

**Disclosure Date** means the date specified in your Loan Agreement.

**Event of Default** means any event described in clauses 40 and 41.

**Final Repayment Date** means the first to occur of:

- a) the date on which your loan term ends;
- b) the date on which the final repayment is due as a result of your default;
- c) the date on which you elect to repay the whole of the Outstanding Balance;
- d) the date on which the whole of the Outstanding Balance becomes payable for some other reason; and
- e) such other date which we agree with you.

**Guarantor** means any person who at any time guarantees to us the payment of all or any part of the Outstanding Balance, and includes any guarantor specified in your Credit Contract.

**Loan Account** means the loan account established in your name in connection with your Credit Contract.

**Loan Agreement** means the loan agreement which includes the Financial Table and sets out the specific details of your proposed loan.

**Mortgage Common Provisions** means the document titled 'Consumer Mortgage Memorandum' which sets out the terms of any mortgage you grant under your Credit Contract.

**Mortgaged Property** means any real estate subject to the Security and, where the context permits, any other property subject to the Security, and includes any improvements, attachments or contracts relating to that property and any part of that property.

**Other Agreement** means any other agreement or arrangement under which we provide financial accommodation to you or any Guarantor at any time.

**Outstanding Balance** means the total amount outstanding at any time and from time to time in respect of all your Loan Accounts, including all accrued interest, fees and charges (including where applicable those that accrue on partial or total repayment), and includes any part of that amount.

**Security** means the security specified in your Loan Agreement and any other security from time to time given to secure your obligations under your Credit Contract.

**Settlement Date** means the date we first advance funds to you.

**Small Business** has the meaning applied in the Banking Code of Practice as at the date of your Credit Contract.

**Terms & Conditions** means these Bank of Sydney Consumer Loan Terms & Conditions as varied from time to time.

**67. Interpretation**

Unless the context otherwise requires, in your Credit Contract:

- a) headings and subheadings are for convenience only and do not affect the interpretation of your Credit Contract;
- b) a reference to a person includes any other entity recognised at law;
- c) a reference to the singular includes the plural and vice versa;
- d) other grammatical forms of defined words or expressions have corresponding meanings;
- e) a reference to a person or to a party to your Credit Contract includes its successors, executors and permitted assigns, transferees and dispossess;
- f) a reference to a document includes any variation or replacement of it;
- g) the use of the word 'include' or any form of that word is not limiting; and
- h) use of examples is illustrative of the context only and does not limit the natural meaning of the terms of your Credit Contract.

**The information statement below will only apply to you if your loan is regulated by the National Credit Code. This statement is prescribed by law. If the borrower is a company, or if the loan is predominantly used for business purposes or investment purposes (except for investment in residential property), the loan will not be regulated by the National Credit Code.**

## Information Statement

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### Things you should know about your proposed credit contract

This statement tells you about some of the rights and obligations of yourself and your credit provider. It does not state the terms and conditions of your contract.

If you have any concerns about your contract, contact the credit provider and, if you still have concerns, the AFCA scheme, or get legal advice

### The contract

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

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

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

whichever happens first.

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

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

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

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

#### 3. Can I terminate the contract?

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

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

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

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

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

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

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

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

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

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

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

Yes, but only if your contract says so.

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

That depends on the type of change. For example –

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

- a change in the way in which interest is calculated; or
- a change in credit fees and charges; or
- any other changes by your credit provider,

except where the change reduces what you have to pay or the change happens automatically under the contract.

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

Yes. You should first talk to your credit provider. Discuss the matter and see if you can come to some arrangement.

If that is not successful, you may contact the AFCA scheme. The AFCA scheme is a free service established to provide you with an independent mechanism to resolve specific complaints. The AFCA scheme can be contacted by phone on 1800 931 678, by email at [info@afca.org.au](mailto:info@afca.org.au), or in writing to GPO Box 3, Melbourne VIC 3001.

Alternatively, you can go to court. You may wish to get legal advice, for example from your community legal centre or Legal Aid.

You can also contact ASIC, the regulator, for information on 1300 300 630 or through ASIC's website at <http://www.asic.gov.au>.

## Insurance

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

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

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

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

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

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

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

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

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

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

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

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

## Mortgages

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

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

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

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

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

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

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

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

See the answers to questions 22 and 23.

Otherwise you may –

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

OR

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

If your credit provider won't give permission, you can contact the AFCA scheme for help.

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

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

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

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

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

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

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

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

### **General**

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

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

- to extend the term of your contract and reduce payments; or
- to extend the term of your contract and delay payments for a set time; or
- to delay payments for a set time.

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

If the credit provider refuses your request to change the repayments, you can ask the credit provider to review this decision if you think it is wrong.

If the credit provider still refuses your request, you can complain to the AFCA scheme. Further details about this scheme are set out below in question 25.

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

Yes, if you are in default under your contract. But the law says that you cannot be unduly harassed or threatened for repayments. If you think you are being unduly harassed or threatened, contact the AFCA scheme or ASIC, or get legal advice.

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

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

**If you have any complaints about your credit contract, or want more information, contact your credit provider. You must attempt to resolve your complaint with your credit provider before contacting the AFCA scheme. If you have a complaint which remains unresolved after speaking to your credit provider, you can contact the AFCA scheme or get legal advice.**

**The AFCA scheme is a free service established to provide you with an independent mechanism to resolve specific complaints. The AFCA scheme can be contacted by phone on 1800 931 678, by email at [info@afca.org.au](mailto:info@afca.org.au), or in writing to GPO Box 3, Melbourne VIC 3001.**

**Please keep this information statement. You may want some information from it at a later date.**

**For more information:**

- Website:** [banksyd.com.au](https://banksyd.com.au)
- Phone:** **13 95 00**  
(Mon - Fri, 9am - 5pm AEST)
- Email:** [info@banksyd.com.au](mailto:info@banksyd.com.au)
- Mail:** Bank of Sydney Ltd  
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