

# UNREGULATED CROSS GUARANTEE AND INDEMNITY GENERAL CONDITIONS





# ABOUT THIS DOCUMENT

This *document* forms part of your *guarantee and indemnity* with us.

Your *cross guarantee and indemnity* is made up of a number of documents:

- these *General Conditions*; and
- the *Schedule*.

These documents should be read together.

All these documents apply as amended from time to time. The most recent versions are available at [boqspecialist.com.au](http://boqspecialist.com.au) or may be requested from us.

## How to read this document

In this document a reference to 'we', 'us', 'our' or 'BOQ Specialist' is a reference to BOQ Specialist – a division of Bank of Queensland Limited ABN 32 009 656 740 AFSL and Australian Credit Licence No. 244616.

The meaning of words printed *like this* and some other key words are explained in these *General Conditions*.

This document is divided into two parts.

Part A of the *General Conditions* applies to all guarantors.

Part B (Large Business Transactions) of the *General Conditions* sets out additional conditions that apply for a *Large Business Transaction*.

We will tell you in the *Schedule* if Part B applies to you.

## **The Banking Code of Practice may also apply to your *cross guarantee and indemnity*.**

The Banking Code of Practice applies to banking services provided to customers who are individuals or small businesses, each as defined in it.

We will comply with the Banking Code of Practice, where it applies to the banking services we provide to you.

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# Part A – Provisions apply to all Guarantors.

## HOW TO INTERPRET THIS CROSS GUARANTEE AND INDEMNITY

### 1. MEANING OF WORDS

*ASIC Act* means Australian Securities and Investments Commission Act 2001 (Cth).

*attorney* means each attorney appointed by you under clause 31.

*business day* means any day that is not a Saturday, a Sunday nor a day that is a national public holiday in either New South Wales or Victoria.

*controller* has the meaning given to it in the Corporations Act.

*costs* includes charges and expenses. It also includes costs, charges and expenses in connection with advisers (in the case of legal advisers, on a full indemnity basis or solicitor and own client basis, whichever is higher).

*cross guarantee and indemnity* means these *General Conditions* and the *Schedule* setting out the particulars of your cross guarantee and indemnity.

*debtor*, in relation to a particular guarantor, means the *person* or *persons* named in the *Schedule* as debtor, other than that guarantor. If there are more than one, debtor means each of them separately and every two or more of them jointly. *Debtor* includes their successors and assigns and *persons* who become debtors in respect of future *guaranteed agreements*.

*General Conditions* means these *general conditions* that form part of this *cross guarantee and indemnity*.

*GST* has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

*guaranteed agreement* means:

- a. each agreement set out in the *Schedule*;
- b. if you are an individual, each other agreement, including a future agreement which all of you acknowledge in writing to be a guaranteed agreement for the purpose of this *cross guarantee and indemnity*;
- c. if you are not an individual, all agreements (including a future agreement) under which for any reason or circumstance:
  - i. we lend any money or provide financial accommodation to the *debtor*, or the *debtor* currently owes, or may at some future time owe us money;
  - ii. we must pay an amount because of any obligation to do so in connection with the *debtor* or you; or
  - iii. you acknowledge in writing to be a guaranteed agreement for the purpose of this *cross guarantee and indemnity*, and
- d. all guaranteed agreements if there are more than one and each one or more of them.

*insolvency* occurs when a *person*:

- a. is (or state that they are) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- b. has a *controller* appointed, is in liquidation, in provisional liquidation, under administration or wound up or has had a *receiver* appointed to any part of their property;
- c. is subject to any arrangement, assignment, moratorium or composition, or protected from creditors under any statute, or dissolved (in each case other than to carry out a reconstruction or amalgamation while solvent on terms approved by us);
- d. has an application or order made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above;
- e. is taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand;
- f. in the case of an individual, commits an act of bankruptcy, enters into a composition with its creditors, is declared or becomes bankrupt;
- g. is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or they make a statement from which we reasonably deduce they are so subject);
- h. is otherwise unable to pay their debts when they fall due; or
- i. has something substantially similar to any of the things referred to above happen to them under the law of any jurisdiction.

*Large Business Transaction* means where:

- a. your cross guarantee and indemnity is not subject to the unfair contract terms protections in the ASIC Act and is not regulated under the NCCP Act, nor under the Banking Code of Practice; and
- b. we tell you in the *Schedule* that your cross guarantee and indemnity is a Large Business Transaction.

*NCCP Act* means the National Consumer Credit Protection Act 2009 (Cth).

*maximum amount* is the amount (if any) set out in the *Schedule*.

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

*person* includes an individual, a firm, a strata corporation, a body corporate, an unincorporated association and an authority.

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

*receiver* includes receiver or receiver and manager and has the meaning given to it in the Corporations Act.

*related bodies corporate* has the meaning given to it in the Corporations Act.

*related entity* has the meaning given to it in the Corporations Act.

*Schedule* means the *schedule* that forms part of this *cross guarantee and indemnity*.

*security* means each *security interest* stipulated in the *Schedule* under "*Security*" and any substituted or additional *security interest* given in connection with this *cross guarantee and indemnity*.

*security interest* means:

- a. any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power or title retention arrangement or guarantee;
- b. a "security interest" as defined in the *PPSA*; or
- c. any document to grant or create anything referred to in either paragraphs (a) or (b) of this definition and any other thing which gives a creditor priority to any other creditor with respect to any asset or an interest in any asset,

*taxes* means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on our overall net income or if they arise as a result of our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors and agents or any receiver we appoint.

"we", "us" and "our" means Bank of Queensland Limited ABN 32 009 656 740 and its successors and assigns.

"you" and "your" means the *person* or *persons* named in the *Schedule* as guarantor. If there are more than one, you means each of you separately and every two or more of you jointly. You includes your successors and assigns.

## 2. INTERPRETATION

The following rules apply to the interpretation of this *cross guarantee and indemnity*:

Reference to:

- a. a *person* includes the *person's* successors and assigns;
- b. a thing includes all or part of that thing;
- c. a document includes that document as changed or replaced from time to time;
- d. a statute includes a statute as amended, repealed or replaced from time to time;
- e. individuals includes corporations and the other way around;
- f. a gender includes all other genders;

- g. currency is to Australian dollars;
- h. the *cross guarantee and indemnity* is a reference to this *cross guarantee and indemnity* (as varied from time to time) between you and us;
- i. clauses are references to clauses in this *cross guarantee and indemnity*;
- j. the singular includes the plural and the other way around;
- k. the Corporations Act is a reference to the Corporations Act 2001 (Cth);
- l. the ASIC Act means Australian Securities and Investments Commission Act 2001 (Cth); and
- m. the Banking Code of Practice is a reference to the 2019 version of The Australian Bankers' Association Banking Code of Practice including any amendments from time to time which have been published by the Australian Bankers' Association and formally adopted by us.

Headings for clauses are included for guidance only and must not be used for interpretation.

A day ends at midnight for all purposes under this *cross guarantee and indemnity*.

The use of the word "may" about any right or power we have under this *cross guarantee and indemnity* indicates that the right or power may be exercised or not exercised, at our discretion acting reasonably. The use of the words "including", "such as" or "for example" when introducing an example does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

If you agree not to do something, you will also not attempt to or permit or cause the thing to be done.

If two or more people are the guarantor the fact that one *person* is released from their promises does not mean that any of the others are also released.

Unless the context requires otherwise words or phrases derived from a defined term have a corresponding meaning to the defined term.

Unless defined in this *cross guarantee and indemnity*, a term or expression which is used in this *cross guarantee and indemnity* and which is defined in the *PPSA* has the meaning given to that term or expression in, or in the context of, the *PPSA*.

To the extent there is any inconsistency between these *General Conditions* and the *Schedule*, the *Schedule* prevails.

# NATURE OF THIS CROSS GUARANTEE AND INDEMNITY

## 3. WHAT YOU UNDERTAKE IN THIS CROSS GUARANTEE AND INDEMNITY

- 3.1 This *cross guarantee and indemnity* is entered into in consideration of us providing or continuing to provide financial accommodation to the *debtor* or not immediately enforcing rights against the *debtor* at your request.
- 3.2 By signing this *cross guarantee and indemnity*, you could become liable to pay us:
- under the guarantee in clause 4;
  - under the indemnity in clause 5;
  - enforcement expenses under clause 9; and
  - interest under clause 11.

However, the *maximum amount* we can require you to pay us is set out in the *Schedule*.

This *cross guarantee and indemnity* may extend to another future agreement for credit in the circumstances described in the definition of *guaranteed agreement* in clause 1.

## 4. GUARANTEE

- 4.1 You guarantee that the *debtor* will pay us all amounts *payable* under a *guaranteed agreement* when they are due. Your guarantee continues until all these amounts have been paid in full or you end this *cross guarantee and indemnity* under clause 12. Your liability under your guarantee is limited to the *maximum amount*.
- 4.2 The reference to all amounts *payable* under a *guaranteed agreement* in clause 4.1 means amounts payable at any time, for any reason and whether or not contemplated by you, us or the *debtor* at the time you give this *cross guarantee and indemnity*. This includes:
- amounts that are now payable, amounts that are owing but not currently payable and amounts that are contingently owing or remain unpaid by the *debtor* to us;
  - amounts we have advanced or paid on the *debtor's* behalf or at the express or implied request of the *debtor*;
  - amounts we are liable to pay by reason of any act or omission on the *debtor's* part; and
  - interest,

Your liability under this guarantee excludes any liability caused by our mistake, error, fraud, negligence or wilful misconduct or wilful misconduct or the mistake, mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors or agents, or any receivers we appoint.

- 4.3 Clause 4.2 applies:
- irrespective of the capacity in which the *debtor* or we became entitled to, or liable for, the amount concerned;
  - regardless of whether the *debtor* or we are liable as principal debtor, as surety or otherwise;
  - whether the *debtor* is liable alone, or together with

another *person*;

- even if the *debtor* owes an amount or obligation to us because it was assigned to us, whether or not:
  - the assignment was before, at the same time as, or after this *cross guarantee and indemnity* was executed;
  - the *debtor* consented to or was aware of the assignment; or
  - the assigned obligation was secured;
- even if this *cross guarantee and indemnity* was assigned to us, whether or not:
  - the *debtor* or you consented to or was aware of the assignment; or
  - any of the amount *payable* was previously unsecured; or
- if you are a trustee, whether or not you have a right of indemnity from the trust fund.

- 4.4 If we ask, you must pay us any amount which the *debtor* does not pay us when it is due under a *guaranteed agreement* up to the *maximum amount*. We need not ask the *debtor* first to pay us.

## 5. INDEMNITY

- 5.1 You indemnify us against, and must pay us for any liability, direct loss or reasonable costs we suffer or incur if:
- a *guaranteed agreement* is unenforceable, for example, because of the *debtor's insolvency* or incapacity or because of any other act or omission by, or circumstance affecting, the *debtor*; or
  - an obligation you would otherwise have under clause 4 is unenforceable;
  - we are obliged, or we agree to pay an amount to a trustee in bankruptcy or liquidator (or a bankrupt *person* or *insolvent* corporation) in connection with a payment by you or the *debtor* (for example, we may have to, or may agree to, pay interest on the amount);
  - you are in breach of your obligations under this *cross guarantee and indemnity*; or
  - any *person* exercises or does not exercise rights under this *cross guarantee and indemnity*,

Your liability under this indemnity excludes any liability, loss or *costs* caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors or agents, or any receivers we appoint.

You agree to pay us the amounts under this clause within 10 *business days* after we ask for them.

Your liability under this indemnity is limited to the *maximum amount* but you are not liable for loss we suffer caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence



or wilful misconduct of our employees, officers, contractors or agents, or any receivers we appoint.

- 5.2 The indemnity in clause 5.1 is a continuing obligation, separate and independent from your other obligations under this *cross guarantee and indemnity*. It continues after those other obligations end unless you end this *cross guarantee and indemnity* under clause 12.

## 6. DEBTOR INFORMATION

If you are an individual, before (and if you request, at any time after) you enter into this *cross guarantee and indemnity* we will provide you with copies of all financial documents about the *debtor*, the transaction(s) or facility(s) and credit contracts related to this *cross guarantee and indemnity* to the extent, and within the time periods, required by the Banking Code of Practice.

## 7. WHAT YOU ACKNOWLEDGE AND DECLARE

- 7.1 You acknowledge that, subject to being provided with any information and documents pursuant to clause 6, you are responsible for making yourself aware of the financial position of the *debtor* and any other *person* who guarantees the *debtor's* obligations under a *guaranteed agreement*.
- 7.2 You declare that you do not enter into this *cross guarantee and indemnity* as a trustee, unless you have told us in writing. If you do enter into this *cross guarantee and indemnity* as a trustee, clause 33 applies.

## 8. REPRESENTATIONS AND WARRANTIES

- 8.1 You represent and warrant (except in relation to matters disclosed to us and accepted by us in writing) that:
- a. neither you nor, if you are a company, any director breaches any law or any obligation to another *person* by signing this *cross guarantee and indemnity*;
  - b. (if you are a corporation) you have been incorporated in accordance with the laws of the place of your incorporation and you validly exist under those laws;
  - c. you have the power to carry on your business;
  - d. you have in full force and effect the power and authorisations necessary for you to enter into this *cross guarantee and indemnity*, to comply with your obligations and exercise your rights under it, and allow this *cross guarantee and indemnity* to be enforced;
  - e. you benefit by entering into this *cross guarantee and indemnity*;
  - f. you have not taken and will not take any *security interest* from the *debtor* in connection with this *cross guarantee and indemnity*;
  - g. you are not aware of any circumstances that cause you to believe that the security is not in full force and effect;
  - h. you do not have any reasonable grounds to suspect that you or any of your *related bodies corporate* are *insolvent* or likely to become *insolvent*;
  - i. there is no pending or threatened legal proceeding affecting you or any of your assets before a court, authority, commission or arbitrator where a decision against you would have a material adverse effect on your ability to meet your obligations under this *cross*

*guarantee and indemnity*;

- j. all information supplied to us in connection with this *cross guarantee and indemnity* is to the best of your knowledge and belief true and correct and not false or misleading in any way; and
  - k. since the date any information was given to us relating to this *cross guarantee and indemnity* there has been no change in your financial circumstances which may have a material adverse effect on your ability to meet your obligations under this *cross guarantee and indemnity*.
- 8.2 You must tell us whenever anything happens which would mean you could not truthfully repeat all the representations and warranties in clause 8.1 (unless we consent to that thing happening).
- 8.3 You acknowledge that we have entered into this *cross guarantee and indemnity* and all of the *guaranteed agreements* in reliance on the representations and warranties in clause 8.1.

# ADDITIONAL AMOUNTS YOU MUST PAY

## 9. ENFORCEMENT EXPENSES

9.1 You must pay us for:

- a. our reasonable *costs*, and any *receiver's* reasonable *costs* and remuneration, in arranging, administering and terminating this *cross guarantee and indemnity* and any *security* (including giving and considering consents, variations, discharges and releases, producing title documents or enforcing, attempting to enforce or taking any other action in connection with our or any receiver's rights); and
- b. any *taxes payable* in connection with this *cross guarantee and indemnity*, any *security* or any other *arrangement with us*.

9.2 You must pay us any *costs* we reasonably incur in enforcing this *cross guarantee and indemnity*. These amounts are payable within 10 *business days* after we ask for them.

## 10. GST

10.1 Unless otherwise expressly stated, all amounts referred to in this *cross guarantee and indemnity* do not include GST.

10.2 To the extent (if any) that *GST* is payable in respect of all or any part of a supply made by a party under or in connection with this *cross guarantee and indemnity* (including any indemnity or reimbursement amount), the consideration to be provided for that supply is increased by an amount equal to the *GST payable* by the supplying party.

## 11. INTEREST

If a liability under this *cross guarantee and indemnity* becomes merged in a judgment or court order, then you, as an independent obligation, must pay interest on the amount of that liability from the date it becomes payable until it is paid, both before and after the judgment or court order, at a rate being the higher of the rate payable under the judgment or court order and the rate payable under the *guaranteed agreement*. You may interest under this clause on demand from us.

# GENERAL

## 12. YOU MAY END, WITHDRAW FROM OR LIMIT THIS CROSS GUARANTEE AND INDEMNITY

12.1 You may be able to end, withdraw from or limit your liability under this *cross guarantee and indemnity* to the extent allowed under the Banking Code of Practice or we otherwise agree. However, you may need to do something before you can do one or more of these things and there may be some limitations on your ability to do this. For example:

- a. if you want to end your liability under this *cross guarantee and indemnity* you may have to pay us the relevant amounts that you may be liable for under this *cross guarantee and indemnity*;
- b. you can also withdraw from this *cross guarantee and indemnity* before we provide credit to the *debtor* and in some circumstances after we provide credit; and
- c. you can write to us to limit your liabilities under this *cross guarantee and indemnity*. (However, we do not have to accept this if the limit you ask for is less than your existing liabilities or if we are obliged to make further advances to the *debtor*).

You can contact us if you want more information about whether and how you can end, withdraw from or limit your liability under this *cross guarantee and indemnity*. You should also ask your legal adviser about this.

12.2 In all other circumstances, we will release you from this *cross guarantee and indemnity* when we have received the lesser of the amounts owing under all *guaranteed agreements* or the *maximum amount* and we are satisfied that:

- a. we will not have to repay or refund any money;
- b. you and the *debtor* have no continuing liability to us; and
- c. there is no reasonable prospect of the *debtor* owing us any money in the future.

## 13. YOUR RIGHTS ARE SUSPENDED

For as long as an amount *payable* under a *guaranteed agreement* remains unpaid, you may not, without our consent:

- a. decrease your liability under this *cross guarantee and indemnity* by claiming that you, the *debtor* or any other *person* has a right to deduct or set-off any amount that you claim we owe to you (except to the extent that you can deduct or set-off an amount by law which we cannot exclude by agreement);
- b. claim the benefit of:
  - i. another guarantee or indemnity; or
  - ii. a mortgage, charge or other security interest, given to us in connection with an amount payable,under:
  - i. a *guaranteed agreement*, or
  - ii. this *cross guarantee and indemnity* or any other guarantee or indemnity given in connection with a *guaranteed agreement*,
- c. claim an amount from the *debtor* or another guarantor of the *debtor's* obligations under any right to recover any money you have paid or are required to pay us; or

- d. claim an amount in the *insolvency* of the *debtor* or another guarantor of the *debtor's* obligations under a *guaranteed agreement* (including a *person* who has signed this *cross guarantee and indemnity* with you) independently of an *attorney* appointed under clause 31.

## 14. DEALING WITH RIGHTS UNDER THIS CROSS GUARANTEE AND INDEMNITY

- 14.1 We may assign or otherwise deal with our rights under this *cross guarantee and indemnity* or any *security* in any way we consider appropriate, acting reasonably, on the same terms and conditions we can assign the obligations of the *debtor* under any agreement with us including the *guaranteed arrangements* provided that such assignment or dealing does not in our reasonable opinion materially prejudice your rights or obligations under this *cross guarantee and indemnity*. If we do this, we do not have to tell you and you may not claim against any assignee (or any other *person* who has an interest in this *cross guarantee and indemnity*) any right of set-off or other rights you have against us.
- 14.2 If we do assign or otherwise deal with our rights under this *cross guarantee and indemnity*, you agree that you are still liable for the lesser of the *maximum amount* and all amounts owing under clauses 4, 5, 9 and 11.
- 14.3 Your rights are personal to you and may not be assigned without our written consent.

## 15. DISCLOSURE OF INFORMATION

- 15.1 Information you provide to us may be disclosed:
  - a. if you consent (unless you are an individual, you may not unreasonably withhold your consent);
  - b. if required by any security exchange or if allowed or required by law;
  - c. to any *person* in connection with our exercising rights or dealing with rights or obligations (including preparatory steps such as negotiating with any potential assignee of our rights or any other *person* who is considering contracting with us in connection with this *cross guarantee and indemnity*);
  - d. to our officers, authorised agents and employees and to legal advisers, auditors and other advisers;
  - e. to any of our *related bodies corporate*;
  - f. where we think it is necessary to protect our position;
  - g. if the information is generally and publicly available;
  - h. to the *debtor* or to any other *person* who also guarantees payment of the amount or part of the amount *payable* under a *guaranteed agreement*; or
  - i. to any *person* for the purposes of the securitisation of any *guaranteed agreement*.
- 15.2 If you are an individual, we will provide you with all information we are required to provide pursuant to the Banking Code of Practice.

## 16. CONSENTS

- 16.1 Whenever a provision of this *cross guarantee and indemnity* specifies

that our consent or approval is required or that we may direct or require you to do or not do some act or thing, or that we will determine whether an event has occurred or not occurred, we will act reasonably and without unreasonable delay in determining whether or not to give that consent or approval (which will not be unreasonably withheld), determining whether that event has occurred or directing you to take some action or satisfy a requirement of ours.

16.2 We may impose reasonable conditions on any consent or approval we give under this *cross guarantee and indemnity* in order to protect our legitimate business interests. You must comply with all conditions and requirements in any consent or approval we give.

16.3 Our consent or approval will not be effective unless it is in writing. We may charge a fee for giving our consent or approval.

## 17. MANAGER

We may appoint a *person* to manage this *cross guarantee and indemnity* and any *securities* for us. We will tell you if we do so. Any such manager is authorised to exercise all of our rights under this *cross guarantee and indemnity* and any *securities*. Until we tell you otherwise, you must deal with that manager in relation to all matters arising in connection with this *cross guarantee and indemnity* and any *securities*.

## 18. CURRENCY CONVERSIONS

18.1 You must make payments in connection with this *cross guarantee and indemnity* in the currency in which it is due.

18.2 If we receive an amount in a currency other than that in which it is due:

- a. we may convert the amount received into the due currency (to do this it might be necessary to convert through a third currency) on the day and at such rates as we consider appropriate, taking into account market exchange rates available to us. We may deduct our usual *costs* in connection with the conversion; and
- b. you satisfy your obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the *costs* of the conversion.

## 19. SETTING OFF MONEY

19.1 Except to the extent you have a right of set-off granted by law which we cannot exclude by agreement, you must pay the amounts *payable* under this *cross guarantee and indemnity* in full without setting off amounts you believe we owe you and without counterclaiming amounts from us.

This does not prevent you making a separate claim against us for amounts we owe you.

19.2 We may set off against amounts *payable* under this *cross guarantee and indemnity* any money we owe you.

## 20. WHEN MUST YOU PAY?

You must pay any amount *payable* to us under this *cross guarantee and indemnity* on the date we specify.

## 21. WHAT HAPPENS TO MONEY WE RECEIVE?

21.1 Acting reasonably, we may use any money paid by or for the *debtor* towards paying any part we choose of the amounts the *debtor* owes us (including paying any amount you do not guarantee). We may use any money paid by you under this *cross guarantee and indemnity* towards paying any part we choose of the amounts you owe us under this *cross guarantee and indemnity*.

21.2 Acting reasonably, we may place in a suspense account any payments

we receive from you for as long as we reasonably think prudent.

21.3 We will credit payments as soon as practicable after we receive them.

## 22. MULTIPLE ACCOUNTS

22.1 If there is a monetary default under this *cross guarantee and indemnity* we can use any money in any of your accounts held with us to pay any amount that is due and *payable* under this *cross guarantee and indemnity* but has not been paid.

22.2 We do not have to do so, nor do we have to tell you before we do so. However, we will provide you with details of such amounts if you request.

## 23. CERTIFICATES

We may rely on certificates provided by any other person with a security interest over the security property as to a matter or about an amount that is owed to them, in the absence of a clear error.

## 24. PROMPT PERFORMANCE

If this *cross guarantee and indemnity* specifies when you must perform an obligation, you must perform it by the time specified. You must perform all other obligations promptly.

## 25. HOW WE MAY EXERCISE OUR RIGHTS

25.1 We may exercise a right or remedy in any way we consider appropriate acting reasonably.

25.2 We may claim against you under this *cross guarantee and indemnity* before we enforce any of our rights or remedies:

- a. against the *debtor* or any other *person*; or
- b. under another document such as another *security interest*.

For example, we may ask you to pay us first without our having made the *debtor* bankrupt.

25.3 If we have more than one *guarantee and indemnity* or *security interest*, we may enforce them in any order we choose.

25.4 We may exercise our rights under this *cross guarantee and indemnity* even though:

- a. we could have done so before but did not or were slow in doing so;
- b. we have tried to exercise the rights before (in whole or in part);
- c. we could have exercised those or other rights before but didn't;
- d. we have exercised other rights before; or
- e. we hold another *security interest* for payment of the amount *payable* under a *guaranteed agreement*.

25.5 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.

25.6 We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy except for any loss to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors or agents, or any receivers we appoint.

25.7 Our rights and remedies under this *cross guarantee and indemnity*.

- a. are in addition to other rights and remedies given by law independently of this *cross guarantee and indemnity* or by any

*security interest* (such as a mortgage); and

- b. may be exercised even if this involves a conflict of duty or we have a personal interest in their exercise.

25.8 Our rights and remedies under this *cross guarantee and indemnity* may be exercised by any of our directors, any of our employees or any other *person* we authorise.

## 26. ADMINISTRATIVE MATTERS

26.1 You must do anything we reasonably ask (such as obtaining consents, signing and producing documents, replying to questions, producing receipts and getting documents completed and signed):

- a. to enable us to exercise our rights in connection with this *cross guarantee and indemnity*;
- b. to ensure that each agreement which is intended to be covered by this *cross guarantee and indemnity* becomes a *guaranteed agreement*;
- c. to enable us to register the power of attorney in clause 31 or a similar power;
- d. to ensure that your obligations under this *cross guarantee and indemnity* are secured by any *security* intended to secure them;
- e. to show whether you are complying with this *cross guarantee and indemnity*; or
- f. to ensure that this *cross guarantee and indemnity* is binding on you.

26.2 If we ask, you must supply us with any information or documents reasonably required about or affecting:

- a. the *security*;
- b. any *guaranteed agreement*;
- c. this *cross guarantee and indemnity*;
- d. you or the financial position of any *debtor*;
- e. a valuation or other expert report about the *security* from an expert nominated by us; or
- f. proof that you have observed your obligations in this *cross guarantee and indemnity* and any *guaranteed agreement*.

26.3 You must pay for anything that you must do under this *cross guarantee and indemnity*.

26.4 You authorise us or any *person* we authorise to make any changes to this *cross guarantee and indemnity* so that it can be stamped (but only if the changes do not change its meaning).

26.5 You agree that we may fill in any blanks in this *cross guarantee and indemnity* or any document related to this *cross guarantee and indemnity* (such as an acknowledgment) to reflect what is intended or agreed between you and us.

## 27. CHANGES

Except where a change to this *cross guarantee and indemnity* is administrative or minor or corrects a mistake or omission, a term of this *cross guarantee and indemnity*, or right or obligation created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

## 28. IF ANY PART OF THIS CROSS GUARANTEE AND INDEMNITY IS UNENFORCEABLE

28.1 If a court decides that any clause or part of a clause of this *cross guarantee and indemnity* is illegal, void or unenforceable, then the rest of this *cross guarantee and indemnity* is to be interpreted as if that clause or that part of the clause is not part of this *cross guarantee and indemnity*.

28.2 To the extent that the Banking Code of Practice, other code or legislation applies to this *cross guarantee and indemnity*, if:

- a. that legislation or code would otherwise make a provision of this *cross guarantee and indemnity* illegal, void or unenforceable; or
- b. a provision of this *cross guarantee and indemnity* would otherwise contravene a requirement of that legislation or code or impose an obligation or liability which is prohibited by that legislation or code,

this *cross guarantee and indemnity* is to be read as if that provision were varied to the extent necessary to comply with that legislation or code or, if necessary, omitted.

28.3 To the extent that the Banking Code of Practice, other code or legislation applies to this *cross guarantee and indemnity*.

- a. our rights to demand any amounts from you and to exercise our rights and remedies against you are subject to the limitations on enforcement of this *cross guarantee and indemnity* imposed by the legislation or code; and
- b. our rights and remedies under this *cross guarantee and indemnity* are in addition to those given to a credit provider under the legislation or code.

## 29. YOUR OBLIGATIONS AND OUR RIGHTS ARE UNAFFECTED

29.1 Rights given to us under this *cross guarantee and indemnity* and your liabilities under it are not affected by any act or omission by us except to the extent of any fraud, negligence or wilful misconduct by us or the fraud, negligence or wilful misconduct of our employees, officers, contractors or agents, or any receivers we appoint, or by anything else that might otherwise affect them under law relating to guarantees and indemnities, including:

- a. if we vary or replace a *guaranteed agreement*, such as by increasing the credit limit, increasing the amount of credit agreed to be provided or extending the term. If this *cross guarantee and indemnity* is one to which the Banking Code of Practice applies, we cannot increase your liabilities under this *cross guarantee and indemnity* by changing the terms of a *guaranteed agreement* except in compliance with the Banking Code of Practice. Your liabilities under this *cross guarantee and indemnity* cannot exceed the *maximum amount* without your agreement;
- b. if we release the *debtor* from the *debtor's* obligations under a *guaranteed agreement* or if we give the *debtor* a concession, such as more time to pay;
- c. if the *debtor* opens another account with us;
- d. if we release or lose the benefit of any *security interest*;
- e. if we could have exercised our rights under this *cross guarantee and indemnity* or under a *guaranteed agreement* before, but were unable to do so for reasons out of our control;
- f. if we were unable to register any *security interest* which could be registered for reasons outside our control;
- g. if we release any other *person* who guarantees the *debtor's*

obligations under a *guaranteed agreement*;

- h. if the obligations of any other *person* who guarantees the *debtor's* obligations under a *guaranteed agreement* may not be enforceable;
- i. if the obligations of the *debtor* under a *guaranteed agreement* or any other *security interest* given by the *debtor* may not be enforceable;
- j. if any other *person* who was intended to *guarantee* the *debtor's* obligations under a *guaranteed agreement* does not do so or does not do so effectively;
- k. if any rights in connection with a *guaranteed agreement* are assigned;
- l. if we have previously exercised any of our rights against any *person*, including you or the *debtor* (in whole or in part);
- m. the death (or the receipt by us of notice of the death), mental or physical disability or *insolvency* of any *person* including you or the *debtor*; or
- n. your other obligations to us.

29.2 Our rights under this *cross guarantee and indemnity* are not affected by, and this *cross guarantee and indemnity* does not affect:

- a. any other guarantee or indemnity, or any *security interest*, right or remedy, to which we are entitled; or
- b. a judgment or order which we obtain against you in respect of an amount *payable* under this *cross guarantee and indemnity*.

29.3 We can still exercise our rights under this *cross guarantee and indemnity* as well as under the judgment, order, other guarantee or indemnity, *security interest*, right or remedy. This *cross guarantee and indemnity* binds each *person* who signs as guarantor even if another *person* who was intended to sign does not sign it or is not bound by it.

## 30. REINSTATEMENT OF RIGHTS

Under a law relating to *insolvency* a *person* may claim that a transaction (including a payment) in connection with this *cross guarantee and indemnity* or a *guaranteed agreement* is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- a. we are immediately entitled, as against you, to the rights in respect of this *cross guarantee and indemnity* or a *guaranteed agreement* to which we were entitled immediately before the transaction; and
- b. on request from us, you agree to do anything to restore to us any *security* we held from you immediately before the transaction.

## 31. POWER OF ATTORNEY

31.1 You appoint us, each of our directors, each of our employees whose job title includes the word "manager", each of our solicitors and each other *person* we authorise separately as your *attorney*. If we ask, you must formally approve anything they do under clause 31.2. You may not revoke these appointments.

31.2 If we are entitled to enforce this *cross guarantee and indemnity*, each *attorney* may:

- a. do anything *which* you may lawfully do to exercise your right of proof after an event of *insolvency* occurs in *respect* of the *debtor* or any other guarantor of the *debtor's* obligations. These things may be done in your or the *attorney's* name and they include

signing and delivering documents, taking part in legal proceedings and receiving any dividend arising out of the right of proof;

- b. delegate their powers (including this power) and revoke a delegation; and
  - c. exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.
- 31.3 The *attorney* need not account to you for any dividend received on exercising the right of proof under clause a except to the extent that any dividend remains after we have received all amounts *payable* under this *cross guarantee and indemnity*.
- 31.4 Where permitted by law the *attorney* may exercise its powers in clause 31.2 without your consent and without giving you notice.

## 32. PARTNERSHIP

If this *cross guarantee and indemnity* is given by a firm or partnership or joint venture:

- a. this *cross guarantee and indemnity* continues to be in full force and effect despite any changes which may from time to time take place in its members or participants, whether by the death or retirement or the *receivership, insolvency*, administration or liquidation of any member or participant or the admission of any new member or participant or otherwise, and even though the firm, partnership or joint venture no longer carries on business; and
- b. this *cross guarantee and indemnity* is binding on you even though you are not or having once been a member of or participant in the firm, partnership or joint venture are no longer one of its members or participants.

## 33. TRUSTEE PROVISIONS

33.1 You make the following declarations if you enter into this *cross guarantee and indemnity*, or own property the subject of a *security*, as trustee of any trust or settlement (unless you have advised us in writing, before entering into this mortgage, that one or more of the declarations cannot be made and we have agreed to waive the requirement that you make that declaration or declarations):

- a. this *cross guarantee and indemnity* is for the benefit of the trust;
- b. this *cross guarantee and indemnity* does not conflict with the operation or terms of the trust;
- c. you are the sole trustee of the trust;
- d. you have the power as trustee of the trust to unconditionally enter into this *cross guarantee and indemnity* and perform your obligations under it;
- e. the trust has not been terminated and no beneficiary is presently entitled to any assets of the trust;
- f. you have the right to be fully indemnified out of the trust assets for obligations incurred under this *cross guarantee and indemnity* and the trust assets are sufficient to satisfy that right of indemnity;
- g. no action has been taken or proposed to terminate the trust;
- h. true copies of the trust deed and other documents relating to the trust have been provided to us and disclose all the terms of the trust;
- i. you have not delegated any of your powers as trustee or

exercised any power of appointment;

- j. no property of the trust has been resettled or set aside or transferred to any other trust;
- k. the trust documents comply with all applicable laws;
- l. by entering into this *cross guarantee and indemnity* and performing your *obligations* under it you are properly performing your obligations to the beneficiaries of the trust;
- m. you have taken all steps necessary to allow you to enter into and perform your obligations under this *cross guarantee and indemnity*;
- n. no action has been taken to remove you as trustee or to appoint an additional trustee; and
- o. you have not breached your obligations as trustee.

You must tell us whenever anything happens which would mean you could not truthfully repeat all these declarations (unless we consent to that thing happening).

33.2 If you are a trustee, unless we have consented in writing, you must not:

- a. do anything in connection with the trust;
- b. deal with any property of the trust; or
- c. otherwise act in connection with the trust,

in any way which adversely affects your ability to pay the *maximum amount*. This includes making any distribution of capital or resigning as trustee.

33.3 If you are a trustee, this *cross guarantee and indemnity* binds you in your personal capacity and in your capacity as trustee of the trust.

33.4 If you are a trustee and you are in breach of your obligations under this *cross guarantee and indemnity* you:

- a. must not exercise your powers or discretions under the trust unless we have consented in writing; and
- b. must not exercise your right to be paid from the assets of the trust on demand.

## 34. NOTICES AND OTHER COMMUNICATIONS

34.1 Notices, certificates, consents, approvals and other communications in connection with this *cross guarantee and indemnity* must be in writing unless we agree otherwise.

34.2 Communications from us may be signed by any of our employees or authorised agents.

34.3 Communications to you may be:

- a. given personally (if you are a corporation, to one of your directors);
- b. left at your residential or business address last known to us;
- c. sent by post to your postal or residential or business address last known to us;
- d. sent by email or other electronic communication to your email or other electronic address last known to us;
- e. given in any other way permitted by law.

34.4 Communications to us must be:

- a. given personally to one of our employees at our registered office and no other place;

- b. sent by prepaid post to our registered office and no other place; or
- c. given by any other means permitted by law.

34.5 A communication is taken to be given (whether or not you actually receive it):

- a. in the case of a communication given personally - on the date it bears or the date it is received by the *person* to whom it is addressed, whichever is the later;
- b. in the case of a communication sent by post - on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later;
- c. in the case of a communication sent by email or other electronic form - on the date it bears, provided the sender does not receive a non-delivery communication within 2 hours after sending.

34.6 If you change your address, you must promptly tell us in writing.

## 35. GOVERNING LAW AND SERVING DOCUMENTS

35.1 This *cross guarantee and indemnity* is governed by the laws of the state or territory where credit was first drawn down by a *debtor* in connection with a *guaranteed agreement*. You and we submit to the non-exclusive jurisdiction of the courts of that place.

35.2 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 by delivering it to or leaving it at your address last known to us or such other address as you and we agree at any time. This clause does not prevent any other method of service.

## 36. COUNTERPARTS

This *cross guarantee and indemnity* may consist of a number of copies, each signed by one or more parties to this *cross guarantee and indemnity*. If so, the signed copies are treated as making up the one document.

## 37. AGREEMENT

This *cross guarantee and indemnity* is an agreement.

# Part B – Large Business Transactions

The terms in Part B will only apply if we tell you in the *Schedule* the Cross Guarantee and Indemnity is a Large Business Transaction.

## 1. MORE THAN ONE ACCOUNT

If you have more than one account with us (either alone or with any other person) we may treat your accounts as one account.

## 2. INDEMNITY

We do not need to incur an expense or make a payment before enforcing this right of indemnity.

Our right to enforce the indemnity is not affected:

- a. if we do not obtain any security interest;
- b. if we could have exercised our rights under this cross guarantee and indemnity or under a guaranteed agreement before, but did not do so or we were slow in doing so;
- c. if we do not register any security interest which could be registered.





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