



# FACILITY TERMS

**Version 2: March 2004**

**RURAL BANK LIMITED  
(ABN 74 083 938 416)**

**BEFORE YOU ACCEPT ANY LETTER OF OFFER (WHICH INCORPORATES THESE TERMS) YOU SHOULD CAREFULLY CONSIDER:**

- YOUR FINANCIAL POSITION;
- THE PROVISIONS OF THESE TERMS, THE LETTER OF OFFER AND THE SECURITIES;
- AND YOU SHOULD SEEK LEGAL ADVICE

## FACILITY TERMS (Version 2 : March 2004)

These terms form part of the *letter of offer* from the *Bank* to the *borrower* and/or *guarantor* and, once the *letter of offer* is accepted, the *borrower* and/or *guarantor* are bound by these terms.

### Note 1:

Clause 1 contains various definitions that are used in both these terms and the *letter of offer*. For your assistance, defined expressions are shown “*like this*” when used in these terms. Clause 1 also includes some simple rules to assist in understanding these terms and the *letter of offer*.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In these terms:

- “**account**” means, in relation to a *facility*, the account specified in, or determined in accordance with, the *letter of offer* relating to that *facility*;
- “**advance**” means each *advance* of funds made under a *facility* by the *Bank* to, or at the request or direction of, the *borrower*;
- “**approved purpose**” means the permitted purpose for a *facility* specified in the *letter of offer*;
- “**authorised officer**” means any director, secretary or attorney of the *Bank*, any lawyer acting for the *Bank* and any employee of the *Bank* whose title includes the word “manager”;
- “**Bank**” means Rural Bank Limited (ABN 74 083 938 416) and its successors and assigns;
- “**borrower**” means each person described in the *letter of offer* as a *borrower* and if more than one person is so described, a reference to “*borrower*” is a reference to them jointly and each of them severally;
- “**business day**” means a day on which banks in general are open for business in the city of the *Bank*’s address as shown in the *letter of offer*;
- “**Corporations Act**” means the Corporations Act 2001 (Cwlth);
- “**drawing**” means a use of a *facility* by, or at the request or direction of, the *borrower* including, the making of an *advance* and the issue of an *external obligation*;
- “**event of default**” means any of the events referred to in **clause 8**;

- **“external exposure”** means, at any time, the maximum liability (actual or contingent) of the *Bank* at that time under each *outstanding external obligation* plus any amount paid by the *Bank* under an *external obligation* which has not been reimbursed to the *Bank* under **clause 14.4**;
- **“external obligation”** means any letter of credit, bank guarantee, performance bond or other obligation to a third party assumed by the *Bank* at the request, or direction, of the *borrower*;
- **“facility”** means each *facility* which the *Bank* has agreed to provide to the *borrower* as set out in the *letter of offer* and any other arrangement between the *Bank* and the *borrower* relating to the provision of financial accommodation by the *Bank* to the *borrower* including the issue by the *Bank* of an *external obligation* at the request of the *borrower*;
- **“facility limit”** means in relation to a *facility*, the amount specified in, or determined in accordance with, the *letter of offer* as the *facility limit* for that *facility*;
- **“fees and charges schedule”** means the schedule of fees and charges published by the *Bank* from time to time and which is available on the *Bank’s* website ([www.ruralbank.com.au](http://www.ruralbank.com.au)) or by telephoning the *Bank* on 1300 660 115;
- **“finance application”** means, in relation to a *facility*, any *finance application* (however described) made by the *borrower* to the *Bank* relating to that *facility* together with all documents attached to, or forming part of, that application;
- **“government body”** means any person, body politic or other thing exercising an executive, legislative, judicial or other governmental function, any public authority and any person deriving by delegation a right directly or indirectly from any other *government body*;
- **“GST”** means any goods and services *tax*, value added *tax* or any *tax* or charge of a like nature levied or imposed under A New Tax System (Goods & Services Tax) Act, 1999 or other legislation;
- **“guarantor”** means each person, if any, described in the *letter of offer* as a *guarantor* and any other person who, now or in the future, gives an indemnity, a guarantee or a guarantee and indemnity to the *Bank* in relation to the *borrower’s* obligations to the *Bank*, and if there is more than one person so described or included, a reference to “*guarantor*” is a reference to them jointly and each of the severally;
- **“insolvency event”** means, in relation to the *borrower* or a *guarantor*:
  - the appointment of a liquidator, provisional liquidator, administrator or controller (as those expressions are defined in the *Corporations Act*) to it or over the whole or any part of its property;
  - it being, or stating that it is, unable to pay all its debts as and when they become due and payable;
  - it is deemed insolvent under the *Corporations Act*;
  - any event described in Section 461 of the *Corporations Act* occurs in relation to it; or
  - any action is taken to make an appointment referred to in this definition;

- **“interest rate”** means, in relation to a *facility*, the *interest rate* specified in the *letter of offer* for that *facility*;
- **“letter of offer”** means any *letter of offer* from the *Bank* to, or accepted or executed by, (whether alone or jointly with any other person) the *borrower* and/or the *guarantor* accompanying or incorporating these terms and any other agreement or arrangement which incorporates these terms entered into between the *Bank* and the *borrower* and/or the *guarantor* which relates to the provision of financial accommodation, or the issue of an *external obligation*, by the *Bank* to, or at the request of, the *borrower*;
- **“outstanding external obligation”** means any *external obligation* issued by the *Bank* at the request of the *borrower* under which the *Bank* has any actual or contingent exposure to the beneficiary of that *external obligation*;
- **“outstanding sum”** means, at any time, the aggregate of the debit balance of each *account*, the *external exposure*, accrued but not capitalised interest, costs, expenses and accrued fees;
- **“potential event of default”** means anything that, with the giving of notice or lapse of time or both, would become an *event of default*;
- **“quarter”** means each 3 month period ending on 31 March, 30 June, 30 September and 31 December;
- **“relevant document”** means the *letter of offer*, these terms, the *securities*, *terms and conditions*, each *fees and charges schedule*, any indemnity given to the *Bank* in connection with an *external obligation* and any other agreement or arrangement made between the *borrower* and/or any *guarantor* (whether alone or jointly with any other person) and the *Bank*;
- **“repayment date”** means, in relation to a *facility*, the date specified in the *letter of offer* as being the *repayment date* or termination date for that *facility*;
- **“secured property”** means property subject, or intended to be subject, to the *securities*;
- **“securities”** means any mortgage, charge, livestock mortgage, bill of sale, lien, indemnity, guarantee, guarantee and indemnity and other *security* instrument described in the *letter of offer* or held by the *Bank* which secures or guarantees an obligation or liability of the *borrower* or a *guarantor* to the *Bank* together with any document required in connection with, or to give effect to, a transaction contemplated by any of them;
- **“taxes”** means all present and future *taxes*, levies, imposts, stamp and other duties, fees, compulsory loans, withholdings or deductions and penalties and interest imposed in relation to any of them, but does not include a tax on the net income of the *Bank* or *GST*;
- **“trust”** means any *trust* of which the *borrower* or a *guarantor* is trustee, whether or not the *Bank* has been notified of the existence of such *trust*; and
- **“trust deed”** means each instrument establishing a *trust*.

## 1.2 Interpretation

In these terms:

- the singular includes the plural and vice versa;
- a reference to any gender includes all other genders;
- “person” includes a partnership, a corporation, an unincorporated association and an authority;
- the whole includes any part;
- headings and notes do not affect its interpretation;
- a reference to a document or legislation includes a reference to that document or legislation as varied, amended or replaced from time to time;
- a reference to a person includes that person’s executors, administrators, successors and permitted assigns; and
- where an example of something is given, it does not limit what else may be included.

### 1.3 Inconsistency

Where there is an inconsistency between these terms and any other *relevant document*, the following order of precedence applies:

- first, the *letter of offer*;
- second, these terms; and
- third, the *security*.

#### Note 2:

Clause 2 sets out various steps that must be taken before the *borrower* may request a *drawing* under a *facility*. Other requirements are set out in these terms and may be included in the *letter of offer*.

## 2. CONDITIONS PRECEDENT

The *Bank* is not obliged to draw a *facility* unless:

- it receives, in a form and substance satisfactory to it, the *letter of offer*, the *securities* and any other documents the *Bank* reasonably requires to evidence that all necessary action was taken to authorise the execution and delivery of each *relevant document*;
- the *securities* are stamped and registered in such jurisdictions and with such *government bodies* as are required for the *securities* to be valid, fully enforceable and to confer the priority specified in the *letter of offer* or, if not specified, as required by the *Bank*;
- any other requirement separately notified by the *Bank* to the *borrower* and/or the *guarantor* or contained in the *letter of offer* is satisfied;

- if any of the *secured property* includes plant, equipment, crops, livestock or improvements, the *Bank* receives proof of insurance of those items (for full insurable value) and with an insurer approved by the *Bank* with the interest of the *Bank* noted on that insurance;
- it receives satisfactory results to its searches and enquiries in connection with the *borrower*, the *guarantor*, the *trust* and the *secured property*;
- it is satisfied that each of the representations and warranties contained in each *relevant document* is correct;
- it is satisfied that since the date of the relevant *letter of offer* there has been no material adverse change to the financial position of the *borrower* or any *guarantor* or to the *secured property*; and
- it is satisfied that there is no subsisting *event of default* or *potential event of default*.

These conditions precedent are for the benefit of the *Bank* only. The *Bank* may waive or defer (with such requirements or conditions as it sees fit) the satisfaction of any of them at any time.

**Note 3:**

Clause 3 sets out various requirements that apply to the use of a *facility*. Others may be specified in the *letter of offer*.

### 3. USE OF FACILITY

#### 3.1 General

The *borrower* and each *guarantor*:

- agrees that at no time may the debit balance of an *account* or the *external exposure* under all *outstanding external obligations* exceed the *facility limit* applicable to the relevant *facility*;
- agrees that the *facility* may only be used for an *approved purpose* and that any *drawing* used for any purpose other than an *approved purpose* must be immediately repaid;
- authorises the *Bank* to debit each *advance* under a *facility* to the *account* for that *facility* on the date that it is provided to the *borrower* or at its request;
- acknowledges that the *Bank* may conduct a review of the *facility* at any time to monitor its
- performance and financial position; and
- agrees to provide to the *Bank* all information reasonably requested by the *Bank* to enable it to conduct that review.

#### 3.2 Cancellation and Reinstatement

The *borrower* and each *guarantor* acknowledges that the *Bank* may cancel that part of the *facility limit* that has not been utilised for more than 364 days. Provided there is no subsisting *event of default*, the *Bank* may reinstate the cancelled portion of the *facility limit* at the *borrower's* request.

### 3.3 Non Usage

If no *drawing* under the *facility* has been made within 90 days of the date of acceptance of the *letter of offer*, the *Bank* may, by notice to the *borrower*, cancel the *facility* and the *Bank's* obligations to provide the *facility* cease on the date of that notice.

### 3.4 Prepayment

Other than where the *facility* has been provided at a fixed *interest rate*, the *borrower* may at any time repay all or any part of the debit balance of the *account* without any additional cost.

### 3.5 Redraw

If the *facility* is a term loan the *Bank* may, subject to the terms of the *letter of offer*, permit any prepaid amount to be redrawn by the *borrower* provided that the redrawn amount is not less than \$20,000.

### 3.6 Priority

Without prejudice to its rights under any *relevant document*, if the *Bank* becomes aware that:

- any other person holds a *security* interest or encumbrance over any *secured property*; or
- the *securities* are not registered with the priority required by the *Bank*,

then the *Bank* is not obliged to continue to provide the *facility* until it has entered into a priority agreement with all relevant parties on terms satisfactory to the *Bank*.

### 3.7 Payment on Account of Outstanding Sum

If the *Bank* receives a prepayment from the *borrower* on account of the *Bank's* obligations under any *outstanding external obligation*, that prepayment will be held by the *Bank* on deposit to cover the *borrower's* obligations under **clauses 11** and **14**. Nothing in this clause affects the *Bank's* rights under **clause 12.11**.

**Note 4:**

Clause 4 sets out various requirements relating to the payments required to be made including, when those payments are required, how they are calculated and where, and how, they must be made.

## 4. PAYMENT OBLIGATIONS

### 4.1 General

All payments required to be made under or in connection with a *relevant document* must be made:

- in cleared funds free of any set-off, counterclaim or deduction;
- on a *business day*;
- in Australian dollars; and
- to the *Bank* at its address shown in the *letter of offer* or as subsequently advised to the *borrower* in writing.

### 4.2 Interest

The *borrower* must pay interest on the debit balance of each *account*. Subject to **clause 4.7**, interest is payable on the debit balance of an *account* calculated at the *interest rate* applicable to the relevant *facility* and will (unless otherwise provided for in the *letter of offer*) be debited to that *account* (or to such other *account* specified in the *letter of offer*) on the first day of each month in arrears. The *interest rate* (unless otherwise specified in the *letter of offer*) is variable and the current *interest rate* applicable to the relevant *facility* can be obtained from any office of the *Bank*. **Any indicative *interest rate* set out in the *letter of offer* may not apply during the term of the *facility* and may change even before the first *advance* is made.**

### 4.3 Fees

The *borrower* must pay all fees in the amount and at the times specified in the *letter of offer*, the relevant *fees and charges schedule* and in each other *relevant document* and the *Borrower* authorises and directs the *Bank* to debit those fees to the relevant *account* on the due date for payment.

### 4.4 Calculation

Interest and, where applicable, fees are calculated daily on the basis of a 365 day year.

### 4.5 Repayments

The *borrower* must repay to the *Bank* the *outstanding sum* on or before the *repayment date* applicable to the relevant *facility* or, if no *repayment date* is specified, on demand and must, if required by the *letter of offer*, repay such other amounts on the due dates for payment



specified in the *letter of offer*. The original of each *external obligation* must be returned to the *Bank* on the *repayment date* applicable to the *facility* relating to that *external obligation*.

#### 4.6 Other costs and expenses

The *borrower* must pay on demand all other costs, charges, duties and expenses including reasonable legal costs (on a full indemnity basis), stamp duty and other government charges incurred by the *Bank* in connection with:

- the preparation, negotiation and execution of each *relevant document* and *external obligation*;
- the stamping and, where necessary, registration of each *relevant document* and *external obligation*;
- the conduct of any searches and enquiries including obtaining any valuation or other report required by the *Bank* and obtaining advice on any *trust deed*;
- the enforcement and attempted enforcement or preservation by the *Bank* of its rights under any *relevant document*;
- any request for consent and approval in connection with any *relevant document* and *external obligation*; and
- any advice obtained, or assessment undertaken, in connection with the *relevant documents*, any *external obligation* and the *Bank's* rights and duties under them.

The *borrower* authorises the *Bank* to debit those costs and expenses to the relevant *account* and acknowledges that it is liable for these costs and expenses even if no *drawing* is ever made under the *facility*.

#### 4.7 Default Interest

The *borrower* and the *guarantor* must pay interest on any moneys due but unpaid under the *relevant documents* including, without limitation, on any debit balance of an *account* in excess of the *facility limit* applicable to that *account*, at the rate being the higher of the aggregate of 3% per annum and the rate charged by the *Bank* from time to time on its unsecured seasonal *facilities* and the aggregate of 3% per annum and the rate of interest applicable to those moneys under the *relevant documents*. Interest on unpaid amounts is calculated from but excluding the date the payment was due to and including the date the payment is made. Interest not paid when due will be capitalised monthly and will be debited to the relevant *account* on the first day of each month in arrears.

#### 4.8 Merger

If the liability of the *borrower* or a *guarantor* to pay to the *Bank* any moneys payable under a *relevant document* becomes merged in any deed, judgement, order or other thing, then the *borrower* or the *guarantor* (as the case may be) must pay interest on the amount owing from time to time under that deed, judgement, order or other thing at the higher of the rate payable under the applicable *relevant document* and the rate fixed by, or payable under, that deed, judgement, order or other thing.

#### 4.9 Appropriation

The *Bank* may appropriate any payment it receives in any way it sees fit towards satisfaction of moneys owing by the *borrower* and/or the *guarantor*. Any law, to the extent permissible, and any direction from the *borrower* and/or a *guarantor*, as to appropriation does not apply.

**Note 5:**

Clause 5 contains various representations and warranties given by the *borrower* and each *guarantor*. The *Bank* relies on these representations and warranties when entering into the *facility* and when each *drawing* is made. Other warranties are included in Clause 10, the *securities* and may be set out in the *letter of offer*.

## 5. REPRESENTATIONS AND WARRANTIES

### 5.1 Representations and Warranties

The *borrower* and each *guarantor* represent and warrant that:

- all information provided to the *Bank* including in the *finance application*, is true and correct and is not false or misleading;
- unless it has disclosed the contrary to the *Bank* in writing prior to the date of acceptance of the *letter of offer*, it is not the trustee of any *trust*;
- it has taken all necessary steps, and has all requisite power, to properly accept the *letter of offer* and execute each other *relevant document*;
- acceptance of the *letter of offer* and execution of each other *relevant document* does not cause a breach of any existing law, its constitution (if applicable) or any other agreement to which it is a party;
- other than as disclosed in writing to the *Bank* prior to the date of acceptance of the *letter of offer*, it has not granted any *security* interest or encumbrance over all or any part of the *secured property*;
- it has obtained all necessary consents, licences, approvals and other authorisations from all
- relevant persons in connection with acceptance of the *letter of offer* and execution of each *relevant document*;
- no *insolvency event* has occurred or is threatened;
- it has paid all rates, *taxes* and other outgoings which are due and payable by it;
- it has not failed to disclose to the *Bank* any material information which a reasonable person would consider relevant to the assessment by the *Bank* of the *finance application* and to the *Bank's* decision to provide the *facility*;
- the *drawings* provided, or to be provided, under each *facility* have been, or will be, applied wholly or predominantly for business or investment purposes;
- no *event of default* or *potential event of default* has occurred;
- no litigation or other proceedings are current or threatened against it; and

- no representation, warranty, promise, assurance or other statement has been made to it by any person (including, the *Bank* and its past or present servants and agents) concerning or relating to any *relevant document* other than those contained in the *relevant documents*.

## 5.2 Reliance

The *borrower* and the *guarantor* acknowledge that the *Bank* relies on the representations, warranties, covenants and acknowledgements set out in these terms and the other *relevant documents* in agreeing to provide the *facility* and that the *Bank* would not have agreed to provide the *facility* but for those representations, warranties, covenants and acknowledgements.

## 5.3 Survival and Repetition

Each representation and warranty set out in these terms survives the acceptance of the *letter of offer* and is deemed to be repeated with reference to the facts and circumstances then existing on the date each *drawing* is provided and on the first *business day* of each month.

### Note 6:

Clause 6 contains various obligations by the *borrower* and each *guarantor*. Others are contained in the *letter of offer* and in the *securities*.

## 6. COVENANTS

The *borrower* and each *guarantor* must:

- if a corporation, provide to the *Bank* as soon as available (but in any case within 4 months after the end of each financial year) a copy of its balance sheet and profit and loss accounts for that year;
- if a natural person, provide to the *Bank* as soon as possible (but in any case within 4 months after the end of each financial year) a copy of the balance sheet and profit and loss account of each of its businesses for that year;
- ensure that all accounts provided to the *Bank* are prepared in accordance with the *Corporations Act* (if applicable) and accounting principles and practices generally accepted in Australia and consistently applied;
- if the *Bank* reasonably suspects there has been an adverse alteration in the *borrower's* or the *guarantor's* financial position, provide to the *Bank* within 14 days of request by the *Bank*, copies of its most recently prepared trading statements, cash flow statements, budgets and balance sheets;
- keep and maintain proper books of account (in accordance with the *Corporations Act*, if applicable), make true and correct entries of all its dealings and make its accounts and financial records available for inspection by the *Bank*;

- provide any information the *Bank* may reasonably request in relation to its financial condition and its business operations;
- take all action necessary to obtain and promptly renew all authorisations, approvals, consents, licences and exemptions required under any applicable law to conduct its business operations and to perform its obligations under, or required on its part for the validity and enforceability of, all *relevant documents* including make all payments when due under any lease, licence or other arrangement for the use of any property;
- notify the *Bank* in writing as soon as it becomes aware of:
  - an *event of default* or a *potential event of default*;
  - any actual or threatened litigation, arbitration or mediation proceeding relating to it or any of the *secured property* where the amount involved is greater than \$10,000;
  - any notification to it of a proposal to compulsorily acquire any of its property; and
  - any other thing which might result or has resulted in a material adverse change in its financial condition or its ability to perform any of its obligations under any *relevant document*;
- comply with the provisions of the *Corporations Act* (if applicable) and all existing laws;
- punctually comply with all requirements of any *government body*;
- punctually pay all rents, instalments of purchase money, interest, rates, *taxes* and other money
- payable by it and at the request of the *Bank* deliver evidence of its payment;
- punctually perform all of its obligations under each *relevant document*;
- carry on and conduct its businesses in a proper and efficient manner;
- insure and keep insured all its property able to be insured against loss or damage by fire and such other risks against which a prudent owner would insure for its full insurable value and maintain workers' compensation, public risk, employees' liability, business interruption and other insurances which are necessary or appropriate having regard to its business and property and other insurances specified by the *Bank* or required under any *relevant document*, in all cases, with a solvent and respectable insurer approved by the *Bank* and provide copies of the relevant policies and evidence of the currency of all insurances to the *Bank* upon request; and
- at its cost and expense, provide to the *Bank* upon request a valuation addressed to the *Bank* of the *secured property* (or an update of any valuation already provided to the *Bank*) prepared by a licensed valuer approved by the *Bank* but unless an *event of default* subsists, the *Bank* may not make any such request more than once in any 12 month period.

**Note 7:**

Clause 7 applies where the *facility* has been provided at a fixed *interest rate* and sets out the additional costs which may be payable in certain circumstances.

## 7. BREAK COSTS

### 7.1 Break costs

Where the *facility* is provided at a fixed *interest rate* and, for any reason (including, for the avoidance of any doubt, as a result of the occurrence of an *event of default*), the whole or part of the debit balance of the *account* is repaid or received by the *Bank*, prior to the expiry of the period during which the *interest rate* is fixed, the *borrower* must, on demand, pay to the *Bank* (by way of indemnity) the amount determined by the *Bank* (in good faith and whether before or after payment or receipt) to be necessary to compensate the *Bank* for any loss, cost, expense or damage including any loss of bargain or expectation it has, or will, suffer as a result of that repayment or receipt.

### 7.2 Acknowledgements

Where the *facility* is provided at a fixed *interest rate*, the *borrower* and the *guarantor* acknowledge that:

- it understands that movements in *interest rates* may result in it losing the possible benefit of having a *facility* with an *interest rate* that is fixed;
- it has assessed, understands and accepts the risk of movements in *interest rates* generally;
- it understands the consequences of repayment (voluntarily or otherwise) of a *facility* to which a fixed *interest rate* applies;
- it has been advised to obtain, and has had sufficient opportunity to obtain, financial advice prior to making its decision to accept a fixed *interest rate*;
- it has received, read and understood the document entitled “Summary of Break Costs” and that the break costs referred to in that document are included in the indemnity contained in **clause 7.1**; and
- it has not otherwise relied on any advice or opinion from the *Bank* or any of its officers or agents in deciding to accept a fixed *interest rate*.

**Note 8:**

This clause lists the *events of default* and what happens if an *event of default* occurs.

**8. EVENTS OF DEFAULT****8.1 Nature**

Each of the following is an *event of default*:

- the *borrower* or a *guarantor* fails to pay to the *Bank* when due any amount required to be paid under any *relevant document*;
- the *borrower* or a *guarantor* does not perform or comply with any other covenant, agreement or undertaking on its part contained in any *relevant document*;
- any representation, warranty or statement by the *borrower* or a *guarantor* in any *relevant document* or any document delivered under any of them is not complied with or is incorrect in any material respect when made or deemed to be repeated;
- any other indebtedness of the *borrower* or a *guarantor* in excess of \$10,000 becomes due and payable or capable of being declared due and payable before its stated maturity;
- any *security* interest or encumbrance held by any person over any property of the *borrower* or a *guarantor* becomes enforceable;
- an *insolvency event* occurs;
- if the *borrower* enters into a *relevant document* as partners, there is any change in the composition of that partnership without the prior written approval of the *Bank*;
- to the extent not prohibited, or made void, by any law, the *borrower* or a *guarantor* enters into or resolves to enter into any arrangement, composition or compromise with or an assignment for the benefit of any of its creditors or a person is appointed under any applicable law to investigate any part of the affairs of the *borrower* or a *guarantor*;
- execution is levied against any of the *borrower's* or a *guarantor's* assets for an amount in excess of \$5,000;
- the *borrower* or a *guarantor* ceases, or threatens to cease, to carry on its business;
- if, without the *Bank's* prior written consent, there is a change in the identity of the person or persons who control the *borrower*, any *guarantor* or any *trust*;
- all or any part of any *relevant document* is terminated or is able to be terminated or is, or becomes capable of becoming void, voidable, illegal, invalid or unenforceable or of limited force and effect;
- any other event or circumstance occurs which, in the reasonable opinion of the *Bank*, is likely materially and adversely to affect the ability of the *borrower* or a *guarantor* to

perform all or any of its obligations under, or otherwise to comply with, any *relevant document*;

- without the prior written consent of the *Bank*, the *borrower* or a *guarantor* increases its liability under any *security* interest or encumbrance over any part of the *secured property* ranking ahead of the *securities*;
- an *event of default* (however described) occurs under, or there is any failure to observe any covenant or undertaking contained in, the *securities*;
- the death of the *borrower* or a *guarantor*, or
- the *securities* do not have the priority specified in the *letter of offer* or, if not specified, as required by the *Bank*.

## 8.2 Exercise of Rights

If the *borrower* fails to pay to the *Bank* any money payable on demand or if any other *event of default* occurs the *Bank* may do any one or more of the following:

- cancel all or any part of any *facility*;
- make the *outstanding sum* under or in connection with the *facility* immediately due for payment or payable on demand; or
- enforce its rights under any *relevant document*.

### Note 9:

Clause 9 sets out various requirements that the *borrower* and/or the *guarantor* must observe and deals with the payment of any applicable *GST*.

## 9. GST PROVISIONS

The *borrower* and each *guarantor* agree that:

- unless otherwise expressly provided, any amount referred to in any *relevant document* which is relevant in determining a payment to be made by one person to another is exclusive of *GST*; and
- if *GST* is levied or imposed on or in respect of any supply made under or in connection with any *relevant document* for which the consideration is a monetary payment, then the amount payable for that supply is increased by the rate at which *GST* is levied or imposed.

**Note 10:**

This clause applies where the *borrower* or a *guarantor* act as trustee of a *trust*, whether or not the *Bank* is aware of the existence of that *trust*.

## 10. TRUSTS

### 10.1 Additional representations and warranties

The *borrower* and each *guarantor* represents and warrants to the *Bank* that:

- the *trust* is validly formed and the *trust deed* has been validly executed and stamped;
- it is validly appointed as the trustee of the *trust*, is not in breach of its obligations as trustee and no circumstances exist by which it may be removed as trustee;
- each *relevant document* is executed pursuant to, and in proper exercise of its powers as trustee of, the *trust* and all formalities required in connection with such execution have been observed;
- the *approved purpose* and performance by it of its obligations under the *relevant documents* is for a proper purpose of, and provides commercial benefit to, the *trust* and its beneficiaries;
- it is entitled to be fully indemnified out of the assets of the *trust* for its liability under each *relevant document* and it has not charged its rights of indemnity to any other party;
- it is the legal owner of all the assets of the *trust*;
- there is no dispute between it and any other person in relation to the *trust* or the *trust assets*;
- it is empowered to carry on its business as now conducted or contemplated and to own its property and assets in its capacity as trustee of the *trust* and there is no restriction or condition in the *trust deed* upon such activity by it;
- the *trust* has not terminated and no event for the vesting of the *trust assets* has occurred;
- the *trust assets* have not been re-settled or set aside;
- all action required under the *trust deed* in relation to execution of the *relevant documents* and the
- entry into the transactions contemplated by them has been taken; and
- any copy *trust deed* supplied to the *Bank* is a true and complete copy of the original.

### 10.2 Further obligations

The *borrower* and/or each *guarantor* must not, without the *Bank's* consent:



- cease to be the trustee of the *trust* or do anything which would cause or enable its removal, or retire, as trustee of the *trust*;
- cause or permit the *trust* to be determined or a vesting date to be appointed;
- do or permit anything which adversely affects its right of indemnity against the *trust* assets;
- re-settle, set aside or distribute any of the *trust* assets unless required to do so by the *trust deed*;
- in any way vary or permit to be varied the terms of the *trust deed*; or
- delegate any of its power as trustee of the *trust* or exercise any power of appointment.

### 10.3 Additional covenants

The *borrower* and each *guarantor* must:

- procure any person who becomes a trustee of the *trust* (whether in replacement of or in addition to it)
- to enter into a deed with the *Bank* under which that person agrees to perform the obligations identical to those of the *borrower* or a *guarantor* under the *relevant documents*; and
- comply with all of its duties as trustee of the *trust*.

### 10.4 Liability

The *borrower's* and the *guarantor's* liability under the *relevant documents* is not limited or otherwise affected by it being trustee of the *trust* or by the extent of its ability to indemnify itself out of the assets of the *trust*. The *borrower* and/or the *guarantor* are liable under the *relevant documents* personally and as trustee of the *trust*.

#### **Note 11:**

Clause 11 contains certain indemnities given by the *borrower* and each *guarantor* to the *Bank* and provisions dealing with the extent of those indemnities.

## 11. INDEMNITIES

### 11.1 Nature

The *borrower* and each *guarantor* indemnifies, and must keep indemnified, the *Bank* against any liability, loss, cost or expense (including consequential and economic loss) which the *Bank* incurs or sustains or for which the *Bank* becomes liable, directly or indirectly, which is caused, or contributed to, by:

- any *event of default*;
- the exercise or attempted exercise or preservation of any right by the *Bank* under any *relevant document*;
- any act by the *Bank* in reliance on any communication purporting to be from the *borrower* or to be given on its behalf;
- any *drawing* requested by the *borrower* not being provided by the *Bank* for any reason, other than a default by the *Bank*;
- any claim against the *Bank* under, or in connection with, an *external obligation*; and
- the repayment to, or receipt by, the *Bank* of all or any part of an *advance*, in relation to which the *interest rate* is fixed, prior to the expiry of the period for which the *interest rate* is fixed.

## 11.2 Scope

Each indemnity contained in these terms and in any other *relevant document* is:

- a continuing obligation;
- an additional, separate and independent obligation; and
- not limited by, and does not limit, any other indemnity.

## 11.3 Preservation of Liability

The liability of the *borrower* and each *guarantor* under each indemnity contained in these terms and in any other *relevant document* is not affected by any act or omission of the *Bank* (or its servants and agents) or by anything that might otherwise affect that liability at law or in equity.

### Note 12:

This clause contains various additional provisions relevant to the arrangements between the *Bank*, the *borrower* and the *guarantor*.

## 12. MISCELLANEOUS

### 12.1 Certificate

A certificate signed by the *Bank* or any *authorised officer* stating an amount owing to the *Bank* at a particular date or as to any other matter or thing, is conclusive evidence against the *borrower* and the *guarantor* (as the case may be) unless proved incorrect.

### 12.2 Assignment

The *Bank* may assign its rights under a *relevant document* to any person at any time without the consent of the *borrower* or a *guarantor*. Neither the *borrower* nor any *guarantor* may, without the prior consent in writing of the *Bank*, assign or encumber any of its rights under a *relevant document*.

### 12.3 Notices

Any notice, demand, consent, or other communication from the *Bank* under a *relevant document* must be in writing signed by the *Bank* or any *authorised officer* and may be served (in addition to any method authorised by law) on the *borrower* or a *guarantor* by being delivered personally or by being sent by:

- post to its registered office or at its address shown in a *relevant document*;
- facsimile to the facsimile number shown on any document sent to the *Bank* or as specified in a facsimile directory; or
- to such other address or facsimile number as may be last known to the person signing or sending such communication.

If sent by post it will be deemed to be given 2 *business days* after it is posted and if sent by facsimile on completion of the transmission.

### 12.4 No merger

Subject to **clause 1.3**, nothing in these terms prejudicially affects any *security* or any rights the *Bank* may have against the *borrower*, any *guarantor* or any other person nor do the *securities* prejudicially affect its rights under these terms.

### 12.5 No waiver or variation

Any waiver under, or variation of, a *relevant document* is effective only to the extent it is in writing.

### 12.6 Exercise of rights

No failure on the part of the *Bank* to exercise, no delay in exercising and no course of dealing with respect to any rights, powers or remedies under any *relevant document* impairs or operates as a waiver of those rights, powers or remedies. No single or partial exercise of any of these rights, powers or remedies precludes any further exercise of them or the exercise of any other rights, powers or remedies.

### 12.7 Moratorium

Any legislation that varies, prevents or prejudicially affects the exercise by the *Bank* of any right, power or remedy conferred on it under any *relevant document* is, to the extent permitted by law, excluded.

### 12.8 Time of the essence

Time is of the essence of the *borrower's* and any guarantor's obligations under any *relevant document*.

### 12.9 Severance

Any provision of a *relevant document* that is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to the extent only of the prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of the provision in any other jurisdiction.

### 12.10 Power of attorney

The *borrower* and each *guarantor* irrevocably appoint the *Bank* as its attorney with power to appoint and remove at its pleasure any one or more of its *authorised officers* as substitute attorneys to do, at any time after the occurrence of an *event of default*, everything that the *borrower* or that *guarantor* may lawfully authorise an agent to do in relation to any *relevant document*.

### 12.11 Set-off and combination

The *borrower* and each *guarantor* authorise the *Bank* at any time to set-off against, or combine with any money, any amount standing to the credit of any *account* of the *borrower* and/or the *guarantor* with the *Bank* in or towards satisfaction of any sum due but unpaid by the *borrower* and/or the *guarantor* (as the case may be) to the *Bank*.

The *Bank* has no obligation to exercise its rights under this clause.

To the extent legally permissible, the *borrower* and each *guarantor* may not exercise against the *Bank* any right of set-off available to it.

### 12.12 Governing law

These terms and the *letter of offer* are governed by the laws of the jurisdiction of the *Bank's* address as shown in the *letter of offer* and, if no address is shown, where the *account* is situated and the *borrower* and each *guarantor* submit to the non-exclusive jurisdiction of the courts of that place.

### 12.13 Partnership

Where the *borrower* enters into a *relevant document* as partners in a partnership:

- the *borrowers* represent and warrant that they are all the partners of that partnership;
- each *borrower* as a separate, independent, principal and personal obligation must pay to the *Bank* all amounts due under the *facility* whether or not the *Bank* may recover any sum from the partnership assets;
- the *relevant documents* continue to be binding on each *borrower* notwithstanding any changes in the composition of the partnership;
- and the partnership is dissolved:

- the *borrower* must immediately give written notice of that event to the *Bank*; and
- each *borrower* must act in relation to the administration of the partnership assets in the manner (if any) directed by the *Bank*;
- a retiring partner is not discharged from any liability to the *Bank* as a result of an agreement between the then existing partners; and
- the obligations of a retiring partner to the *Bank* under any *relevant document* are not affected by anything which might otherwise affect them at law or in equity.

#### 12.14 Authorisation

The *borrower* and each *guarantor* authorise the *Bank* to provide a copy of any *relevant document* to any *government body* in which the *securities* are to be stamped, lodged, filed or registered.

#### 12.15 Authorised officers

A determination by, or an opinion of, an *authorised officer* given to the *borrower* and/or the *guarantor* is deemed to be a determination by, or an opinion of, the *Bank*.

#### 12.16 Rights cumulative

The rights of the *Bank* under the *relevant documents* are cumulative and are in addition to any other rights of the *Bank*.

#### 12.17 Disclosure

The *Bank* may disclose to any person any information in its possession relating to the *borrower*, the *guarantor*, the *relevant documents* and any *external obligation* if:

- the *borrower* or the *guarantor* (as the case may be) consent (which consent may not be unreasonably withheld or delayed);
- it is legally required or permitted to do so;
- it is otherwise permitted under the *relevant documents* to do so;
- it is publicly available;
- it is in accordance with any directive or request of a *government body*;
- that person proposes to enter, or has entered, into a contract or dealing with the *Bank* in connection with the *relevant documents* or the subject matters of the *relevant documents*;
- that disclosure is necessary or desirable to enable the *Bank* to exercise or deal with its rights or obligations under the *relevant documents* or any *external obligation*;
- that disclosure is to a related body corporate (as that expression is defined in the *Corporations Act*) of the *Bank*; or

- that disclosure is to the *borrower* or any *guarantor*.

### 12.18 Illegality

If the *Bank's* compliance with its obligations under the *relevant documents* becomes illegal, the *Bank* may by written notice cancel the *facility*. Upon receipt of such notice of cancellation the *borrower* must immediately pay to the *Bank* the *outstanding sum* and all other moneys owing (actually or contingently) by it to the *Bank* in connection with that *facility*.

### 12.19 Increased costs

If, as a result of any change of law or directive or change of interpretation of any law or directive, the *Bank* determines (in good faith) that the cost to the *Bank* of providing the *facility* is increased or the *Bank's* return is reduced, the *borrower* must on demand pay to the *Bank* the amount certified by the *Bank* as being necessary to compensate it for such increased cost or foregone return.

### 12.20 Business days

If:

- the day on which any payment is due under a *relevant document* is not a *business day*, that payment must be made on the preceding *business day*; and
- the day on which any other thing is to be done under a *relevant document* is not a *business day*, that thing must be done on the following *business day*.

### 12.21 Independence and survival

Each indemnity in a *relevant document* is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives the termination of that *relevant document*.

#### Note 13:

Clause 13 deals with various matters involving access to, and use of, a *facility* and other related matters.

## 13. ACCESS TO FACILITIES

### 13.1 Access

The terms and conditions from time to time contained in the terms and conditions regulate the way in which you can use a *facility*. Those terms and conditions are, if applicable to the *facility*, incorporated in, and form part of, these terms.

### 13.2 Cancellation of Access

The *Bank* may, at any time after the occurrence of an *event of default*, cancel or restrict access to a *facility* via any card, internet or telephone access arrangements, cheque or other arrangements set out in the terms and conditions.

### 13.3 Privacy Act

The *Bank* will comply with its obligations under the Privacy Act 1988 (Cwlth) in its dealings with the *borrower* and a *guarantor*. The *Bank's* privacy declaration and privacy statement are available at any office of the *Bank* and at [www.ruralbank.com.au](http://www.ruralbank.com.au). The *Bank's* privacy officer can be contacted between 8am and 6pm (Central Standard Time) on any *business day* on 1300 600 115.

#### Note 14:

Clause 14 sets out the provisions which apply to a *facility* which is, or includes, an *external obligation*.

## 14. EXTERNAL OBLIGATIONS

### 14.1 Application

This **clause 14** applies where the *facility* is, or involves, the issue by the *Bank* of an *external obligation*.

### 14.2 Payment

The *borrower* and *guarantor* irrevocably and unconditionally authorise the *Bank* to pay immediately any amount claimed at any time against the *Bank* under any *external obligation* and acknowledge that the *Bank* may pay the amount of any such claim:

- without reference to, or obtaining any further authority from, the *borrower* or a *guarantor*;
- without enquiring whether the claim has been properly made; and
- notwithstanding that the *borrower* or a *guarantor* (or any other person) may dispute the validity of the claim and notwithstanding any direction from the *borrower* or a *guarantor* not to make that payment.

### 14.3 Voluntary Payment

The *Bank* may, at any time (in its absolute discretion) and without notice to the *borrower* or a *guarantor*, make a voluntary payment to the holder of any *external obligation* to terminate the *Bank's* obligations under, or in connection with, that *external obligation*.

#### 14.4 Reimbursement

The *borrower* must pay to the *Bank*, immediately following the *Bank's* demand for payment, an amount equal to each amount demanded from, or paid (whether voluntarily or otherwise) by, the *Bank* under an *external obligation*. The *borrower* irrevocably and unconditionally authorises the *Bank* to debit to the *relevant account* (or if the *borrower* has no existing *account* at the *Bank*, to open an *account* in the name of the *borrower* and debit to that *account*) any payment made by the *Bank* under, or in connection with, an *external obligation*, even if demand by the *Bank* has not been made on the *borrower* for payment.