



# Asset Finance Terms

(Edition 6.0)

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## Key terms of your asset finance arrangements

### 1. About these key terms

The aim of these key terms is to help you understand the key terms of your asset finance arrangements with ANZ. Please note it does not contain all of the terms and conditions of your arrangements with ANZ.

Additionally, it is not a substitute for, and does not form part of, your contract with ANZ. When you see a boxed number like this, **1**, it guides you to a numbered clause of the Asset Finance Terms. You can read the clause to obtain further information.

### 2. Enter into asset finance transactions

You can ask ANZ to provide you with an asset finance transaction to assist with purchase or rental of goods, or for another permitted purpose. There are four types of transaction: chattel mortgage, finance lease, hire purchase and rental. If ANZ accepts your request, the Asset Finance Terms, together with the transaction schedule for your transaction, and any applicable special terms, set out the terms that apply to your transaction. **4 5 23**

### 3. Buy and accept delivery of goods

You must obtain title to the goods. For a finance lease, hire purchase or rental, you do this as agent for ANZ, who will become the owner. You are responsible for delivery and installation of the goods. ANZ's responsibility is only to pay the goods supplier. You bear all risks relating to the goods, except for any warranty that the law requires ANZ to give. **10 11 44**

You can ask ANZ to pay the initial price for the goods in multiple instalments (progressive purchase **25**), or buy goods from you instead of a third party supplier (sale and lease back **26**).

### 4. Pay your instalments or repayments

You must pay ANZ the agreed instalments or repayments on the dates agreed. For a finance lease, you must also pay the agreed residual value of the goods at expiry; in certain cases, ANZ will refund you an amount out of net proceeds of sale of the goods. A termination amount may be payable on expiry or early termination. Details of goods, amounts, dates, and how to pay, are in the transaction schedule, the Asset Finance Terms, and any special terms that apply. **8 9**

### 5. Early termination

Early termination, where permitted or required, may lead to additional costs. These costs can be significant; you can ask ANZ for an estimate. **7 8 22**

### 6. Fees, costs and charges

Other amounts that you may be required to pay ANZ include: fees, charges, goods and services tax, overdue interest, and (unless arising from ANZ's negligence, fraud or wilful default) costs and indemnity amounts. ANZ can set off amounts it owes to you against amounts that you owe ANZ. **8 45**

### 7. Use, care and return of goods

You must care for the goods, replace parts where necessary, and have the goods serviced and repaired. If you are required to return goods to ANZ at expiry, they must be in the agreed return condition. You must keep the goods insured for full replacement value, with ANZ's interest noted on the policy. Goods must be kept in Australia, and under your control at the agreed premises. ANZ may inspect the goods with reasonable notice, or in urgent circumstances. **13 14 15 22 24**

You must not sell, give another person a lease of, or dispose of the goods, without ANZ's consent (to which further conditions will apply). ANZ has a security interest in the goods, and may register its interest on the Personal Property Securities Register. You must not use or store goods in a way that is unlawful, not covered by insurance, dangerous or riskier than normal use. You must comply with environmental laws. **11 12 13 32**

If goods are lost or destroyed, you must tell ANZ immediately. You may need to pay ANZ a casualty amount, and the transaction may terminate to the extent of the affected goods. **20**

### 8. Ensure no default occurs

You must ensure that no default occurs. A default will occur if an amount you must pay is not paid within 2 business days of its due date. **18**

Default will also occur if you, a guarantor or security provider give ANZ information that is materially incorrect or misleading; fail to provide ANZ with required financial information; fail to maintain required insurance; are involved in illegal activities as notified by an authority; are insolvent; have your material assets repossessed; lose your legal capacity; change your legal status without consent; or materially change your ownership or control, without ANZ's consent. **18**

Default will also occur if you use Transaction funds for a non-approved purpose; use goods in breach of the terms; locate goods in a place that is not permitted; or fail to maintain authorisations needed for your business or operating the goods. A default for one of your transactions, will be a default for all your transactions. **18**

In some circumstances, a 30 day remedy period and a material impact test will apply, before ANZ can take action. [18](#)

If you are in default, ANZ may terminate your transaction and use its enforcement powers. You must also pay the termination amount. For a cross-collateralised transaction, the goods are also security for other amounts agreed by you. [19](#) [27](#) [28](#)

**Where can you find out more?**

Your contract has been provided to you and you should read it before signing anything. Please ask your ANZ banker or your accountant or lawyer about anything you do not understand.

## 1. These Asset Finance Terms

From time to time ANZ may agree to enter into Transactions with you. These Asset Finance Terms set out terms and conditions that apply to each Transaction. They are part of your agreement with ANZ. They should be read together with the Transaction Schedule and any Special Terms that apply to a Transaction. If there is any inconsistency between terms for a Transaction, the terms of the Transaction Schedule for that Transaction prevail, then the Special Terms (if any) and then these Asset Finance Terms, to the extent that they are inconsistent.

## 2. Definitions and interpretation

Some terms used in these Asset Finance Terms have special meanings.

### 2.1 What you means

(a) **You** means the person (including a corporation) who enters into the Transaction.

(b) If there is more than one of you, it means each of you individually, and each group of two or more of you. This means that each of your obligations in connection with the Transaction is binding on each of you individually, and each group of two or more of you.

(c) If you are a trustee of a trust, it means you personally and in your capacity as trustee of that trust and, if the context requires, that trust.

(d) If you are a partner of a partnership, it means you personally and in your capacity as a partner of the partnership and, if the context requires, that partnership.

(e) It includes your executor, administrator, successor, and a person to whom you transfer your rights under the Transaction with ANZ's Consent.

### 2.2 What ANZ means

(a) **ANZ** means:

(i) the person identified as "ANZ" in the Transaction Schedule or, if no person is identified in that way, Australia and New Zealand Banking Group Limited (ACN 005 357 522);

(ii) any successor of the person described in sub-paragraph (i); and

(iii) any person to which rights or obligations of the person described in sub-paragraph (i), in connection with a Transaction Document, have been transferred (in any manner) in accordance with clause 45.12(a) or with your consent.

(b) ANZ's Powers may be exercised by officers or staff of ANZ or people ANZ authorises (even retrospectively) to act for ANZ.

### 2.3 What Guarantor means

(a) **Guarantor** means each person (including a corporation) who agrees to be a Guarantor of the Transaction.

(b) If there is more than one, it means each of them individually, and each group of two or more of them. This means that each of a guarantor's obligations in connection with the Transaction is binding on each Guarantor individually, and each group of two or more of them.

(c) If a Guarantor is a trustee of a trust, it means the Guarantor personally and in its capacity as trustee of that trust and, if the context requires, that trust.

(d) If a Guarantor is a partner of a partnership, it means the Guarantor personally and in its capacity as a partner of the partnership and, if the context requires, that partnership.

(e) It includes an executor, administrator, successor, and a person to whom a Guarantor transfers rights under the Transaction with ANZ's Consent.

### 2.4 Other definitions

**Additional Term** means, in relation to a Transaction that continues (in accordance with the Transaction Documents) following expiry of the original Term, the period commencing on the day after the original Term and ending in accordance with clause 7.

**Adjusted Date** has the meaning given in clause 8.2(a).

**Ancillary Collateral** means any property subject to an Ancillary Security Interest.

**Ancillary Security Document** means any document under which an Ancillary Security Interest is granted or created.

**Ancillary Security Interest** means any Security Interest, Guarantee or other document or agreement at any time created or entered into as security for any Secured Money.

**Attorney** means any attorney appointed under a Transaction Document.

**Australian Dollars** means the lawful currency of Australia.

**Authorisation** means a consent, authorisation, Licence, registration, exemption or other recognition by a Government Agency (including a deemed consent because the Government Agency does not respond to something within a prescribed period after being notified of it).

**Authorised Representative** means:



(a) in respect of you or another Obligor (other than a Guarantor), any director or secretary, or any person from time to time nominated as an Authorised Representative by you or that other Obligor (other than a Guarantor) by a notice to ANZ (in the form required by ANZ) and which includes certified copies of signatures and dates of birth of all new persons so appointed and in respect of whom:

(i) the identity of that person has been verified to ANZ's satisfaction in order to manage anti-money laundering, counter-terrorism financing or economic and trade sanctions risk or to comply with any Laws in Australia or any other country; and

(ii) ANZ has not received notice of revocation of the appointment; and

(b) in respect of ANZ or a Beneficiary, any person whose title or acting title includes the word *Chief, Counsel, Executive, Head, Manager, Director or President* or cognate expressions, or any secretary, director or lawyer or a person notified to you as being ANZ's Authorised Representative for the purposes of a Transaction Document.

**Banking Code of Practice** means the relevant version of the industry code published from time to time by the Australian Banking Association and adopted by ANZ.

**Base Rate** means the floating rate specified as such in the Transaction Schedule, as set and reset by ANZ in accordance with clause 8.3. However, if you and ANZ agree in writing to fix the rate for the Transaction for a period, **Base Rate** means (in respect of that period) the rate which, when added to the Margin, equals that fixed rate.

**BBR** means, for a period:

(a) the applicable Screen Rate; or

(b) if:

(i) no Screen Rate is available for a term equivalent to that period; or

(ii) the basis on which the agreed Screen Rate page is calculated or displayed is changed and in ANZ's opinion it ceases to reflect ANZ's cost of funding to the same extent as at the Commencement Date, and no new relevant page is specified under the definition of "Screen Rate",

then in either case, BBR will be the rate determined by ANZ to be the arithmetic mean of the buying rates quoted to ANZ by three Reference Banks, at or about 10.30 am (Melbourne time) on the Quotation Day of that period. The buying rates must be for bills of exchange accepted by leading Australian banks which have a term equivalent to the period. Rates will be expressed as a yield percent per annum to maturity and, if necessary, will be rounded up to the nearest fourth decimal place.

**Beneficiary** means:

(a) ANZ and its Related Entities and any other person for which ANZ is acting as agent or trustee under a Transaction Document; and

(b) any other person which you and ANZ agree is to be a Beneficiary for the purposes of the Transaction,

and any successor of any of the above.

**Break Cost** includes any amount of loss or reasonable cost, that ANZ determines it incurs as a result of:

(a) termination of the Transaction in whole or part before the expiry of its then applicable Term (whether termination occurs before or after the Commencement Date);

(b) payment of any amount under the Transaction to ANZ prior to the date for payment;

(c) the Termination Amount or Residual Value becoming payable for any reason;

(d) the termination or variation of any funding, swap or hedging arrangement actually or notionally acquired or contracted by ANZ or a Beneficiary to fund or maintain the Transaction; or

(e) the return, surrender or delivery of the Goods to ANZ prior to, or after, the agreed date.

**Business Day** means a day, other than a Saturday or Sunday, on which banks are open for general business in both Sydney and Melbourne.

**Cape Town Convention** means, together, the official English language text of each of the Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters Specific to Aircraft Equipment each as opened for signature on 16 November 2001 at Cape Town, South Africa and brought into effect under the laws of the Commonwealth of Australia by the Implementing Legislation.

**Capitalisation Date** means any date identified as such in the Transaction Schedule.

**Casualty Amount** means the Termination Amount plus:

(a) if the Transaction is a Rental, the implicit residual value used in calculating the Instalments; and

(b) if the Transaction is a Finance Lease, the Residual Value.

**Casualty Event** means the loss of normal use of the Goods due to:

(a) loss or theft;

(b) compulsory acquisition, seizure, confiscation or surrender; or

(c) damage, destruction or disrepair where, in the opinion of ANZ or an insurer, their repair is impractical or uneconomic.

**Change in Law** has the meaning given in clause 21.3.

**Chattel Mortgage** means a Transaction identified as such in its Transaction Schedule.

**Chattel Paper** has the same meaning as in the PPSA.

**Claim** means any claim, action, suit or proceeding (including in tort, contract or equity or under statute), liability, loss, damage, reasonable costs or expense (including any legal cost or expense on a full indemnity basis), Tax or duty, of any kind.

**Collateral** means the property subject to a Security Interest granted under these Asset Finance Terms.

**Commencement Date** means:

(a) for a Transaction to which Progressive Purchase applies, the date on which the final instalment of the Goods' Purchase Price is paid by ANZ for all of the Goods described in the Transaction Schedule; and

(b) for any other Transaction, the date on which ANZ accepts your offer to enter into the Transaction in accordance with clause 4.2.

This definition applies despite any proposed commencement date specified in the Transaction Schedule.

**Completion** has the meaning given in clause 25.1(a).

**Condition** means, with respect to the Goods, their condition, quality, value, durability and safety, and their compliance with any applicable specifications, documentation or warranties. It includes compliance with the Return Condition.

**Consent** means ANZ's written consent to something, given before that thing happens.

**Consumer Credit Law** means the *National Consumer Credit Protection Act 2009* (Cth) which includes the National Credit Code as Schedule 1 to the Act.

**Controller** means a Receiver or a person appointed as ANZ's agent under a Transaction Document.

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

**Costs** has the meaning given in clause 8.7(a).

**Cross-collateralised Transaction** means a Transaction to which cross-collateralisation applies:

(a) as identified in its Transaction Schedule; or

(b) as provided by any Special Terms applying to that Transaction.

**Customer** means you, the person who enters into the Transaction.

**Dealing** has the meaning given in clause 31.1.

**Discount Rate** means the rate specified in the Transaction Schedule or, if no rate is specified, the Implicit Rate less 3% per annum.

**Drawdown Amount** means an amount agreed to be paid or funded by ANZ on a corresponding Drawdown Date.

**Drawdown Date** means any date identified as such in the Transaction Schedule, or any date on which funds are, or are proposed to be, disbursed or funded by ANZ in accordance with the Transaction Documents.

**Environmental Law** means a provision of a law or a law, which relates to an aspect of planning, the environment, heritage, health or safety.

**Event of Default** means an event or circumstance defined as such in these Asset Finance Terms or another Transaction Document.

**Excess Usage Fee** means the fee for use of the Goods in excess of the Usage Allowance specified in the Transaction Schedule.

**Excluded Tax** means a Tax on, or calculated by reference to, overall net income.

A **Failure to Remedy** applies in respect of an event, if ANZ has given written notice to the Borrower or other Obligor (as the case may be) to remedy the event, and the Borrower or other Obligor has not remedied it within 30 days of receipt of that notice.

**Finance** means financial accommodation of any kind (for example, arranging or providing a loan, lease, Guarantee or trade finance, entering into a swap or other derivative, equipment lease or hire purchase, deferring a purchase price, or subscribing for a preference share).

**Finance Lease** means a Transaction identified as such in its Transaction Schedule.

A **floating rate** applies to a Transaction if a Base Rate and a Margin are specified in the Transaction Schedule or if you agree with ANZ that a floating rate applies to the Transaction.

**Goods** means the good(s) specified in the Transaction Schedule, all accessions as defined in the PPSA and (if the context permits) each component, accessory, spare or appurtenance in connection with the good(s), any replaced part, and any part of the above. If the Transaction involves a payment by ANZ in connection with Goods, it includes an interest in connection with those Goods, such as rights under a purchase agreement.

If a Drawdown Amount is used to acquire rights in any other goods, ANZ may (but is not obliged to) deem those acquired goods to be Goods for all or any purposes under the Transaction Documents.

**Government Agency** means a government, minister, department, public authority or officeholder, local authority, court or tribunal,

regulatory body (including a self-regulating body such as a stock exchange), or any officer, or agent of them.

**GST** means any tax under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (the **GST Law**) and any similar tax under any Law of the Commonwealth of Australia or any State or Territory.

**GST Amount** has the meaning given in clause 8.11(a).

**Guarantee** means a guarantee, indemnity, letter of credit, bond, legally binding letter of comfort or other obligation (however described) to:

(a) pay, provide funds for the payment or discharge of, indemnify against the consequences of default in the payment of, or otherwise be responsible for any obligation or indebtedness of another person; or

(b) be liable to purchase or pay for any property as a result of, or indemnify against the consequences of, or otherwise be responsible for, the insolvency or financial condition of another person.

**Guaranteed Money** has the meaning given in clause 46.2(b).

**Guaranteed Transaction** has the meaning given in clause 46.2(a).

**Guarantor** has the meaning given in clause 2.3.

**Hire Purchase** means a Transaction identified as such in its Transaction Schedule.

**Implementing Legislation** means the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013* (Cth) and *International Interests in Mobile Equipment (Cape Town Convention) (Consequential Amendments) Act 2013* (Cth).

**Implicit Rate** means the rate calculated by ANZ, acting reasonably, of pre-tax return of profit that ANZ would have received if the Transaction had not terminated early, all Instalments and other payments had been paid on their respective due dates and (if the Transaction is a Finance Lease or a Rental) ANZ had received the Goods back at the expiry of the Term in their required Condition.

**Indemnified Person** has the meaning given in clause 8.9(a)(i).

**Insolvency Event** means, in respect of you or another Obligor:

(a) an application or resolution for the winding up of or the appointment of a provisional liquidator, receiver or administrator to the corporation is made (except for reconstruction in terms ANZ Consents to);

(b) the corporation is, or is presumed to be, insolvent or commits any act which, if committed by an individual, would be an act of

bankruptcy, is taken to have failed to comply with a statutory demand, or any ground for winding up occurs;

(c) the individual is bankrupt or commits an act of bankruptcy, or the individual dies;

(d) you or another Obligor are, or you or another Obligor admits to being, unable to pay your or that other Obligor's debts as they fall due; or

(e) a proposal is made or a step is taken for a compromise, moratorium, composition or arrangement (including a deed of company arrangement or scheme of arrangement) with or assignment to your or another Obligor's creditors, or to reschedule with creditors your or another Obligor's indebtedness, or you or another Obligor propose to suspend or cease trading or to stop payments.

**Instalment** means, in respect of the Transaction:

(a) if a floating rate applies to the Transaction, the Instalments calculated by ANZ in accordance with clause 8.3(b); and

(b) if a floating rate does not apply to the Transaction, the amounts specified as Instalments in the Transaction Schedule for that Transaction,

and each other amount (including any Progressive Purchase Instalments) scheduled to be paid by you under the Transaction Documents.

**Instalment Date** means each Instalment payment date specified in or determined in accordance with the Transaction Schedule and each other date on which a payment is scheduled to be paid by you under the Transaction Documents.

**Instalment Period** means the period from and including an Instalment Date to but excluding the next Instalment Date. The first Instalment Period commences on the Commencement Date.

**Insurance** means any insurance cover required to be entered into by you under clause 15.

**Law** means an act of parliament or something pursuant to it (*for example, a regulation, by-law, code, proclamation or order-in-council*), or a requirement of an Authorisation or of a Government Agency. It includes any amendment or replacement, and regulations and other enactments under, a Law.

**Legally Incapacitated** means bankrupt, insolvent under administration, mentally disabled or ill, imprisoned, dead, in liquidation, administration or receivership, de-registered, or otherwise without full legal capacity.

**Licence** means a right to use, exploit, deal with or do things with property.

**Liquidation** includes receivership or other appointment of a controller, deregistration,

compromise, deed of arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, death or bankruptcy.

**Location** means the Premises and, if different to the Premises, the location where the Goods are located (whether or not ANZ has Consented to the Goods being at that location).

**Loss** means any claim, loss, damages, indebtedness, diminution in value, liability or obligation or any reasonable cost or expense.

**Margin** means the margin specified in the Transaction Schedule.

**Market Disruption Event** means any event or circumstance specified as such in clause 8.10(d).

**Market Value** means the value of the Goods as determined by a person nominated by ANZ (acting reasonably) as being experienced in valuing goods of a type which are similar to the Goods.

**Material Adverse Effect** means a material adverse effect on:

- (a) the value of the Goods;
- (b) your or another Obligor's business, operation, property and condition (financial or otherwise);
- (c) your ability or the ability of any other Obligor to perform the obligations under the Transaction Documents;
- (d) the effectiveness or priority of any Security Interest granted by you or another Obligor under any Transaction Documents; or
- (e) the validity or enforceability of the whole or any material part of any Transaction Document or any material rights or remedies of any Beneficiary under the Transaction Documents.

**Net Sale Proceeds** means the amount (including any GST) that ANZ receives from selling or otherwise Remarketing the Goods, less all Remarketing Costs. If the amount received equals or is less than the Remarketing Costs (including any GST), the Net Sale Proceeds will be deemed to equal zero.

**Obligor** means you and (if applicable) each person who is also liable to pay or Guarantees or grants an Ancillary Security Interest for some or all of the Secured Money under the Transaction (for example, it includes each Guarantor).

**Outstanding Amount** means, for a Transaction, the total outstanding principal amount under that Transaction.

**Overdue Rate** means, on any day, 2% per annum above the Implicit Rate of the Transaction, or the maximum amount permitted by Law if lower.

**Parts** means replacement parts, accessories, enhancements, updates and attachments.

**Personal Information** means 'personal information' as defined in the *Privacy Act 1988* (Cth).

**Potential Event of Default** means an event or circumstance which, through the lapse of time or giving of notice, is reasonably likely to become an Event of Default.

**Power** means a power, right, authority, discretion or remedy which is conferred on ANZ, or any Beneficiary, Controller or Attorney, by these Asset Finance Terms, by any other Transaction Document or by Law.

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

**Premises** means the premises identified as such in the Transaction Schedule.

**Proceeds** has the same meaning as in the PPSA.

**Progressive Purchase** means a Transaction to which Progressive Purchase applies as indicated in its Transaction Schedule. If the Drawdown Amount set out in a Transaction Schedule is not sufficient to complete the payment of the Purchase Price and ANZ pays more than the Drawdown Amount in connection with the purchase of the Goods, ANZ may deem that Progressive Purchase applies to the Transaction.

**Progressive Purchase Instalments** means, for a Transaction to which Progressive Purchase applies, the instalments calculated in accordance with clause 25.2.

**Progressive Purchase Instalment Dates** means the Instalment Dates for Progressive Purchase Instalments.

**Progressive Purchase Rate** means, if Progressive Purchase applies to a Transaction, the rate specified in the Transaction Schedule.

**Purchase Date** means the date on which ANZ pays the Purchase Price for the Goods.

**Purchase Price** means, for Goods, the purchase price of the Goods specified in the Transaction Schedule for those Goods, or such other price as ANZ agrees to.

**Quotation Day** means, in relation to any period for which any rate is to be determined, the first day of that period.

**Receiver** means a receiver or receiver and manager.

**Records** has the meaning given in clause 44.2(a).

A **Recovery Risk** applies in respect of an event, if ANZ, acting fairly and reasonably, considers that, because of the event, ANZ is unlikely to be able to recover all amounts owed to it in connection with a Transaction, the Goods or a

Transaction Document by the Borrower or another Obligor.

**Reference Banks** means a bank or financial institution selected as such by ANZ from time to time.

**Related Entity** has the meaning given in the Corporations Act, but on the basis that:

(a) subsidiary has the meaning in these Asset Finance Terms; and

(b) body corporate includes any entity, trust or partnership.

**Relevant Interbank Market** means the Australian bank bill market.

**Relevant Person** has the meaning given in clause 44.1.

**Remarket** means (in respect of the Goods) re-rent, re-lease, sell, dispose of, or otherwise transact or redeploy for commercial gain.

**Remarketing Costs** means all Loss (including any GST) that ANZ reasonably incurs in connection with the recovery, sale or actual or attempted Remarketing of Goods (*for example, recovering, cleaning, repairing, refurbishing, storing, protecting, insuring, transporting and advertising, and any commission*).

**Rental** means a Transaction identified as such in its Transaction Schedule.

**Reset Date** has the meaning given in clause 8.3(b).

**Residual Value** means, for Goods subject to a Transaction, the amount applying to those Goods as described in the Transaction Schedule. If the Transaction terminates in relation to only some of the Goods to which that amount applies, **Residual Value** means a proportion of that amount, being the proportion that the Purchase Price for the terminating Goods bears to the Purchase Price of all Goods.

**Return** has the meaning given in clause 22.2(b).

**Return Condition** means any provision in a Transaction Document referred to as a "return condition" or requiring the Goods to be in a particular condition or to meet a particular criterion. In the event of inconsistency between such provisions, the provisions will prevail in the following order:

(a) the Transaction Schedule;

(b) clause 24.1;

(c) clause 22.2(b); and

(d) any other provision of a Transaction Document.

**Return Location** means for an item of Goods:

(a) the location most recently notified to you by ANZ (acting reasonably) or Consented to by ANZ for this purpose; or

(b) if none, the return location (if any) specified in the Transaction Schedule for that item.

**Sale and Lease Back** means a Transaction identified as such in its Transaction Schedule.

**Screen Rate** means in relation to BBR, the average bid rate displayed on the Reuters screen BBSY page for a term equivalent to the relevant period.

If the agreed page is replaced or service ceases to be available, or the basis on which that rate is calculated or displayed is changed and in ANZ's opinion it ceases to reflect ANZ's cost of funding to the same extent as at the Commencement Date of the Transaction, ANZ may specify another page or service displaying the appropriate rate.

**Secured Money** means:

(a) **(not a Cross-collateralised Transaction)** for a Transaction that is not a Cross-collateralised Transaction, all money which you or another Obligor (whether alone or not) are or at any time may become actually or contingently liable to pay to or for the account of ANZ or another Beneficiary (whether alone or not) for any reason whatever under or in connection with a Transaction Document for that Transaction, whether or not currently contemplated.

It includes money by way of principal, interest, fees, costs, Guarantee, indemnity, charges, duties or expenses or payment of liquidated or unliquidated damages under or in relation to a Transaction Document, or as a result of a breach of or default under or in connection with, a Transaction Document.

It includes money that you or another Obligor would have been liable to pay but for your or that other Obligor's Liquidation, or some other reason; or

(b) **(Cross-collateralised Transaction)** for a Transaction that is a Cross-collateralised Transaction, all money which you or another Obligor (whether alone or not) are or at any time may become actually or contingently liable to pay to or for the account of ANZ or another Beneficiary (whether alone or not) for any reason whatever under or in connection with:

(i) a Transaction Document for that Transaction;

(ii) a Transaction Document for any other Transaction; and

(iii) any Finance or document in relation to the provision of Finance referred to in the cross-collateralisation section of the Transaction Schedule,

whether or not currently contemplated.

It includes money by way of principal, interest, fees, costs, Guarantee, indemnity, charges,

duties or expenses or payment of liquidated or unliquidated damages, or as a result of a breach of or default under any arrangement with ANZ.

It includes money that you or another Obligor would have been liable to pay but for your or that other Obligor's Liquidation, or some other reason.

If Special Terms apply to that Cross-collateralised Transaction, Secured Money also includes all money that the Special Terms provide:

(iv) to be "Secured Money" in respect of that Transaction (to the extent that the Special Terms so provide); or

(v) to be secured by that Transaction, the Goods under that Transaction, or the Proceeds of those Goods (to the extent that the Special Terms so provide).

*Note: The use of the term "Secured Money" in connection with a Transaction that is a Rental does not connote that the lease or bailment under the Rental secures payment or performance of an obligation.*

**Security Interest** means:

- (a) a "security interest" under the PPSA;
- (b) a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement, notice or arrangement having a similar effect;
- (c) any other arrangement (including preferential, trust or set-off arrangement) having a similar commercial effect as a grant of security; or
- (d) a guarantee or indemnity.

**Special Terms** means any terms or conditions that ANZ agrees with you apply to a Transaction, or which ANZ agrees with you are "Special Terms", other than these Asset Finance Terms or a Transaction Schedule (*for example, a letter of offer, a facility agreement, a set of standard terms or a right of entry document may also apply to the Transaction as Special Terms*).

**Sub-lease** means a lease, sub-lease, charter, hiring, bailment or other similar arrangement under which property can be used, managed or occupied.

**Sub-lease Right** means any right, power, authority or interest of yours under or in connection with any Sub-lease or Proceeds of it.

**Sub-lessee** means the person to which a Sub-lease is provided.

**Subsidiary** has the meaning given in the Corporations Act, but so that, as well:

(a) an entity's Subsidiaries include all entities (including trusts) whose profit or loss is required by current accounting practice to be

included in the consolidated annual statements of financial performance of that entity; and

(b) an entity will be a Subsidiary of another entity (including a trust) if it would have been a Subsidiary were that other entity a corporation (including under the paragraph above).

**Tax** includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a Government Agency, and any related interest, penalty, charge, fee or other amount. It excludes Excluded Taxes.

**Tax Act** means the income tax legislation of Australia, including the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

**Term** means the period identified as such in the Transaction Schedule or, if none is specified, the period from the Commencement Date to the last Instalment Date. If that period changes due to early termination, extension or automatic continuation under a Transaction Document, then, where the context requires, **Term** refers to the changed period.

**Termination Amount** means, on a date for payment of the Termination Amount under a Transaction, the sum of the following (without double counting):

- (a) if the Transaction is a Chattel Mortgage, the Outstanding Amount;
- (b) for all Transactions other than a Chattel Mortgage, the present value (determined by ANZ by discounting at the Discount Rate) of the amount (excluding GST and any other Taxes) of all Instalments and Progressive Purchase Instalments payable but not yet accrued, plus GST and any other Taxes payable in respect of those amounts;
- (c) for all Transactions, all Instalments and Progressive Purchase Instalments and other amounts that have become due but remain unpaid;
- (d) if Progressive Purchase applies to the Transaction, to the extent not included in an amount above:
  - (i) the sum of all Drawdown Amounts, Purchase Price or other amounts paid by ANZ in connection with the Goods; and
  - (ii) where ANZ, acting reasonably, elects to complete the purchase of the Goods or retain them and then Remarket them, the amount (if any) by which ANZ's aggregate Goods acquisition and Remarketing Costs, expenses and Taxes exceed the amount that ANZ actually receives as a result of the Remarketing;
- (e) interest (if any) calculated at the Overdue Rate on all amounts that have become due but remain unpaid; and
- (f) the amount of any Break Cost.

The **Transaction** means the contract arising when ANZ accepts your offer, comprising:

- (a) the Transaction Schedule;
- (b) these Asset Finance Terms; and
- (c) any Special Terms.

**Transaction Document** means, for a Transaction, these Asset Finance Terms, the Transaction Schedule, any Special Terms, any Ancillary Security Document and any other document which is entered into or provided under or in connection with, or amends or novates, any of them, or which ANZ agrees with you is a Transaction Document for the purposes of that Transaction.

**Transaction Schedule** means any document that refers to these Asset Finance Terms and to your offer to enter into or vary a transaction in respect of the goods described in that document.

**Urgent Circumstances** has the meaning given in clause 14.1.

**Usage Allowance** means the hour or kilometre allowance for Goods specified in the Transaction Schedule.

**Variation** means a variation to an existing Transaction between you and ANZ. The Variation is identified as a Variation in its Transaction Schedule.

## 2.5 Interpretation

In the Asset Finance Terms and any Transaction Schedule:

- (a) headings are included for easy reference and are not to be used in interpretation;
- (b) the meaning of words is not limited by specific examples introduced by *including*, or *for example*, or similar expressions;
- (c) singular includes plural and vice versa;
- (d) if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) references to writing include any means of producing words and figures in a tangible and permanently visible form;
- (f) reference to a person, partnership, association, corporation, trust or other entity includes their successors and permitted transferees;
- (g) reference to something (*for example, the Goods*) includes part of it;
- (h) references to *dollars* or *\$* means Australian Dollars, unless the context clearly requires otherwise;
- (i) reference to an agreement includes a Security Interest, Guarantee, deed or other

arrangement (even if not in writing), and any amendment, supplement, replacement or novation of it, except where prohibited by the Transaction;

- (j) a Casualty Event or Event of Default *subsists* until it has been waived by ANZ in writing;
- (k) amounts and obligations will still be taken to be owed and ANZ's Powers will be fully enforceable despite you or any other relevant person becoming Legally Incapacitated or (as far as the Law allows) any moratorium;
- (l) if any part of the Transaction is not legally enforceable in a relevant place that part will be ignored in that place, but in all other respects the Transaction has full effect;
- (m) nothing in the Transaction reduces any Powers ANZ has from other sources;
- (n) ANZ's Powers and your obligations which, by their nature, are continuing do not stop at the expiry or termination of the Transaction;
- (o) if you agree not to do something, that also means you must not agree to it happening, and you must use your best endeavours to make sure no-one else does it and that it does not otherwise occur; and
- (p) the fact that these Asset Finance Terms or other Transaction Documents were drafted by or for ANZ does not mean that they must be interpreted against ANZ's interests.

## 3. Your own advice

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- (a) You will obtain your own advice as to the effect of a Transaction on your financial, accounting, taxation and legal position and the treatment of a Transaction for accounting, taxation and legal purposes.
- (b) You will not rely on any information that ANZ or any Beneficiary may have given you or the terms of any Transaction Document (such as the name of a Transaction) in determining the correct treatment of a Transaction.
- (c) Use of any expression (including "Finance Lease", "Rental", "floating rate" or "fixed rate") in a Transaction Document does not imply any representation by ANZ as to the treatment of any Transaction contemplated in any Transaction Document.

## 4. How a Transaction is created

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### 4.1 How you make an offer to enter into a Transaction

If ANZ receives a Transaction Schedule signed by you or your Authorised Representative, that will be an irrevocable offer by you to enter into the Transaction set out in the Transaction

Schedule on the terms and conditions set out in the Transaction Schedule, these Asset Finance Terms and any Special Terms.

#### **4.2 How ANZ accepts your offer**

ANZ may accept or decline your offer. ANZ may accept your offer by notifying you that ANZ has signed the Transaction Schedule or by making a payment as contemplated by it. The Transaction is binding on you when one of those things first occurs, even if:

- (a) another person named or described in the Transaction Schedule never signs it or another Transaction Document; or
- (b) it or another Transaction Document is not binding on another person who does sign it.

### **5. Types of Transactions**

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#### **5.1 Chattel Mortgage**

If ANZ accepts your offer to enter into a Transaction that is a Chattel Mortgage, ANZ agrees to lend you the Drawdown Amount for the purpose of enabling you to, and you agree to, buy the Goods, subject to and in accordance with the Transaction Documents.

#### **5.2 Finance Lease**

If ANZ accepts your offer to enter into a Transaction that is a Finance Lease, ANZ agrees to buy the Goods and (on completion of the purchase) lease the Goods to you, and you agree to take a lease of them from ANZ, subject to and in accordance with the Transaction Documents.

#### **5.3 Hire Purchase**

If ANZ accepts your offer to enter into a Transaction that is a Hire Purchase, ANZ agrees to buy the Goods and (on completion of the purchase) hire the Goods to you, and you agree to take a hire of them from ANZ, subject to and in accordance with the Transaction Documents.

#### **5.4 Rental**

If ANZ accepts your offer to enter into a Transaction that is a Rental, ANZ agrees to buy the Goods and (on completion of the purchase) rent the Goods to you, and you agree to take a rental of them from ANZ, subject to and in accordance with the Transaction Documents.

### **6. How a Transaction is varied**

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This clause applies if a Transaction Schedule indicates that it is a Variation to an existing Transaction.

#### **6.1 Variation offer**

If ANZ receives a Transaction Schedule signed by you or your Authorised Representative that indicates that it is a Variation to an existing Transaction, that will be an irrevocable offer by you to vary the existing Transaction on the terms set out in that Transaction Schedule.

#### **6.2 How ANZ accepts your offer**

ANZ may accept or decline your offer. ANZ may accept your offer by notifying you that ANZ has signed the Transaction Schedule or by acting on a variation as contemplated by it. The Transaction is binding on you when one of those things first occurs, even if:

- (a) another person named or described in the Transaction Schedule never signs it or another Transaction Document; or
- (b) it or another Transaction Document is not binding on another person who does sign it.

#### **6.3 Variation**

If ANZ accepts your offer, from the date of ANZ's acceptance of the offer, the existing Transaction will be varied as set out in that Transaction Schedule and:

- (a) the terms and conditions set out in that Transaction Schedule will apply to the Transaction; and
- (b) to the extent that they are inconsistent with, or superseded by, that Transaction Schedule, the terms and conditions applying to the Transaction under its existing Transaction Documents will be replaced.

All other terms and conditions that apply to the existing Transaction will remain unaltered and in full force and effect (*for example, a Transaction may be varied to extend the Term or to change the Instalments and Instalments Dates that apply to that Transaction. The other terms will continue to apply unaltered*).

### **7. Term**

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(a) Unless the Term is extended or ended early in accordance with the Transaction Documents, the Transaction commences on the Commencement Date and ends on the last day of the original Term.

(b) If no Event of Default subsists, a Transaction that is a Rental will automatically continue after the expiry of the original Term on the terms and conditions of the Transaction Documents unless you:

- (i) notify ANZ in writing not less than 90 days before the last day of the original Term that you intend to return the Goods on the last day of the original Term; and
- (ii) return the Goods to ANZ on that date in accordance with the provisions of clause 22.2.



(c) If the Term is extended under clause 7(b), the Transaction will continue until the earliest date on which all of the following apply:

(i) you have notified ANZ in writing of your intention to return the Goods;

(ii) at least 90 days have elapsed from the date ANZ receives your notice; and

(iii) you have returned the Goods to ANZ in accordance with the provisions of clause 22.2.

(d) You must pay ANZ an amount equal to one day's proportion of the largest Instalment that applied to the Transaction during the original Term (together with any GST and any other applicable Taxes) for each day of the Additional Term.

(e) ANZ may give you notice ending the Additional Term. The Additional Term will expire on any date that ANZ specifies by written notice to you, provided that the specified date falls:

(i) on or after expiry of the original Term; and

(ii) at least 30 days after the date on which ANZ sends its notice.

## **8. Your payment obligations**

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### **8.1 Currency of payments**

All payments under the Transaction Documents must be in Australian Dollars unless ANZ Consents.

### **8.2 Payment to be made on Business Day**

(a) If a payment under a Transaction would (but for this provision) fall due on a date that is not a Business Day, that payment is due instead on the next occurring Business Day (the **Adjusted Date**).

(b) If that payment is a Progressive Purchase Instalment, then the Progressive Purchase Instalment Date or Capitalisation Date (as applicable) for that Progressive Purchase Instalment will be the Adjusted Date.

### **8.3 Instalments**

(a) You must pay the Instalments on the Instalment Dates.

(b) If a floating rate applies to a Transaction:

(i) The rate applicable to the Transaction will be the sum of the Base Rate and the Margin.

(ii) The Instalments set out in the Transaction Schedule are indicative only. They have been calculated by reference to the Indicative Base Rate set out in the Transaction Schedule, rather than the actual Base Rate (because ANZ does not know what the actual

Base Rate will be for the relevant Instalment Period until the Reset Date referred to below).

(iii) The Instalment Periods will correspond approximately to the number of days indicated in the Base Rate specified in the Transaction Schedule. However, the first or last Instalment Period may be shorter, depending on the Commencement Date and the Term.

(iv) The Base Rate for each Instalment Period will be set by ANZ on or around the Commencement Date and will be reset by ANZ on or around the first day of each successive Instalment Period (each such set or reset date being a **Reset Date**).

(v) The Base Rate is applied to the Transaction based on a 30 day month and a 360 day year.

(vi) The Instalments will change if the Base Rate does not equal the Indicative Base Rate set out in the Transaction Schedule on any Reset Date. They may increase or decrease.

(vii) If the Base Rate does not equal the Indicative Base Rate on a Reset Date, ANZ will adjust the Instalments using the same basis of calculation as the indicative Instalments set out in the Transaction Schedule, but applying the actual Base Rate in calculating the relevant Instalments. ANZ will give you a notice or invoice setting out the revised Instalments. You are bound by that notice or invoice (unless that notice or invoice is proved to be incorrect) and must pay the revised Instalments on the dates specified.

(c) If a floating rate does not apply to a Transaction, each Instalment will be as specified in the Transaction Schedule.

(d) You may, at any time during the Term of the Transaction to which a floating rate applies, ask ANZ to quote fixed Instalments for the balance of the Term of that Transaction. If ANZ accepts a Variation setting out fixed Instalments, those fixed Instalments will apply for the balance of that Term commencing on the next Instalment Date to occur after ANZ's acceptance. You may only change to fixed Instalments once during the Term of the Transaction and once this selection has been made you are not entitled to revert to a floating rate for that Transaction.

### **8.4 Progressive Purchase Instalments (Progressive Purchase only)**

If Progressive Purchase applies to your Transaction, you must also pay the Progressive Purchase Instalments on the Progressive Purchase Instalment Dates.

### **8.5 Residual Value (Finance Lease only)**

If the Transaction is a Finance Lease, you guarantee that ANZ will receive an amount (net

of Remarketing Costs and any GST that ANZ is required to remit) at least equal to the Residual Value (plus GST) from the Remarketing of the Goods within 12 months of the expiry or early termination of the Transaction.

Your guarantee is given by paying an amount equal to the Residual Value (plus GST) to ANZ in accordance with clause 22.4.

### **8.6 Excess Usage Fee (Rental only)**

If the Transaction is a Rental and the Transaction Schedule indicates that an Excess Usage Fee applies to the Goods, you must pay ANZ an Excess Usage Fee for each hour or kilometre of use of those Goods in excess of the Usage Allowance. The Excess Usage Fee is payable on expiry or earlier termination of the Transaction.

### **8.7 Fees and Costs**

(a) Subject to clauses 8.7(b) and 8.14, you must also pay to ANZ, when ANZ asks, all fees set out in the Transaction Schedule or that ANZ is otherwise entitled to charge you under a Transaction Document, and Taxes and Losses ANZ incurs, relating in any way to the Goods, the Transaction or any Transaction Document (**Costs**).

(b) If ANZ agrees to capitalise or fund any Costs in relation to a Transaction, those Costs (including any applicable interest) will form part of the amount of the Instalments and become due and payable on each corresponding Instalment Date, except where the Transaction is terminated early for any reason, in which case the balance of the Costs shall become due and payable on the day of early termination.

(c) Information on current standard fees, charges and rates is available on request.

(d) Fees and Costs paid are not refundable unless ANZ agrees otherwise in writing.

(e) Without limiting clause 8.7(a), this means you must pay:

(i) Taxes (except to the extent ANZ includes them in Instalments that you pay) and fines and penalties on them;

(ii) the amount of the cost or expense of any registration or other Authorisation required or permitted to be made or obtained under a Transaction Document;

(iii) Costs of preparing, varying or releasing the Transaction and any request for Consent, release or termination of a Transaction;

(iv) any Remarketing Costs that ANZ reasonably incurs in respect of the Remarketing or attempted Remarketing of Goods under clause 22.5(b), where ANZ is unable to sell the Goods within 12 months of the day of expiry or early termination of the Transaction, or where

the Net Sale Proceeds of the Goods equal zero; and

(v) Costs that ANZ reasonably incurs:

(A) exercising (or defending a challenge to) any right or Power, or in preparing to do so or in claiming or defending an entitlement to the Transaction;

(B) valuing or inspecting the Goods where ANZ is entitled to do so under the terms of a Transaction Document;

(C) relating to repossession (including Costs of finding the Goods, paying third parties who claim a lien, repairing damage caused by removal, transport and storage and security Costs);

(D) in connection with any enquiry of any Government Agency relating in any way to the Goods or the Transaction; or

(E) arranging for returned Goods to be put into the required Return Condition (if you have not already done this).

### **8.8 Amounts relating to termination or casualty**

If the Transaction expires or terminates, or a Casualty Event subsists in respect of Goods, you must also comply with your payment obligations under clauses 19 to 22 (as applicable).

### **8.9 Other indemnity amounts you must pay**

(a) (**Goods indemnities**) Subject to clause 8.14, you:

(i) release ANZ, each Attorney, each investigator appointed under clause 14.2, each Beneficiary and each of their respective agents and employees (each an **Indemnified Person**) from any Claim by you; and

(ii) must pay each Indemnified Person, when they ask, any Loss they incur (including as a result of any Claim by you),

arising out of or relating in any way to the Goods. This includes Losses or Claims relating to:

(iii) the acquisition, ownership, possession, location, use, operation, repair, maintenance, transportation or storage of the Goods;

(iv) damage to the environment;

(v) loss (including seizure or forfeiture) of or damage to the Goods or other property;

(vi) the death of or injury to any person; or

(vii) any breach of copyright, design, trademark, patent, other intellectual property or any Licence of intellectual property.

(b) (**General indemnities**) Subject to clause 8.14, you:

(i) release each Indemnified Person from any Claim by you; and

(ii) must pay each Indemnified Person, when they ask, any Loss they incur (including as a result of any Claim by you),

arising out of or relating to:

(iii) any act or omission of the Indemnified Person concerning you, the Goods or the Transaction (except where made dishonestly or in bad faith);

(iv) the exercise, attempted exercise or non-exercise of any Powers under the Transaction;

(v) the Indemnified Person being an owner or other person having an interest in connection with the Goods;

(vi) any Claim by a person (including you) because of reliance on the Indemnified Person's judgement or records;

(vii) any disclosure of information about you considered by the Indemnified Person to be in ANZ's interests; or

(viii) any Event of Default or its consequences (including early termination of the Transaction by ANZ).

**(c) (Early termination indemnities)**

(i) Subject to clause 8.14, if the Transaction (or part of it) is terminated early for any reason, you must pay ANZ any Loss or Claims ANZ incurs (as calculated by ANZ, acting reasonably), to the extent it is not otherwise paid under the terms of the Transaction Documents.

(ii) In calculating ANZ's Loss, ANZ may take into account things such as:

(A) the difference on the return on funds to ANZ had the Transaction continued (assuming no Event of Default) and the actual return ANZ expects to receive during the remainder of the original Term; or

(B) costs of ending or varying an agreement or arrangement for the funding or hedging (including on a portfolio basis) of ANZ's exposure.

*Note: If you are required to Return all or some of the Goods to ANZ, or all or part of the Termination Amount becomes payable to ANZ before the last day of the Term, the Break Cost you are required to pay may be significant, especially for a fixed rate Transaction. You can ask ANZ for an estimate of the Break Cost that will be payable if this occurs.*

(iii) ANZ's Loss may include, among other things, the amount of any commission and other charges paid by ANZ to any intermediary who arranged the Transaction or introduced you or any other Obligor to ANZ or ANZ to you or any other Obligor. Where all or part of such amount

is not directly attributable to a Transaction Document (for example, if it was calculated by reference to the dollar amount of all business referred to ANZ over a particular period), ANZ may use the pro-rata portion of that amount to calculate its Loss.

**(d) (Tax indemnities)**

(i) Subject to clause 8.14, you must pay ANZ, when ANZ asks, any Loss ANZ directly incurs in relation to the Transaction if any of the following happens:

(A) any Law or its interpretation or administration changes;

(B) you are, or another Obligor is, not a resident in Australia for tax purposes or are not registered for GST; or

(C) ANZ is not entitled to an input tax credit for any acquisition of Goods in connection with a Transaction, where ANZ reasonably considers it is entitled to that credit.

(ii) ANZ can change one or more of the remaining Instalments or their Instalment Dates to include these amounts.

**(e) (Currency indemnity)**

(i) Subject to clause 8.14, you must indemnify ANZ against any deficiency which arises whenever for any reason (including as a result of judgment or order):

(A) ANZ receives or recovers an amount in one currency (the **Payment Currency**) in respect of an amount denominated under a Transaction Document in another currency (the **Due Currency**); and

(B) the amount actually received or recovered by ANZ under its normal practice when it converts the Payment Currency into the Due Currency is less than the relevant amount in the Due Currency in respect of which the payment was received.

(ii) You must also indemnify ANZ against any deficiency which arises whenever for any reason (including as a result of judgment or order):

(A) the supplier invoice for the Goods is denominated in a currency other than Australian Dollars (**Invoice Currency**); and

(B) due to a change in the rate of exchange for Australian Dollars against the Invoice Currency, between the date of the invoice and the date of payment for the Goods, ANZ must pay an amount for GST to the supplier which is greater than the amount that would have been payable on the date of the invoice.

**8.10 Market disruption**

(a) This clause 8.10 applies if the Transaction has a Base Rate that is determined by reference, directly or indirectly, to a Screen

Rate or one or more rates quoted by one or more Reference Banks.

(b) Subject to clause 8.10(c), if the Base Rate is to be determined by reference to the Reference Banks, but a Reference Bank does not supply a quotation by the specified time on the Quotation Day, the applicable Base Rate will be determined on the basis of the quotations of the remaining Reference Banks.

(c) If ANZ determines that a Market Disruption Event occurs in relation to the Transaction for any Instalment Period, then ANZ will promptly notify you, and the rate applicable in respect of that Transaction for the Instalment Period will be the rate per annum which is the sum of:

(i) the Margin; and

(ii) the rate notified by ANZ as soon as practicable and in any event no later than the Business Day before the Instalment is due to be paid in respect of that Instalment Period, to be that which expresses as a percentage rate per annum the cost to ANZ of funding that Transaction from whatever source or sources ANZ may reasonably select.

ANZ will determine the rate under this clause 8.10(c) in good faith. The rate so notified, and any notification under clause 8.10(d), will be conclusive and binding on you and ANZ, unless that rate or notification is proved to be incorrect.

(d) Each of the event or circumstances set out in this clause 8.10(d) is a Market Disruption Event:

(i) at or about noon on the Quotation Day for the relevant Instalment Period (if a Screen Rate is applicable) the Screen Rate is not available or (if quotation by Reference Banks is applicable) none or only one of the Reference Banks supplies a rate to ANZ to determine the Base Rate for the relevant currency and period; or

(ii) in relation to a Transaction for which the Base Rate was to have been an interbank offered rate (such as LIBOR), before 5 pm in the relevant place (which, for LIBOR, will be London) on the Business Day after the Quotation Day for the relevant Instalment Period, ANZ advises you that, as a result of market circumstances not limited to ANZ, the cost to ANZ on the Quotation Day of obtaining matching deposits in the relevant interbank market expressed as a rate per cent per annum is or would be in excess of that interbank offered rate, or that ANZ is unable to obtain matching deposits in that market; or

(iii) in relation to a Transaction for which the Base Rate was to have been a bank bill swap rate, before 5 pm (Sydney time) on the Business Day after the Quotation Day for the relevant Instalment Period, ANZ notifies you that, as a result of market circumstances not limited to ANZ (whether or not those circumstances, or

their effect on ANZ's cost of funds, subsist on the date on which ANZ enters into the Transaction), the cost to ANZ of funding the Transaction exceeds the otherwise applicable Base Rate.

(e) If a Market Disruption Event occurs and ANZ or you so require, ANZ and you will enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate applicable to Instalments.

(f) Any alternative basis agreed pursuant to clause 8.10(e) will only apply with the prior consent of you and ANZ.

(g) You will keep confidential and not disclose to any other person any information described in clause 8.10(c) or 8.10(d). However, despite the foregoing, you or your officers or employees may disclose such information to the extent required by any applicable Law, or to the extent that you reasonably deem necessary in connection with any actual or contemplated proceedings or a claim with respect to this clause 8.10.

#### **8.11 Recovery of GST**

Unless the context requires otherwise, words and phrases used in this clause 8.11 that have a specific meaning in the GST Law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) will have the same meaning in this clause.

(a) Unless otherwise stated or required by the context, any amount or calculation specified in these Asset Finance Terms or any Transaction Schedule is specified exclusively of GST. If GST is payable, or notionally payable, on a supply made under or in connection with a Transaction Document, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a valid tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided unless ANZ agrees otherwise in writing. If a tax invoice is not received prior to the provision of that other consideration, the GST Amount is payable within 10 days of the receipt of a tax invoice.

(b) Where any indemnity, reimbursement or similar payment under a Transaction Document is based on any cost, expense or other liability, it will be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

(c) If an adjustment event occurs in relation to a supply made under or in connection with a Transaction Document, the GST Amount will be recalculated to reflect that adjustment

and an appropriate payment will be made between the parties.

(d) The relevant provisions of the Transaction Schedule (if your offer is accepted by ANZ) and the other Transaction Documents, and any relevant statements, notifications or documents provided by ANZ in respect of them, together constitute a tax invoice, or (if there is a change in the consideration for any taxable supply) an adjustment note, issued by ANZ.

### 8.12 Overdue payments

(a) If you do not pay ANZ an amount when due under a Transaction Document (including an amount of interest accrued under this clause, and an amount awarded under a court judgement), ANZ may charge you interest on that amount from the due date until it is paid, at the Overdue Rate (or, if higher, the rate applicable under a court judgement or at Law).

(b) Overdue interest is charged on daily balances (based on a 30 day month and a 360 day year) and is payable on each Instalment Date and, if there is no remaining Instalment Date, on demand. Due but unpaid overdue interest may be capitalised by ANZ at any time without notice to you.

(c) In calculating overdue interest, no offset is allowed for any money that ANZ owes you or for a credit balance in another account, unless ANZ Consents to that offset.

### 8.13 Statements of account

(a) This clause applies if the Banking Code of Practice applies under clause 35.1.

(b) ANZ will give you a statement of account at least once every:

(i) 6 months – for any Chattel Mortgage to which a floating rate applies; or

(ii) 12 months – for any other Transaction.

(c) However, in situations where the Banking Code of Practice provides that a statement need not be given, ANZ may decide not to issue a statement.

(d) ANZ may issue statements of account to you electronically.

(e) If Special Terms apply to your Transaction, the Special Terms may modify this clause 8.13 or may provide for a statement of account for any facility or agreement under which Transactions may be drawn.

(f) It is your responsibility to carefully review your statements of account so you are aware of the status of your account. If you believe there are errors or unauthorised transactions shown on your statements you must contact ANZ as soon as possible.

### 8.14 You are not required to pay when an ANZ party is at fault

(a) Under these Asset Finance Terms, you are not required to:

(i) pay or reimburse any cost or expense to ANZ;

(ii) release ANZ (or any other Indemnified Person) from any Claim; or

(iii) indemnify ANZ (or any other Indemnified Person) against any Loss,

to the extent that the cost, expense, Claim or Loss arises due to:

(iv) the negligence, fraud or wilful default of ANZ, its employees, officers, contractors, agents or any receiver appointed by ANZ over the Collateral; or

(v) termination of a Transaction because of something referred to in clause 8.14(a)(iv).

(b) Clause 8.14(a) prevails over any other provision of these Asset Finance Terms that is inconsistent with it.

## 9. How to pay

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### 9.1 How to make payments

(a) You must pay ANZ to the account or at the place set out in each Transaction Schedule or as ANZ otherwise directs you (*for example, in an invoice*).

(b) If ANZ asks, you must promptly sign and return to ANZ an order (in the form required by ANZ) directing your bank or other financial institution to make deductions from your account, to make your payments to ANZ.

(c) You must make sure there are always enough funds in that account to cover payments due to ANZ.

(d) ANZ may also require any payment to be made by bank cheque, same day funds, direct deposit, or otherwise as ANZ asks.

(e) If ANZ receives a payment:

(i) on a non-Business Day; or

(ii) after 5:00 pm on a Business Day in the place where payment is due; or

(iii) otherwise after the time required in the Transaction Document,

the payment will be taken to be received on the next Business Day.

(f) If a payment is due on the 29th, 30th or 31st of a month that does not contain that date or after the last Business Day of a month, that payment is due on the last Business Day of that month (despite the provisions of a Transaction Schedule).

## 9.2 Net Transaction

The Transaction is a net transaction. Your obligations under the Transaction (including the obligation to pay Instalments) are not subject to:

- (a) any abatement, reduction, impairment or termination of any kind whatsoever (including any right of set-off, counterclaim or defence in your favour);
- (b) the condition or the unavailability for whatever reason of the Goods; or
- (c) any other Claim or thing which, but for this clause, might operate to relieve you of any obligation under the Transaction.

## 9.3 No deductions

- (a) You must make each payment owing to ANZ in full. You must not make any deduction or adjustment.
- (b) If:
  - (i) ANZ does not receive the benefit of a payment purported to be made (*for example, if a cheque is returned unpaid*); or
  - (ii) ANZ has to or agrees to refund a payment (*for example, as a voidable transaction or an amount recoverable by a trustee in bankruptcy*),

that payment will be taken never to have been made, even if ANZ issued a receipt.

- (c) If a Law requires you to deduct an amount out of a payment to ANZ (*for example, withholding tax*):

- (i) you must promptly pay the amount deducted to the appropriate Government Agency;
- (ii) within 30 days of the end of the month in which the deduction is made, you must give ANZ the original receipt (or other documents acceptable to ANZ) evidencing the payment; and
- (iii) unless the Tax is an Excluded Tax, on the due date you must pay ANZ an additional amount so that ANZ receives a net amount (after allowance for any further deduction and any Tax on the additional amount) equal to the amount ANZ would have received if no deduction had been made. Subject to clause 8.14, you must indemnify ANZ against the Tax and any amounts recoverable from ANZ in respect of the Tax.

You waive any statutory or other right to recover from ANZ any amount paid under this clause.

## 9.4 ANZ can allocate amounts it receives

- (a) Subject to clause 9.4(c), ANZ will allocate any money ANZ receives in relation to a

Transaction against the payment obligation for which the payment was received, unless:

- (i) ANZ is not able to determine the payment obligation for which the payment was received; or
- (ii) a Casualty Event or Event of Default is subsisting or a Potential Event of Default has occurred,

in which case, ANZ may apply moneys received in any manner ANZ reasonably chooses. This includes allocating money between different amounts you owe ANZ under different Transactions or other facilities you have with ANZ.

- (b) ANZ may allocate at the time ANZ receives money, or later. ANZ may retain money in a suspense account until ANZ allocates it.
- (c) Unless ANZ, in its discretion, determines otherwise, ANZ will apply any money ANZ receives in relation to a Termination Amount first in payment of that part of the amount constituting the Termination Amount that represents liquidated damages and then, when such amount has been paid, to the balance of the Termination Amount.

## 10. Goods – purchase, delivery and installation

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### 10.1 Purchase (Transactions other than Chattel Mortgage)

- (a) This clause does not apply to a Transaction that is a Chattel Mortgage or a Transaction to which Sale and Lease Back applies.
- (b) If ANZ enters into a Transaction with you, ANZ appoints you as its agent with authority only to acquire title to the Goods described in the Transaction directly from the supplier on ANZ's behalf. You accept that appointment and agree that, beyond that limited authority and any authority ANZ gives you under clause 10.9, you do not act as ANZ's agent in relation to the Transaction. In all respects, you remain liable in your own right for acquisition and delivery of the Goods and for any obligation under arrangements with the supplier of the Goods.
- (c) If your appointment as ANZ's agent under clause 10.1(b) is not effective for any reason, you must promptly transfer any right, title or interest that you may have acquired to or in the Goods, or under the purchase agreement, to ANZ free and clear of all Security Interests of any kind.

### 10.2 Purchase (Chattel Mortgage)

- (a) This clause applies to a Transaction that is a Chattel Mortgage.

(b) If ANZ accepts your offer to enter into a Transaction under clause 4.2, you agree to acquire title to the Goods described in the Transaction from the supplier, using the Drawdown Amount or, if you already have title as certified in clause 11.1(b), to use the Drawdown Amount for a purpose to which ANZ Consents. You remain liable in your own right for acquisition and delivery of the Goods and for any obligation under arrangements with the supplier of the Goods.

### **10.3 Disbursement of purchase moneys**

ANZ may pay the supplier of the Goods directly. However, if you obtain control over any amount funded by ANZ, you must use it to acquire title to the Goods or otherwise for a purpose to which ANZ Consents.

### **10.4 Delivery**

You must, at your own expense, have the Goods delivered to, and (if applicable) assembled or installed at, the Premises immediately when available.

### **10.5 Goods not received**

If ANZ has paid for the Goods but you have not received them promptly or at all, you must still comply with any and all of your payment and other obligations under the Transaction and ANZ will not be liable to you no matter what the reason.

### **10.6 Receipt before Commencement Date**

If you receive the Goods before the Commencement Date, your obligations under the Transaction apply from the time of receipt of the Goods and ANZ may increase the first Instalment under the Transaction by an amount proportionate to the period from receipt of the Goods to the Commencement Date.

### **10.7 ANZ gives no warranties (except where imposed by Law)**

(a) The basis of the Transaction is that you:

- (i) select the Goods yourself;
- (ii) carefully inspect them (ANZ relies on you to do this); and
- (iii) assume the risk that the Goods will not be appropriate and satisfactory to you.

(b) ANZ is not responsible for the Condition, quality, design or operation of the Goods or their suitability or fitness for any purpose (unless a Law makes ANZ responsible and it cannot be excluded by ANZ).

(c) If a Law imposes on ANZ a warranty about the Goods that cannot be excluded and the Goods are not of a kind normally used for personal, domestic or household use, ANZ's

obligations for breach of that warranty are limited to replacing or repairing the Goods, supplying equivalent goods, or paying the cost of the Goods, as ANZ decides (subject to that being fair and reasonable under the *Competition and Consumer Act 2010* (Cth) or a similar Law).

(d) ANZ does not say or imply that payments of Instalments or other amounts under the Transaction or a Transaction Document will be an allowable deduction under the Tax Act.

### **10.8 Goods must not become fixtures**

(a) Unless ANZ agrees otherwise before the Commencement Date of a Transaction, you must ensure that the Goods do not become fixed to land or improvements without ANZ's Consent.

(b) If the Goods become fixed to land or improvements in breach of your promise in clause 10.8(a):

- (i) they will not become part of that property;
- (ii) ANZ may enter that place and remove the Goods; and
- (iii) ANZ may lodge a caveat on the land to protect ANZ's interest in the Goods. If you are the owner of the land you must give ANZ a signed consent to the caveat in the prescribed form. ANZ may sign the consent, as your Attorney, if you do not.

### **10.9 Warranties and agency**

(a) This clause does not apply to a Transaction that is a Chattel Mortgage.

(b) You transfer to ANZ all your present and future rights and interests in, and the benefit of, all warranties relating to the Goods. This includes all claims for damages under any warranty claim and the proceeds of those claims. The benefit of the warranties will be the property of ANZ while ANZ owns the Goods.

(c) While no Event of Default is subsisting, ANZ appoints you as its agent to exercise in your name, but for the benefit of ANZ, rights in relation to claims under the warranties and all other rights and powers in relation to those warranties, provided that you do not, without Consent, do anything that is likely to lead to a change in, or cancellation of, the warranties.

(d) Despite the transfer of the warranties, you are still liable under the original purchase agreement to perform the obligations of the purchaser under it.

## **11. Goods - title, risk and enjoyment**

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### **11.1 Title**

(a) Unless the Transaction is a Chattel Mortgage, the Goods are ANZ's property. You certify to ANZ that ANZ has (or ANZ will have from the time ANZ intends the Transaction to be effective) sole, beneficial and clear right and title to the Goods, free from anything that might prejudice ANZ such as a Security Interest, unless ANZ knows about it and has Consented to it.

(b) If the Transaction is a Chattel Mortgage, you certify to ANZ that you have (or you will have from the time ANZ intends the Transaction to be effective) sole, beneficial and clear right and title to the Goods, free from anything that might prejudice ANZ such as a Security Interest, unless ANZ knows about it and has Consented to it.

(c) For example, this means you certify that the Goods are not affected by any:

(i) Security Interest (except one to which ANZ has Consented);

(ii) possession or ownership by or with someone other than you or ANZ;

(iii) notice of forfeiture or compulsory acquisition, or something which might lead to that; or

(iv) actual or threatened legal, arbitration or administrative proceeding (including a family law dispute).

(d) You also certify to ANZ that, to the best of your knowledge, no person asserts or is likely to make a Claim that might prejudice ANZ.

(e) You agree with ANZ that:

(i) unless the Transaction is a Chattel Mortgage, the Goods are ANZ's property no later than the Commencement Date, and you have no ownership rights in them;

(ii) even if there is defect in ANZ's interest in the Goods or someone else takes the Goods from you or stops you from using them, the Transaction will continue to bind you as though ANZ were the secured party in respect of, and (unless the Transaction is a Chattel Mortgage) the true owner of, the Goods and you had possession and control of them;

(iii) the person selling the Goods to ANZ, or (if the Transaction is a Chattel Mortgage) to you, is not ANZ's agent; and

(iv) unless the Transaction is a Hire Purchase, you have no right or obligation to purchase the Goods from ANZ.

### **11.2 Quiet enjoyment**

ANZ will not ask, or authorise anyone else to ask, for the Goods from you during the Term,

except as permitted in these Asset Finance Terms or the Transaction Documents.

### **11.3 You bear certain risks**

You bear the full risk of liability for the possession, use, operation, maintenance, repair, Condition and storage of the Goods.

### **11.4 You must protect ANZ's interests**

You must:

(a) ensure anyone with whom you have any dealings concerning the Goods (*for example, a repairer or someone with whom you leave them for a period of time*) is aware that ANZ has a first priority Security Interest in the Goods and their Proceeds, and (unless the Transaction is a Chattel Mortgage) that ANZ owns the Goods;

(b) affix, maintain and clearly display any notice of ANZ's interest that ANZ asks you to display on the Goods; and

(c) do anything reasonable that ANZ asks, and everything reasonable within your power, to protect ANZ's interests in and to the Goods and your possession and control of them.

## **12. Goods – restrictions on dealings**

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### **12.1 No disposals**

(a) You must not, without ANZ's Consent, dispose of, or create or allow any interest in, the Goods, their Proceeds or the Transaction (*for example, you may not sell or sub-lease the Goods without ANZ's Consent*).

(b) Where by Law ANZ may not restrict the creation of any Security Interest over an asset ranking after the Security Interest granted under these Asset Finance Terms, clause 12.1(a) will not restrict that creation, but before creating that Security Interest you must ensure that the holder of that Security Interest enters into a deed of priority in form and substance specified by ANZ (acting reasonably).

### **12.2 Restrictions**

You must not do any of the following without ANZ's Consent:

(a) use the Goods in a dangerous or negligent way, or where the risk of damage to them or other property or people is higher than would be expected from normal use;

(b) materially modify the Goods, including affixing any item to them other than parts permitted by clause 13;

(c) acquire an asset which will become part of the Goods (*for example, an accessory*), where that asset is (or will, on acquisition, become) subject to any Security Interest that is not in favour of ANZ;



(d) apply for an Authorisation relating to the Goods; or

(e) vary or terminate any Sub-lease, Licence, Authorisation or warranty relating to the Goods, or do anything that may allow any Sub-lease, Licence, Authorisation or warranty to be varied or terminated.

### 12.3 Sub-leases

(a) **(Sub-leases)** You must not Sub-lease any Goods, unless ANZ has given Consent to that Sub-lease. In addition to any condition set out in the Consent, the conditions set out in clause 12.3(c) also apply to each Consent given at any time, except to the extent that ANZ expressly modifies a particular condition in writing.

(b) **(Prior notification)** Upon your request for ANZ's Consent to a Sub-lease, you must notify ANZ of the identity of the proposed Sub-lessee and the proposed location of the Goods under the Sub-lease.

(c) **(Conditions of Consent)** The conditions to any Consent by ANZ to a Sub-lease are as follows:

(i) The Consent constitutes ANZ's consent to you parting with possession of the relevant Goods to the extent required for you to provide the Sub-lease. The Consent does not otherwise relieve you of any obligation or liability under a Transaction Document or reduce any Power of ANZ under a Transaction Document. The Consent does not extend to any later modification of the Sub-lease (including any waiver or consent granted by you), unless ANZ updates its Consent.

(ii) The Sub-lease must be documented in the form of a written agreement or deed binding on the Sub-lessee, and must not contain any provision that adversely affects, or is inconsistent with, ANZ's Powers or your obligations under the Transaction Documents.

(iii) You must reserve rights under the Sub-lease to enable you to perform your obligations, and to enable ANZ to exercise its Powers, under the Transaction.

(iv) The term of any Sub-lease must not begin earlier than the Term and must expire (or you or ANZ must have the express right to terminate it) no later than the last day of the Term, whether through expiry of the Term or following an early termination for any reason (including following an Event of Default).

(v) The Sub-lessee must be expressly prohibited from dealing with or disposing of the Goods (or purporting to do so).

(vi) You must not permit the Sub-lessee to locate the Goods in any place other than as permitted in ANZ's Consent or permitted under the Transaction Documents.

(vii) If the Goods are subject to a Finance Lease or a Rental, the Sub-lessee must not be tax exempt or a non-resident of Australia.

(viii) If ANZ asks, you must provide ANZ with a copy of the Sub-lease document, and comply with any direction of ANZ to you to exercise your rights under the Sub-lease (including any right of inspection of or access to the Goods). However, ANZ's exercise or non-exercise of these rights does not constitute Consent to any Sub-lease or its provisions, or reduce ANZ's Powers under the Transaction Documents.

(ix) You assume all risks of a Sub-lease and ANZ has no liability arising from a Sub-lease. Non-performance by a Sub-lessee does not relieve you of any obligation or liability you have under the Transaction Documents.

(x) You agree to ensure that all monetary proceeds of the Sub-lease are credited directly in the account nominated by ANZ.

(d) **(Registration and priority)** You agree to register each Security Interest granted to you as a result of any Sub-lease. On ANZ's request, you must provide evidence of each such registration. To the greatest extent possible, each such registration must:

(i) describe the Collateral by serial number (if permitted for the Goods under the PPSA);

(ii) indicate that the Security Interest is or is to be a purchase money security interest (as defined in the PPSA);

(iii) be effected within any relevant timeframe under the PPSA, including under sections 62 and 63 of the PPSA; and

(iv) indicate that the Security Interest is subordinate to the interests of ANZ.

You agree that ANZ's Security Interest as a result of the Transaction ranks in priority to your Security Interest as a result of the Sub-Lease, despite the timing of registration or any other matter.

(e) **(Expenses)** Subject to clause 8.14, you agree to reimburse any reasonable cost or expense incurred by ANZ in connection with any Sub-lease or any Consent to a Sub-lease.

(f) **(Proceeds)** This paragraph applies if the Goods give rise to Proceeds (by being dealt with or otherwise) as contemplated in section 32 of the PPSA. ANZ does not authorise any disposal giving rise to the Proceeds, or agree that any dealing giving rise to the proceeds extinguishes ANZ's Security Interest in the Goods. To the extent that ANZ is held to have authorised such a disposal, you agree that the proceeds of the Goods include each Sub-lease Right, and that ANZ has a Security Interest in (as original Collateral) all present and after-

acquired property that constitutes Proceeds of the Goods and each Sub-lease Right.

(g) **(Transfer)** You agree not to transfer any Chattel Paper constituted by or arising from any Sub-lease to any person (other than to ANZ).

(h) **(Inventory)** This paragraph (h) applies to the extent that any Goods are inventory of yours. ANZ and you agree that you will specifically appropriate any Goods that are inventory to the Security Interest arising under the Transaction, and will not remove any specifically appropriated inventory without ANZ's specific and express Consent.

(i) **(Inconsistent dealings)** Subject to clause 8.14, you must pay ANZ, as a separate and independent obligation, when ANZ asks, any Loss ANZ incurs as a result of you or any Sub-lessee dealing in any way with the Goods in a manner inconsistent with the Transaction or (if any) ANZ's Consent to the Sub-lease, where that dealing gives rise to:

(i) a person (other than ANZ) obtaining a Security Interest over the Goods, or taking them free of ANZ's Security Interest in them;

(ii) any Security Interest or rights of a person (other than ANZ) in those Goods taking priority over ANZ's Security Interest in the Goods; or

(iii) any right of ANZ in respect of Goods being unenforceable pursuant to section 81(2) of the PPSA.

A reference in this clause 12.3(i) to "Goods" includes a reference to Sub-lease Rights, Chattel Paper arising from a dealing in Goods, or the proceeds of any of the foregoing.

(j) **(Sub-lessee documents)** Nothing in this clause 12.3 limits any right of ANZ granted or arising under a document entered into by a Sub-lessee.

### **13. Goods - use, operation and care**

#### **13.1 Care for and maintain the Goods**

You must at all times and at your own cost:

- (a) take proper care of the Goods;
- (b) keep the Goods in good working order and condition;
- (c) obtain and maintain any warranty for the Goods;
- (d) ensure that the Goods are safe and fully operational (except for short periods when being serviced or repaired);
- (e) service, repair, maintain and use the Goods in accordance with good practice and the manufacturer's recommendations and the supplier's recommendations or those of an insurer of the Goods;

(f) only let appropriately qualified or trained people service, repair, maintain and use the Goods;

(g) make sure that only genuine Parts are used for repairs or upgrades; and

(h) maintain and complete correctly the service records and any log books for the Goods.

#### **13.2 Operation**

You must at all times:

(a) operate the Goods in accordance with all Laws and not use, or permit or enable the Goods to be used for any illegal purpose;

(b) comply with all requirements of the manufacturer of the Goods or any material part of them (such as an engine), where failure to do so could have a Material Adverse Effect;

(c) not use, operate, transport or store the Goods in a manner not covered by Insurances or in a manner which is reasonably likely to prejudice ANZ's interests; and

(d) not use or operate the Goods for underground mining purposes.

#### **13.3 Premises**

(a) You must ensure that the Goods are in Australia at all times unless ANZ Consents.

(b) You must at all times keep the Goods under your control at the Premises.

(c) You must comply with all material obligations that you have under any lease or mortgage of, or licence to occupy, the Location.

#### **13.4 Replacements and parts**

(a) You must replace any part of the Goods which becomes worn out, non-operational, unsafe, is destroyed, lost or removed, with an item of at least the same quality and value as the replaced item in its new Condition. The item must not be sourced unlawfully, or from any person or place that is the subject of, or in any manner prohibited by, any economic and trade sanctions referred to in clause 34.

(b) Unless you and ANZ otherwise agree:

(i) all Parts become ANZ's property as soon as they are fitted to the Goods. You will make sure that you own each of the Parts before they are fitted to the Goods, and that no other person has an interest in them; and

(ii) in relation to Parts fitted to the Goods, ANZ may elect to require you to remove them and make good any damage to the Goods which have arisen from the fitting or removal of those Parts.

### 13.5 You must pay taxes and expenses

You must pay when due all taxes, duties, assessments, levies, deposits and other amounts owing by you to any Government Agency, and other amounts owing in respect of the Goods. *(This does not stop you appealing in good faith against an assessment.)*

### 13.6 You must maintain Authorisations and comply with Laws

(a) You must ensure that all Authorisations needed for the full use of the Goods are maintained at all times *(for example, if the Goods include a car, you must keep it registered. If the Goods include an aircraft, you must maintain an air worthiness certificate and everything else needed to fully use it. If the Goods are used in connection with a business, you must ensure that appropriate Authorisations are held to carry on the business and allow the Goods to be used in it)*.

(b) You must strictly comply with all Laws which affect your right to have or use the Goods or the Location or where non-compliance is reasonably likely to have a Material Adverse Effect.

### 13.7 You must ensure environmental monitoring and compliance

You must:

(a) **(Monitor and ensure compliance):**

(i) ensure that the Goods and their use at all times comply with Environmental Laws; and

(ii) adequately monitor that compliance and take all measures practicable to minimise environmental risks;

(b) **(Notify ANZ of potential exposure)** promptly tell ANZ if anything happens or is expected to happen which is reasonably likely, under an Environmental Law, to result in:

(i) a Claim or proceedings relating to; or

(ii) money needing to be spent on; or

(iii) the ceasing or changing of an activity or a use or a proposed activity or a proposed use of,

the Goods or anything relating to them;

(c) **(Undertake investigations)** on ANZ's request (which shall not be made unless ANZ, acting reasonably, considers that the possession, use or storage of the Goods may breach an Environmental Law), appoint a qualified person (Consented to by ANZ) to inspect the Condition and operation of the Goods and the Location, and confirm your compliance with relevant Environmental Laws, at your cost, and promptly give ANZ that person's report;

(d) **(Oppose action under Environmental Law)** if ANZ asks, oppose,

object to or appeal against any action proposed under an Environmental Law in relation to the Goods; and

(e) **(No environmental agreement)** not enter into any agreement or arrangement with any Government Agency relating to the Goods or their use under an Environmental Law, without ANZ's Consent.

### 13.8 Return Condition

You must ensure that the Goods comply in all respects with all Return Conditions that apply to the Transaction.

## 14. ANZ's right to inspect and investigate

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### 14.1 ANZ may inspect the Goods

ANZ and any agent appointed by ANZ may inspect and test the Goods or the Location at all reasonable times and (in Urgent Circumstances) at any time. ANZ must give you a reasonable period of prior written or verbal notice, other than in Urgent Circumstances.

**Urgent Circumstances** means circumstances where there is, or ANZ reasonably believes that there is:

(a) a Casualty Event or Event of Default that is subsisting;

(b) a genuine risk that the Goods will be removed from the Location if prior notice is given; or

(c) a genuine risk of a Casualty Event or an emergency (including any circumstances that may materially affect the value of the Goods).

You must ensure that ANZ and its agent can fully inspect and test the Goods, including (if necessary) by arranging for access to, and obtaining the right to access, the Location.

### 14.2 ANZ can appoint an investigator

If ANZ thinks it is in its interests to do so, ANZ may appoint someone to investigate the Goods or any business relating to them, your financial affairs or anything else relevant to the Transaction *(for example, compliance with Environmental Laws or risk management issues)*.

### 14.3 You must co-operate

You must do everything requested by any of ANZ, a person appointed to inspect the Goods under clause 14.1 or an investigator appointed under clause 14.2 (including obtaining co-operation from other people), to allow the inspection and testing of the Goods or the investigation (as applicable) to be carried out.

#### 14.4 Costs of inspection or investigation

Subject to clause 8.14, you must pay all costs ANZ reasonably incurs in relation to the inspection or investigation if:

(a) the inspection occurs, notice of the inspection is given, or the investigator is appointed, while a Casualty Event or Event of Default is subsisting (even if ANZ did not know about the Casualty Event or Event of Default when ANZ or its agent began the inspection, or when ANZ gave you notice of the inspection or appointed the investigator);

(b) the inspection occurs, notice of the inspection is given, or the investigator is appointed, at a time when ANZ believes that a Casualty Event or Event of Default is likely to subsist or to occur, or that it is reasonable for ANZ to investigate that possibility; or

(c) in respect of a Transaction that is a Rental, the inspection or investigation occurs under any other circumstances.

#### 15. You must insure

(a) You must keep the Goods insured at all times:

(i) for their full replacement value (which ANZ may specify) or such lesser value as Consented by ANZ;

(ii) as required by Law;

(iii) against all risks usually insured against by a prudent owner of similar property, and any other risks required by ANZ;

(iv) with a reputable insurer and in a place both Consented to by ANZ;

(v) on terms Consented to by ANZ;

(vi) with ANZ's interest noted on the policy as the loss payee;

(vii) so that ANZ is insured even if the Insurance is void, voidable or unenforceable by you, or it lapses without ANZ's knowing; and

(viii) so that ANZ is notified if you do not renew Insurance or purport to vary it.

(ix) You must make full disclosure to the insurer.

(b) You must give ANZ a certified copy of the certificate of currency of the insurance policy to keep.

(c) You must notify ANZ of anything reasonably likely to give rise to a claim under the insurance policy.

(d) If you receive insurance proceeds you must immediately pay them to ANZ or as ANZ directs. Until that payment is made, you hold the insurance proceeds on trust for ANZ.

(e) ANZ may decide, acting reasonably, whether to use insurance proceeds:

(i) to repair or replace the Goods, discharge a liability, or make good a loss; or

(ii) towards payment of amounts owing by you under the Transaction (whether or not those amounts would otherwise have become due),

or partly to each (except for insurance proceeds payable to compensate liability to others).

(f) You must use all reasonable endeavours to have anyone else entitled at Law to require a particular allocation of insurance proceeds agree to the way in which ANZ wishes to allocate them.

(g) You must not do or omit to do anything which might cancel, reduce or otherwise prejudice the Insurance.

(h) Unless ANZ Consents, you must not insure the Goods other than as agreed in this clause. If you do, you will be taken to do so in trust for ANZ (so that ANZ has the benefit of that insurance).

(i) ANZ has the sole right (if ANZ chooses) to make, enforce and settle insurance Claims. You must help ANZ to do this, as ANZ asks. You must obtain ANZ's Consent if you wish to do any of these things.

(j) ANZ may insure the Goods at your cost if you do not insure the Goods in accordance with this clause or if the insurer will, or is likely to, cancel the policy.

#### 16. Certifications made by you

##### 16.1 General

You certify to ANZ:

(a) **(Capacity and authority)** you have full legal capacity and authority to carry on your business as currently carried on and contemplated, to enter into all Transaction Documents and to perform your obligations under them;

(b) **(Binding)** each provision of each Transaction Document is fully binding on and enforceable against you;

(c) **(No breach)** signing and performance of each Transaction Document will not:

(i) breach any Law or judgment applicable to it in a material way;

(ii) be a material default under an agreement with someone else or, unless you are an individual, your constituent documents;

(iii) impose any other obligation on you or create any other Security Interest; or

(iv) accelerate another obligation or cancel another right of yours;

(d) **(No litigation)** no legal, arbitration or administrative proceeding or taxation investigation, assessment, Claim or dispute is taking place, pending or threatened against you, which is reasonably likely to have a Material Adverse Effect;

(e) **(No Event of Default)** no Event of Default is subsisting or is expected to occur;

(f) **(Authorisations held)** any material Authorisation or consent needed to enter into or perform obligations under Transaction Documents and for them to be fully effective has been obtained, is in force and has been complied with;

(g) **(Information given to ANZ remains true)** all information and forecasts given to ANZ by you or on your behalf remain accurate, up-to-date, and are not misleading in any material respect; and

(h) **(Full disclosure by you)** you have disclosed everything to ANZ that is material and relevant in the context of the Transaction Documents, your financial affairs and the Goods, and you have not told or omitted to tell ANZ, or done or omitted to do, anything which might mislead ANZ.

## 16.2 Goods

You certify to ANZ:

(a) **(Purpose)** you will use the Goods only for business purposes;

(b) **(No other interest)** no Goods are subject to any Security Interest that is not permitted by the Transaction;

(c) **(No environmental obligations)** nothing relevant to the Goods has occurred which has given rise or might give rise to:

(i) a Claim or proceedings relating to;

(ii) money needing to be spent in relation to;

(iii) ceasing or changing of a use or proposed use of; or

(iv) an obligation to register,

the Goods, or anything relating to them, under an Environmental Law;

(d) **(Authorisations held)** you hold all Authorisations required under Environmental Laws and other Laws to carry on the present and intended uses of the Goods; and

(e) **(Environmental compliance)** you have complied with all Environmental Laws in relation to the Goods and all things relating to them.

## 16.3 Certifications generally

(a) Each certification you give is taken to be given by you on the date ANZ receives the Transaction Schedule signed by you or your Authorised Representative, at the Commencement Date and each 6 months after it and again each time a payment is due under the Transaction Documents.

(b) You must tell ANZ promptly if a certification is no longer true.

(c) ANZ relies on your certifications.

## 17. Information and other things you must give ANZ

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### 17.1 Financial information

You must:

(a) **(Provide financial information)** give ANZ all information that ANZ reasonably asks for about your and each other Obligor's financial affairs (and the affairs of your group, if you are a corporation), at the reasonable times ANZ asks for it (*for example, ANZ may ask for statements of financial performance, statements of financial position, cashflow forecasts, and audit reports*);

(b) **(Use conventional accounting)** ensure each financial report you give ANZ is in accordance with applicable Laws and accounting practices generally accepted in your place of incorporation or residence, and gives a true and fair view; and

(c) **(Provide other information)** promptly provide other information and evidence that ANZ reasonably asks for about the Goods, complying with your obligations to ANZ, your business and any other thing relevant to you, another Obligor and ANZ (*for example, if the Goods are mining, construction or heavy equipment, ANZ may require you to provide asset and maintenance records, including oil sample analysis*).

### 17.2 ANZ is entitled to documents

You must promptly give ANZ, and ANZ may keep, any documents ANZ asks for relating to the Goods (*for example, Authorisations, documents showing ownership, and Sub-leases*).

### 17.3 Other things you must tell ANZ

You must notify ANZ immediately if you become aware of any:

(a) Event of Default or Potential Event of Default;

(b) Security Interest or proposed Security Interest in relation to the Goods or (if the Goods are affixed to them) the Location;

(c) actual or proposed compulsory acquisition of the Goods;

(d) circumstances where a Claim for insurance, compensation or damages is reasonably likely to arise or have arisen relating to the Goods;

(e) actual or threatened dispute or legal, arbitration or administrative proceedings which is reasonably likely to have a Material Adverse Effect;

(f) circumstances where the value of the Goods is or might be significantly reduced;

(g) notice, requirement or order of a Government Agency about the Goods (other than a routine notice or assessment);

(h) change of your or another Obligor's address; or

(i) other thing about which ANZ asks you to inform it.

#### **17.4 Change of your details**

You must notify ANZ at least 14 days before:

(a) you or another Obligor changes name;

(b) any ACN, ABN, ARBN or ARSN is allocated, changed or cancelled, or begins or ceases to apply, in respect of you or another Obligor; or

(c) any Collateral or Ancillary Collateral ceases, or begins, to be held in the course of furtherance of carrying on an enterprise to which an ABN has been allocated to you or another Obligor.

#### **17.5 You must obtain agreement of any lessor or mortgagee of the Location**

You must promptly give ANZ from each lessor or mortgagee of the Location:

(a) its written permission for ANZ to enter the Location to enforce ANZ's rights under the Transaction;

(b) a written acknowledgment that the Transaction is not a breach of the lease or mortgage;

(c) a written acknowledgment that the Goods are ANZ's property and not fixtures; and

(d) any other written undertaking ANZ reasonably requests.

### **18. When an Event of Default will occur**

#### **18.1 You must ensure no Event of Default occurs**

It is a fundamental term of the Transaction that you ensure that no Event of Default occurs. You will repudiate the Transaction if an Event of Default occurs or if you evidence your intention to no longer comply with the Transaction and

ANZ will have rights against you and the Goods and any Proceeds of them.

#### **18.2 General Events of Default**

An Event of Default occurs if any of the following happens:

(a) **(Failure to pay)** you or another Obligor fails to pay ANZ an amount payable in connection with a Transaction or Transaction Document within two Business Days of its due date;

(b) **(Material representation)** a representation made, or any certification or information given, to ANZ, in each case, by you or another Obligor regarding a Transaction or Transaction Document, is materially incorrect or misleading (including by omission) when made or given;

(c) **(Illegal activities)** a statutory or law enforcement authority notifies ANZ of your or another Obligor's involvement in an illegal activity;

(d) **(Insolvency or bankruptcy)** an Insolvency Event occurs in respect of you or another Obligor;

(e) **(Assets repossessed or seized)** a person repossesses or seizes all or a material part of your or another Obligor's assets, or obtains a judgment against you or another Obligor allowing that person to repossess or seize such assets;

(f) **(Unauthorised asset dealings)** you, another Obligor or any other person deals with any asset in breach of the terms of a Transaction Document, unless ANZ Consents to the proposed dealing, and a Recovery Risk applies. *(Examples of dealing with an asset include selling, leasing, mortgaging or lodging a caveat against an asset);*

(g) **(Change in status)** you or another Obligor become Legally Incapacitated, or there is a change in your or another Obligor's legal status or composition, and ANZ has not given its Consent;

(h) **(Loss of business licence)** you fail to maintain an Authorisation that you need to conduct or operate your business, and a Recovery Risk and a Failure to Remedy apply;

(i) **(Failure to provide financial information or maintain insurance)** you or another Obligor fail to provide ANZ with any financial information required under a Transaction Document, by the date on which it is required, or fail to maintain any insurance that is required under a Transaction Document, and a Failure to Remedy applies;

(j) **(Change in ownership)** a material change in the direct or indirect ownership or control of you or another Obligor occurs, ANZ has not given its Consent (which will not be

unreasonably withheld), and a Failure to Remedy applies; or

(k) **(Misuse of funds)** amounts disbursed by ANZ under a Transaction are used for a non-approved purpose, and a Recovery Risk and a Failure to Remedy apply.

### 18.3 Trust or partnership Events of Default

An Event of Default occurs if any of the following happens:

(a) **(Trustee default)** if you or another Obligor enter into any Transaction Document with ANZ as a trustee, an Event of Default under clause 30.1(d) occurs in relation to you or that Obligor; or

(b) **(Partnership default)** if you or another Obligor enter into any Transaction Document with ANZ as a partner of a partnership, an Event of Default under clause 30.2(b) occurs in relation to you or that Obligor.

### 18.4 Goods Events of Default

An Event of Default occurs if any of the following happens:

(a) **(Unauthorised Goods use, dealings or location)** you, another Obligor or any other person:

(i) use or deal with any Goods in breach of the terms of a Transaction Document (including clause 12 (*Goods – restrictions on dealings*) and clause 13 (*Goods – use, operation and care*)); or

(ii) the Goods are at any time in a Location that is not permitted under the terms of a Transaction Document,

and:

(iii) a Recovery Risk applies; or

(iv) ANZ, acting fairly and reasonably, considers that, as a result of that use, dealing or Location, a breach of any Law or regulation applicable in respect of the Goods, in connection with economic or trade sanctions, has occurred, unless ANZ Consents to the proposed use, dealing or Location;

(b) **(Loss of Goods licence)** you fail to maintain an Authorisation needed to keep, use or operate the Goods, or you do not comply with clause 13.6 (*You must maintain Authorisations and comply with Laws*), and a Recovery Risk applies; or

(c) **(Failure to provide Goods information or maintain Goods insurance)** you fail to provide ANZ with any information about the Goods required under a Transaction Document, by the date on which it is required, or fail to maintain any Goods insurance that is required under a Transaction Document (including any failure to comply with clause 15

(*You must insure*)), and a Failure to Remedy applies.

If ANZ Consents to another person (such as a Sub-lessee) having responsibility for any of these matters, a reference to 'you' in this provision includes that other person to the extent of its responsibilities.

### 18.5 Cross default among Transactions

An Event of Default for a Transaction occurs if there is an Event of Default in respect of another Transaction.

## 19. What happens if an Event of Default occurs

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### 19.1 ANZ may terminate after Event of Default

(a) If an Event of Default is subsisting in connection with a Transaction, ANZ may, by written notice to you, terminate the Transaction.

(b) Termination of a Transaction means, among other things, that you will be obliged to pay the Termination Amount in accordance with clause 22.1.

(c) Termination of the Transaction does not terminate or reduce ANZ's Powers or relieve you of your obligations under the Transaction.

(d) If an Event of Default under clause 18.2(d) occurs, ANZ's rights under this clause 19 may be restricted by law.

### 19.2 Exercise of ANZ's Powers

(a) If an Event of Default is subsisting, ANZ may, if it is entitled to terminate a Transaction under clause 19.1(a), also exercise all enforcement Powers given to ANZ under the Transaction and by Law (including enforcing ANZ's rights in relation to the Goods under clause 22.2, 24.1 or 28.1, as applicable).

(b) If a Law prohibits ANZ from exercising certain enforcement or other Powers as a result of a particular Event of Default, that does not prevent ANZ from exercising those Powers if another Event of Default, not specified in that Law, has also occurred.

(c) If a Law requires ANZ to give notice before exercising a Power and the Law provides that the period of notice may be agreed, the period of notice is one day or the minimum period the Law allows to be agreed (whichever is the longer).

### 19.3 ANZ's Powers need not be exercised immediately

ANZ may exercise a Power at any time while an Event of Default is subsisting even if:

(a) ANZ did not exercise a Power at the time the Event of Default occurred or when ANZ first became aware of it or ANZ has otherwise ignored the Event of Default;

(b) ANZ has accepted payments in the meantime; or

(c) ANZ has ignored or waived any other Event of Default in the past (provided ANZ has not waived the Event of Default that is currently subsisting).

## **20. What happens if a Casualty Event occurs**

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If a Casualty Event occurs in respect of Goods:

(a) you must tell ANZ immediately;

(b) if the Casualty Event subsists on the next Instalment Date, you must pay ANZ the Casualty Amount referable to the affected Goods and the Transaction will terminate in respect of the affected Goods when you make that payment at that time;

(c) ANZ must pay you:

(i) any insurance proceeds received by ANZ in respect of the Goods under a Transaction that is a Finance Lease or Rental up to an amount equal to the Casualty Amount; and

(ii) all insurance proceeds received by ANZ in respect of the Goods under a Transaction that is a Chattel Mortgage or Hire Purchase,

after you pay ANZ the Casualty Amount relating to those Goods and all other amounts owing by you to ANZ at that time (whatsoever);

(d) if ANZ takes possession of the affected Goods, ANZ may (but is not required to) (subject to insurers' rights) dispose of them and use the proceeds towards payment of the Casualty Amount and, if the Transaction is not a Rental, all other amounts owing by you to ANZ at that time (whatsoever); and

(e) the other clauses in these Asset Finance Terms about early termination will not apply to the affected Goods.

## **21. What happens if there is a Change in Law or Illegality Event**

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### **21.1 Illegality**

(a) If a Change in Law makes it illegal or impracticable for ANZ to participate in the Transaction under the Transaction Documents, ANZ may by notice to you:

(i) terminate the Transaction; and

(ii) direct you to prepay the Termination Amount for the Transaction affected, together with all other amounts owing under the Transaction Documents.

(b) You must make the payment immediately, or if later, the latest day (in ANZ's opinion) on which the prepayment can be made without the illegality or impracticability arising.

### **21.2 Increased costs**

Whenever ANZ determines (acting reasonably) that as a result of a Change in Law any of the following occurs in connection with its participation in the Transaction under the Transaction Documents:

(a) **(Increased costs)** its costs are increased;

(b) **(Reduced receipts)** an amount received or receivable by it is reduced; or

(c) **(Reduced return)** its or its holding company's return on capital or other effective return is reduced (including because more capital needs to be allocated to the facility and cannot be used elsewhere),

ANZ may notify you. You must pay ANZ on demand the amounts certified by an Authorised Representative of ANZ to be necessary to compensate ANZ or the relevant holding company for the increase or reduction.

That certificate will be conclusive and bind you, unless that certificate is proved to be incorrect.

### **21.3 Change in Law**

A **Change in Law** is the introduction of, or a change in, any Law, official directive, ruling or request or a change in its interpretation or application. If it does not have the force of Law, it must be one with which responsible Australian or United States banks or financial institutions would comply. It includes any Change in Law with respect to capital adequacy, special deposit, liquidity, reserve, prime assets, tax or prudential requirements (except a change in tax on overall net income).

## **22. What happens on expiry or early termination**

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This clause applies if the Transaction:

(a) expires on the last day of the original Term or of any Additional Term; or

(b) terminates early for any reason.

This clause does not apply:

(c) if the Transaction is a Hire Purchase and title to the Goods has been transferred to you under clause 23.1; or

(d) to the extent that a Casualty Event subsists in respect of Goods (in which case clause 20 applies).



### 22.1 Payment of Termination Amount

You must pay ANZ the Termination Amount for the Goods on the day of expiry or early termination of the Transaction.

### 22.2 Return of Goods

This clause does not apply to a Transaction that is a Chattel Mortgage.

(a) You must Return the Goods to ANZ on the day of expiry or early termination of the Transaction.

(b) **Return** means return of the Goods in good order and Condition to the Return Location or other place ANZ nominates, at your cost, together with:

(i) all Authorisations and warranties and an appropriate, duly signed and stamped transfer of them to ANZ or to a person ANZ nominates; and

(ii) all log books, records and other documents and things ANZ asks for, relevant to the Goods and their past or future use.

(c) If you do not Return the Goods on the day of expiry or early termination of the Transaction (without limiting any other remedy ANZ has):

(i) ANZ may repossess the Goods at your cost; and

(ii) for each day until their Return or repossession, if ANZ asks, you must pay ANZ an amount equal to the higher of:

(A) one day's proportion of the largest Instalment, or a daily amount calculated by reference to the highest implicit rate, that applied to the Transaction during its original Term; and

(B) a daily amount calculated by reference to the rate determined by ANZ to be the sum of ANZ's cost of funding on that day and the implicit rate of return that applied to the Transaction during its original Term,

(together with GST and any other applicable Taxes) as an estimate of liquidated damages for the late Return.

### 22.3 Return Condition

Clause 24 also applies to the Return of Goods if the Transaction is a Rental.

### 22.4 Residual Value

(a) This clause applies if the Transaction is a Finance Lease.

(b) You must pay ANZ an amount equal to the Residual Value (plus GST) on the day of expiry or early termination of the Transaction.

*Note: An amount may become payable to you after the Remarketing period, under clause 22.5(c).*

### 22.5 Remarketing of Goods

(a) This clause applies if the Transaction is a Finance Lease and you Return the Goods in accordance with clause 22.2(a).

(b) ANZ will use reasonable efforts to Remarket the Goods. Subject to any overriding Law, ANZ does not owe any duty to you or any other person to Remarket the Goods:

(i) for the best price possible. ANZ will try to obtain a reasonable price; or

(ii) if ANZ reasonably believes that any reasonable price obtainable (including any GST) within 12 months of the day of expiry or early termination of the Transaction, would not exceed the expected Remarketing Costs (including any GST).

(c) If you have paid ANZ an amount equal to the Residual Value (plus GST) in accordance with clause 22.4(b) and, within 12 months of the day of expiry or early termination of the Transaction, ANZ sells the Goods, and:

(i) the Net Sale Proceeds (net of any GST that ANZ is required to remit) are equal to or greater than the Residual Value (plus GST), ANZ will pay you an amount equal to the Residual Value (plus GST); or

(ii) the Net Sale Proceeds (net of any GST that ANZ is required to remit) are less than the Residual Value (plus GST) but greater than zero, ANZ will pay you an amount equal to the Net Sale Proceeds (plus GST).

### 22.6 Partial termination

If the early termination referred to in this clause 22 relates to only some of the Goods under a Transaction, then this clause applies proportionally to the terminating part of that Transaction, with all necessary changes.

### 22.7 How to close your account

You may close your account for a Transaction, if each Transaction covered by that account has expired or terminated in accordance with its terms, no Event of Default or Potential Event of Default subsists, and you have paid all Secured Money in connection with each Transaction. To close your account, please contact your ANZ banker or ANZ asset finance manager. ANZ will tell you about any minimum notice period that applies before closure.

### **23. If the Transaction is a Hire Purchase**

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This clause applies if the Transaction is a Hire Purchase.

#### **23.1 Title transfer**

If you have paid in full:

(a) on or by the last day of the original Term of the Hire Purchase, all Instalments and all other amounts payable by you to ANZ under the Hire Purchase during the Term; or

(b) where the Hire Purchase for the Goods is terminated (in whole or part) before the expiry of the Term of the Hire Purchase other than following an Event of Default, the Termination Amount in respect of the early termination of the Hire Purchase of the relevant Goods,

title to and risk in the Goods will pass from ANZ to you on an as-is-where-is basis.

#### **23.2 No condition, representation or warranty**

You agree that, to the full extent permitted by Law, ANZ makes no, and there is no, express or implied condition, representation or warranty as to any aspect of any item of the Goods that you purchase from ANZ, including ANZ's title, its description, Condition or use, merchantability, suitability or fitness for a particular or any purpose and all conditions, warranties and representations in relation to the Goods (whether expressed, implied, statutory, collateral or otherwise) are excluded.

### **24. If the Transaction is a Rental**

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This clause applies if the Transaction is a Rental of any mining, construction or heavy equipment.

#### **24.1 Return Conditions**

You must ensure that the Goods are returned in the following Return Condition. Other Return Conditions may be set out in the Transaction Schedule. You must comply with these Return Conditions too.

(a) The Goods must be returned by you, at your expense, in a clean and tidy Condition free of dirt to a location nominated by ANZ or an alternative location as agreed between ANZ and you.

(b) Tyres, tracks, tray bodies, dump bodies, body liners, buckets, bucket edges and teeth, blades and blade edges, drums, ripper tines and boots, track undercarriage components, scarifiers, and all other ground engaging wear componentry forming part of the Goods, must have a minimum 50% remaining life on each and every separate component or part upon the return of the Goods.

(c) The Goods must have been serviced in accordance with the manufacturer's specifications and guidelines with all scheduled regular services completed and with accurate service records maintained with the Goods.

(d) The Goods must be in good order and Condition and be fully operational with all required maintenance to manufacturers standards completed. Upon return, all major components (including engines, transmissions, hydraulics, torque converters, brakes, differentials, pumps, suspensions, slew rings, and radiators) must have a minimum of 50% life remaining since last replacement or overhaul to manufacturers service exchange component standard. If a major component does not comply with this requirement, then ANZ may charge you the pro-rata replacement cost of any component for those hours below the 50% prescribed above if (in ANZ's opinion) the value of the Goods has been detrimentally affected as a result of the lower than agreed remaining component life.

(e) The Goods must be free from all oil leaks, defects, cracks, major corrosion and panel damage; all electronic components, wiring, globes, computer componentry, batteries, operating lights, wipers, hoses, cylinders and controls must be in sound operating Condition. Cabs are to be clean, tidy, with all glass, lights, upholstery, gauges, air conditioners, vents and controls in good working Condition. Repairs to any of the above must have been completed properly and professionally with genuine or manufacturer recommended parts.

(f) The Goods must be returned with clear oil sample analysis reports on all major components, systems and compartments.

(g) All operating manuals and tools supplied with the Goods at the time of original delivery, together with all maintenance records and reports, oil analysis reports, and other work reports and records relating to the Goods, must be returned with the Goods.

(h) Tyres must be radials and may be exchanged or rotated to comply with the return requirement for tyres that they each have to have a minimum 50% life remaining, have clean uncut sidewalls, and be the correct size operating tyres for the Goods.

(i) Upon return, the Goods must comply with all applicable Workcover or relevant safety or industrial regulations pertaining to this type of Goods including those governing noise emission levels.

(j) The Goods must be capable of being immediately operated by a third party purchaser, without further major repair, replacement, alterations or improvements. The Goods must be fully compliant with all applicable Laws and industry codes or guidelines.

## 25. If Progressive Purchase applies to the Transaction

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This clause applies if Progressive Purchase applies to the Transaction.

### 25.1 How Progressive Purchase works

(a) Under a Transaction where Progressive Purchase applies, ANZ agrees that the Purchase Price may be paid by way of two or more instalments where completion of the purchase, delivery and (if applicable) installation of those Goods (**Completion**) occurs within 1 year of the date of the first Transaction Schedule.

(b) If details of any future Drawdown Amount or Drawdown Date (or other relevant information) are not available when preparing the Transaction Schedule, then the Progressive Purchase may be documented using multiple, successive Transaction Schedules relating to the same Transaction, in accordance with clause 6.

(c) If ANZ accepts the offer under your first Transaction Schedule, an agreement to hire, lease, mortgage or rent (as the case may be) the Goods on Completion will come into existence upon acceptance, even if details of future Drawdown Amounts or future Drawdown Dates (or other relevant information) are not contained in that first Transaction Schedule. Clause 25.1(d) applies to that agreement.

(d) If Completion has not occurred within 9 months of the date of the first Transaction Schedule (whether due to default or insolvency of the supplier, or otherwise):

- (i) you agree to notify ANZ; and
- (ii) ANZ may notify you that, unless Completion occurs within 1 year of the date of the first Transaction Schedule, or by a later date specified by ANZ in that notice, the Transaction will not be extended beyond that date.

If Completion has not occurred by the date that is 1 year after the date of the first Transaction Schedule (or by any later date specified by ANZ in writing), the Transaction will not be extended and will terminate on that date. If a Transaction terminates in accordance with this clause 25.1(d), clause 22 will apply to that Transaction.

(e) If a Transaction Schedule indicates that Progressive Purchase applies to some (but not all) of the Goods under that Transaction Schedule, then this clause 25 applies to the Transaction only in respect of those particular Goods (with all necessary changes).

### 25.2 Progressive Purchase Instalments

(a) You must pay to ANZ Progressive Purchase Instalments. Progressive Purchase Instalments are payable on the Progressive Purchase Instalment Dates, and (if applicable) capitalised, in accordance with the Transaction Schedule.

(b) Each Progressive Purchase Instalment will be calculated by ANZ in accordance with the following formula. The formula will be applied, with respect to (as applicable under the Transaction Schedule) each Progressive Purchase Instalment Date, each Capitalisation Date and the Commencement Date (each, a **Calculation Date**), to:

(i) each instalment of the Drawdown Amount that ANZ has disbursed at any time prior to that Calculation Date; and

(ii) each Progressive Purchase Instalment that ANZ has capitalised at any time prior to that Calculation Date.

$$I = \frac{A \times R \times N}{365} + C$$

where:

A = the instalment of the Drawdown Amount disbursed by ANZ or the Progressive Purchase Instalment capitalised by ANZ;

C = the amount (if any) of Costs, expenses or other amounts (including GST), incurred by ANZ in connection with the provision of the instalment described in this clause, that remains unpaid as at the Calculation Date (without double counting);

I = the amount of the Progressive Purchase Instalment relating to the amount referred to in "A" for that Calculation Date;

N = the period (expressed as a number of days):

(1) from and including the Progressive Purchase Instalment Date or Capitalisation Date (as applicable under the Transaction Schedule) that precedes the Calculation Date (the **Previous Calculation Date**). However, if there was no Previous Calculation Date, or "A" is an instalment of the Drawdown Amount that was disbursed after the Previous Calculation Date, then the period will begin on the date on which ANZ made the disbursement;

(2) until but excluding the Calculation Date; and

R = the Progressive Purchase Rate set by ANZ in respect of the period "N".

## 26. If Sale and Lease Back applies to the Transaction

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This clause applies if Sale and Lease Back applies to the Transaction.

### 26.1 How Sale and Lease Back works

Under a Transaction where Sale and Lease Back applies, you (instead of a third party supplier) supply the Goods to ANZ so that ANZ can hire, lease or rent them (as the case may be) back to you.

## 26.2 Purchase of the Goods

(a) ANZ agrees to purchase the Goods from you, and you agree to sell the Goods to ANZ (without any right of re-transfer except under clause 23, if applicable) for the Purchase Price on the Purchase Date.

(b) On the Purchase Date, full and absolute legal and beneficial ownership of and title to the Goods will transfer to ANZ:

(i) free and clear of all Security Interests of any kind; and

(ii) without the need for actual or formal delivery of the Goods to ANZ (delivery to ANZ is deemed to have occurred on the Purchase Date).

(c) Subject to ANZ's receipt of a tax invoice in respect of the Goods, ANZ will pay to you, or such other person as you may in writing direct, the Purchase Price. ANZ has no further obligations to you in respect of ANZ's purchase of the Goods from you.

(d) You certify to ANZ that:

(i) you, as beneficial owner, have (or will have on the delivery of the Goods) good right and lawful and absolute title to, and authority to sell, the Goods to ANZ and pass all property and title in the Goods to ANZ free from any Security Interests and any other Claims, remedies, defences or other interests whatsoever;

(ii) the Goods are (or will on the Purchase Date be) in your possession and are accurately described in the Transaction Schedule;

(iii) as at the date of the Transaction Schedule and the Purchase Date, no Casualty Event is subsisting in respect of any of the Goods and they have not been seized from you;

(iv) to the best of your knowledge and belief, all consumer product safety standards and consumer product information standards applicable to the Goods have been duly, fully and properly complied with in all respects; and

(v) to the best of your knowledge and belief, all the Goods are of merchantable quality (taking into account fair wear and tear), all Goods have received up-to-date servicing and maintenance in accordance with manufacturer's guidelines and specifications, and (where applicable) all Goods are in a roadworthy and mechanically sound Condition.

## 26.3 If Progressive Purchase also applies

If both Sale and Lease Back and Progressive Purchase apply to the same Transaction:

(a) each reference to "Purchase Date" is a reference to the date on which ANZ pays the final instalment of the Purchase Price for the Goods; and

(b) on and from the date on which ANZ pays the first instalment of the Purchase Price, but without prejudice to clause 26.2(b), any right, title or interest to or in the Goods that you have or acquire prior to the Purchase Date will transfer to ANZ at the time you first have or acquire that right, title or interest.

## 26.4 If Sale and Lease Back only applies to some Goods

If a Transaction Schedule indicates that Sale and Lease Back only applies to some (but not all) of the Goods under that Transaction Schedule, then this clause 26 applies to the Transaction only in respect of those particular Goods (with all necessary changes).

## 27. Grant of Security Interest

This clause applies if the Transaction is a Chattel Mortgage and to each Cross-collateralised Transaction.

### 27.1 Grant

When the Transaction is created, you grant a Security Interest to ANZ (for itself and as trustee for the Beneficiaries) in all your present and after-acquired right, title and interest and including the present and after-acquired right, title and interest of the Trust (if applicable) in, to, under or derived from:

(a) the Goods;

(b) any technical data, manuals, log books and other records relating to the Goods or any part of them;

(c) any policy of insurance maintained in relation to the Goods except liability insurance;

(d) any Sub-lease of the Goods;

(e) any Chattel Paper relating to the Goods;

(f) any account into which Proceeds are paid; and

(g) any warranty or guarantee given by any supplier or manufacturer of all or any part of the Goods,

and any Proceeds of any of the Collateral (including Proceeds of Proceeds). If the Transaction is a Chattel Mortgage to which Progressive Purchase applies, this includes any right, title or interest that you may acquire in any of the Goods, or under the purchase agreement, prior to completion of the purchase of all the Goods.

### 27.2 Nature and priority

A Security Interest granted under this clause:

(a) ranks in priority to all other Security Interests in the Collateral;

(b) operates as a mortgage over all Collateral, and a legal mortgage or (in the case of a Chattel Mortgage) an equitable mortgage over all Collateral to which you have title; and

(c) operates without the need for actual delivery.

### **27.3 Secured Money**

A Security Interest granted under this clause secures the due and punctual payment of the Secured Money.

### **27.4 Dealing with proceeds**

(a) You must ensure that all monetary Proceeds received by you or for your account are immediately credited to the nominated account and not able to be withdrawn except as provided in the Transaction Documents.

(b) So long as no Event of Default subsists, you may withdraw from the nominated account amounts equal to all the Proceeds and all proceeds of inventory credited to that account, received in the ordinary course of your ordinary business, unless those proceeds were received as a result of a disposal or other dealing in breach of the Transaction Document.

(c) If ANZ requires, Authorised Representatives of ANZ will be the only signatories to the nominated account. Except for withdrawals permitted under clause 27.4(b), no withdrawals may be made from it without the approval of ANZ.

(d) You must give notices and directions necessary or requested by ANZ to ensure clauses 27.4(a) and 27.4(b) are complied with.

(e) Failure by ANZ to require you to comply with this clause will not constitute a waiver.

(f) If for any reason ANZ waives or is taken to have waived the requirements of this clause, the Security Interest granted under these Asset Finance Terms will still operate as a non-circulating Security Interest in respect of the asset which gives rise to the relevant Proceeds.

### **27.5 Non-monetary Proceeds**

(a) You must inform ANZ immediately of any non-monetary Proceeds.

(b) You undertake that a Security Interest granted under this clause is and will remain a first-ranking Security Interest with respect to all Collateral, ranking ahead of all other Security Interests except those expressly permitted by ANZ.

(c) Whenever ANZ, acting reasonably, asks you to do anything:

(i) to ensure each of these Asset Finance Terms, each Ancillary Security Document and each Security Interest granted under them is

fully effective, enforceable and perfected with the stated priority;

(ii) for more satisfactorily assuring or securing the Collateral or Ancillary Collateral to the Beneficiaries in a manner not inconsistent with these Asset Finance Terms or any Ancillary Security Document; or

(iii) for aiding the exercise of any Power, you must do it immediately at your own cost. That may include, for that purpose:

(iv) doing anything to make, procure or obtain any Authorisation (including registration) in respect of anything, or to facilitate it;

(v) creating, procuring or executing any document, including any notice, consent or agreement, or legal or statutory mortgage or transfer; and

(vi) delivering documents or evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any Collateral or Ancillary Collateral.

### **27.6 Enforcement**

To the extent permitted by Law, at any time an Event of Default is subsisting, ANZ or any Authorised Representative of ANZ may exercise any of the Powers, without any need to take possession and without being liable as mortgagee in possession. It may also exercise those Powers through one or more agents, in which case anything done or incurred by an agent will be taken to be done or incurred by ANZ.

### **27.7 Receivership**

To the extent permitted by Law, at any time an Event of Default is subsisting, ANZ may:

(a) appoint any person or any two or more persons jointly or severally (or both) to be a receiver or receiver and manager of all or any of the Collateral or Ancillary Collateral or to act as agent of ANZ to exercise any of the Powers with respect to all or any of the Collateral or Ancillary Collateral;

(b) remove any Controller;

(c) appoint another Controller in addition to or in place of any Controller; and

(d) fix or vary the remuneration of any Controller.

An appointment may be made on any terms ANZ thinks fit and whether or not any Beneficiary or any Authorised Representative of a Beneficiary at any time has exercised any Power. Without limiting any other method of appointment permitted by Law, an appointment may be made by an instrument signed by an Authorised Representative of ANZ or by, or on behalf of, ANZ.

The Power to appoint a Receiver may be exercised even if the Liquidation of you has occurred or will occur.

Except to the extent otherwise provided by any Law relating to Liquidation, every Receiver appointed under these Asset Finance Terms is your agent. You alone are responsible for a Receiver's acts and defaults.

## 27.8 Termination

ANZ may give up possession of any Collateral or Ancillary Collateral and terminate any receivership or agency at any time.

## 27.9 End of cross-collateralisation

If, in respect of a Cross-Collateralised Transaction, no Event of Default or Potential Event of Default subsists and you have paid all Secured Money referred to in paragraph (b)(i) of the definition of "Secured Money", cross-collateralisation will cease to apply to that Transaction.

## 28. Powers on Enforcement

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This clause applies if the Transaction is a Chattel Mortgage or the Transaction is a Cross-collateralised Transaction.

### 28.1 Powers

ANZ and (except to the extent specifically excluded by the terms of appointment) a Controller has Power to do anything in respect of the Collateral or Ancillary Collateral that an absolute beneficial legal owner of the property could do. That includes Power to do any of the following on any terms they think fit:

- (a) **(Seize, possess and manage)** Seize, take and retain possession of, get in and manage the Collateral or Ancillary Collateral.
- (b) **(Sell):**
  - (i) Sell any of the Collateral or Ancillary Collateral (whether or not physical possession has been taken by ANZ or the Controller).
  - (ii) Without limitation, any sale may be made:
    - (A) by public auction, private treaty or tender;
    - (B) for cash or on credit;
    - (C) in one lot or in parcels;
    - (D) either with or without special conditions or stipulations as to title or time or mode of payment of purchase money or otherwise;
    - (E) with power to allow the whole or any part of the purchase money to be deferred (whether with or without any security); and

(F) whether or not in conjunction with the sale of any property by any person.

(c) **(Transaction)** Lease any of the Collateral or Ancillary Collateral for any term (whether or not ANZ or the Controller has taken possession).

(d) **(Maintain and improve the Collateral or Ancillary Collateral)** Anything to maintain, protect or improve any of the Collateral or Ancillary Collateral or to obtain income or returns from any of the Collateral or Ancillary Collateral (including by development, sub-division, construction, alteration or repair of any property, or by demolishing, dismantling or scrapping any property).

(e) **(Sever fixtures)** Sever fixtures and crops.

(f) **(Vary and terminate agreements)** Vary, rescind or terminate any document or agreement (including surrender or accept the surrender of leases).

(g) **(Execute documents)** Enter into and execute documents or agreements on behalf of you or ANZ or a Controller. This includes using your seal and signing, accepting and endorsing cheques, promissory notes and bills of exchange.

## 29. You appoint ANZ as your Attorney for some purposes

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By way of Security Interest, you irrevocably appoint ANZ and each of ANZ's officers and staff individually, as your Attorney (but for ANZ's benefit and not subject to your direction), to do the following in your name:

- (a) each thing you are required to do in the Transaction Documents, but have not done at the due time; and
- (b) each thing which ANZ is entitled to do in the Transaction Documents if an Event of Default is subsisting.

An Attorney may delegate his or her Powers, if delegation is reasonably necessary or expedient in order to do anything in paragraph (a) or (b).

## 30. Particular circumstances

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### 30.1 Trustee

If you or another Obligor enter into any Transaction Document with ANZ as a trustee, the following paragraphs apply:

(a) **(Scope of obligations)** The Transaction Document binds you or the Obligor (as the case may be) personally and in a trustee capacity, and all future trustees of the trust.

(b) **(Attorney)** An Attorney acts for you or the Obligor in your or the Obligor's own capacity and trustee capacity.

(c) **(Enforce rights)** If an Event of Default occurs:

(i) if ANZ asks, you or the Obligor must exercise; and

(ii) ANZ has the right to exercise,

all of your or the Obligor's rights of indemnity against trust assets and all rights against beneficiaries.

(d) **(Event of Default)** An Event of Default will occur if, without ANZ's Consent, there is a change in:

(i) the composition of the trustee or trustees (including the retirement, removal or replacement a trustee, or the appointment of an additional trustee); or

(ii) the status of the trust (*for example, the trust is dissolved, wound up, set aside or terminated*).

(e) **(Certification)** You or the Obligor certify that:

(i) you or the Obligor have disclosed to ANZ everything about the trust;

(ii) the trust has been duly created and complies with all Laws in accordance with its terms;

(iii) there is no limitation on or right of set off against your or the Obligor's right to indemnity from trust assets, nor has the trust been determined, resettled or set aside;

(iv) you or the Obligor have always acted, and in entering into the Transaction Documents and the transactions contemplated in them, you or the Obligor have acted and are acting, lawfully and properly, in an authorised way and in the interests of the beneficiaries; and

(v) there is no other trustee.

### 30.2 Partnership

If you or another Obligor enter into any Transaction Document with ANZ as a partner of a partnership, the following paragraphs apply:

(a) **(Scope of obligations)** The Transaction Document binds:

(i) you or the other Obligor (as the case may be) personally;

(ii) you or the other Obligor, in your or the Obligor's capacity as a partner of the partnership, individually (despite any changes in the membership of the partnership or the fact that you or the Obligor are no longer a partner in the partnership); and

(iii) you or the other Obligor, together with each other partner of that partnership, jointly.

(b) **(Authority to Act)**

You or the other Obligor can request ANZ, in writing, to change any authority to transact (such as an Authorised Representative nomination or other authority) so that all Obligors are required to approve any future Transactions or activity on the account.

(c) **(Event of Default)** An Event of Default will occur if, without ANZ's Consent, there is a change in:

(i) the composition of the partnership (including the retirement, removal or replacement of a partner, or the appointment of an additional partner); or

(ii) the status of the partnership (*for example, the partnership is dissolved, wound up or terminated*).

(d) **(Certification)** You or the Obligor certify that:

(i) you or the Obligor have disclosed to ANZ everything about the partnership;

(ii) the partnership has been duly created and complies with all Laws in accordance with its terms;

(iii) you or the Obligor have always acted, and in entering into the Transaction Documents and the transactions contemplated in them, you have acted and are acting, lawfully and properly, in an authorised way and in the interests of the partnership; and

(iv) you or the Obligor will notify ANZ if any event described in clause 30.2(b) occurs.

(e) **(Successor partnership)** If ANZ asks, you agree to do everything necessary to ensure all partners of any successor partnership are bound by these Asset Finance Terms and each other Transaction Document.

### 30.3 Legal capacity

You must do everything to ensure that you do not become subject to any Legal Incapacity. If you are not an individual, you must maintain your corporate existence and remain in good standing.

## 31. Protection of third parties

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### 31.1 No enquiry

No party to any Dealing (as defined below) and no person asked to register a Dealing:

(a) is bound to enquire:

(i) whether an Event of Default has occurred or whether the Transaction Document has become enforceable;

(ii) whether a person who is, purports or is purported to be, a Controller or Attorney is duly appointed;

(iii) as to the amount of Secured Money or the Termination Amount and whether Secured Money or the Termination Amount is due and payable; or

(iv) in any other way as to the propriety or regularity of the Dealing; or

(b) is affected by notice that the Dealing is unnecessary or improper.

For the protection of any party to a Dealing or a person registering a Dealing, the Dealing will be taken to be authorised by these Asset Finance Terms and will be valid accordingly, even if there is any irregularity or impropriety in the Dealing.

In this clause, a **Dealing** is:

(c) any payment, or any delivery or handing over of an asset, to; or

(d) any acquisition, incurring of Finance Debt, receipt, sale, Lease, disposal or other dealing, by,

any Beneficiary, Controller or Attorney, or any person who purports or is purported to be a Controller or Attorney.

### 31.2 Receipt

The receipt of any Authorised Representative of any Beneficiary, or any Controller or Attorney appointed under a Transaction Document, (or person who purports, or is purported, to be such a Controller or Attorney) for any money or assets payable to or receivable or received by it exonerates the person paying that money or handing over that asset from being concerned as to their application, or from being liable or accountable for their loss or misapplication.

## 32. Personal Property Securities Act

### 32.1 PPSA further steps

You agree to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which ANZ, acting reasonably, asks and considers necessary for the purposes of:

(a) providing more effective security over the Goods, or any other personal property over which ANZ has a Security Interest, for payment of all monies owing to ANZ under or in connection with the Transaction Document;

(b) ensuring that a Security Interest created under a Transaction Document is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;

(c) enabling ANZ to apply for any registration, or give any notification, in connection with a Security Interest created

under a Transaction Document so that the Security Interest has the priority ANZ requires;

(d) enabling ANZ to exercise ANZ's rights in connection with the Goods;

(e) binding you and any other person intended to be bound under the Transaction Document;

(f) enabling ANZ to obtain the consent to any Security Interest created under a Transaction Document of any other person;

(g) enabling ANZ to register the power of attorney or similar power; and

(h) showing whether you are complying with the Transaction Document.

### 32.2 PPSA undertaking

If:

(a) you hold any Security Interest for the purposes of the PPSA and if your failure to perfect such Security Interest could materially adversely affect your business or ANZ's title or Security Interest in the Goods; or

(b) a Security Interest in your favour arises over the Goods (whether or not as a result of a breach by you under the Transaction Document),

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

(c) for you to obtain, the highest ranking priority possible in respect of the Security Interest (such as perfecting a purchase money security interest or perfecting a Security Interest by control); and

(d) to reduce as far as possible the risk of a third party acquiring an interest free of ANZ's Security Interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).

### 32.3 PPSA audit

If ANZ asks, you agree to arrange at your expense an audit of the PPSA procedures referred to in clause 32.2. ANZ may ask you to do this if ANZ reasonably suspect that you are not complying with this clause.

### 32.4 Additional PPSA undertakings

You must:

(a) if ANZ notifies you, fix identifying plates or marks on or to the Goods for any purpose including notification of ANZ's Security Interest over the Goods and that any lease or



sale of the Goods will constitute a breach of the Transaction; or

(b) permit ANZ to do anything in clause 32.4(a) and provide ANZ with access to the Goods to enable ANZ to do this.

### **32.5 Registration**

ANZ may at your expense apply for any registration, or give any notification, in connection with a Security Interest created under a Transaction Document and for whatever class or classes of Collateral ANZ thinks fit. You consent to any registration or notification by ANZ.

### **32.6 Costs of further steps**

Everything you are required to do under this clause is at your expense. Subject to clause 8.14, you agree to pay or reimburse ANZ for ANZ's reasonable costs in connection with anything you are required to do under this clause 32.6.

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

(a) You agree that (to the extent the Law permits):

(i) sections 142 and 143 of the PPSA are excluded and ANZ need not comply with the following provisions of the PPSA: sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4) and any other provision of the PPSA notified to you by ANZ after the date of these Asset Finance Terms;

(ii) neither ANZ nor any receiver (or receiver and manager) need give any notice required under any provision of the PPSA (except section 135); and

(iii) in the exercise of ANZ's rights upon an Event of Default, if:

(A) the Termination Amount plus, in the case of a Transaction that is a Finance Lease, the Residual Value, is less than the Market Value of the Goods; and

(B) ANZ is unable to recover the amount equal to the Market Value of the Goods for any reason (including as a result of section 140(2)(f) of the PPSA),

you will (as a separate obligation of yours and without prejudice to any other right of ANZ's under the Transaction Document) indemnify ANZ for any shortfall, subject to clause 8.14.

(b) This clause 32.7 applies despite any other clause in the Transaction Documents.

### **33. Cape Town Convention**

If ANZ determines that the Cape Town Convention applies to a Transaction, whenever

ANZ, acting reasonably, requests you to do anything:

(a) to ensure any Transaction Document (or any Security Interest, right or power under any Transaction Document) is fully effective, enforceable and perfected with the contemplated priority under the Implementing Legislation;

(b) for more satisfactorily assuring or securing to ANZ under the Implementing Legislation the property the subject of any such Security Interest in a manner consistent with the Transaction Documents; or

(c) for aiding the exercise of any right or power in any Transaction Document that the Implementing Legislation may authorise or recognise,

you shall do it promptly at your own cost. This may include obtaining consents, entering into a new or additional security agreement over any property the subject of any Security Interests, executing de-registration and export requests authorisations and powers of attorney, getting documents completed and signed, supplying information, delivering documents and evidence of title and executed blank transfers, and giving possession or control with respect to any property the subject of any Security Interest.

### **34. Anti-money laundering and sanctions**

(a) You agree that ANZ may delay, block or refuse to process any Transaction without incurring any liability if ANZ suspects that:

(i) the Transaction may breach any Laws or regulations in Australia or any other country;

(ii) the Transaction involves any person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is sanctioned under economic and trade sanctions imposed by the United States, the European Union or any country; or

(iii) the Transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful in Australia or any other country.

(b) You must provide all information to ANZ which ANZ reasonably requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any Laws or regulations in Australia or any other country.

(c) You agree that ANZ may disclose any information concerning you to:

(i) any law enforcement, regulatory agency or court where required by any such Law or regulation in Australia or elsewhere; and

(ii) any correspondent financial institution ANZ uses to make the payment for the purposes of compliance with any such Law or regulation.

(d) Unless you have disclosed that you are acting in a trustee capacity or on behalf of another party, you warrant that you are acting on your own behalf in entering into the Transaction Documents.

(e) You declare and undertake to ANZ that the processing of any Transaction by ANZ in accordance with your instructions will not breach any Laws or regulations in Australia or any other country.

## **35. Banking Code of Practice**

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### **35.1 When the Banking Code of Practice applies**

If you are an individual or small business (as defined in the Banking Code of Practice), ANZ is bound by the Banking Code of Practice when ANZ provides ANZ's products and services to you (including in respect of any Guarantor of your obligations who is an individual).

### **35.2 The Banking Code of Practice and these Asset Finance Terms**

Where the Banking Code of Practice applies, it will prevail over these Asset Finance Terms to the extent they are inconsistent with it.

*(For example, if there is an inconsistency between the Banking Code of Practice and clause 14, 19 or 27.7 of these Asset Finance Terms, the Banking Code of Practice will override that clause to the extent of the inconsistency.)*

## **36. Financial Hardship**

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You or any other Obligor should inform ANZ as soon as possible if you or any other Obligor are in financial difficulty. In such a situation, you or that other Obligor can request that ANZ try to help you or that other Obligor overcome any financial difficulties you or that other Obligor may have in meeting your or that other Obligor's obligations under the Transaction Documents. ANZ may, for example, be willing to discuss or agree to a new repayment plan. However it is not bound to do so.

## **37. Complaints and dispute resolution**

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If ANZ makes a mistake, or its service does not meet your or any other Obligor's expectations, you or that other Obligor should inform ANZ. For more information please visit your local branch, ring the contact centre on 13 13 14 or contact ANZ at [anz.com/your-feedback](http://anz.com/your-feedback).

## **38. Privacy**

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### **38.1 ANZ's collection, use and disclosure of Personal Information**

(a) ANZ may collect and use your or any other Obligor's Personal Information in the course of your or that other Obligor's relationship with ANZ. ANZ explains below when and how ANZ may collect, use and disclose this Personal Information.

(b) It is important that the information ANZ holds is up to date. You and each other Obligor must let ANZ know when information provided to ANZ has changed.

(c) Unless otherwise stated, this clause 38 applies to individuals and non-individuals (*for example, companies*).

### **38.2 Collection of Personal Information by ANZ**

ANZ may use and disclose the Personal Information it collects about you or any other Obligor for the following purposes:

(a) to assist in providing information about a product or service;

(b) to consider your or that other Obligor's request for a product or service;

(c) to enable ANZ to provide a product or service;

(d) to tell you or that other Obligor about other products or services that may be of interest to you or that other Obligor;

(e) to assist in arrangements with other organisations (such as loyalty partners) in relation to the promotion or provision of a product or service;

(f) to manage accounts and perform other administrative and operational tasks (including risk management, systems development and testing, credit scoring, staff training, collecting debts and market or customer satisfaction research);

(g) to consider any concerns or complaints you or an Obligor raise against ANZ and/or to manage any legal action involving ANZ;

(h) to prevent or investigate any fraud, unlawful activity or misconduct (or suspected fraud, unlawful activity or misconduct);

(i) to identify you or that other Obligor or establish your or an Obligor's tax status under any Australian or foreign legislation, regulation or treaty or pursuant to an agreement with any Tax authority; and

(j) as required by relevant Laws, codes of practice and external payment systems.

### **38.3 Absence of relevant Personal Information**

If you or any other Obligor do not provide some or all of the information requested, ANZ may be unable to provide you or that Obligor with a product or service.

### **38.4 Information required by Laws etc.**

ANZ may be required by relevant Laws to collect certain information from you or any other Obligor. Details of these Laws and why they require ANZ to collect this information are contained in ANZ's Privacy Policy and at [anz.com/privacy](http://anz.com/privacy).

### **38.5 Providing Personal Information to others**

(a) ANZ may provide your or any other Obligor's Personal Information to:

(i) any of ANZ's Related Entities which may use the information to: carry out ANZ's functions and activities; promote its own products and services; assess your or that other Obligor's application for its products or services; manage your or that other Obligor's product or service; perform administrative and operational tasks (including debt recovery); or comply with regulatory requirements and prudential standards;

(ii) an organisation that is in an arrangement with ANZ to jointly offer products and/or has an alliance with ANZ to share information for marketing purposes (and any of its outsourced service providers or agents) to enable them or ANZ to: provide you or that other Obligor with products or services; and/or promote a product or service;

(iii) any agent, contractor or service provider ANZ engages to carry out or assist its functions and activities (*for example, mailing houses or debt collection agencies*);

(iv) an organisation that assists ANZ to detect and protect against consumer fraud;

(v) any Government Agency;

(vi) other parties ANZ is authorised or required by Law or court/tribunal order to disclose information to;

(vii) participants in the payments system (including payment organisations and merchants) and other financial institutions (such as banks);

(viii) other credit providers;

(ix) mortgage insurers and any reinsurer of any such mortgage insurer;

(x) your or that other Obligor's guarantors (and intending guarantors) and any person who has provided security for your or that other Obligor's obligations;

(xi) any person who introduces you or that other Obligor to ANZ;

(xii) your or that other Obligor's referee(s);

(xiii) your or that other Obligor's joint borrower(s) or account holder(s); and

(xiv) your or that other Obligor's authorised agents, executor, administrator or trustee in bankruptcy; legal representative or attorney; or anyone acting for you or that other Obligor in connection with your or that other Obligor's account.

(b) If you or any other Obligor are an individual and do not want ANZ to tell you about products or services, phone 13 13 14 or your or that other Obligor's ANZ Manager to withdraw your or that other Obligor's consent.

(c) ANZ may disclose Personal Information to recipients (including service providers and other members of the ANZ Group) which are (1) located outside Australia and/or (2) not established in or do not carry on business in Australia. You or any other Obligor can find details about the location of these recipients in ANZ's Privacy Policy and at [anz.com/privacy](http://anz.com/privacy).

### **38.6 Credit Reporting**

(a) If you or any other Obligor are an individual customer, you or that other Obligor agree that ANZ may obtain information about your or that other Obligor's credit history and credit worthiness, including credit liabilities, repayments and defaults, from a credit reporting body (including a body that provides information on commercial activity and commercial credit worthiness) and use it to assess any application for credit, to manage your or that other Obligor's credit and for the purposes of debt collection. ANZ may also disclose information about you or that other Obligor to credit reporting bodies.

(b) Information about credit reporting (including the name and contact details of these credit reporting bodies and the circumstances in which ANZ may disclose your or any other Obligor's information to them) is available in ANZ's Privacy Policy and at [anz.com/privacy](http://anz.com/privacy).

### **38.7 ANZ Privacy Policy**

ANZ's Privacy Policy ([anz.com/privacy](http://anz.com/privacy)) contains information about:

(a) the circumstances in which ANZ may collect your or any other Obligor's Personal Information from other sources (including from a third party);

(b) how to access your or any other Obligor's information and seek correction of your or any other Obligor's information; and

(c) how you or another Obligor can raise concerns that ANZ has breached the *Privacy Act 1988* or an applicable code and how ANZ will deal with those matters.

### **38.8 Collecting sensitive information**

ANZ will not collect sensitive information about you or any other Obligor, such as about your or any other Obligor's health, without your or that other Obligor's permission.

### **38.9 Personal Information you provide about someone else**

(a) If you or any other Obligor give ANZ Personal Information about someone else, please show them a copy of this clause so that they may understand the manner in which their Personal Information may be used or disclosed by ANZ in connection with your or that other Obligor's dealings with ANZ.

(b) To the extent that you provide to ANZ any Personal Information regarding an Obligor who is not you or regarding any other person, you warrant that at the time that you provide such information, you:

(i) have obtained all necessary rights to provide such information to ANZ; and

(ii) have provided collection notices to such Obligors in substantially the same form as set out in this clause 38.

### **38.10 Survival of obligation**

This clause survives the termination of these Asset Finance Terms.

## **39. Confidentiality**

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### **39.1 PPSA Confidentiality**

Except as permitted in clause 39.2 or to the extent that section 275(7) of the PPSA applies, no party shall disclose any information of the kind mentioned in section 275(1) of the PPSA.

### **39.2 Permitted disclosure**

ANZ may disclose information or documents:

(a) in enforcing a Transaction Document, in a proceeding arising out of or connected with a Transaction Document or to the extent that disclosure is regarded by ANZ as necessary to protect its interests;

(b) as required under an order of a Government Agency or any procedure for discovery in any proceedings;

(c) as required under any Law (except to the extent the requirement can be excluded or limited by contract or by a confidentiality obligation) or under any administrative guideline, directive, request or policy with which

responsible financial institutions similarly situated would normally comply;

(d) as required or permitted by any Transaction Document;

(e) to a ratings agency and its advisers;

(f) to a trustee associated with any financing conduit and its advisers;

(g) to its legal advisers and its consultants; or

(h) with the prior consent of each relevant Obligor.

## **40. Notices**

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All notices, requests, demands, consents, approvals, agreements or other communications (**Notices**) to or by a party to the Transaction including any Guarantor:

(a) must be in writing signed by an Authorised Representative of the sender or where the sender is a Guarantor, by that Guarantor; and

(b) will be conclusively taken to be given or made:

(i) where a Transaction Document expressly allows the Notice to be given by press advertisement, on the first day that the Notice is published (even if that day is not a Business Day); or

(ii) when delivered, received or left at the address or fax number of the recipient shown in the Transaction Schedule or to any other address provided by the recipient to the sender but, if delivery or receipt is on a day on that is not a Business Day it will be conclusively taken to have been received at the commencement of business on the next day on which business is generally carried on in that place.

## **41. Time is of the essence**

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If a Transaction Document specifies when a party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all of its other obligations under the Transaction Documents promptly. Time is of the essence for your and any other Obligor's obligations to pay money under the Transaction.

## **42. ANZ's certificate is evidence**

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In court proceedings, a certificate by ANZ is evidence of how much you and any other Obligor owe to ANZ (or of anything else ANZ certifies), unless proved otherwise.

### **43. Waiver, consent and variation**

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#### **43.1 Waiver**

(a) ANZ may exercise any of its rights, even if ANZ has waived them in other cases in the past.

(b) Only a waiver in writing signed by someone ANZ authorises to do so is binding on ANZ, and then only for the particular case in which it is given.

#### **43.2 Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

(a) no other conduct or omission of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

(b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

(c) the exercise of a right does not prevent any further exercise of that right or of any other right.

#### **43.3 Consent**

ANZ may withhold ANZ's Consent to something, or only give it conditionally, as ANZ sees fit (except where otherwise indicated in the Transaction Document).

#### **43.4 Variation of Transaction Documents**

Subject to clause 6, a Transaction Document may be amended only by another agreement or deed (as appropriate) executed by all the parties.

### **44. ANZ's liabilities**

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#### **44.1 ANZ is not responsible for actions and omissions**

Subject to clause 8.14, neither ANZ nor an Attorney or any person acting on ANZ's or an Attorney's behalf (**Relevant Person**) is responsible for any Loss in connection with these Asset Finance Terms or any Transaction which happens:

(a) as a result of the exercise or non-exercise of a right or Power; or

(b) otherwise.

This clause is subject to any overriding Law.

#### **44.2 ANZ is not responsible for inspections, valuations or sale price**

(a) ANZ's inspections, valuations, reports and opinions (**Records**) in relation to you and any other Obligor, your and any other Obligor's

financial position and the Goods are for ANZ's purposes. You and any other Obligor are not entitled to a copy (unless a Law or, if it applies, the Banking Code of Practice, overrides this paragraph).

(b) You and any other Obligor should not rely on the fact that ANZ appears to think that your and any other Obligor's financial position or the Condition or value of the Goods is satisfactory, because ANZ's Records and financing decisions are not made to protect your or any other Obligor's interests.

(c) Any searches, inspections or enquiries ANZ makes are not intended to be the same as the searches, inspections and enquiries that a careful purchaser should make.

(d) You and any other Obligor agree not to rely on ANZ's Records or opinions, and not to hold ANZ responsible for any mistakes in them or for not telling you or any other Obligor anything in them.

### **45. Miscellaneous provisions**

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#### **45.1 Set-off**

At any time, ANZ may, without prior notice:

(a) combine or amalgamate any of your or any other Obligor's accounts with ANZ (whether those accounts are held alone or with any other person) so as to treat them as one account. However, ANZ may not combine any Obligor's accounts with any other Obligor's accounts (unless both Obligors already jointly hold the accounts being combined); or

(b) set off any obligation of any type in any currency that ANZ owes to an Obligor, including any credit balance in any account of the relevant Obligor with any branch of ANZ (whether or not matured), against any obligation of that Obligor to ANZ under or in relation to any Transaction Document to pay any sum then payable.

Exercise of this right is at ANZ's discretion. This right is independent of any Security Interest granted under the Transaction Documents and any right at law.

#### **45.2 ANZ can complete details**

(a) ANZ may, where it is reasonable in the circumstances, complete any blanks or further details in the Transaction Documents and correct any obvious errors (*for example, ANZ can fill in details of the Goods in the Transaction Schedule if you do not know them when you sign*).

(b) If ANZ asks you or any other Obligor, you or any other Obligor must sign a document (*for example, an application to transfer an Authorisation*), even if not fully completed, if ANZ considers it could assist ANZ to enforce the

Transaction after an Event of Default. ANZ is not entitled to complete and use that document unless an Event of Default is subsisting.

#### **45.3 Statutory powers**

(a) The powers conferred on a ANZ or a Receiver by Law:

(i) are in addition to the Powers conferred by these Asset Finance Terms or any Ancillary Security Document;

(ii) to the extent permitted by Law, may be exercised immediately when an Event of Default occurs and at any time while the Event of Default is subsisting; and

(iii) are excluded or varied only so far as they are inconsistent with the express terms of these Asset Finance Terms or any Ancillary Security Document.

(b) To the extent permitted by Law (but without prejudice to any express lawful requirement in the Transaction Document):

(i) you and any other Obligor dispense with or waive any notice or lapse of time required by Law before enforcing these Asset Finance Terms or any Ancillary Security Document or the exercise of any Power; but

(ii) if by Law prior notice cannot be dispensed with or waived but the period of such notice can be agreed on, then the period of that notice is the longer of one day or the minimum period that the Law allows to be agreed,

and the Powers expressed in these Asset Finance Terms will be construed accordingly.

#### **45.4 ANZ can act in ANZ's best interests**

ANZ may exercise a Power in a Transaction Document or at Law when and in any way ANZ likes.

#### **45.5 Delay**

No failure to exercise and no delay in exercising on ANZ's part, any right or remedy under a Transaction Document and no delay or granting of time or other indulgence by ANZ will affect ANZ's rights to enforce your and any other Obligor's obligations or exercise any right under the Transaction.

#### **45.6 Severability of provisions**

Any provision of a Transaction Document which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of that Transaction Document nor affect the validity or enforceability of that provision in any other jurisdiction, and to the extent that it complies with the law or is enforceable.

#### **45.7 Restricted Collateral**

(a) If the Security Interest granted under these Asset Finance Terms with respect to any Collateral would:

(i) otherwise be ineffective with respect to the Collateral; or

(ii) breach any Law or (if that Collateral is a right under a document or agreement) that document or agreement,

then if it would render the Security Interest with respect to that Collateral effective and not in breach, the Security Interest will operate as a non-circulating Security Interest with respect to the Collateral, failing which, it will operate as a circulating Security Interest with respect to that Collateral, failing which it will not apply to that Collateral.

(b) You must use your best efforts promptly to obtain any consent and do anything else needed to ensure the Security Interest can apply to that Collateral and not operate as a circulating Security Interest.

#### **45.8 Supervening legislation**

To the full extent permitted by Law, all legislation which at any time directly or indirectly:

(a) lessens, varies or affects in favour of you or any other Obligor any obligation under the Transaction Document; or

(b) delays, prevents or prejudicially affects the exercise by any Beneficiary, Controller or Attorney of any Power,

is excluded from the Transaction Documents.

#### **45.9 Agent's commission**

If the Transaction has been arranged by someone else or someone else has introduced you or any other Obligor to ANZ or ANZ to you or any other Obligor, you and any other Obligor:

(a) agree that that person is your and any other Obligor's agent (not ANZ's);

(b) direct ANZ to pay any commission and other charges to that agent; and

(c) acknowledge that the commission and other charges are intended to be recouped by ANZ from the Instalments.

#### **45.10 Indemnity and reimbursement obligations**

Except where otherwise indicated in the Transaction Document, each indemnity, reimbursement or similar obligation in these Asset Finance Terms or the Transaction (*for example, your and any other Obligor's obligation to pay ANZ's fees and expenses*):

(a) is of a continuing nature and is independent of each other obligation;

(b) is in addition to any other rights that the indemnified person has under that or any other Transaction Document, or rights given independently by law;

(c) may be enforced without the indemnified person being required to incur any expense or make any payment before enforcing the indemnity;

(d) is payable on demand; and

(e) survives the termination or discharge of these Asset Finance Terms or the Transaction.

#### 45.11 Reinstatement of Rights

Under law, a trustee in bankruptcy, liquidator or controller (as defined in the Corporations Act) may ask ANZ to refund a payment ANZ has received in connection with these Asset Finance Terms or any other Transaction Document or a Guarantee. To the extent ANZ is obliged to, or ANZ agrees to, make a refund, ANZ may treat the original payment as if it had not been made. ANZ is then entitled to its rights against each Obligor under the Transaction Documents (including under any Guarantee) as if the payment had never been made. This applies despite anything else in these Asset Finance Terms, the Guarantee or any other Transaction Document or the fact that the Asset Finance Terms, the Guarantee or any other Transaction Document may have come to an end.

#### 45.12 Assignment

(a) ANZ may at any time assign, transfer, grant security over, declare a trust over, or otherwise transact in respect of any of ANZ's rights arising under the Transaction or any Transaction Document, and may disclose to the proposed assignee, transferee, secured party, beneficiary or person with which ANZ is transacting, any information in ANZ's possession relating to you and any other Obligor, the Goods, the Transaction or the Transaction Document.

(b) You and any other Obligor are not entitled to assign, transfer, grant security over, declare a trust over or otherwise transact in respect of any of your and any other Obligor's rights arising under the Transaction without ANZ's Consent.

#### 45.13 Law that applies

(a) Each Transaction Document is governed by the law in force in Victoria.

(b) Each party submits to the non-exclusive jurisdiction of the courts of Victoria and any court that may hear appeals from any of those courts, for any proceedings in connection with any Transaction Document, and waives any right it might have to claim that those courts are an inconvenient forum.

#### 45.14 Counterparts

A Transaction Document or the Transaction may be executed in counterparts, which together will be deemed to constitute one instrument.

### 46. Guarantee

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#### 46.1 How a Guarantee is created

If ANZ receives a Transaction Schedule signed by the Guarantor, the Guarantor irrevocably agrees to guarantee the Transaction set out in that Transaction Schedule on the terms set out in this clause, the Transaction Schedule, these Asset Finance Terms and any Special Terms.

#### 46.2 What is guaranteed

(a) **Guaranteed Transaction** means each Transaction guaranteed under a Guarantee created in accordance with clause 46.1.

(b) **Guaranteed Money** means all money which the Customer may owe to ANZ now or in the future for any reason under or in respect of each Guaranteed Transaction and the Transaction Documents for each Guaranteed Transaction.

#### 46.3 Consideration

(a) By providing a Guarantee, the Guarantor could become liable to pay ANZ:

- (i) under the guarantee in clause 46.4;
- (ii) under the indemnity in clause 46.5;
- (iii) interest under clause 46.6; and
- (iv) costs and other expenses under clause 46.7.

(b) The Guarantor's obligations are in no way conditional on the condition, merchantability, suitability, title, operation or delivery of the Goods.

(c) The Guarantor gives the Guarantee for valuable consideration which includes ANZ entering into the Transaction Documents and the Guaranteed Transaction.

#### 46.4 Guarantee

(a) The Guarantor unconditionally and irrevocably guarantees the due and punctual payment of the Guaranteed Money.

(b) At any time, Guaranteed Money may include (without limitation) the following:

- (i) money which the Customer actually does owe or will owe to ANZ;
- (ii) money which the Customer does or will contingently owe to ANZ (*for example, under an indemnity given by the Customer to ANZ*); and
- (iii) money which the Customer may owe to ANZ at any time if something happens or is

discovered (for example, where ANZ may later be able to sue the Customer for damages because of something that arises out of a Guaranteed Transaction).

(c) If the Customer does not pay any amount of the Guaranteed Money in accordance with the Transaction Documents, then the Guarantor agrees to pay that amount to ANZ on demand.

#### **46.5 Indemnity**

(a) The Guarantor unconditionally and irrevocably indemnifies ANZ against any liability, Loss or Costs that ANZ suffers or incurs if any Guaranteed Money is not owing by or recoverable from the Customer for any reason.

(b) The Guarantor as principal debtor agrees to pay ANZ on demand a sum equal to the amount of any such liability, Loss or Costs.

(c) The indemnity in clause 46.5(a) is a continuing obligation, separate and independent from the Guarantor's other obligations under the Guarantee. It continues after those other obligations end, unless the Guarantor ends the indemnity under clause 46.21. It is not necessary for ANZ to incur expense or make payment before enforcing a right of indemnity conferred by this clause 46.5.

If an Insolvency Event occurs, ANZ's rights under this clause 46.5 may be restricted by law.

#### **46.6 Interest**

The Guarantor must pay interest calculated on daily balances on any amount it owes under clause 46.4 or clause 46.5 from the date ANZ asks it for the amount until the Guarantor pays it. This interest is to be calculated and is payable in accordance with clause 8.12.

#### **46.7 Guarantor's own costs and other expenses**

The Guarantor must pay for anything which it must do under the Guarantee.

#### **46.8 ANZ's rights are protected**

(a) Rights given to ANZ under the Guarantee and the Guarantor's liabilities under it are not affected by any act or omission by ANZ or by anything else that might otherwise affect them under Law or otherwise, including:

(i) the fact that the Guarantor does not sign these Asset Finance Terms or any other Transaction Document (other than the relevant Transaction Schedule);

(ii) the fact that ANZ varies or replaces these Asset Finance Terms or any other Transaction Document, such as by extending the Term (but if the Guarantor's liability is limited as described in clause 46.16, then that limit applies despite any variation or replacement);

(iii) the fact that ANZ either releases, loses the benefit of or does not obtain any Security Interest or does not register any Security Interest which could be registered;

(iv) the fact that ANZ exercises or delays or refrains from exercising or enforcing these Asset Finance Terms or any other Transaction Document or any right, power or remedy conferred on it by Law or by these Asset Finance Terms or any other Transaction Document;

(v) the fact that ANZ releases the Customer or gives the Customer a concession, such as more time to pay;

(vi) the fact that the obligations of another Guarantor under these Asset Finance Terms or any other Transaction Document may not be enforceable;

(vii) the fact that while the Guarantee was intended to guarantee your obligations under these Asset Finance Terms and all other Transaction Documents, it does not do so or it does not do so effectively;

(viii) the insolvency of any person including the Customer. However if an Insolvency Event occurs, ANZ's rights may be restricted by law; or

(ix) changes in membership, name or business with respect to the Customer or the Guarantor.

(b) The Guarantee does not merge with or adversely affect and is not adversely affected by, any of the following:

(i) any other Guarantee, or any Security Interest, or right or remedy to which ANZ is entitled; or

(ii) a judgment or order which ANZ obtains against the Guarantor in respect of an amount payable under the Guarantee.

(c) ANZ can still exercise its rights under the Guarantee as well as under the judgment, order, any other Guarantee, any Security Interest, right or remedy.

(d) The Guarantee binds each person who signs as Guarantor even if another person who was intended to sign it does not sign it or is not bound by it.

#### **46.9 Guarantor's rights are suspended**

As long as any Guaranteed Money remains unpaid, the Guarantor may not, without ANZ's Consent:

(a) reduce its liability under the Guarantee by claiming that the Guarantor or the Customer or any other person has a right of set-off or counterclaim against ANZ. If ANZ owes any amounts to the Guarantor or the Customer, the Guarantor or the Customer must raise those claims separately; or

(b) exercise any legal rights to claim to be entitled to the benefit of any other



Guarantee, any Security Interest given in connection with an amount payable under any Transaction Document or an amount payable under the Guarantee; or

(c) claim an amount from the Customer under a right of indemnity; or

(d) claim an amount in the Customer's insolvency.

This clause 46.9 does not apply if the Banking Code of Practice applies to the Guarantee.

#### **46.10 What the Guarantor acknowledges and declares**

(a) The Guarantor acknowledges that it is responsible for making itself aware of the Customer's financial position and the risks it undertakes under these Asset Finance Terms and each other Transaction Document.

(b) If the Guarantor is the trustee of a trust or settlement including any trust specified in these Asset Finance Terms, unless ANZ has agreed in writing to the contrary the Guarantor makes the following declarations as trustee of that trust or settlement:

(i) the Guarantee is for the benefit of the trust;

(ii) the Guarantor is the sole trustee of the trust;

(iii) the Guarantor has authority to enter into the Guarantee;

(iv) the Guarantor has the right to be fully indemnified out of trust assets for obligations incurred under the Guarantee; and

(v) the Guarantor enters into the Guarantee on its own behalf and in its capacity as trustee of that trust.

(c) The Guarantor agrees to ensure that nothing happens that would prevent it truthfully repeating these declarations (unless ANZ Consents to that thing happening).

(d) If the Guarantor is the trustee of a trust or settlement including any trust specified in these Asset Finance Terms, unless ANZ has agreed in writing to the contrary the Guarantor agrees that it will not permit (insofar as it is able to do so) without ANZ's Consent:

(i) any re-settlement or distribution of capital of the trust;

(ii) any retirement or replacement of the trustee or any appointment of a new trustee of the trust deed establishing the trust;

(iii) any amendment of the trust deed establishing the trust;

(iv) any further encumbrance or charging of any nature of any of the assets of the trust; or

(v) any breach of the provisions of the trust.

(e) If any of these events occurs, the Guarantor must immediately inform ANZ in writing.

#### **46.11 When must the Guarantor pay**

The Guarantor must pay any amount payable to ANZ under the Guarantee by the time and on the date specified by ANZ.

#### **46.12 Guarantor must take further steps**

The Guarantor must do anything ANZ reasonably asks (such as obtaining consents, signing and producing receipts and getting documents completed and signed) to bind itself under the Guarantee.

#### **46.13 How ANZ may exercise its rights**

(a) Subject to the Banking Code of Practice (if it applies), ANZ may claim against the Guarantor under the Guarantee before ANZ enforces any of its rights or remedies:

(i) against the Customer or any other person; or

(ii) under another document such as any other Guarantee or any Security Interest.

(b) If ANZ has more than one Guarantee or Security Interest, ANZ may enforce them in any order that it chooses.

#### **46.14 How ANZ may use money it receives**

(a) ANZ may use any money paid by or for the Customer towards meeting any part ANZ chooses of the amounts the Customer owes ANZ (including meeting any amount the Guarantor does not guarantee). ANZ may use any money paid by the Guarantor under the Guarantee towards paying any part ANZ chooses of the amounts the Guarantor owes ANZ under the Guarantee.

(b) ANZ may place in a suspense account any payments it receives from the Guarantor for as long as ANZ thinks prudent as long as ANZ is acting in a commercially reasonable manner.

#### **46.15 Certifications made by the Guarantor**

The Guarantor makes the certifications to ANZ in clauses 16.1(a) to 16.1(h) and in accordance with clause 16.3 as if the references to "you" are references to the Guarantor.

#### **46.16 Is there a limit on the Guarantor's liability under a Guarantee?**

If the Banking Code of Practice applies to the Guarantee, the Guarantee must be limited either:

(a) to a specific amount and/or category of amounts such as all amounts owing under a specific Transaction, plus other liabilities (such as interest and Costs) that are described in the Guarantee; or

(b) to the value of a specified security at the time of recovery.

If applicable, that limit will be set out in the Transaction Schedule for the Guaranteed Transaction.

#### **46.17 How can the Guarantor limit its obligations?**

If the Banking Code of Practice applies to the Guarantee, the Guarantor can limit the amount or nature of its obligations under the Guarantee by specifying the limitation in the Transaction Schedule for the Guaranteed Transaction or other document under which it agrees to provide a Guarantee or sending ANZ a letter in accordance with clause 40 saying that the Guarantor wants to limit its obligations under the Guarantee. ANZ does not have to accept such a limit if:

(a) it is below the Customer's liability under the Guaranteed Transaction at the time plus any interest or Costs which may be subsequently incurred in respect of that liability; or

(b) ANZ is obliged to provide further Drawdown Amounts or would be unable to secure the present value of an asset which is security for the Guaranteed Money (*for example, as described in clause 46.19*).

#### **46.18 How can the Guarantor stop its obligations?**

The Guarantor can stop its obligations under the Guarantee in the two ways set out below or any other way permitted by law under the Banking Code of Practice.

(a) The Guarantor can send ANZ a letter in accordance with clause 40 saying that the Guarantor wants to withdraw from the Guarantee. If the Guarantor does this:

(i) before ANZ enters into a Guaranteed Transaction with the Customer; or

(ii) at any time afterwards and there is a material difference between the terms of the Guaranteed Transaction as entered into and the terms of the Transaction Documents given to the Guarantor,

then the Guarantor will not be liable.

In all other circumstances, even after the Guarantor gives the letter, it is still liable under the Guarantee for:

(iii) liabilities relating to Guaranteed Transactions entered into before the letter is received by ANZ; and

(iv) any further amount the Guarantor agrees.

However, the Guarantor's right to limit its liability in this way may be limited by clause 46.19.

(b) The Guarantor can stop its liability under the Guarantee by paying ANZ an amount equal to all of the Guaranteed Money at that time, or any lesser amount to which the Guarantor's liability is limited at that time under clause 46.16. When the Guarantor asks, ANZ will give the Guarantor a certificate as to what that amount is. If the Guarantor makes that payment, ANZ will release the Guarantor from the Guarantee.

The Guarantor can also stop its liability under the Guarantee by making other arrangements ANZ agrees to in return for releasing the Guarantor from the Guarantee.

If the Guarantor has entered into the Guarantee with another person, and if that person has not stopped its obligations, that person remains fully liable for all money owed under the Guarantee.

#### **46.19 Limit on the Guarantor's right to stop or limit its obligations under the Guarantee**

If under any Guaranteed Transaction, ANZ:

(a) has lent, advanced or paid any money to the Customer for the purpose of manufacturing the Goods, the Guarantor cannot stop its obligations in relation to that Guaranteed Transaction by writing a letter until ANZ issues a certificate saying the manufacture of the Goods has been finished to ANZ's satisfaction; or

(b) is obliged to provide further Drawdown Amounts, the Guarantor cannot stop its obligations in relation to that Guaranteed Transaction until all further Drawdown Amounts ANZ is obliged to make have been made.

#### **46.20 What happens after the Guarantor has stopped its obligations under the Guarantee?**

If the Guarantor stops its obligations under the Guarantee, ANZ can end or continue any or all of the Guaranteed Transactions with the Customer.

If ANZ decides to allow further amounts to be drawn then:

(a) if the Guarantor has stopped its obligations by making a payment, its liability ends; and

(b) if the Guarantor has stopped its obligations by writing a letter in accordance with clause 46.18(a), its liability under the Guarantee is as described in that clause.

#### **46.21 Guarantor may end this Guarantee**

Subject to clause 45.8 the Guarantor may end its liability under this Guarantee at any time if it pays ANZ all amounts payable under this Guarantee at that time including any amount which ANZ determines to be the Guarantor's future or contingent liabilities.

This clause 46.21 does not apply if the Banking Code of Practice applies to the Guarantee, but the Guarantor may then stop its liability under the Guarantee as set out in clause 46.19.

#### **46.22 Can the Guaranteed Transaction change?**

(a) ANZ and the Customer can at any time:

(i) replace the existing Guaranteed Transaction;

(ii) vary the existing Guaranteed Transaction; or

(iii) do whatever business ANZ and the Customer wish with each other.

(b) Subject to the Banking Code of Practice, the Guarantee applies to any replacement Guaranteed Transaction and to the Guaranteed Transaction which is varied. ANZ does not have to get the Guarantor's consent. Except as stated below, it does not matter that the Guaranteed Money may increase.

(c) However, if there is a limit on the amount payable by the Guarantor under the Guarantee (see clause 46.16) the Guarantor is not liable to pay any more than the limit, no matter what replacement Guaranteed Transaction is entered into or what variations to the Guaranteed Transaction is made.

#### **46.23 What does ANZ have to tell the Guarantor?**

If the Banking Code of Practice applies to the Guarantee, the Guarantor has rights to certain information.

In all other respects (and except as expressly set out in the Guarantee or as required by any

Law, the Banking Code of Practice or applicable code of conduct):

(a) ANZ is not required to do anything in relation to, or tell the Guarantor anything concerning, the Customer's financial and business condition and affairs or the Customer's Guaranteed Transactions with ANZ; and

(b) ANZ does not have to tell the Guarantor if anything happens in relation to the Guaranteed Money or the Guaranteed Transactions or any Security Interests or rights. It is the Guarantor's responsibility to find it out.

Subject to what appears above, this applies both before and after the Guarantor provides the Guarantee.

#### **46.24 What happens if Consumer Credit Law applies?**

To the extent the Guarantee relates to a Guaranteed Transaction that is regulated by Consumer Credit Law then the Guarantee is limited as follows.

(a) ANZ's rights and powers and those of ANZ's officers and staff under the Guarantee are limited as required by Consumer Credit Law.

(b) The amounts which the Guarantor is required to pay under the Guarantee will not be more than ANZ is allowed to recover from the Guarantor.

This applies despite anything in the Guarantee, or any other, document. It does not affect the Guarantee to the extent that it relates to any Guaranteed Transaction which is not regulated by Consumer Credit Law.

#### **46.25 Additional clauses**

Clauses 33 to 45 of these Asset Finance Terms apply to the Guarantee (*for example, the Guarantor must provide to ANZ all notices and requests in relation to the Guarantee in accordance with clause 40 and set-off may apply to any amount payable by the Guarantor under the Guarantee in accordance with clause 45.1*).