

# Personal Loan

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Facility Agreement Terms and Conditions - Consumer

September 2016



If You apply for a Personal Loan Facility the Personal Loan Facility will be governed by the following Terms and Conditions and “Details” Schedule. These Terms and Conditions are issued by BOQ Specialist - a division of Bank of Queensland Limited ABN 32 009 656 740 AFSL and Australian credit licence No. 244616.

**Does the *National Credit Code* apply to this agreement?**

Some provisions of this agreement are stated to apply only if the *National Credit Code* applies, or does not apply, to this agreement.

The *National Credit Code* is a national law designed to protect consumers in relation to credit contracts, mortgages, guarantees and other matters.

The *National Credit Code* will apply to this agreement if you are an individual and the credit is provided predominantly for personal, domestic or household use, or for investment in residential property (but not other forms of investment).

If BOQ Specialist approves Your Facility Limit, we will send You a Personal Loan “Details” Schedule (“Schedule”) offering to enter into a contract with You for a Personal Loan Facility. You will be bound by the Personal Loan Facility Terms and Conditions, the Direct Debit Request – Service Agreement (if applicable), any Special Terms and Conditions (if applicable) when You accept the offer as set out in the Schedule.

**The Schedule may require You to accept the terms of the Personal Loan Facility by signing and returning a specified document or may allow You to accept the terms in some other way.**

#### 1. Facility

- Subject to this document we agree to make the *facility* available to *you*.
- After deduction of any fees and charges payable on or before the *drawdown date* (as set out in the *details*) which you have not already paid, we pay the remainder of the *advance* to *you* or as *you* direct.
- Unless we otherwise agree, you will not be entitled to redraw any part of the *advance repaid*.
- *You* may only use the *facility* for the purposes specified in the *details* or any other purposes we agree to in writing.
- No funds will be available if *You* are in *default* under this agreement.

#### 2. Drawdown

The *facility* will be drawn down in one *advance* only on the *drawdown date*.

#### 3. Conditions precedent

We are only obliged to make the *facility* available to *you* if the following conditions precedent are satisfied:

- all other conditions set out in this agreement or the *details* that are required to be satisfied before we make the *facility* available to *you* have been fulfilled;
- we have received all fees and expenses specified in the *details* as being payable by you before the *facility* is to be made available; and
- we have received any additional documentation we require in a form and substance satisfactory to *us*.

#### 4. Interest on the advance

- Interest accrues daily on the *principal outstanding* at the *interest rate* for each *interest period*. However, if any of the *principal outstanding* is due but unpaid on a day, we charge interest on that amount under clause 10 instead.
- We add the interest accrued on the *principal outstanding* on the first day of the next succeeding *interest period*.

- Interest will be calculated on the actual days elapsed based on a 365 day year.
- Any *base rate* specified in the *details* may be varied from time to time, which will result in a change to the *interest rate*.
- We may change the *interest rate* by giving *you* notice in writing or by publishing the change in the national media or on our website or otherwise in accordance with *our* obligations at law or under an applicable industry code. If the *facility* is a *fixed rate loan*, the *interest rate* will not change.
- Further, by giving *you* notice as required by law or an applicable industry code, we may change:
  - any *margin* used to determine the *interest rate*; or
  - the name or description of the *base rate* applicable to *your* loan, or the way the *base rate* is determined.We may only change a *margin* or the determination method of the *interest rate* if we have a legitimate business need to do so and we act reasonably in doing so.
- *You* can obtain information on the current *interest rate* from us on request.

#### 5. Interest periods

- Subject to this clause 5, each *interest period* for the *advance* will be a period of one month, usually on the same day as the date of the *advance* in each subsequent month during the term.
- The first *interest period* begins on the *drawdown date*. Each subsequent *interest period* begins on the day after the date when the preceding *interest period* ends.
- An *interest period* that would otherwise end on a day that is not a *business day* ends on the next *business day*.
- An *interest period* that would otherwise end after the *expiry date* ends on the *expiry date*.

#### 6. Part prepayments of the advance

- If the *facility* is a *fixed rate loan*, prepayments will be applied against remaining repayments due under the *repayment schedule* on the remaining repayment dates in order of maturity.
- If the *facility* is a variable rate loan, prepayments will be applied to reduce the *principal outstanding*.

#### 7. Full prepayments of the advance

- Subject to this clause, *you* may prepay all of the *principal outstanding* at any time.
- If you repay this *facility* in full before the expiry date, you must pay to us the *total amount owing including*:
  - the whole of any remaining *principal outstanding* together with accrued interest, and
  - fees incurred up until the date of termination but not yet debited to the *principal outstanding*; and
  - *break costs* (if any).

#### 8. Repayments

- *You* agree to repay the *principal outstanding* and interest (as contemplated in clause 4) as set out in the *repayment schedule* and this clause 8.
- If a payment would otherwise be due on a date that is not a *business day*, it is due on the next *business day*.
- If this *facility* is a *variable rate loan* and the repayments are to increase, we will notify *you* in writing.
- All repayments under this *facility* must be paid by direct debit from an account *you* have with *us* or another account at *our* discretion or by electronic funds transfer from an account approved by *Us*.

- We may change the amount of any repayment or the dates on which repayments must be made (for example, if there is a change to fees and charges) by giving you notice in writing or publishing the change in the national media or on our website or otherwise in accordance with our obligations at law or under an applicable industry code.

## 9. Expiry

- On the *expiry date* you must pay to us:
  - the whole of any remaining *principal outstanding* together with accrued interest and fees on that amount; and
  - the *total amount owing* then payable by you under this document and unpaid.

## 10. Overdue amounts

Interest accrues on each unpaid amount that is due and payable by you under this agreement (including interest payable under clauses 4, 5 and 10):

- daily up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier;
- both before and after judgment (as a separate and independent obligation); and
- at the *overdue rate*.

You must pay interest accrued under this clause on demand by us.

This clause does not affect your obligation to make payments when they are due and payable.

## 11. Statements

We will send you at least every six months a statement for this facility.

## 12. Payments

- You must make all payments under any *transaction document* in A\$ by transfer of *cleared funds* to the account or accounts in Australia we specify, by 4.00 PM Australian eastern standard time on the due date.
- If you are prohibited by law from making those payments free and clear of all deductions and withholdings, then:
  - you agree to deduct the relevant amount; and
  - you agree to pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipts to us.
- All payments to be made by the *transaction parties* under or in connection with any *transaction document* have been calculated without regard to GST.

## 13. Variation to fees and charges

- The *fees and charges* current as at the disclosure date are shown in the *details*.
- we may change the amount of any fee or charge, or change how often they are charged, or impose new fees and charges at any time.
- We will give you advance notice of any new fee or charge or changes to existing charges by giving you notice in writing or by publishing the change in the national media or on our website or otherwise in accordance with our obligations at law or under an applicable industry code. But some changes to government fees and charges are publicised by the government and not us.

- We may only change the particulars of a fee or charge or impose a new fee or charge if we have a legitimate business need to do so and we act reasonably in doing so.
- You can obtain information on current *fees and charges* from us on request.

## 14. Representations, warranties and undertakings

Each *transaction party* represents, warrants and undertakes that:

- **(power)** the *transaction party* has the power to enter into and perform its obligations under the *transaction documents* to which it is a party, to carry out the transactions contemplated by them and to carry on its business (if any) as now conducted;
- **(no contravention)** the performance by the transaction party of the *transaction documents* to which that person is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
  - a law or treaty or a judgment, ruling, order or decree of a *government agency* binding on that person;
  - any other document or agreement that is binding on that person or that person's *assets*,
 and, except as provided by the *transaction documents*, did not and will not:
  - create or impose a *security interest* on any of that person's *assets*; or
  - allow a person to accelerate or cancel an obligation with respect to *financial indebtedness*, or constitute an *event of default*, cancellation event, prepayment event or similar event (whatever called) under an agreement relating to *financial indebtedness*, whether immediately or after notice or lapse of time or both;
- **(compliance with law)** the *transaction party* has complied with, and will continue to comply with all laws, lawful requirements of any *government agency* and other obligations binding on it which affect or relate to any of the *secured property*;
- **(litigation)** no litigation, arbitration, *tax claim*, dispute or administrative or other proceeding is current or pending or, to that person's knowledge, threatened, that may have a *material adverse effect*;
- **(event of default)** no *event of default* or *potential event of default* has occurred has occurred;
- **(authorisations)** each *authorisation* that is required in relation to:
  - the delivery and performance by the *transaction party* of the *transaction documents* to which that person is expressed to be a party and the transactions contemplated by them; and
  - the validity and enforceability of those documents and the effectiveness or priority of the *securities* has been obtained or effected, is in full force and effect, has been complied with and all applicable fees have been paid;
- **(accuracy of information)** all information provided by the *transaction party* to us is true in all material respects at the date of this document or, if later, when provided. Neither that information nor its conduct and the conduct of anyone on that person's behalf in relation to the transactions contemplated by the *transaction documents*, was or is misleading in any material respect, by omission or otherwise;
- **(controller)** no *controller* is currently appointed to any of the *transaction party's* property;

- **(solvency)** the *transaction party* is able to, and will continue to be able to, pay that person's debts as and when they fall due for payment after entering into or participating in any *transaction document* or any transaction contemplated under any of those documents to which that person is a party;
- **(no security interests over assets)** the *transaction party's* assets are free from security interests other than permitted encumbrances;
- **(ownership of secured property)** each *transaction party* is the legal and beneficial owner of the *secured property* which it has granted to us in each *security* to which it is a party.

Each *transaction party* acknowledges that we have entered into the *transaction documents* in reliance on the representations and warranties in *this document*.

## 15. Obligations

- **(reporting obligations)** Each *transaction party* must provide or procure to be provided to us any financial or other information we reasonably request in connection with any *transaction document* within 14 days of notice to you from us.
- **(authorisations)** Each *transaction party* must ensure that each *authorisation* required for:
  - the delivery and performance by it of the *transaction documents* to which it is expressed to be a party and the transactions contemplated by those documents; and
  - the validity and enforceability of those documents and the effectiveness and priority of each *security* or any *collateral security*,

is obtained when required, complied with and promptly renewed and maintained in full force and effect and it will provide copies promptly to us when they are obtained or renewed.

- **(default)** Each *transaction party* must not cause or permit any *event of default* to occur.
- **(taxes)** Each *transaction party* has and will pay all *taxes* payable by that person when due.
- **(inspection)** We or persons authorised by us may at any time during usual business hours on reasonable notice inspect, and require the provision of, copies of your records and inspect the *secured property*. Each *transaction party* must do everything in the *transaction party's* power to assist that inspection and provide those copies and ensure that its employees and officers do the same.
- **(information)** If a *transaction party* requests us to give our consent to any matter or thing it must provide to us all information we reasonably require to decide whether to give or withhold that consent.

## 16. Events of default

Each of the following events listed in this clause 16 is an event of *default*:

- **(obligations under transaction documents)** A *transaction party* fails:
  - to pay or repay in accordance with the *transaction party's* obligations under the *transaction documents* any part of the *secured money* when due; or
  - to comply with any of the *transaction party's* other material obligations under a *transaction document*.
- **(representation or warranty untrue)** A representation, warranty or statement by or on behalf of a *transaction party* in a *transaction document*, or in a document provided under or in connection with a *transaction document*, is not true in a material respect or is misleading in a material respect when made or repeated.

- **(insolvency event)** Any *insolvency event* occurs in relation to a *transaction party*.
- **(enforcement against assets)** One or more of the following events occurs in relation to all or any of the assets and undertaking of a *transaction party*:
  - a receiver, receiver and manager, administrative receiver or similar officer is appointed;
  - a *security interest* becomes enforceable or is enforced; or
  - a distress, attachment or other execution is levied or enforced.
- **(vitiation of transaction documents)** One or more of the following events occurs in relation to a *transaction document*:
  - all or any part of a *transaction document* is terminated or is or becomes void, illegal, invalid, unenforceable or of limited force and effect;
  - a party becomes entitled to terminate, rescind or avoid all or part of a *transaction document*; or
  - any *security interest* arising out of or in connection with any *transaction document* does not have or ceases to have the highest possible priority or the agreed priority.
- **(revocation of authorisation)** An *authorisation* that is material to the performance by any *transaction party* of a *transaction document*, or to the validity and enforceability of a *transaction document* is repealed, revoked or terminated, expires, is modified, amended or not renewed, or conditions are attached to it in a manner unacceptable to us, and is not immediately replaced by another *authorisation* acceptable to us.
- **(material adverse effect)** Any event or series of events, whether related or not, occurs, that may have, in our reasonable opinion, a *material adverse effect*.
- **(cross default)** any event of default (however described) occurs under any other document or agreement in respect of any financial indebtedness to which it is a party and which is an BOQ Specialist arrangement or is secured by any secured property, or any property subject to any collateral security.

## 17. Our rights on default

If an *event of default* occurs, our rights include:

- We may give you a notice stating that you are in default.
- We may charge interest at the *overdue rate*.
- If you do not, or cannot, correct the default within any grace period given in the notice or required by law (or if you are in default again for a similar reason at the end of that period), then, at the end of that period and without further notice to you, the *principal outstanding* becomes immediately due for payment (to the extent it is not already due for payment).
- We may then sue you for that amount, or enforce any of the *security documents*, or do both.
- In limited circumstances set down by law (such as if we are unable to locate you), we need not give the notice or wait until the end of any grace period given in a notice. Instead, if you are in default, the *principal outstanding* which is payable under this agreement becomes immediately due for payment without notice. We may then immediately sue you for that amount, or enforce any of the *security documents*, or do both.
- If you are in default, we may use any money you have in another account with us towards repaying the *total amount owing* (this is known as "combining accounts"). We may combine accounts without giving you any notice but we will tell you afterwards.

## 18. Expenses

You must pay or, if we require, reimburse us for our reasonable costs and expenses reasonably incurred in enforcing this agreement after you are in default.

## 19. Stamp duties and taxes

- You must pay to us or reimburse us on demand for all stamp, transaction, registration and other taxes that we have paid or that we reasonably believe are payable specified in the *details* in the circumstances set out in the *details*. You must also pay any government charges, or duties on receipts or withdrawals when we ask.
- All payments to be made under or in connection with any *transaction document* have been calculated exclusive of GST unless expressly stated otherwise.
- If all or part of any such payment is the consideration for a taxable supply for GST purposes then, when the *transaction party* makes the payment:
  - the *transaction party* must pay to us an additional amount equal to the GST payable by us on that supply; and
  - if requested by the *transaction party*, we will promptly provide to the *transaction party* a tax invoice complying with the relevant GST legislation.
- Where under any *transaction document* a *transaction party* is required to reimburse or indemnify us for an amount, the *transaction party* must pay the relevant amount less any GST input tax credit we determine that we are entitled to claim in respect of that amount together with, if the payment or reimbursement is subject to GST, an amount equal to the GST on that payment or reimbursement.
- If an adjustment event arises in respect of a taxable supply made by us under any *transaction document*, the amount payable by you under this clause 19 will be recalculated to reflect the adjustment event and a payment will be made by you to us or by us to you as the case requires.

## 20. Dealing with interests

- A *transaction party* must not cause or permit any person to acquire an interest in any *transaction party's* rights or obligations under the *transaction documents*.
- We have the right at law at any time to assign all or any of our rights and benefits under any *transaction document* to any person, including a securitisation or funding vehicle, or a sub-participant of our participation under any *transaction document*, without your consent. Any person to whom our rights are transferred will have the same rights that we do under the *transaction documents* that are no greater than our rights.
- You agree that if we so reasonably direct, all or any of our rights under any *transaction document* may be novated or transferred to any person, on the basis that the person will have the same rights that we do under the *transaction documents* that are no greater than our rights.
- You agree that we may disclose any information or documents we consider desirable to help us exercise these rights. You also agree that we may provide any person to which our rights or obligations may be assigned, novated or transferred with any information necessary to effect that securitisation so long as they agree to keep that information confidential.

## 21. Financier

We enter into this document as the provider of the *facility*. The *securities* may be registered in our name or in the name of one of our subsidiaries, nominees or agents.

## 22. Further assurances

- Each *transaction party* must, and must ensure that each other *transaction party*, does anything we reasonably ask (at its own expense) (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) to:
  - ensure that the *transaction documents* are not void, voidable or otherwise unenforceable by us in accordance with their terms;
  - ensure that a *security interest* is enforceable, perfected (including registration and where possible, by control in addition to registration under the *PPS Act*) and otherwise effective;
  - stamp and enable us to apply for any registration, or give any notification, in connection with the *security interest* so that the *security interest* has the priority required by us;
  - enable us to exercise our rights in connection with the *security interest*; and
  - authorise us to sign any documents on its behalf and do anything else we reasonably consider appropriate to effect a novation under clause 20.
- You must notify us in writing of any change in your name at least 14 days before your propose to change your name.
- Everything a *transaction party* is required to do under this clause is at that *transaction party's* expense.
- This clause applies to anything we ask any *transaction party* to do in connection with the *PPS Act*.

## 23. Notices

Subject to any legal requirements for service, any notice, demand, originating process, court document or any other document relating to a proceeding may be served on You by being sent by prepaid ordinary post to Your residential or business address last known to Us or by being left at Your residential or business address last known to Us or by being sent by prepaid ordinary post or by being left at any land in respect of which You, now or in the future, have any legal, equitable and/or beneficial interest in.

## 24. Records as evidence

We may maintain records specifying:

- payments made by us for the account of any *transaction party*;
- payments by any *transaction party* for our account under any *transaction document*; and
- interest, fees, charges, costs and expenses payable in relation to the *transaction documents*,

and those records will as against you constitute sufficient evidence of the matters set out in them unless proven to be incorrect.

## 25. Our determination and certificate

- A certificate by us relating to any *transaction document* is sufficient evidence against the *transaction party* of the matters certified unless shown to be incorrect.
- We are not obliged to give the reasons for our determination or opinion in relation to any matter under any *transaction document*.
- A determination or an opinion by our authorised officer that is given to a *transaction party* or otherwise expressed or acted on by us as being our determination or our opinion will be treated as being a determination or opinion by us.

## 26. Approvals and consent

Subject to any express provision in the transaction documents to the contrary or unless this document expressly provides otherwise, we may conditionally or unconditionally give or withhold our approval or consent as we determine appropriate, acting reasonably.

## 27. Cumulative rights

The rights, powers and remedies provided in this document are in addition to those provided by law independently of this document and each right, power and remedy provided in this document (including any right of indemnity) is additional to and not exclusive of every other right, power or remedy provided in this document.

## 28. Confidentiality

- We may disclose any confidential information or documents:
- in enforcing a *transaction document* or in a proceeding arising out of or in connection with a *transaction document* or to the extent that we regard the disclosure as necessary to protect *our* interests;
  - if required under a binding order of a *government agency* or any procedure for discovery in any proceedings;
  - if required under any law or any administrative guideline, directive, request or policy whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of responsible bankers or financial institutions similarly situated (except this paragraph does not permit *us* to disclose any information under section 275(4) of the *PPS Act* unless section 275(7) of the *PPS Act* applies);
  - as required or permitted by any *transaction document*;
  - to *our* legal advisers and consultants; or
  - with *your* prior written consent, which must not be unreasonably withheld.
- *You* may disclose any confidential information or documents if required under any law or any administrative guideline, directive, request or policy whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of responsible bankers or financial institutions similarly situated (except this paragraph does not permit you to disclose any information under section 275(4) of the *PPS Act*).
- This clause 28 survives the termination of this document.

## 29. Moratorium legislation

Subject to clause 39, any present or future legislation that operates:

- to lessen or vary in favour of a *transaction party* any of that *transaction party's* obligations in connection with this document; or
- to postpone, stay, suspend or curtail any of *our* rights under this document,

is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

## 30. Severability of provisions

A provision of a *transaction document* that is prohibited or unenforceable in any *jurisdiction* is ineffective in that *jurisdiction* to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of that *transaction document* nor affect the validity or enforceability of that provision in any other *jurisdiction*.

## 31. Time of the essence

Time is of the essence of this document. If the parties agree to vary a time requirement:

- the time requirement so varied is of the essence of this document; and
- the agreement to vary the time requirement must be in writing.

## 32. Variations

We may vary any of the terms and conditions of this agreement by giving *you* notice in writing or by publishing the change in the national media or on *our* website or otherwise in accordance with *our* obligations at law or under an applicable industry code.

We may only vary a term or condition if we have a legitimate business need to do so and we *act* reasonably in doing so.

## 33. Waiver and exercise of rights

- A right in favour of *us* under a *transaction document*, a breach of an obligation of a transaction party under a *transaction document*, or the occurrence of an *event of default* can only be waived by a written instrument signed by *us*. No other act, omission or delay of *us* will constitute a waiver.
- A single or partial exercise or waiver by *us* of any right under a *transaction document* will not prevent any other exercise of that right or the exercise of any other right.
- We and *our* representatives will not be liable for any of *your* losses, costs or expenses caused or contributed to by the waiver of, exercise of, attempted exercise of, failure to exercise or delay in exercising a right we have, unless the loss is caused by *our* or the representative's negligence or fraud in the exercise of a right or remedy.

## 34. Your judgment

- *You* will make *your* own judgment and decision in respect of the utilisation of the *facility* independently and without reliance on *us*.
- We are under no liability or responsibility and we are not to be taken to have accepted any liability or responsibility whatsoever (whether in contract, tort or otherwise) in respect of movement in rates of interest or exchange or any advice, opinions or data rendered or given by any of *our* officers, employees, agents or other persons representing *us*, irrespective of whether or not the advice, opinions or data was or is rendered or given at *your* request, except to the extent that *you* reasonably relied on incorrect or negligently given advice by such persons representing *us*.
- *You* have obtained *your* own financial advice and made *your* own enquiries in relation to *your* obligations including, but not limited to, taxation obligations under this document.

### 35. Time for performance

Subject to any express provision to the contrary in this document, if:

- the day on which anything is to be done is not a *business day*, that thing must be done on the next following *business day*; and
- an act, other than a payment or the giving of a communication, is required to be done on a particular day and the act is done after 5.00pm on that day, it will be treated as having been done on the following day.

### 36. Set off

- We may set off against any debt due and owing by a *transaction party* to us, including debts due and owing under any *transaction document*, any debt due and owing by us to the *transaction party*, including any money in any currency held by us for the account of the *transaction party* in any place.
- Except to the extent you have a right of set off granted by law which we cannot exclude by agreement (such as under the National Credit Code), you must pay all amounts due under the *transaction documents* in full without setting off amounts you believe we owe you and without counterclaiming amounts from us.
- If you believe that we owe you an amount in relation to this *facility* (for example, if you believe that we have not complied with our obligations under this *facility*) you may raise that claim through our dispute resolution process referred to in clause 38.

### 37. Governing law and jurisdiction

The law of the *jurisdiction* governs this document and the parties submit to the non-exclusive jurisdiction of the courts of the *jurisdiction* and of the Commonwealth of Australia.

### 38. Disputes

- If you have any complaints in relation to this agreement please contact:  
Complaints Officer - Head of Compliance  
BOQ Specialist  
GPO Box 2539  
Sydney NSW 2001
- If we are unable to resolve your complaint you may contact:  
Financial Ombudsman Service  
GPO Box 3  
Melbourne VIC 3001  
www.fos.org.au.

### 39. National Credit Code and Code of Banking Practice

- This clause applies to the extent that a *Code* applies to this agreement.
- If:
  - a *Code* would otherwise make a provision of this agreement illegal, void or unenforceable; or
  - a provision of this agreement would otherwise contravene a requirement of a *Code* or impose an obligation or liability which is prohibited by a *Code*,this agreement is to be read as if that provision were varied to the extent necessary to comply with a *Code* or, if necessary, omitted.
- If a *Code* is inconsistent with this agreement, a *Code* overrides this agreement to the extent of the inconsistency.

### 40. Code of Banking Practice

- As part of our commitment to customer service, we have adopted the *Code of Banking Practice*. This is a self-regulatory code which aims to foster good relations

between banks and customers, and to promote good banking practice. The *Code of Banking Practice* applies to banking services provided to customers who are "individuals" or "small businesses" as defined in it. We will comply with the *Code of Banking Practice*, where it applies to the banking services we provide to you.

- The *Code of Banking Practice* requires us to provide you with certain information. You will find this information in this document, and on request. In particular, you will find information regarding:
  - our obligations regarding the confidentiality of your information;
  - complaints;
  - what to do when you are in financial difficulty; and
  - the importance of you reading the terms and conditions applying to any banking service we provide to you.

### 41. Financial difficulty

We understand that some situations can bring about financial stress, including illness or injury and changes to employment. If you are experiencing financial difficulties please contact us to discuss options and solutions.

### 42. Inconsistency of provisions

Subject to clause 39, if there is any inconsistency between the provisions of this document and the provisions of any other *transaction document*, the provisions of the *transaction document* will govern and apply to the extent of the inconsistency.

### 43. Definitions

In this document the following definitions apply unless the context indicates otherwise:

**A\$** means the lawful currency of Australia;

**administration fee** means the sum of \$175 and is referred to in the Break Cost definition.

**advance** means the loan drawn down under this *facility* in accordance with this document or, as applicable, the outstanding principal amount of that advance (including capitalised interest);

**authorisation** includes any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption prescribed by law or regulation or required by any government agency;

**authorised officer** means:

- in relation to a *transaction party*, any director or company secretary of the *transaction party*, or any person nominated by the *transaction party* by a notice to us as an *authorised officer* on behalf of the *transaction party* to sign notices or documents in connection with any of the *transaction documents*, the notice to be accompanied by specimen signatures of the persons concerned; and
- in relation to us, any person whose title or office includes the word director, manager, associate or consultant, or any person acting in any of those offices, or any person appointed as an *authorised officer* by us;

**base rate** in relation to an **interest period** means the rate determined by us from time to time acting in good faith as to our costs of funds for providing the *facility* or other funding as applicable.

**break costs** means the higher of the *administration fee* or an amount equal to our reasonable estimate of our loss being the difference, between an amount calculated by reference to the rate equivalent to our cost of funds at the start of the fixed interest period and an amount calculated by reference to the rate equivalent to our cost of funds at the time that early repayment is made, over

the remainder of the fixed interest period. This is then discounted back to the net present value at the rate equivalent to *our* costs of funds at the time of the early repayment;

**business day** means a day that is not a Saturday, Sunday or public or bank holiday in Sydney, New South Wales;

**cleared funds** means immediately available funds;

**Code** means each of the National Credit Code and the *Code of Banking Practice*;

**Code of Banking Practice** means the Code of Banking Practice 2013 as published by the Australian Bankers' Association as amended or replaced;

**collateral security** means any *security interest*, *guarantee* or other document or agreement at any time created or entered into as security for any *secured money*;

**controller** has the meaning given to it in section 9 of the *Corporations Act*;

**Corporations Act** means the Corporations Act 2001 (Cth);

**details** means the details which form part of this agreement;

**drawdown date** means the date on which the *advance* is drawn.

**event of default** means any event described in clause 16 as an *event of default*;

**expiry date** means the day on which the final repayment is due under the *repayment schedule*;

**facility** means the facility to be provided under this document up to the *facility limit*;

**facility limit** means the facility limit specified in the *details*;

**fees** means any fees specified in the schedule;

**financial indebtedness** means any indebtedness or other liability (present or future, actual or contingent) relating to any financial accommodation including indebtedness or other liability:

- for money borrowed or raised;
- relating to the sale or negotiation of any negotiable instrument;
- as lessee under any finance lease (as defined in applicable accounting standards), as hirer under any asset purchase agreement or as purchaser under any title retention agreement;
- relating to any redeemable preference share;
- for the deferred purchase price of any property or services other than indebtedness for the purchase price of trading stock incurred in the ordinary course of business;
- under any commodity, currency or interest rate swap agreement, forward exchange rate agreement or under any future contract (as defined in any statute); or
- under any *guarantee* relating to any financial accommodation;

**fixed rate** means a per annum rate of interest specified in the *details* or specified by *us* as a *fixed rate* when you request that this agreement be subject to a fixed interest rate for a period;

**fixed rate loan** means the *facility* provided under this document in relation to which the *interest rate* is the *fixed rate*;

**government agency** means any government or governmental, semi governmental or judicial entity or authority in any state, country or other jurisdiction, including any self-regulatory organisation established under a statute or stock exchange;

**GST** means any goods or services tax, value-added tax, consumption tax or similar tax including as that term is defined in the *GST Act*;

**GST Act** means A New Tax System (Goods and Services tax) Act 1999 (Cth);

**guarantee** means any guarantee, indemnity, letter of credit, performance bond, legally binding letter of comfort, an option arrangement or suretyship, or any similar transaction or a combination of them;

**guarantor** means each person named in the details as a Guarantor and any other person who gives a *collateral security* or any of them;

**insolvency event** means the happening of any one or more of the following events to a *transaction party*:

- it is bankrupt, insolvent or insolvent under administration, in *liquidation*;
- if it is an individual, it ceases to be of full legal capacity;
- it is taken (under section 459F(1) of the *Corporations Act*) to have failed to comply with a statutory demand;
- it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act*;
- it is subject to the process of any court or authority invoked against it or any of its property to enforce any judgment or order for the payment of money or the recovery of any property;
- the holder of a *security interest* takes possession of any or all of its assets or property;

or something having a substantially similar effect to these occurrences happens in connection with that *transaction party* under the law of any applicable jurisdiction.

**interest period** means each interest period for the *facility* as described in clause 5;

**interest rate** means a per annum rate of interest specified in the *details* as at the *disclosure date*, and may be:

- in relation to a variable *rate loan*, the *base rate* plus the *margin*; or
- in relation to a *fixed rate loan*, the *fixed rate* (if any), unless otherwise agreed in writing between you and *us*;

**jurisdiction** means the State or Territory specified in the *details*;

**liquidation** includes provisional liquidation, administration, receivership, compromise, arrangement, amalgamation, official management, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death;

**margin** means the percentage referred to in the details as the *margin*;

**material adverse effect** means a material adverse effect on:

- the ability of any *transaction party* (as a whole) to comply with that party's obligations under any *transaction document*; or
- *our* rights and remedies under the *transaction documents*; or
- *the* business, operation, condition (financial or otherwise), cashflows or prospects of any *transaction party* (taken as a whole); or
- the effectiveness or priority of any *security interest* granted by a *transaction party* under any *transaction document*; or
- the validity or enforceability of any *transaction document*;

**National Credit Code** means the National Credit Code in Schedule 1 of the National Consumer Credit Protection Act 2009 (Cth) and any Regulations made for the purpose of the *National Credit Code*, including without limitation Chapter 7 of the National Consumer Credit Protection Regulations 2010 (Cth). The note at the beginning of this agreement explains when the *National Credit Code* applies to this agreement.

**overdue rate** means at any time the *interest rate* as specified in the *details* plus 4%;

**permitted encumbrances** means in relation to each transaction party:

- the *securities*;
- any *security interest* over any of that party's assets to which we have expressly consented;
- a lien arising by operation of law in the ordinary course of day-to-day trading and not securing *financial indebtedness*, where the party duly pays the indebtedness secured by that lien other than indebtedness contested in good faith;
- a charge or lien arising in favour of a government *agency* by operation of statute unless there is default in payment of money secured by that charge or lien; and
- any rights of set-off, netting or combination of accounts;

**PPS Act** means the Personal Property Security Act 2009 (Cth);

**principal outstanding** means the principal amount outstanding of the *advance* (including capitalised interest and any unpaid fees and expenses);

**repayment schedule** means the schedule for repayment outlined in the *details*;

**representative** means a person's officer, employee, contractor or agent;

**secured money** means:

- in relation to a *transaction party*, all money and damages that now or in the future are owing or payable (actually or contingently) by a *transaction party to us*, including money and damages payable:
  - under any transaction document;
  - by a *transaction party* alone or jointly or separately with any other person;
  - in a *transaction party's* own right or in any capacity; and

**secured property** means the property or assets mortgaged or charged by a *security* or *collateral security*;

**securities** means:

- the *security documents*; and
- any *collateral security*;

**security documents** means:

- the *securities* and other documents referred to in the *details*; and
- any other security or document incidental, collateral or supplementary to the *securities* or documents referred to in the *details* as we require;

**security interest** means any interest held as security for the payment of a monetary obligation or the performance of any other obligation, including:

- a mortgage, charge, encumbrance, lien, pledge or hypothecation;
- a bill of sale, assignment, title retention arrangement, trust or power held as security; and
- anything that is a 'security interest' as defined under the *PPS Act*;

**tax** includes any tax, *GST*, rate, levy, charge, impost or duty (including stamp and transaction duties) and any interest, penalty, fine or expense relating to any of them except if imposed on *our* net overall income;

**total amount owing** means at any time all money owing under this agreement without limitation the *principal outstanding* together with accrued interest, interest that has been capitalised but not paid, all fees and charges incurred but not yet debited or paid as the case may be, *break costs* (if any) and all enforcement fees and charges;

**transaction documents** means:

- this document;
- the *securities*;
- any document or agreement entered into or provided under or in connection with, or for the purpose of amending or novating, any of the above;
- any undertaking by or to a party or that party's lawyers under or in relation to any of the above; and
- any other document that we and you agree is a *transaction document*;

**transaction party** means you and any *guarantor*, or any of those persons;

**variable rate loan** means the *facility* provided under this document in relation to which the interest rate is the *base rate* plus the *margin*;

**we** means BOQ Specialist – a division of Bank of Queensland Limited ABN 32 009 656 740 AFSL and Australian credit licence No. 244616 and *our* and *us* have corresponding meanings; and

**you** means the person described in the *details* as the customer and that person's successors and permitted assigns and *your* has a corresponding meaning.

#### 44. Interpretation

- In this document, unless the context indicates otherwise, reference to:
  - one gender includes the others;
  - the singular includes the plural and the plural includes the singular;
  - a person includes an individual, body corporate, unincorporated association, corporation and a government or statutory body or authority;
  - a party to this document or another agreement or document includes the party's executors, administrators, successors and permitted substitutes or assigns;
  - a statute, regulation or provision of a statute or regulation (*statutory provision*) includes that *statutory provision* as amended or re-enacted; a statute, regulation or provision enacted in replacement of that *statutory provision*; and another regulation or other statutory instrument made or issued under that *statutory provision*;
  - "law" includes a reference to common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).
- an agreement or document is to the agreement or document as amended, novated, supplemented or replaced, except to the extent prohibited by this document;
- any thing (including an amount) is a reference to the whole and each part of it;
- an "asset" includes any real or personal, present or future, tangible or intangible property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived from the property or asset;
- If there is any inconsistency between the provisions of *this* document and the provisions of any other *transaction document*, the provisions of the *transaction document* will govern and apply to the extent of the inconsistency

## Information statement for you, the borrower

This information statement only applies to you if the National Credit Code applies to this agreement

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

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

If you have any concerns about your contract, contact your credit provider and, if you still have concerns, your credit provider's external dispute resolution 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 your credit provider's external dispute resolution scheme. External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Your credit provider's external dispute resolution provider is the Financial Ombudsman Service and can be contacted at —

Phone: 1800 367 287

Website: [www.fos.org.au](http://www.fos.org.au)

Postal address:

Financial Ombudsman Service

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 can not 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 can not 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 their external dispute resolution 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 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 the 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 the decision if you think it is wrong.

If the credit provider still refuses your request you can complain to the external dispute resolution scheme that your credit provider belongs to. 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 can not be unduly harassed or threatened for repayments. If you think you are being unduly harassed or threatened, contact the credit provider's external dispute resolution 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 YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.

EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS THE FINANCIAL OMBUDSMAN SERVICE AND CAN BE CONTACTED AT —  
PHONE: 1800 367 287

WEBSITE:  
[www.fos.org.au](http://www.fos.org.au)

POSTAL ADDRESS:  
FINANCIAL OMBUDSMAN SERVICE  
GPO BOX 3  
MELBOURNE VIC 3001

PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.



Client service centre  
T 1300 160 160  
[boqspecialist.com.au](http://boqspecialist.com.au)

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