

TERMS AND CONDITIONS COMMERCIAL

30 JANUARY 2012

For the divisions of Volkswagen Financial Services Australia Pty Limited trading as:
Volkswagen Finance, Audi Finance, Škoda Finance, Bentley Motors Finance
and Lamborghini Finance

- LEASE
- HIRE-PURCHASE
- CHATTEL LOAN AND MORTGAGE

VOLKSWAGEN FINANCE



www.volkswagenfinance.com.au

AUDI FINANCE



www.audifinance.com.au

ŠKODA FINANCE



www.skodafinance.com.au

BENTLEY MOTORS FINANCE



www.bentleymotorsfinance.com.au

LAMBORGHINI FINANCE



www.lamborhifinance.com.au

Contents

Lease	1
Hire-Purchase	9
Chattel Loan and Mortgage	17

LEASE

Terms and Conditions

1. Lease of Goods

- 1.1 We agree to lease the Goods to you for the whole of the Term of this Agreement commencing on the date you sign the Schedule, upon the terms set out in the Schedule, these Terms and Conditions and, if applicable, any Special Conditions.
- 1.2 You have the right to use the Goods during the Term of this Agreement.
- 1.3 By signing the Schedule, you acknowledge delivery of the Goods. You must pay all costs of delivery. Any failure to obtain delivery or any defect in the Goods does not affect your obligation to pay the Rent Instalments and any other money due under this Agreement.
- 1.4 Our interest in the Goods and all Proceeds is a Security Interest and this Agreement is a Security Agreement.
- 1.5 You consent to us registering our Security Interest on the Register and agree to provide all assistance reasonably required by us to facilitate registration.

2. Payments

- 2.1 You must pay all Rent Instalments in accordance with these Terms and Conditions and the payment details set out in the Schedule. Payments must be made on or before the due dates specified.
- 2.2 You must pay the Establishment Fee specified in the Schedule on the date you sign the Schedule or in accordance with any other arrangement acceptable to us. You must also pay any other fees and charges levied by us to cover our costs in relation to this Agreement.
- 2.3 You must make all payments by direct debit, or in another manner, acceptable to us. If a payment is dishonoured, the payment is taken not have been made.
- 2.4 Where Rent Instalments are made monthly and a Rent Instalment becomes due on a date in a month that has no such date, the Rent Instalment will be due on the last day of that month.
- 2.5 Any payment due on a day which is not a Business Day must be made on the next Business Day.
- 2.6 You must make all payments free of all deductions and without set-off, irrespective of any loss, damage, destruction, defect, unsuitability, failure to operate, or anything else relating to the Goods.
- 2.7 You must pay interest on any money payable under this Agreement and not paid on the due date, including any damages you may be liable to pay us, at a rate equal to the aggregate of 2% and the rate implicit in the return to us under this Agreement. Interest is calculated on a daily basis, from the date the money becomes due and payable to the date of payment.
- 2.8 You must pay all costs and expenses which we incur in exercising any of our rights under this Agreement, including any amount paid to release a lien claimed over the Goods or to remedy a breach of your obligations under this Agreement (e.g. fail to maintain insurance).
- 2.9 Also, you must pay to us the standard fees and charges specified in the Schedule and any new fees and charges we introduce. We will notify you of changes to the amount of those fees and charges and when new ones are introduced.
- 2.10 Unless otherwise stated in this Agreement, all amounts are payable by you on demand.
- 2.11 Payments we receive may be applied to any amount you owe under this Agreement in any order we decide.
- 2.12 If taxes, stamp duties, fines or other government charges apply in relation to this Agreement or anything done or supplied under it, or relate to the use, possession or operation of the Goods, then you must pay, or reimburse us for, the amount of those taxes, stamp duties, fines or other government charges. We may, by written notice, vary the Rent Instalments as a consequence of any change to, or imposition of, any tax, stamp duty, fine or other government charge.

- 2.13 You must pay or reimburse us for the amount of any GST payable on any taxable supply made by us under or in connection with this Agreement.
- 2.14 If a payment to a party under this Agreement is calculated by reference to a loss, cost, expense or outgoing incurred by that party, then the calculation of that payment is to be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost, expense or outgoing. That payer must also pay to the supplier of the taxable supply any GST payable in relation to the payment.

3. Ownership of the Goods

- 3.1 The Goods are owned by us. You have no right or option to purchase the Goods.
- 3.2 Any replacement of the Goods or parts of the Goods, and any additions which may be incorporated with the Goods during the Term of this Agreement, will form part of the Goods and be owned by us. Our Security Interest in the Goods extends to these replacements and additions. You must ensure all replacements and additions are free of any third party interests, including Security Interests.
- 3.3 You must not do anything inconsistent with our ownership of, or our Security Interest in, the Goods.
- 3.4 You must not assign this Agreement or grant a Security Interest in the Goods without our permission.

4. Use and Location

- 4.1 The Goods must be kept in your possession and control.
- 4.2 All costs arising from possession and use of the Goods are to be paid by you.
- 4.3 The Goods must be ordinarily kept at the address specified in the Schedule or such other place as we approve.
- 4.4 You must promptly notify us if the address at which the Goods are ordinarily kept changes and of any change in the registration of the Goods (including any loss of registration).
- 4.5 You must tell us within 7 days of being requested in writing where the Goods are used or ordinarily kept. If the Goods are not in your possession, you must give us all the information you have that might assist in tracing the Goods.
- 4.6 You must not without our written consent make any alterations, additions or improvements to the Goods.
- 4.7 You assume all risks and liabilities arising from your possession or use of the Goods. You indemnify us against any liability we may incur arising from the use or possession of the Goods by you or any other person.

5. Repair and Maintenance

- 5.1 You must keep the Goods in good repair and ensure the Goods are serviced and maintained in accordance with the manufacturer's specifications and recommendations.
- 5.2 You must pay for repairs to the Goods immediately, to avoid a repairer's lien over the Goods.
- 5.3 We are entitled to inspect and test the Goods upon giving reasonable notice.
- 5.4 You must maintain current registration throughout the Term and comply with all laws relating to the Goods or their use.

6. Loss or Damage

- 6.1 You bear the entire risk of loss of, or damage to, the Goods from any cause.
- 6.2 You must tell us immediately the Goods are stolen, lost, destroyed or damaged to such an extent we or the insurer decides that repair is impracticable or uneconomic.
- 6.3 If the Goods are stolen, lost, destroyed, or damaged so that repair is impractical or uneconomic, any insurance money must be paid to us in reduction of your liability. Payment of the insurance money to us does not release you from liability for any other amount due under this Agreement. If repair is practical, you are obliged to repair the Goods promptly.

7. Insurance

- 7.1 You must maintain insurance of the Goods during the Term against loss, damage or destruction, and such risks as we from time to time require.
- 7.2 Insurance must be on such terms as we reasonably require with an insurer approved by us.
- 7.3 Insurance must be for the respective rights and interests of you and us and for the full insurable value of the Goods as determined by us. You must produce proof of the terms and currency of insurance over the Goods whenever we request you to do so.
- 7.4 You must not do or permit to be done anything which could prejudice any insurance or any claim under any insurance.
- 7.5 You must notify us immediately of any claim made under any insurance or if any insurance is reduced or cancelled.

8. Termination

- 8.1 You will be deemed to have repudiated this Agreement if:
- (a) you fail to pay any amount payable under this Agreement and also fail to subsequently comply with a notice of default given to you requiring payment to be made; or

- (b) any other Event of Default capable of rectification occurs and you fail or are unable to rectify the default within 14 days after we give you a notice telling what the default is and asking you to rectify it; or
 - (c) an Event of Default not capable of rectification occurs; or
 - (d) we believe on reasonable grounds we were induced to enter into this Agreement by you or the Guarantor providing information that was incorrect or was misleading; or
 - (e) you have repudiated any other agreement with us.
- 8.2 Where you are deemed to have repudiated this Agreement, we may do any one or more of the following:
- (a) exercise any right, power, or privilege conferred by law, equity, this Agreement, or any other collateral document;
 - (b) perform any of your obligations under this Agreement;
 - (c) terminate this Agreement by written notice to you or by taking or attempting to take possession of the Goods (and for that purpose may enter any premises without notice to you).
- 8.3 Upon termination of this Agreement, you must pay us by way of liquidated damages for our loss of bargain arising from the early termination of this Agreement, the Termination Value, together with:
- (a) any other amounts payable under this Agreement; and
 - (b) upon repossession of the Goods, our expenses in repossessing it, which include any expenses incurred in attempting to repossess the Goods and satisfying any lien claimed over it, whether justifiable or not, as well as any legal expenses paid by us on a solicitor and client basis in relation to the repossession.
- 8.4 In calculating our loss:
- (a) the amount payable under clause 8.3 will be adjusted for any variation in GST or other taxes or impositions payable in respect of such rebated instalments when compared with the amounts provided for in the Rent Instalments; and
 - (b) we will credit to you any amount by which the net proceeds of sale of the Goods referred to in clause 9.4 exceed the Residual Value.
- 8.5 The Termination Value at the date of termination under clause 8.3 is the total of the following amounts:
- (a) the present day value of the Residual Value for the Goods; and
 - (b) the present day values of the Rent Instalments which are still to fall due and which are attributable to the Goods.

The present day value of an amount on a day is calculated by discounting that amount at a percentage rate per annum below the implicit rate in the return to us under this Agreement, such percentage rate not exceeding 4% as determined by us in order to cover our administration and other costs and losses arising directly or indirectly from the early termination.

- 8.6 If this Agreement is terminated, we are entitled to possession of the Goods and you must immediately deliver the Goods to the place specified by us. If the Goods are not delivered as specified, you must pay an amount equal to one day's portion of a Rent Instalment for each day until the Goods are delivered to us.
- 8.7 You must pay all costs of and incidental to enforcement of this Agreement by us, including any costs of repossessing and storing the Goods.

9. End and Enforcement of this Agreement

- 9.1 At the end of this Agreement, whether by expiry or termination, we are entitled to possession of the Goods which must be immediately delivered to the place specified by us.
- 9.2 If the Goods are not returned to us when required, you must pay us an amount equal to one day's proportion of a Rent Instalment for each day until the Goods are delivered to us.
- 9.3 If you do not return the Goods to us when required to do so and we are not able to recover possession of the Goods within a reasonable period of time, we may declare them to be lost. You then must pay us an amount equivalent to the Termination Value calculated in accordance with clause 8.5, together with all other amounts payable under this Agreement.
- 9.4 Upon the Goods being received by us after expiry or termination of the Agreement, we will sell the Goods for the best wholesale or other price we can reasonably obtain at the time and, if the "net proceeds" of sale (i.e. the proceeds less any costs of selling, attempting to sell, storing, repairing and maintaining the Goods) are less than the Residual Value, you must pay us on demand the amount of any deficiency. If the net proceeds of sale are more than the Residual Value, we will pay you the amount of the excess.
- 9.5 If we are unable to dispose of the Goods within two (2) months of their return or repossession, we may obtain a valuation of the wholesale value of the Goods. That valuation (less any costs of valuing, attempting to sell, storing, repairing and maintaining the Goods) will be the "net proceeds" of sale for the purposes of clause 9.4.
- 9.6 Our rights under clause 9.5 are without prejudice to our rights to recover from you any further losses, damages, costs or expenses we suffer, incur or realise upon a later sale of the Goods.

9.7 If the Goods were in a damaged condition when we received them, the proceeds of any insurance received by us will be deducted from any amount you must pay under clause 9.4. However, in these circumstances, the insurer may be entitled to take the Goods and, if this happens, the net proceeds of sale will be nil.

9.8 Unless the Goods are used predominantly for personal, domestic or household purposes, the parties agree each of the following requirements or rights under the PPSA do not apply to the enforcement of our Security Interest in the Goods or of this Agreement:

- (a) Any requirement for us to give you a notice of removal of accession.
- (b) Any requirement for us to give you a notice of our proposed disposal of the Goods.
- (c) Any requirement for us to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties.
- (d) Any requirement for us to give you a statement of account if we do not dispose of the Goods;
- (e) Any right you have to redeem the Goods before we exercise a right of disposal;
- (f) Any right you have to reinstate this Agreement before we exercise a right of disposal of the Goods.

10. Powers you give to us

10.1 In the exercise of rights by us in relation to this Agreement, under this clause:

- (a) each authorisation and appointment cannot be revoked for as long as any amount remains owing under this Agreement; and
- (b) when we exercise each of those rights we will do so at your cost and in your name.

10.2 We are authorised to act on your behalf in the exercise of any right and in relation to any legal proceedings involving our interest in the Goods.

10.3 You appoint us your attorney to do anything you should do under this Agreement, and to settle any disputes concerning the Goods.

10.4 Where we have taken possession of the Goods:

- (a) we may execute any transfer, assignment, discharge or other instrument we reasonably consider necessary for the enforcement or protection of our rights; and
- (b) we may notify an insurer who is providing insurance in respect of those Goods to cancel the insurance and direct the insurer to pay any rebate of premium to us to pay money owed under this Agreement.

11. Your warranties

You and all persons signing this Agreement warrant that:

- (a) all information given by you, them or any guarantor to us is correct and is not misleading; and
- (b) you have not relied upon any statement made by us or anyone acting on our behalf about this Agreement, financial or taxation matters and their affect on you, or the quality, or the suitability for any purpose, of the Goods; and
- (c) you, and all persons signing this Agreement on your behalf, are authorised to enter into this Agreement.

12. Your acknowledgements about introducers and commission

12.1 You acknowledge any introducing dealer or broker has no authority to bind us.

12.2 You agree to us paying commission or other remuneration to any person who introduced you to us. You acknowledge we may take into account any commission or other payment when calculating the Rent Instalments.

13. Limitation of liability

13.1 You acknowledge that:

- (a) to the full extent permitted by law, all express and implied terms conditions and warranties other than those set out in this Agreement are excluded;
- (b) we are not liable for any injury to any person or loss or damage to property arising from possession, installation, operation, removal, or use of the Goods (including any injury or loss arising from our negligence); and
- (c) if you are a consumer (as that term is defined in the *Competition and Consumer Act 2010*, the *Australian Securities and Investments Commission Act 2000* or any similar legislation), then nothing in this Agreement is intended to exclude, restrict, or modify any statutory obligation of us if it cannot be lawfully effected.

13.2 Subject to clause 13.1, our liability for anything in relation to the Goods, their use or their installation, including damage or economic loss to anyone, is limited as much as it lawfully can be. Whatever happens, our liability is no more than either to:

- (a) replace or pay for the cost of replacing the Goods with the same or equivalent Goods; or
- (b) repair the Goods or pay for their repair.

14. Guarantee and indemnity

14.1 The Guarantor unconditionally and irrevocably guarantees the Lessee will pay the Lessor all amounts payable under this Agreement when they are due. If the Lessee does not pay any amount under this Agreement on time and in accordance with this Agreement, then

the Guarantor agrees to pay that amount to us on demand from the Lessor (whether or not the Lessor made demand on the Lessee).

14.2 In addition, the Guarantor unconditionally and irrevocably indemnifies the Lessor against, and the Guarantor must therefore pay the Lessor on demand for any liability, loss or costs the Lessor suffers or incurs if:

- (a) the Lessee does not, is not obliged to, or is unable to, pay the Lessor in accordance with this Agreement; or
- (b) the Lessor is obliged, or the Lessor agrees, to pay an amount to a trustee in bankruptcy or liquidator (or bankruptcy person or insolvent company) in connection with a payment by the Guarantor or the Lessee.

14.3 The Guarantor must pay the Lessor for its reasonable costs in enforcing the guarantee and indemnity contained in this Agreement. The Guarantor must also pay for anything which the Guarantor must do under this Agreement.

14.4 The Guarantor must pay interest calculated on daily balances on any amount the Guarantor owes under clause 14.1 or 14.2 from the date the Lessor asks the Guarantor for the amount until the Guarantor pays it. This interest is to be calculated and is payable in accordance with clause 2.7.

14.5 The Guarantor's liability is not prejudiced or affected by anything that might otherwise have that effect, including, but without limitation, any of the following:

- (a) if another person who was intended to sign this Agreement but does not sign it or is not bound by it;
- (b) by the Lessor granting time or other concession to or making any composition with the Lessee or any Guarantor; or
- (c) by the Lessee or any Guarantor being bankrupt or Insolvent; or
- (d) by the Lessor obtaining any further or other covenant or security or guarantee in respect of the Lessee's obligations from any other person; or
- (e) by the Lessor forbearing or neglecting to exercise any remedy or right the Lessor has for the enforcement of the Lessee's obligations;
- (f) by the absence of any notice to the Guarantor of default by the Lessee or by any other Guarantor; or
- (g) by any Guarantor (being a natural person) becoming of unsound mind or dying; or
- (h) any change in the membership of any partnership or firm of which the Lessee or the Guarantor is a member; or
- (i) the Lessor's assignment of its interest in this Agreement and this guarantee and indemnity to any person without the Guarantor's consent or knowledge.

14.6 The Guarantor agrees to waive any rights the Guarantor might have as surety which are inconsistent with the terms of this guarantee and indemnity or which might in any way restrict the Lessor's rights, remedies or recourse.

14.7 The Guarantor acknowledges that no payment operates or discharges or reduces any Guarantor's liability if the payment is voidable as a preference or an insolvent transaction under any law relating to bankruptcy or the winding up of companies and no discharge that occurs because of such a payment discharges the liability of the Guarantor under this guarantee and indemnity.

15. Trusts

If the Lessee enters into this Agreement, or the Guarantor gives the guarantee and indemnity contained in clause 14, as trustee, then that person warrants that:

- (a) they are the sole trustee of the trust; and
- (b) they have the necessary powers to enter into this Agreement or the guarantee and indemnity, as the case maybe, and do so with the consent and for the benefit of the beneficiaries of the trust; and
- (c) they have rights to seek recourse or indemnification from the trust's assets for the obligations so incurred; and
- (d) they will not without the Lessor's consent retire or be removed as trustee from the trust; and
- (e) the trust will not be terminated and the trustee will not be changed without the Lessor's consent; and
- (f) if the Lessor requests, they will give the Lessor copies of the trust deed and other documents relating to the trust; and
- (g) they are liable both personally and in their capacity as trustee.

16. Administrative Provisions

16.1 NOTICES

16.1 If the Lessee or Guarantor has to give the Lessor a document about this Agreement, the Lessee or Guarantor can:

- (a) leave it at, or post it to, the Lessor's office address as shown on the Schedule, or any other address the Lessor tells you; or
- (b) send it to the Lessor's facsimile number as shown on the Schedule or any other number the Lessor tells you; or
- (c) send it to an email address the Lessor tells you.

However, if the PPSA requires or permits a document to be given to the Lessor, the document must be given to the Lessor at the address specified in the Registration recorded on the Register.

- 16.2 If the Lessor needs to give the Lessee or Guarantor a document about this Agreement, the Lessor can do so by:
- (a) delivering it to the Lessee or Guarantor personally; or
 - (b) leaving it at, or sending it by post or facsimile to, the Lessee's or Guarantor's residential, business or postal address, or facsimile number, last known to the Lessor; or
 - (c) sending it to the email address the Lessee or Guarantor has authorised and only if the Lessee or Guarantor has agreed to receive documents this way; or
 - (d) making it securely available on the Lessor's website for retrieval by electronic communication and only if the Lessee or Guarantor has agreed to receive documents this way.

16.3 The Lessee waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

16.4 CERTIFICATE

A certificate signed by or on behalf of the Lessor as to a matter or as to an amount payable to the Lessor in connection with this Agreement is conclusive to the amount stated in it or any other matter of a factual nature, in the absence of proof to the contrary.

16.5 ASSIGNMENT

The Lessor may assign, or grant a Security Interest in, its rights under the Agreement or the Goods without the Lessee's or Guarantor's consent. The Lessee and the Guarantor agree that if the Lessor considers exercising this right, the Lessor may disclose any information (including documents) about this Agreement, the Lessee and the Guarantor to the assignee, or to anyone who is considering becoming the assignee, and to that person's advisors and service providers.

16.6 CONFIDENTIALITY

The Lessor and Lessee agree this Agreement and all related information and document(s) are confidential and will not be disclosed, except to the extent disclosure is permitted or required by this Agreement or by law (other than section 275(1) of the PPSA).

16.7 SEVERABILITY

If any term, agreement, or condition of this Agreement, including the guarantee and indemnity under clause 14, or the application of any term, agreement, or condition of this Agreement to any person or circumstance is or becomes illegal, invalid, or unenforceable in any jurisdiction it will be severed and neither the remaining terms, agreements, and conditions nor the application, validity, and enforceability of the severed term, agreement, or condition in any other jurisdiction will be affected.

16.8 WAIVER, AMENDMENT, ETC

- 16.8 No delay or granting of time or other indulgence by the Lessor will affect its rights to enforce the Lessee's or Guarantor's obligations or to exercise any right under this Agreement.
- 16.9 A provision of this Agreement may not be waived or varied except as agreed, or as otherwise permitted by this Agreement.

16.10 DISPUTES

If the Lessee or the Guarantor wishes to dispute a payment or anything else about this Agreement, the Lessee and the Guarantor are encouraged to contact our internal dispute resolution process.

16.11 GOVERNING LAW

This Agreement, including the guarantee and indemnity contained in clause 14, is governed by the law applying in New South Wales.

Mandatory laws of other States and the Territories may also apply to this Agreement.

17. Definitions and Interpretation

17.1 DEFINITIONS

In this document unless the context otherwise requires:

Agreement means the agreement between the Lessor and the Lessee as set in the Schedule and these Terms and Conditions and, if applicable, any Special Conditions.

Business Day means any day on which the Lessor is ordinarily open for business in Sydney, New South Wales.

Event of Default means if any one or more of the following occur:

- (a) the Lessee does not pay any amount payable under this Agreement on the due date;
- (b) the Lessee is in breach of any other obligation under this Agreement;
- (c) the Goods are lost or destroyed or the Lessor forms the opinion the Goods are so damaged as to make their repair uneconomical;
- (d) the Lessee deals with the Goods in any way that is inconsistent with the Lessor's ownership of the Goods;
- (e) if the Lessee or Guarantor is an individual, the Lessee or Guarantor dies or is made or declared bankrupt or become incapable of managing his/her own affairs or is gaoled;
- (f) an Insolvency Event occurs to the Lessee or the Guarantor;
- (g) if the Lessee is a company, there is any change in ownership or control;
- (h) if the Lessee is a partnership, the partnership is dissolved or an application is made to a court for dissolution of the partnership;

- (i) if in our opinion a material adverse change has occurred in the Lessee's business or financial position which is likely to affect the ability to meet the Lessee's obligations under this Agreement;
- (j) any distress or execution is levied or enforced against any of the Lessee's assets;
- (k) the Lessee ceases to carry on business;
- (l) any warranty given by the Lessee in relation to this Agreement is false.

GST means goods and services tax levied under 'A New Tax System (Goods and Services Tax) 1999' and related legislation.

Insolvency Event means the happening of any the following events:

- (a) an application is made to a court for an order or an order is made appointing a liquidator or provisional liquidator in respect of the Lessee or the Guarantor (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
- (b) proceedings are initiated with a view to obtaining an order for the winding up or similar process of the Lessee or the Guarantor, or an order is made or any effective resolution is passed for the winding up of the Lessee or the Guarantor;
- (c) except to reconstruct or amalgamate while solvent on terms approved by the Lessor, the Lessee or the Guarantor enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement, or composition with, or assignment for the benefit of, all or any class of creditors, or proposes a reorganisation, moratorium or other administration involving any class of creditors;
- (d) a controller is appointed to or over or takes possession of all or a substantial part of the assets or undertaking of the Lessee or the Guarantor;
- (e) the Lessee or the Guarantor is or is deemed or presumed by law or a court to be insolvent;
- (f) the Lessee or the Guarantor takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to the Lessee or the Guarantor; and
- (g) anything analogous or having a substantially similar effect to any of the events specified above happens in respect of the Lessee or the Guarantor under the law of any applicable jurisdiction.

PPSA means the Personal Property Securities Act 2009.

Rent Instalments means the rent instalments set out in the Schedule.

Schedule means the schedule to this Agreement which sets out the specific terms of, and the parties to, the Agreement.

Special Conditions means additional or substitute terms and conditions applicable to this Agreement.

Terms and Conditions means these terms and conditions.

17.2 PPSA DEFINITIONS

The words listed below have the same meaning, when used in this Agreement, as they do in the PPSA:

- (a) **Accession**
- (b) **Proceeds**
- (c) **Register**
- (d) **Registration**
- (e) **Security Agreement**
- (f) **Security Interest.**

17.3 INTERPRETATION

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) reference to a person includes any other entity recognised by law and vice versa;
- (d) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (e) any reference to a party to this document includes its successors and permitted assigns;
- (f) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (h) words used in any document comprising this Agreement have the same meaning when used in the other documents;
- (i) references to a law or agreement includes that law or agreement as changed from time to time and to any law or agreement made in substitution for it.

This page has been left blank intentionally

HIRE-PURCHASE

Terms and Conditions

1. Hiring of Goods

- 1.1 We agree to hire the Goods to you for the whole of the Term of this Agreement commencing on the date you sign the Schedule, upon the terms set out in the Schedule, these Terms and Conditions and, if applicable, any Special Conditions.
- 1.2 You have the right to use the Goods during the Term of this Agreement.
- 1.3 By signing the Schedule, you acknowledge delivery of the Goods. You must pay all costs of delivery. Any failure to obtain delivery or any defect in the Goods does not affect your obligation to pay the Rent Instalments and any other money due under this Agreement.
- 1.4 Our interest in the Goods and all Proceeds is a Security Interest and this Agreement is a Security Agreement.
- 1.5 You consent to us registering our Security Interest on the Register and agree to provide all assistance reasonably required by us to facilitate registration.

2. Payments

- 2.1 You must pay all Rent Instalments in accordance with these Terms and Conditions and the payment details set out in the Schedule. Payments must be made on or before the due dates specified.
- 2.2 You must also pay any other fees and charges levied by us to cover our costs in relation to this Agreement.
- 2.3 You must make all payments by direct debit, or in another manner, acceptable to us. If a payment is dishonoured, the payment is taken not have been made.
- 2.4 Where Rent Instalments are made monthly and a Rent Instalment becomes due on a date in a month that has no such date, the Rent Instalment will be due on the last day of that month.

- 2.5 Any payment due on a day which is not a Business Day must be made on the next Business Day.
- 2.6 You must make all payments free of all deductions and without set-off, irrespective of any loss, damage, destruction, defect, unsuitability, failure to operate, or anything else relating to the Goods.
- 2.7 You must pay interest on any money payable under this Agreement and not paid on the due date, including any damages you may be liable to pay us, at a rate equal to the aggregate of 2% and the rate implicit in the return to us under this Agreement. Interest is calculated on a daily basis, from the date the money becomes due and payable to the date of payment.
- 2.8 You must pay all costs and expenses which we incur in exercising any of our rights under this Agreement, including any amount paid to release a lien claimed over the Goods or to remedy a breach of your obligations under this Agreement (e.g. fail to maintain insurance).
- 2.9 Also, you must pay to us the standard fees and charges specified in the Schedule and any new fees and charges we introduce. We will notify you of changes to the amount of those fees and charges and when new ones are introduced.
- 2.10 Unless otherwise stated in this Agreement, all amounts are payable by you on demand.
- 2.11 Payment we receive may be applied to any amount you owe under this Agreement in any order we decide.
- 2.12 If taxes, stamp duties, fines or other government charges apply in relation to this Agreement or anything done or supplied under it, or relate to the use, possession or operation of the Goods, then you must pay, or reimburse us for, the amount of those taxes, stamp duties, fines or other government charges. We may, by written notice, vary the Rent Instalments as a consequence of any change to, or imposition of, any tax, stamp duty, fine or other government charge.

- 2.13 You must pay or reimburse us for the amount of any GST payable on any taxable supply made by us under or in connection with this Agreement.
- 2.14 If a payment to a party under this Agreement is calculated by reference to a loss, cost, expense or outgoing incurred by that party, then the calculation of that payment is to be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost, expense or outgoing. That payer must also pay to the supplier of the taxable supply any GST payable in relation to the payment.

3. Ownership of the Goods

- 3.1 The Goods are owned by us. You only have a right to use them.
- 3.2 Any replacement of the Goods or parts of the Goods, and any additions which may be incorporated with the Goods during the Term of this Agreement, will form part of the Goods and be owned by us. Our Security Interest in the Goods extends to these replacements and additions. You must ensure all replacements and additions are free of any third party interests, including Security Interests.
- 3.3 You must not do anything inconsistent with our ownership of, or Security Interest in, the Goods.
- 3.4 You must not assign this Agreement or grant a Security Interest in the Goods without our permission.
- 3.5 Ownership of the Goods will pass to you when you:
- (a) have paid all Rent Instalments; and
 - (b) have paid all other money which you are required to pay under this Agreement; and
 - (c) are not in breach of any provisions of this Agreement.
- 3.6 You may terminate the hiring of the Goods at any time and purchase the Goods from us, by paying us the aggregate of:
- (a) any Rent Instalment then due for payment; and
 - (b) the sum of the present day value of the final payment specified in the Schedule for the Goods and the present day values of the Rent Instalments which are still to fall due and which are attributable to the Goods, calculated by discounting the Rent Instalments at a percentage rate per annum below the implicit rate in the return to us under this Agreement, such percentage rate not exceeding 4% as determined by us; and
 - (c) any other money owing under this Agreement and all accrued but unpaid amounts not yet debited to your account (including interest charges accrued in the month of repayment).

4. Use and Location

- 4.1 The Goods must be kept in your possession and control.
- 4.2 All costs arising from possession and use of the Goods are to be paid by you.
- 4.3 The Goods must be ordinarily kept at the address specified in the Schedule or such other place as we approve.
- 4.4 You must promptly notify us if the address at which the Goods are ordinarily kept changes and of any change in the registration of the Goods (including any loss of registration).
- 4.5 You must tell us within 7 days of being requested in writing where the Goods are used or ordinarily kept. If the Goods are not in your possession, you must give us all the information you have that might assist in tracing the Goods.
- 4.6 You must not without our written consent make any alterations, additions or improvements to the Goods.
- 4.7 You assume all risks and liabilities arising from your possession or use of the Goods. You indemnify us against any liability we may incur arising from the use or possession of the Goods by you or any other person.

5. Repair and Maintenance

- 5.1 You must keep the Goods in good repair and order, and ensure the Goods are serviced and maintained in accordance with the manufacturer's specifications and recommendations.
- 5.2 You must pay for repairs to the Goods immediately, to avoid a repairer's lien over the Goods.
- 5.3 We are entitled to inspect and test the Goods upon giving reasonable notice.
- 5.4 You must maintain current registration throughout the Term and comply with all laws relating to the Goods or their use.

6. Loss or Damage

- 6.1 You bear the entire risk of loss of, or damage to, the Goods from any cause.
- 6.2 You must tell us immediately the Goods are stolen, lost, destroyed or damaged to such an extent we or the insurer decides that repair is impracticable or uneconomic.
- 6.3 If the Goods are stolen, lost, destroyed, or damaged so that repair is impractical or uneconomic, any insurance money must be paid to us in reduction of your liability. Payment of the insurance money to us does not release you from liability for any other amount due under this Agreement. If repair is practical, you are obliged to repair the Goods promptly.

7. Insurance

- 7.1 You must maintain insurance of the Goods during the Term against loss, damage or destruction, and such risks as we from time to time require.
- 7.2 Insurance must be on such terms as we reasonably require with an insurer approved by us.
- 7.3 Insurance must be for the respective rights and interests of you and us and for the full insurable value of the Goods as determined by us. You must produce proof of the terms and currency of insurance over the Goods whenever we request you to do so.
- 7.4 You must not do or permit to be done anything which could prejudice any insurance or any claim under any insurance.
- 7.5 You must notify us immediately of any claim made under any insurance or if any insurance is reduced or cancelled.

8. Termination

- 8.1 You will be deemed to have repudiated this Agreement if:
- (a) you fail to pay any amount payable under this Agreement and also fail to subsequently comply with a notice of default given to you requiring payment to be made; or
 - (b) any other Event of Default capable of rectification occurs and you fail or are unable to rectify the default within 14 days after we give you a notice telling what the default is and asking you to rectify it; or
 - (c) an Event of Default not capable of rectification occurs; or
 - (d) we believe on reasonable grounds we were induced to enter into this Agreement by you or the Guarantor providing information that was incorrect or was misleading; or
 - (e) you have repudiated any other agreement with us.
- 8.2 Where you are deemed to have repudiated this Agreement, we may do any one or more of the following:
- (a) exercise any right, power, or privilege conferred by law, equity, this Agreement, or any other collateral document;
 - (b) perform any of your obligations under this Agreement;
 - (c) terminate this Agreement by written notice to you or by taking or attempting to take possession of the Goods (and for that purpose may enter any premises without notice to you).
- 8.3 Upon termination of this Agreement, you must pay us by way of liquidated damages for our loss of bargain arising from the early termination of this Agreement, the Termination Value, together with:

- (a) any other amounts payable under this Agreement; and
- (b) upon repossession of the Goods, our expenses in repossessing it, which include any expenses incurred in attempting to repossess the Goods and satisfying any lien claimed over it, whether justifiable or not, as well as any legal expenses paid by us on a solicitor and client basis in relation to the repossession.

- 8.4 The Termination Value at the date of termination under clause 8.3 is the sum of the present day value of the final payment specified in the Schedule for the Goods and the present day values of the Rent Instalments which are still to fall due and which are attributable to the Goods. The present day value of an amount on a day is calculated by discounting that amount at a percentage rate per annum below the implicit rate in the return to us under this Agreement, such percentage rate not exceeding 4% as determined by us, in order to cover our administration and other costs and losses arising directly or indirectly from the early termination.
- 8.5 If this Agreement is terminated, we are entitled to possession of the Goods and you must immediately deliver the Goods to the place specified by us. If the Goods are not delivered as specified, you must pay an amount equal to one day's portion of a Rent Instalment for each day until the Goods are delivered to us.
- 8.6 You must pay all costs of and incidental to enforcement of this Agreement by us, including any costs of repossessing, attempting to repossess and storing the Goods.
- 8.7 If you do not return the Goods to us when required to do so and we are not able to recover possession of the Goods within a reasonable period of time, we may declare them to be lost. You then must pay us an amount equivalent to the Termination Value calculated in accordance with clause 8.4, together with all other amounts payable by you under this Agreement.

9. End and enforcement of this Agreement

- 9.1 If the Goods are returned to or repossessed by us, we will sell the Goods as soon as practicable for the best wholesale or other price we can reasonably obtain at the time. We must pay you the "net proceeds" of sale (i.e. the proceeds less any costs of selling, attempting to sell, storing, repairing and maintaining the Goods), less the Termination Value calculated in accordance with clause 8.4 on the day you return or we repossess the Goods as well as all amounts payable by you under this Agreement.
- 9.2 If we are unable to dispose of the Goods within two (2) months of their return or repossession, we may obtain a valuation of the wholesale value of the Goods. That valuation (less any costs of valuing, attempting to sell, storing, repairing and maintaining the Goods) will be the "net proceeds" of sale for the purposes of clause 9.1.

- 9.3 Our rights under clause 9.1 are without prejudice to our rights to recover from you any further losses, damages, costs or expenses we suffer, incur or realise upon a later sale of the Goods.
- 9.4 If the Goods were in a damaged condition when we receive them, the proceeds of any insurance received by us will be deducted from any amount you must pay us. However, in these circumstances, the insurer may be entitled to take the Goods and, if this happens, the net proceeds of sale will be nil.
- 9.5 Unless the Goods are used predominantly for personal, domestic or household purposes, the parties agree each of the following requirements or rights under the PPSA do not apply to the enforcement of our Security Interest in the Goods or of this Agreement:
- Any requirement for us to give you a notice of removal of accession.
 - Any requirement for us to give you a notice of our proposed disposal of the Goods.
 - Any requirement for us to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties.
 - Any requirement for us to give you a statement of account if we do not dispose of the Goods;
 - Any right you have to redeem the Goods before we exercise a right of disposal;
 - Any right you have to reinstate this Agreement before we exercise a right of disposal of the Goods.

10. Powers you give to us

- 10.1 In the exercise of rights by us in relation to this Agreement, under this clause:
- each authorisation and appointment cannot be revoked for as long as any amount remains owing under this Agreement; and
 - when we exercise each of those rights we will do so at your cost and in your name.
- 10.2 We are authorised to act on your behalf in the exercise of any right and in relation to any legal proceedings involving our interest in the Goods.
- 10.3 You appoint us your attorney to do anything you should do under this Agreement, and to settle any disputes concerning the Goods.
- 10.4 Where we have taken possession of the Goods:
- we may execute any transfer, assignment, discharge or other instrument we reasonably consider necessary for the enforcement or protection of our rights; and
 - we may notify an insurer who is providing insurance in respect of those Goods to cancel the insurance and direct the insurer to pay any rebate of premium to us to pay money owed under this Agreement.

11. Your warranties

You and all persons signing this Agreement warrant that:

- all information given by you, them or any guarantor to us is correct and is not misleading; and
- you have not relied upon any statement made by us or anyone acting on our behalf about this Agreement, financial or taxation matters and their affect on you, or the quality, or the suitability for any purpose, of the Goods; and
- you, and all persons signing this Agreement on your behalf, are authorised to enter into this Agreement.

12. Your acknowledgements about introducers and commission

- 12.1 You acknowledge any introducing dealer or broker has no authority to bind us.
- 12.2 You agree to us paying commission or other remuneration to any person who introduced you to us. You acknowledge we may take into account any commission or other payment when calculating the Rent Instalments.

13. Limitation of liability

- 13.1 You acknowledge that:
- to the full extent permitted by law, all express and implied terms conditions and warranties other than those set out in this Agreement are excluded;
 - we are not liable for any injury to any person or loss or damage to property arising from possession, installation, operation, removal, or use of the Goods (including any injury or loss arising from our negligence); and
 - if you are a consumer (as that term is defined in the *Competition and Consumer Act 2010*, the *Australian Securities and Investments Commission Act 2000* or any similar legislation), then nothing in this Agreement is intended to exclude, restrict, or modify any statutory obligation of us if it cannot be lawfully effected.
- 13.2 Subject to clause 13.1, our liability for anything in relation to the Goods, their use or their installation, including damage or economic loss to anyone, is limited as much as it lawfully can be. Whatever happens, our liability is no more than either to:
- replace or pay for the cost of replacing the Goods with the same or equivalent Goods; or
 - repair the Goods or pay for their repair.

14. Guarantee and indemnity

- 14.1 The Guarantor unconditionally and irrevocably guarantees the Hirer will pay the Owner all amounts payable under this Agreement when they are due. If the Hirer does not pay any amount under this Agreement on time and in accordance with this Agreement, then

the Guarantor agrees to pay that amount to us on demand from the Owner (whether or not the Owner made demand on the Hirer).

- 14.2 In addition, the Guarantor unconditionally and irrevocably indemnifies the Owner against, and the Guarantor must therefore pay the Owner on demand for any liability, loss or costs the Owner suffers or incurs if:
- (a) the Hirer does not, is not obliged to, or is unable to, pay the Owner in accordance with this Agreement; or
 - (b) the Owner is obliged, or the Owner agrees, to pay an amount to a trustee in bankruptcy or liquidator (or bankruptcy person or insolvent company) in connection with a payment by the Guarantor or the Hirer.
- 14.3 The Guarantor must pay the Owner for its reasonable costs in enforcing the guarantee and indemnity contained in this Agreement. The Guarantor must also pay for anything which the Guarantor must do under this Agreement.
- 14.4 The Guarantor must pay interest calculated on daily balances on any amount the Guarantor owes under clause 14.1 or 14.2 from the date the Owner asks the Guarantor for the amount until the Guarantor pays it. This interest is to be calculated and is payable in accordance with clause 2.7.
- 14.5 The Guarantor's liability is not prejudiced or affected by anything that might otherwise have that effect, including, but without limitation, any of the following:
- (a) if another person who was intended to sign this Agreement but does not sign it or is not bound by it;
 - (b) by the Owner granting time or other concession to or making any composition with the Hirer or any Guarantor; or
 - (c) by the Hirer or any Guarantor being bankrupt or Insolvent; or
 - (d) by the Owner obtaining any further or other covenant or security or guarantee in respect of the Hirer's obligations from any other person; or
 - (e) by the Owner forbearing or neglecting to exercise any remedy or right the Owner has for the enforcement of the Hirer's obligations;
 - (f) by the absence of any notice to the Guarantor of default by the Hirer or by any other Guarantor; or
 - (g) by any Guarantor (being a natural person) becoming of unsound mind or dying; or
 - (h) any change in the membership of any partnership or firm of which the Hirer or the Guarantor is a member; or
 - (i) the Owner's assignment of its interest in this Agreement and this guarantee and indemnity to any person without the Guarantor's consent or knowledge.

14.6 The Guarantor agrees to waive any rights the Guarantor might have as surety which are inconsistent with the terms of this guarantee and indemnity or which might in any way restrict the Owners rights, remedies or recourse.

14.7 The Guarantor acknowledges that no payment operates or discharges or reduces any Guarantor's liability if the payment is voidable as a preference or an insolvent transaction under any law relating to bankruptcy or the winding up of companies and no discharge that occurs because of such a payment discharges the liability of the Guarantor under this guarantee and indemnity.

15. Trusts

If the Hirer enters into this Agreement, or the Guarantor gives the guarantee and indemnity contained in clause 14, as trustee, then that person warrants that:

- (a) they are the sole trustee of the trust; and
- (b) they have the necessary powers to enter into this Agreement or the guarantee and indemnity, as the case maybe, and do so with the consent and for the benefit of the beneficiaries of the trust; and
- (c) they have rights to seek recourse or indemnification from the trust's assets for the obligations so incurred; and
- (d) they will not without the Owners' consent retire or be removed as trustee from the trust; and
- (e) the trust will not be terminated and the trustee will not be changed without the Owner's consent; and
- (f) if the Owner requests, they will give the Owner copies of the trust deed and other documents relating to the trust; and
- (g) they are liable both personally and in their capacity as trustee.

16. Administrative Provisions

16.1 NOTICES

16.1 If the Hirer or Guarantor has to give the Owner a document about this Agreement, the Hirer or Guarantor can:

- (a) leave it at the Owner's office address as shown on the Schedule, or any other address the Owner tells you; or
- (b) send it to the Owner's facsimile number as shown on the Schedule or any other number the Owner tells you; or
- (c) send it to an email address the Owner tells you.

However, if the PPSA requires or permits a document to be given to the Owner, the document must be given to the Owner at the address specified in the Registration recorded on the Register.

- 16.2 If the Owner needs to give the Hirer or Guarantor a document about this Agreement, the Owner can do so by:
- (a) delivering it to the Hirer or Guarantor personally; or
 - (b) leaving it at, or sending it by post or facsimile to, the Hirer's or Guarantor's residential, business or postal address, or facsimile number, last known to the Owner; or
 - (c) sending it to the email address the Hirer or Guarantor has authorised and only if the Hirer or Guarantor has agreed to receive documents this way; or
 - (d) making it securely available on the Owner's website for retrieval by electronic communication and only if the Hirer or Guarantor has agreed to receive documents this way.

16.3 The Hirer waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

16.4 CERTIFICATE

A certificate signed by or on behalf of the Owner as to a matter or as to an amount payable to the Owner in connection with this Agreement is conclusive as to the amount stated in it or any other matter of a factual nature, in the absence of proof to the contrary.

16.5 ASSIGNMENT

The Owner may assign, or grant Security Interest in, its rights under the Agreement or the Goods without the Hirer's or Guarantor's consent. The Hirer and the Guarantor agree that if the Owner considers exercising this right, the Owner may disclose any information (including documents) about this Agreement, the Hirer and the Guarantor to the assignee, or to anyone who is considering becoming the assignee, and to that person's advisors and service providers.

16.6 CONFIDENTIALITY

The Owner and Hirer agree this Agreement and all related information and document(s) are confidential and will not be disclosed, except to the extent disclosure is permitted or required by this Agreement or by law (other than section 275(1) of the PPSA).

16.7 SEVERABILITY

If any term, agreement, or condition of this Agreement, including the guarantee and indemnity under clause 14, or the application of any term, agreement, or condition of this Agreement to any person or circumstance is or becomes illegal, invalid, or unenforceable in any jurisdiction it will be severed and neither the remaining terms, agreements, and conditions nor the application, validity, and enforceability of the severed term, agreement, or condition in any other jurisdiction will be affected.

16.8 WAIVER, AMENDMENT, ETC

16.8 No delay or granting of time or other indulgence by the Owner will affect its rights to enforce the Hirer's or Guarantor's obligations or to exercise any right under this Agreement.

16.9 This Agreement may not be waived or varied except as agreed, or as otherwise permitted by this Agreement.

16.10 DISPUTES

If the Hirer or the Guarantor wishes to dispute a payment or anything else about this Agreement, the Hirer and the Guarantor are encouraged to contact our internal dispute resolution process.

16.11 GOVERNING LAW

This Agreement, including the guarantee and indemnity contained in clause 14, is governed by the law applying in New South Wales.

Mandatory laws of other States and the Territories may also apply to this Agreement.

17. Definitions and Interpretation

17.1 DEFINITIONS

In this document unless the context otherwise requires:

Agreement means the agreement between the Owner and the Hirer as set in the Schedule and these Terms and Conditions and, if applicable, any Special Conditions.

Business Day means any day on which the Owner is ordinarily open for business in Sydney, New South Wales.

Event of Default means if any one or more of the following occur:

- (a) the Hirer does not pay any amount payable under this Agreement on the due date;
- (b) the Hirer is in breach of any other obligation under this Agreement;
- (c) the Goods are lost or destroyed or the Owner forms the opinion the Goods are so damaged as to make their repair uneconomical;
- (d) the Hirer deals with the Goods in any way that is inconsistent with the Owner's ownership of the Goods;
- (e) if the Hirer or Guarantor is an individual, the Hirer or Guarantor dies or is made or declared bankrupt or become incapable of managing his/her own affairs or is gaoled;
- (f) an Insolvency Event occurs to the Hirer or the Guarantor;
- (g) if the Hirer is a company, there is any change in ownership or control;
- (h) if the Hirer is a partnership, the partnership is dissolved or an application is made to a court for dissolution of the partnership;

- (i) if in our opinion a material adverse change has occurred in the Hirer's business or financial position which is likely to affect the ability to meet the Hirer's obligations under this Agreement;
- (j) any distress or execution is levied or enforced against any of the Hirer's assets;
- (k) the Hirer ceases to carry on business;
- (l) any warranty given by the Hirer in relation to this Agreement is false.

GST means goods and services tax levied under 'A New Tax System (Goods and Services Tax) 1999' and related legislation.

Insolvency Event means the happening of any the following events:

- (a) an application is made to a court for an order or an order is made appointing a liquidator or provisional liquidator in respect of the Hirer or the Guarantor (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
- (b) proceedings are initiated with a view to obtaining an order for the winding up or similar process of the Hirer or the Guarantor, or an order is made or any effective resolution is passed for the winding up of the Hirer or the Guarantor;
- (c) except to reconstruct or amalgamate while solvent on terms approved by the Owner, the Hirer or the Guarantor enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement, or composition with, or assignment for the benefit of, all or any class of creditors, or proposes a reorganisation, moratorium or other administration involving any class of creditors;
- (d) a controller is appointed to or over or takes possession of all or a substantial part of the assets or undertaking of the Hirer or the Guarantor;
- (e) the Hirer or the Guarantor is or is deemed or presumed by law or a court to be insolvent;
- (f) the Hirer or the Guarantor takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to the Hirer or the Guarantor; and
- (g) anything analogous or having a substantially similar effect to any of the events specified above happens in respect of the Hirer or the Guarantor under the law of any applicable jurisdiction.

PPSA means the Personal Property Securities Act 2009.

Rent Instalments means the rent instalments set out in the Schedule.

Schedule means the schedule to this Agreement which sets out the specific terms of, and the parties to, the Agreement.

Special Conditions means additional or substitute terms and conditions applicable to this Agreement.

Terms and Conditions means these terms and conditions.

17.2 PPSA DEFINITIONS

The words listed below have the same meaning, when used in this Agreement, as they do in the PPSA:

- (a) **Accession**
- (b) **Proceeds**
- (c) **Register**
- (d) **Registration**
- (e) **Security Agreement**
- (f) **Security Interest.**

17.3 INTERPRETATION

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) reference to a person includes any other entity recognised by law and vice versa;
- (d) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (e) any reference to a party to this document includes its successors and permitted assigns;
- (f) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (h) words used in any document comprising this Agreement have the same meaning when used in the other documents;
- (i) references to a law or agreement includes that law or agreement as changed from time to time and to any law or agreement made in substitution for it.

This page has been left blank intentionally

CHATTEL LOAN AND MORTGAGE

Terms and Conditions

1. The Loan

- 1.1 You offer to borrow the Amount of Credit from us on the terms set out in the Schedule, these Terms and Conditions and, if applicable, any Special Conditions.
- 1.2 We accept your offer when our authorised officer signs the Schedule or when we disburse the Amount of Credit in accordance with your directions, whichever occurs first.
- 1.3 By signing the Schedule, you acknowledge delivery of the Goods. You must pay all costs of delivery. Any failure to obtain delivery or any defect in the Goods does not affect your obligation to pay the Loan Instalments and any other money due under this Agreement.

2. Payments

- 2.1 You must repay the Amount of Credit and pay interest in accordance with these Terms and the payment details set out in the Schedule. Payments must be made on or before the due dates specified. You must also pay any other fees and charges levied by us to cover our costs in relation to this Agreement.
- 2.2 You must make all payments by direct debit, or in another manner, acceptable to us. If a payment is dishonoured, the payment is taken not have been made.
- 2.3 Where Loan Instalments are made monthly and a Loan Instalment becomes due on a date in a month that has no such date, the Loan Instalment will be due on the last day of that month.
- 2.4 Any payment due on a day which is not a Business Day must be made on the next Business Day.
- 2.5 You must make all payments free of all deductions and without set-off, irrespective of any loss, damage, destruction, defect, unsuitability, failure to operate, or anything else relating to the Goods.
- 2.6 You must pay all costs and expenses which we incur in exercising any of our rights under this Agreement, including any amount paid to release a lien claimed

over the Goods or to remedy a breach of your obligations under this Agreement (e.g. fail to maintain insurance).

- 2.7 Also, you must pay to us the standard fees and charges specified in the Schedule and any new fees and charges we introduce. We will notify you of changes to the amount of those fees and charges and when new ones are introduced.
- 2.8 Unless otherwise stated in this Agreement, all amounts are payable by you on demand.
- 2.9 Payment we receive may be applied to any amount you owe under this Agreement in any order we decide.
- 2.10 You may repay the loan in full at any time provided you pay all fees, charges, interest, enforcements expenses, costs and other amounts owing, including:
 - (a) any Loan Instalment then due for payment; and
 - (b) the net present value of all Loan Instalments and the final payment referred to in the Schedule payable from the date of repayment to the end of the Term, calculated by applying a discount rate equal to a percentage rate per annum below the rate implicit in the return to us under this Agreement, such percentage rate not exceeding 4% as determined by us; and
 - (c) any other money owing under this Agreement and all accrued but unpaid amounts not yet debited to your account (including interest charges accrued in the month of repayment).
- 2.11 If taxes, stamp duties, fines or other government charges apply in relation to this Agreement or anything done or supplied under it, or relate to the use, possession or operation of the Goods, then you must pay, or reimburse us for, the amount of those taxes, stamp duties, fines or other government charges. We may, by written notice, vary the Rent Instalments as a consequence of any change to, or imposition of, any tax, stamp duty, fine or other government charge.

- 2.12 You must pay or reimburse us for the amount of any GST payable on any taxable supply made by us under or in connection with this Agreement.
- 2.13 If a payment to a party under this Agreement is calculated by reference to a loss, cost, expense or outgoing incurred by that party, then the calculation of that payment is to be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost, expense or outgoing. That payer must also pay to the supplier of the taxable supply any GST payable in relation to the payment.

3. Interest

- 3.1 Interest accrues from the date you sign the Schedule. It is calculated using the implicit rate in the return to us under this Agreement. Interest is calculated on daily balances and debited to your loan on the same day each month on which you signed the Schedule.
- 3.2 You must pay default interest on any money payable under this Agreement and not paid on the due date, including any damages you may be liable to pay us, at a rate equal to the aggregate of 2% and the rate implicit in the return to us under this Agreement. Interest is calculated on a daily basis, from the date the money becomes due and payable to the date of payment. Default interest is debited to your loan on the same day each month on which you signed the Schedule.

4. Mortgage

- 4.1 You give to us a mortgage of the Goods described in the Schedule and any goods acquired in replacement for, and any additions or accessories added to, the Goods. You must ensure all replacements, additions and accessories are free of any third party interest, including Security Interests. The mortgage secures all amounts payable by you under this Agreement and all Proceeds.
- 4.2 If you do not have legal ownership of the Goods at the time of signing the Schedule:
- (a) you must do all that is necessary to become the legal owner of the Goods immediately after signing the Schedule; and
 - (b) you acknowledge the mortgage is given for a loan to be spent wholly or in part in purchasing the Goods.
- 4.3 Our interest in the Goods and all Proceeds is a Security Interest and this Agreement is a Security Agreement.
- 4.4 You consent to us registering our Security Interest on the Register and agree to provide all assistance reasonably required by us to facilitate registration.
- 4.5 You must not assign this Agreement or grant a Security Interest in the Goods without our permission.
- 4.6 If we are satisfied you have paid all amounts payable under this Agreement and you are not in breach of any other obligation under this Agreement, we will discharge the mortgage.

5. Use and Location

- 5.1 The Goods must be kept in your possession and control.
- 5.2 All costs arising from possession and use of the Goods are to be paid by you.
- 5.3 The Goods must be ordinarily kept at the address specified in the Schedule or such other place as we approve.
- 5.4 You must promptly notify us if the address at which the Goods are ordinarily kept changes and of any change in the registration of the Goods (including any loss of registration).
- 5.5 You must tell us within 7 days of being requested in writing where the Goods are used or ordinarily kept. If the Goods are not in your possession, you must give us all the information you have that might assist in tracing the Goods.
- 5.6 You must not without our written consent make any alterations, additions or improvements to the Goods.
- 5.7 You assume all risks and liabilities arising from your possession or use of the Goods. You indemnify us against any liability we may incur arising from the use or possession of the Goods by you or any other person.

6. Repair and Maintenance

- 6.1 You must keep the Goods in good repair and ensure the Goods are serviced and maintained in accordance with the manufacturer's specifications and recommendations.
- 6.2 You must pay for repairs to the Goods immediately, to avoid a repairer's lien over the Goods.
- 6.3 We are entitled to inspect and test the Goods upon giving reasonable notice.
- 6.4 You must maintain current registration throughout the Term and comply with all laws relating to the Goods or their use.

7. Loss or Damage

- 7.1 You bear the entire risk of loss of, or damage to, the Goods from any cause.
- 7.2 You must tell us immediately the Goods are stolen, lost, destroyed or damaged to such an extent we or the insurer decides that repair is impracticable or uneconomic.
- 7.3 If the Goods are stolen, lost, destroyed, or damaged so that repair is impractical or uneconomic, any insurance money must be paid to us in reduction of your liability. Payment of the insurance money to us does not release you from liability for any other amount due under this Agreement. If repair is practical, you are obliged to repair the Goods promptly.

8. Insurance

- 8.1 You must maintain insurance of the Goods during the Term against loss, damage or destruction, and such risks as we from time to time require.
- 8.2 Insurance must be on such terms as we reasonably require with an insurer approved by us.
- 8.3 Insurance must be for the respective rights and interests of you and us and for the full insurable value of the Goods as determined by us. You must produce proof of the terms and currency of insurance over the Goods whenever we request you to do so.
- 8.4 You must not do or permit to be done anything which could prejudice any insurance or any claim under any insurance.
- 8.5 You must notify us immediately of any claim made under any insurance or if any insurance is reduced or cancelled.

9. Default

- 9.1 You will be in default under this Agreement if an Event of Default occurs.
- 9.2 On default, you must pay us the full amount owing under this Agreement which may include the balance outstanding, arrears, interest, fees and charges, enforcement expenses and costs, as well as:
- (a) all accrued but unpaid amounts not yet debited to your account (including interest charges accrued in the month of repayment); and
 - (b) all repayments accrued but unpaid up to and including the date of repayment; and
 - (c) the net present value of all Loan Instalments and the final payment referred to in the Schedule payable from the date of repayment to the end of the Term, calculated by applying a discount rate equal to a percentage rate per annum below the rate implicit in the return to us under this Agreement, such percentage rate not exceeding 4% as determined by us in order to cover our administration and other costs and losses arising directly and indirectly from the default.
- 9.3 On default, we may do any one or more of the following:
- (a) exercise any right, power or privilege conferred by law, equity, this Agreement or any other collateral document;
 - (b) perform any of your obligations under this Agreement;
 - (c) sue you for the full amount owing under this Agreement;
 - (d) enforce the Guarantee;
 - (e) enter any premises and take possession of the Goods;
 - (f) sell or otherwise deal with the Goods.

- 9.4 You must pay all costs of and incidental to enforcement of this Agreement by us, including any costs of taking possession, attempting to take possession, and storage, of the Goods.
- 9.5 When we sell the Goods in exercise of our rights under this Agreement:
- (a) you acknowledge that a purchaser of the Goods is not required to enquire into our right to sell the Goods or whether that right is being properly exercised; and
 - (b) the purchase cannot be challenged on the grounds that there was no default or that no due notice was given.
- 9.6 Unless the Goods are used predominantly for personal, domestic or household purposes, the parties agree each of the following requirements or rights under the PPSA do not apply to the enforcement of our Security Interest in the Goods or of this Agreement:
- (a) Any requirement for us to give you a notice of removal of accession.
 - (b) Any requirement for us to give you a notice of our proposed disposal of the Goods.
 - (c) Any requirement for us to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties.
 - (d) Any requirement for us to give you a statement of account if we do not dispose of the Goods;
 - (e) Any right you have to redeem the Goods before we exercise a right of disposal;
 - (f) Any right you have to reinstate this Agreement before we exercise a right of disposal of the Goods.

10. Powers you give to us

- 10.1 In the exercise of rights by us in relation to this Agreement, under this clause:
- (a) each authorisation and appointment cannot be revoked for as long as any amount remains owing under this Agreement; and
 - (b) when we exercise each of those rights we will do so at your cost and in your name.
- 10.2 We are authorised to act on your behalf in the exercise of any right and in relation to any legal proceedings involving our interest in the Goods.
- 10.3 You appoint us your attorney to do anything you should do under this Agreement, and to settle any disputes concerning the Goods.
- 10.4 Where we have taken possession of the Goods:
- (a) we may execute any transfer, assignment, discharge or other instrument we reasonably consider necessary for the enforcement or protection of our rights; and

- (b) we may notify an insurer who is providing insurance in respect of those Goods to cancel the insurance and direct the insurer to pay any rebate of premium to us to pay money owed under this Agreement.

11. Your warranties

You and all persons signing this Agreement warrant that:

- (a) all information given by you, them or any guarantor to us is correct and is not misleading; and
- (b) you have not relied upon any statement made by us or anyone acting on our behalf about this Agreement, financial or taxation matters and their affect on you, or the quality, or the suitability for any purpose, of the Goods; and
- (c) you, and all persons signing this Agreement on your behalf, are authorised to enter into this Agreement.

12. Your acknowledgements about introducers and commission

- 12.1 You acknowledge any introducing dealer or broker has no authority to bind us.
- 12.2 You agree to us paying commission or other remuneration and benefits to any person who introduced you to us.

13. Limitation of liability

- 13.1 You acknowledge that:
 - (a) to the full extent permitted by law, all express and implied terms conditions and warranties other than those set out in this Agreement are excluded;
 - (b) we are not liable for any injury to any person or loss or damage to property arising from possession, installation, operation, removal, or use of the Goods (including any injury or loss arising from our negligence); and
 - (c) if you are a consumer (as that term is defined in the *Competition and Consumer Act 2010*, the *Australian Securities and Investments Commission Act 2000* or any similar legislation), then nothing in this Agreement is intended to exclude, restrict, or modify any statutory obligation of us if it cannot be lawfully effected.
- 13.2 Subject to clause 13.1, our liability for anything in relation to the Goods, their use or their installation, including damage or economic loss to anyone, is limited as much as it lawfully can be. Whatever happens, our liability is no more than either to:
 - (a) replace or pay for the cost of replacing the Goods with the same or equivalent Goods; or
 - (b) repair the Goods or pay for their repair.

14. Guarantee and indemnity

- 14.1 The Guarantor unconditionally and irrevocably guarantees the Borrower will pay the Lender all amounts payable under this Agreement when they are due. If the Borrower does not pay any amount under this Agreement on time and in accordance with this Agreement, then the Guarantor agrees to pay that amount to the Lender on demand from the Lender (whether or not the Lender made demand on the Borrower).
- 14.2 In addition, the Guarantor unconditionally and irrevocably indemnifies the Lender against, and the Guarantor must therefore pay the Lender on demand for any liability, loss or Costs the Lender suffers or incurs if:
 - (a) the Borrower does not, is not obliged to, or is unable to, pay the Lender in accordance with this Agreement; or
 - (b) the Borrower is obliged, or the Lender agrees, to pay an amount to a trustee in bankruptcy or liquidator (or bankruptcy person or insolvent company) in connection with a payment by the Guarantor or the Borrower.
- 14.3 The Guarantor must pay the Lender for its reasonable costs in enforcing the guarantee and indemnity contained in this Agreement. The Guarantor must also pay for anything which the Guarantor must do under this Agreement.
- 14.4 The Guarantor must pay interest calculated on daily balances on any amount the Guarantor owes under clause 14.1 or 14.2 from the date the Lender asks the Guarantor for the amount until the Guarantor pays it. This interest is to be calculated and is payable in accordance with clauses 3.2 and 3.3.
- 14.5 The Guarantor's liability is not prejudiced or affected by anything that might otherwise have that effect, including, but without limitation, any of the following:
 - (a) if another person who was intended to sign this Agreement but does not sign it or is not bound by it;
 - (b) by the Lender granting time or other concession to or making any composition with the Borrower or any Guarantor; or
 - (c) by the Borrower or any Guarantor being bankrupt or Insolvent; or
 - (d) by the Lender obtaining any further or other covenant or security or guarantee in respect of the Borrower's obligations from any other person; or
 - (e) by the Lender forbearing or neglecting to exercise any remedy or right the Lender has for the enforcement of the Borrower's obligations;
 - (f) by the absence of any notice to the Guarantor of default by the Borrower or by any other Guarantor; or

- (g) by any Guarantor (being a natural person) becoming of unsound mind or dying; or
- (h) any change in the membership of any partnership or firm of which the Borrower or the Guarantor is a member; or
- (i) the Lender's assignment of its interest in this Agreement and this guarantee and indemnity to any person without the Guarantor's consent or knowledge.

- 14.6 The Guarantor agrees to waive any rights the Guarantor might have as surety which are inconsistent with the terms of this guarantee and indemnity or which might in any way restrict the Lenders rights, remedies or recourse.
- 14.7 The Guarantor acknowledges that no payment operates or discharges or reduces any Guarantor's liability if the payment is voidable as a preference or an insolvent transaction under any law relating to bankruptcy or the winding up of companies and no discharge that occurs because of such a payment discharges the liability of the Guarantor under this guarantee and indemnity.

15. Trusts

If the Borrower enters into this Agreement, or the Guarantor gives the guarantee and indemnity contained in clause 14, as trustee, then that person warrants that:

- (a) they are the sole trustee of the trust; and
- (b) they have the necessary powers to enter into this Agreement or the guarantee and indemnity, as the case maybe, and do so with the consent and for the benefit of the beneficiaries of the trust; and
- (c) they have rights to seek recourse or indemnification from the trust's assets for the obligations so incurred; and
- (d) they will not without the Lender's consent retire or be removed as trustee from the trust; and
- (e) the trust will not be terminated and the trustee will not be changed without the Lender's consent; and
- (f) if the Lender requests, they will give the Lender copies of the trust deed and other documents relating to the trust; and
- (g) they are liable both personally and in their capacity as trustee.

16. Administrative Provisions

16.1 NOTICES

- 16.1 If the Borrower or Guarantor has to give the Lender a document about this Agreement, the Borrower or Guarantor can:
- (a) leave it at the Lender's office address as shown on the Schedule, or any other address the Lender tells you; or

- (b) send it to the Lender's facsimile number as shown on the Schedule or any other number the Lender tells you; or
 - (c) send it to an email address the Lender tells you.
- However, if the PPSA requires or permits a document to be given to the Lender, the document must be given to the Lender at the address specified in the Registration recorded on the Register.

- 16.2 If the Lender needs to give the Borrower or Guarantor a document about this Agreement, the Lender can do so by:
- (a) delivering it to the Borrower or Guarantor personally; or
 - (b) leaving it at, or sending it by post or facsimile to, the Borrower's or Guarantor's residential, business or postal address, or facsimile number, last known to the Lender; or
 - (c) sending it to the email address the Borrower or Guarantor has authorised and only if the Borrower or Guarantor has agreed to receive documents this way; or
 - (d) making it securely available on the Lender's website for retrieval by electronic communication and only if the Borrower or Guarantor has agreed to receive documents this way.

- 16.3 The Borrower waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

16.4 CERTIFICATE

A certificate signed by or on behalf of the Lender as to a matter or as to an amount payable to the Lender in connection with this Agreement is conclusive as to the amount stated in it or any other matter of a factual nature, in the absence of proof to the contrary.

16.5 ASSIGNMENT

The Lender may assign, or grant a Security Interest in, its rights under the Agreement or the Goods without the Borrower's or Guarantor's consent. The Borrower and the Guarantor agree that if the Lender considers exercising this right, the Lender may disclose any information (including documents) about this Agreement, the Borrower and the Guarantor to the assignee, or to anyone who is considering becoming the assignee, and to that person's advisors and service providers.

16.6 CONFIDENTIALITY

The Lender and Borrower agree this Agreement and all related information and document(s) are confidential and will not be disclosed, except to the extent disclosure is permitted or required by this Agreement or by law (other than section 275(1) of the PPSA).

16.7 SEVERABILITY

If any term, agreement, or condition of this Agreement, including the guarantee and indemnity under clause 14, or the application of any term, agreement, or condition of this Agreement to any person or circumstance is or becomes illegal, invalid, or unenforceable in any jurisdiction it will be severed and neither the remaining terms, agreements, and conditions nor the application, validity, and enforceability of the severed term, agreement, or condition in any other jurisdiction will be affected.

16.8 WAIVER, AMENDMENT, ETC

16.8 No delay or granting of time or other indulgence by the Lender will affect its rights to enforce the Borrower's or Guarantor's obligations or to exercise any right under this Agreement.

16.9 This Agreement may not be waived or varied except as agreed, or as otherwise permitted by this Agreement.

16.10 DISPUTES

If the Borrower or the Guarantor wishes to dispute a payment or anything else about this Agreement, the Borrower and the Guarantor are encouraged to contact our internal dispute resolution process.

16.11 GOVERNING LAW

16.11 This Agreement, including the guarantee and indemnity contained in clause 14, is governed by the law applying in New South Wales.

Mandatory laws of other States and the Territories, and the Commonwealth, may also apply to this Agreement.

17. Definitions and Interpretation

17.1 DEFINITIONS

In this document unless the context otherwise requires:

Agreement means the agreement between the Lender and the Borrower as set in the Schedule and these Terms and Conditions and, if applicable, any Special Conditions.

Business Day means any day on which the Lender is ordinarily open for business in Sydney, New South Wales.

Event of Default means if any one or more of the following occur:

- (a) the Borrower does not pay any amount payable under this Agreement on the due date;
- (b) the Borrower is in breach of any other obligation under this Agreement;
- (c) the Goods are lost or destroyed, or the Lender forms the opinion the Goods are so damaged as to make their repair uneconomical, or the Lender believes, on reasonable grounds, that urgent action is required to protect the Goods;
- (d) the Borrower deals with the Goods in any way that is inconsistent with the Lender's security interest in

the Goods or the Borrower surrenders possession of the Goods to the Lender;

- (e) if the Borrower or Guarantor is an individual, the Borrower or Guarantor dies or gaoled;
- (f) an Insolvency Event occurs to the Borrower or the Guarantor;
- (g) if the Borrower is a company, there is any change in ownership or control;
- (h) if the Borrower is a partnership, the partnership is dissolved or an application is made to a court for dissolution of the partnership;
- (i) if in our opinion a material adverse change has occurred in the Borrower's business or financial position which is likely to affect the ability to meet the Borrower's obligations under this Agreement;
- (j) any distress or execution is levied or enforced against any of the Borrower's assets;
- (k) the Borrower ceases to carry on business;
- (l) any warranty given by the Borrower in relation to this Agreement is false;
- (m) this document is, becomes or is claimed to be void or unenforceable or this document does not have or loses the priority it is intended to have.

GST means goods and services tax levied under 'A New Tax System (Goods and Services Tax) 1999' and related legislation.

Insolvency Event means the happening of any the following events:

- (a) an application is made to a court for an order or an order is made appointing a liquidator or provisional liquidator in respect of the Borrower or the Guarantor (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
- (b) proceedings are initiated with a view to obtaining an order for the winding up or similar process of the Borrower or the Guarantor, or an order is made or any effective resolution is passed for the winding up of the Borrower or the Guarantor;
- (c) except to reconstruct or amalgamate while solvent on terms approved by the Lender, the Borrower or the Guarantor enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement, or composition with, or assignment for the benefit of, all or any class of creditors, or proposes a reorganisation, moratorium or other administration involving any class of creditors;
- (d) a controller is appointed to or over or takes possession of all or a substantial part of the assets or undertaking of the Borrower or the Guarantor;
- (e) the Borrower or the Guarantor is or is deemed or presumed by law or a court to be insolvent;
- (f) the Borrower or the Guarantor takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or

an administrator is appointed to the Borrower or the Guarantor;

- (g) anything analogous or having a substantially similar effect to any of the events specified above happens in respect of the Borrower or the Guarantor under the law of any applicable jurisdiction.

Loan Instalments means the loan instalments set out in the Schedule.

PPSA means the Personal Property Securities Act 2009.

Schedule means the schedule to this Agreement which sets out the specific terms of, and the parties to, the Agreement.

Special Conditions means additional or substitute terms and conditions applicable to this Agreement.

Terms and Conditions means these terms and conditions.

17.2 PPSA DEFINITIONS

The words listed below have the same meaning, when used in this Agreement, as they do in the PPSA:

- (a) **Accession**
- (b) **Proceeds**
- (c) **Register**
- (d) **Registration**
- (e) **Security Agreement**
- (f) **Security Interest.**

17.3 INTERPRETATION

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) reference to a person includes any other entity recognised by law and vice versa;
- (d) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (e) any reference to a party to this document includes its successors and permitted assigns;
- (f) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (h) words used in any document comprising this Agreement have the same meaning when used in the other documents;
- (i) references to a law or agreement includes that law or agreement as changed from time to time and to any law or agreement made in substitution for it.

This page has been left blank intentionally

VOLKSWAGEN FINANCIAL SERVICES AUSTRALIA PTY LIMITED

Locked Bag 6252, Regents Park NSW 2143
Level 1, 24 Muir Road, Chullora NSW 2190

Tel 1300 734 567 Fax +61 2 9695 6398
www.vwfs.com.au

ABN 20 097 071 460 Australian Credit Licence 389344

ComT&C_v0112