

# **Bendigo Equipment Finance.**

## **Asset Purchase.**

### **Terms & Conditions.**

1 March 2020



## Index

|           |   |    |
|-----------|---|----|
| <b>1</b>  | Hiring of goods and type of contract.....   | 3  |
| <b>2</b>  | Term of this contract .....   | 3  |
| <b>3</b>  | Rent and other payments.....  | 3  |
| <b>4</b>  | Delivery of goods.....  | 3  |
| <b>5</b>  | Location and use of goods.....  | 3  |
| <b>6</b>  | Ownership of the goods.....   | 4  |
| <b>7</b>  | Repair and maintenance of goods.....  | 4  |
| <b>8</b>  | Loss or damage to the goods .....   | 5  |
| <b>9</b>  | Insurance .....   | 5  |
| <b>10</b> | Representations and warranties .....  | 5  |
| <b>11</b> | Exclusion of warranties.....  | 6  |
| <b>12</b> | Return of goods.....  | 6  |
| <b>13</b> | Option to purchase.....   | 6  |
| <b>14</b> | Termination and repossession .....  | 6  |
| <b>15</b> | Termination prior to expiry of the term .....   | 7  |
| <b>16</b> | Overdue interest and costs.....   | 7  |
| <b>17</b> | Remedy of breaches by you.....  | 7  |
| <b>18</b> | Duties and taxes.....   | 8  |
| <b>19</b> | Tax indemnity .....   | 8  |
| <b>20</b> | Application of moneys .....   | 8  |
| <b>21</b> | Power of attorney .....   | 8  |
| <b>22</b> | Trustee .....   | 8  |
| <b>23</b> | Farm goods .....  | 9  |
| <b>24</b> | Commission.....   | 9  |
| <b>25</b> | General.....  | 9  |
| <b>26</b> | Proper law .....  | 9  |
| <b>27</b> | Security .....  | 10 |
| <b>28</b> | Set-off and combination of accounts.....  | 10 |
| <b>29</b> | Evidence.....   | 10 |
| <b>30</b> | PPSA.....   | 10 |
| <b>31</b> | Banking Code of Practice .....  | 10 |
| <b>32</b> | Australian Financial Complaints Authority .....   | 10 |
| <b>33</b> | Guarantee and indemnity.....  | 10 |
| <b>34</b> | Notices other communications and service of documents .....   | 11 |
| <b>35</b> | Variation of standard terms and conditions.....   | 12 |
| <b>36</b> | Statements.....   | 12 |
| <b>37</b> | Privacy.....  | 12 |
| <b>38</b> | Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF), identification and information requirements..... | 12 |
| <b>39</b> | Confidentiality .....   | 13 |
| <b>40</b> | Definitions.....  | 13 |

## Bendigo Equipment Finance - Notice

This document does not contain all of the terms of the *asset purchase contract*. The rest of the *asset purchase contract* terms are set out in the *schedule* signed by *you*.

By signing the *schedule* *you* offer to enter into a *contract*.

A *contract* comes into effect when we accept *your* offer to enter into this *asset purchase contract*. The *schedule* sets out how we accept *your* offer.

*You* should read these *standard terms and conditions* and the *schedule* carefully. *You* should keep these documents for *your* reference.

Before we accept *your* offer we may require *you* to provide to us:

- 1 any payments under the *contract* which are payable on the *commencement date*;
- 2 the original invoice issued by the supplier or seller of the *goods*;
- 3 a written acknowledgment that the *goods* have been delivered to *you* or that *you* will arrange delivery of the *goods*;
- 4 evidence that the *goods* have been insured as required by clause 9 of these *standard terms and conditions*;
- 5 a waiver in accordance with clause 5.5 of these *standard terms and conditions* from all persons having any *interest* in the *premises* that they will not acquire any interest in the *goods*;
- 6 copies of any maintenance contracts that we may require *you* to enter into in respect of the *goods*;
- 7 evidence that no event has occurred that would, or with the lapsing of time would, if the *contract* has been made, constitute a *breach of an essential term*;
- 8 evidence that the *goods* are in good order and condition and have not in any way been lost, damaged, destroyed or seized; and
- 9 any *guarantee* or *security* to be provided in respect of the *contract*.

## Standard terms and conditions

The meaning of words printed *like this* and some other key words is explained at the end of these *standard terms and conditions*.

### 1 Hiring of goods and type of contract

- 1.1 These standard terms and conditions and the schedule set out the terms upon which we hire the goods to you.
- 1.2 A contract that incorporates these standard terms and conditions is an asset purchase contract if you sign a schedule titled "Asset purchase contract".

### 2 Term of this contract

- 2.1 This *contract* is for the whole of the *term*.
- 2.2 This contract commences on the commencement date.

### 3 Rent and other payments

- 3.1 *You* must pay the *deposit* to the supplier or as we may direct.
- 3.2 *You* must pay the rent by the rental instalments specified in the schedule on each rent payment date.
- 3.3 *You* must pay *us* *our* fees as directed by *us* from time to time.
- 3.4 We may vary *our* fees at any time by notice to *you*. Any variation of existing fees (other than a government fee or charge) takes effect from the earlier of the date *you* receive written notice of the change or the date we publish details of the change by advertisement in a national newspaper.
- 3.5 We must give at least 30 days' *notice* in writing to *you* before the introduction of a new fee (other than a government fee or charge) under clause 3.4 takes effect.
- 3.6 We must notify *you* 30 days' in advance of the introduction or variation of a government charge payable directly or indirectly by *you* by advertisement in a national newspaper or in writing to *you* unless the introduction or variation is publicised by a government, government agency or representative body.

### 4 Delivery of goods

- 4.1 *You* are responsible (unless otherwise agreed) for:
  - (1) obtaining delivery of the *goods*; and
  - (2) paying all delivery charges.
- 4.2 Any delay in delivery of the *goods* or any damage to the *goods* during delivery does not affect *your* obligations under this *contract*. *You* acknowledge that we have not given any warranty as to the anticipated date of delivery of the *goods*.

### 5 Location and use of goods

- 5.1 The *goods* must be kept in *your* possession and control at all times and *you* must not part with possession or lose control of the goods without *our* prior written consent.
- 5.2 Subject to clause 5.3 the *goods* must be kept at the *premises* or such other place as we may approve.
- 5.3 Where the *goods* are mobile they may be used by *you* within Australia.
- 5.4 The *goods* must not be taken outside of Australia.
- 5.5 *You* must not affix the *goods* to any property without *our* prior written consent. Any fixing must be temporary and only to the extent necessary for the proper use of the *goods*.

Before affixing the *goods* to the property *you* must do everything requested by *us* (including obtaining waivers by other persons who have any interest (including a *security interest*) in the property to which the *goods* are affixed) to ensure that no other person acquires or retains any interest (including a *security interest*) in the *goods* and that *we* may obtain access to the *goods*.

5.6 *You* must notify *us* if *you* wish to change the place at which the *goods* are located or, in the case of mobile *goods*, ordinarily garaged.

5.7 *You* must, following reasonable advance notice by *us*:

- (1) notify *us* of the location of the *goods*;
- (2) produce the *goods* to *us* or allow *us* to enter the place where the *goods* are kept to:
  - inspect the *goods*;
  - confirm the terms of this *contract* are being complied with; or
  - exercise any rights under this *contract*.

*We* may give *you* shorter, or no, notice under this clause 5.7 if it is necessary for *us* to act quickly to manage an immediate risk.

5.8 *You* must only use the *goods* in accordance with:

- (1) all applicable laws;
- (2) the supplier's and the manufacturer's specifications, instructions and recommendations;
- (3) any requirements of the insurers of the *goods*; and
- (4) *your* business operations and the purpose for which *you* told *us* that *you* intended to use the *goods*.

5.9 *You* must keep the *goods* registered or licensed whenever it is necessary to do so to use or operate the *goods*.

5.10 *You* assume all risks and liabilities arising from the use and possession of the *goods*.

5.11 *You* agree that:

- (1) *you* will comply with all *OHS laws* in relation to the *goods*;
- (2) the *goods* are and will during the *term* of this *contract* be and remain under *your* control and are not and will not be under *our* control;
- (3) *you* will indemnify and keep *us* indemnified against any liability *we* may incur or any claim that may be made against *us* in respect of any breach or alleged breach of any *OHS law* except to the extent that liability arises due to *our* fraud, wilful misconduct or negligence or that of *our* employees or agents; and
- (4) the obligations under this clause are in addition to *your* other obligations under this *contract*.

## **6 Ownership of the goods**

6.1 The *goods* remain *our* property. *You* are a bailee and have no title or interest in the *goods*.

6.2 *You* must not create any *encumbrance* over the *goods*.

6.3 *You* must not do anything which could prejudice or jeopardise *our* rights in respect of the *goods*.

6.4 *You* must not sell, lease, hire, transfer or otherwise dispose of *your* rights in respect of the *goods* or attempt to do so without *our* prior written consent.

6.5 Any replacement or repair or addition to the *goods* forms part of the *goods* and becomes *our* property. *You* must ensure any replacement part or addition is not subject to a *security interest*.

6.6 If *you* want *us* to acquire software in conjunction with the *goods* then *you* must:

- (1) inform *us* of this when asking *us* to hire the *goods* to *you*; and
- (2) set out the price of the software separately.

6.7 If *we* agree to *your* request to acquire software in conjunction with the *goods* then:

- (1) *we* will acquire the software as *your* agent or in such capacity or on such *terms* as *we* otherwise reasonably determine are necessary;
- (2) *rental instalments* will be calculated as if the cost of the software forms part of the cost of the *goods*;
- (3) the definition of *goods* is deemed to include the software or the interest in the software which *we* acquire;
- (4) *you* will be responsible for obtaining any necessary approvals to entitle *you* to use the software;
- (5) *you* will be responsible for ensuring compliance with all licences or the conditions of use relating to the software;
- (6) *our security interest* in the *goods* will be taken to extend to and include a *security interest* in the software.

6.8 If *you* lease or hire *goods* to other persons in accordance with clause 6.4 (because *you* obtain *our* prior written consent), *you* must:

- (1) ensure that any lease or hiring arrangement with other persons is not a PPS Lease (as defined in the *PPSA*) or if it is *you* must perfect and continuously maintain perfection of any *security interest* that forms part of the *goods* (including perfecting a purchase money security interest);
- (2) have the terms on which *you* lease or hire the *goods* approved by *us* before *you* enter into the lease or hiring arrangement;
- (3) require the other person to acknowledge *our security interest* in the *goods* and that its interest in the *goods* is subject to or subordinate to *our security interest*; and
- (4) give *us* possession of any chattel paper (as defined in the *PPSA*) relating to a lease or hiring arrangement or ensure any such chattel paper is marked in such a way that no other person could take possession of it without acquiring actual or constructive knowledge of *our security interest*.

## **7 Repair and maintenance of goods**

(1) *You* must at all times keep the *goods* properly serviced, in proper working order and condition and in good and substantial repair.

(2) *You* must maintain and service the *goods* in accordance with the supplier's and the

manufacturer's specifications and any requirements of any insurers.

- (3) You must not without *our* consent make any replacement, alteration or addition of any nature to the *goods* which may lead to a reduction in the value of the *goods*.
- (4) You must provide *us* with a written statement disclosing all defects in the *goods* whenever reasonably requested and whether or not this *contract* has expired or *terminated*.
- (5) All repairs to and maintenance of the *goods* must be carried out by suitably qualified personnel at *your* expense.

## 8 Loss or damage to the goods

8.1 You bear the risk of loss or damage to the *goods*, except where any loss or damage is caused by *our* fraud, negligence or wilful misconduct or that of *our* employees or agents.

8.2 You must notify *us* immediately if the *goods* are totally or substantially lost, damaged or seized.

8.3 If any part of the *goods* is lost, materially damaged or seized, then we may at *our* option *terminate* this *contract* in relation to those *goods*. If that occurs then:

- (1) you must pay *us* the *balance due* in regard to that part or parts within the 30 days of *us* notifying *you* of *our* decision to *terminate* the *contract*; and
- (2) we will give *you* credit if and when we receive any insurance or other moneys received in relation to that loss, damage or seizure.

We may (acting reasonably) determine the *balance due* in regard to that part by reference to the portion of the value, utility or other relevant measure of the *goods* which are lost, damaged or seized. If *you* request *us* to do so, we will inform *you* in writing of the basis of this calculation. *Our* calculations will be conclusive unless they are proved to be incorrect.

8.4 If the *goods* are damaged but we do not *terminate* this *contract*, then:

- (1) you must ensure that the *goods* are restored at *your* expense to good working order and condition;
- (2) replacement goods form part of the *goods* under this *contract*; and
- (3) any proceeds of insurance required by *us* must be applied towards repair or replacement of the *goods*.

8.5 Where this *contract terminates* in respect of only part of the *goods*, the *contract* will continue in respect of the remainder of the *goods* at a revised *rent* (including the final *rental instalment*), as calculated by *us* (acting reasonably) and advised to *you* having regard to the proportion of the *value*, utility or other relevant measure of the *goods* which has not been so damaged, destroyed or seized. If *you* request *us* to do so, we will inform *you* in writing of the basis of this calculation. *Our* calculations will be conclusive unless they are proved to be incorrect.

## 9 Insurance

9.1 You must effect and maintain at all times during the *term*, or any holding over, insurance of the *goods* for their full replacement value.

9.2 Insurances must:

- (1) be on terms approved by *us*;
- (2) be with an insurer approved by *us*;
- (3) note *our* interest as owners of the *goods*; and
- (4) be for such risks as we may specify for the purposes of protecting the full replacement value of the *goods*.

9.3 You must pay all insurance premiums and other charges in relation to the insurance.

9.4 When requested by *us*, *you* must provide to *us*:

- (1) satisfactory evidence that the insurances referred to in this clause have been effected;
- (2) satisfactory evidence that all premiums in respect of such insurance are paid up and current; and
- (3) all such other information in relation to the insurance as we may require.

9.5 You must not:

- (1) do or permit to occur anything which may prejudice any insurance or any claim under that insurance; or
- (2) enforce, conduct, settle or compromise any claim under any insurance without *our* consent.

9.6 You must immediately notify *us* of any event which may lead to a claim under any insurances. *You* must comply with all *our reasonable* directions in respect of any such claim.

9.7 We are entitled to receive all moneys payable to *you* or to *us* under any insurance in respect of damage to or loss of the *goods* except where that damage or loss arises due to *our* fraud, negligence or wilful misconduct or that of *our* employees or agents.

## 10 Representations and warranties

10.1 You represent and warrant to *us* that:

- (1) you have full power and authority and have done all things necessary to permit *you* to enter into this *contract*;
- (2) the signing or performing of *your* obligations under this *contract* will not cause *you* to be in breach of any other arrangements that *you* may have and do not require any consent or approval from any other person;
- (3) all documentation provided by *you* to *us*, including any copy or facsimile of invoices issued to *us* by the supplier or seller of the *goods* are true and correct copies;
- (4) no *breach of an essential term* or event which with the giving of *notice* or lapse of time or both would be a *breach of an essential term* has occurred or having occurred subsists; and
- (5) all of the financial information provided by *you* to *us* provides a true and fair view of *your* financial position and no material adverse change has occurred since the time of preparation of that financial information.

10.2 You warrant to *us* that the representations in this clause are true and correct at the *commencement date* and will remain so during the *term*.

|           |   |           |   |
|-----------|---|-----------|---|
| <b>11</b> | <b>Exclusion of warranties</b>  |           |   |
| 11.1      | You acknowledge that, to the full extent permitted by law we do not and nor does any person acting with <i>our</i> authority, give any warranty or representation whatsoever in <i>your</i> favour:   | 13.3      | If you exercise your option to purchase the <i>goods</i> during the <i>term</i> , you must pay in addition to the <i>balance due</i> , the <i>early termination fee</i> set out in the Details as well as any <i>break costs</i> .  |
|           | (1) as to the condition or quality of the <i>goods</i> ;  |           | <i>Break costs</i> are our reasonable estimate of the loss we may incur as a result of the early repayment. We include in our calculation any difference between the interest rate included in each <i>rental instalment</i> for this <i>contract</i> on the date the <i>contract</i> started and the interest rate that would apply on the date of exercise of the option to purchase, calculated by reference to the <i>balance due</i> .   |
|           | (2) as to whether the <i>goods</i> have any defects whether latent or otherwise;  |           | The <i>early termination fee</i> is an amount to compensate us for administrative expenses arising out of the exercise of your right to purchase during the term under this clause 13 and is a fixed amount set out in the Details.   |
|           | (3) as to the suitability or fitness for the ordinary or any special purpose of the <i>goods</i> ;  | 13.4      | Upon <i>you</i> complying fully with the provisions of clause 13.2 and 13.3, we will sell the <i>goods</i> to <i>you</i> . On such sale, this <i>contract terminates</i> and title to the <i>goods</i> passes to <i>you</i> .   |
|           | (4) as to whether the <i>goods</i> correspond with any description of them; and   | 13.5      | The option to purchase under this clause:   |
|           | (5) as to the taxation treatment of the <i>goods</i> , the <i>rent</i> or any other matters relating to the <i>contract</i> .   | (1)       | may not be exercised without <i>our</i> consent where a <i>breach of an essential term</i> subsists; and  |
| 11.2      | If <i>you</i> exercise the option to purchase the <i>goods</i> contained in this <i>contract</i> , then on its sale to <i>you</i> consequent upon the exercise of that option we do not make any representations or warranties with respect to the merchantability, condition, quality, durability or suitability of the <i>goods</i> in any respect.                                   | (2)       | ceases upon <i>termination</i> of this <i>contract</i> .  |
| 11.3      | Any provision which is deemed to be incorporated into this <i>contract</i> is excluded, restricted or modified to the fullest extent permitted by law.  | <b>14</b> | <b>Termination and repossession</b>   |
| 11.4      | Your obligations under this <i>contract</i> continue despite any defect in the <i>goods</i> or the breakdown (whether completely or partially) of the <i>goods</i> .  | 14.1      | If <i>you</i> do not, or cannot, correct the <i>breach of an essential term</i> within the applicable remedy period given in the notice or required by law or code (or if <i>you</i> are in <i>breach of an essential term</i> again for a similar reason at the end of any applicable remedy period given in the notice or required by law or code), then at the end of that period we will immediately repossess the <i>goods</i> and give <i>you</i> notice that we have done so.          |
| 11.5      | We are not liable to <i>you</i> for any loss or damage caused directly or indirectly by the <i>goods</i> , by any inadequacy of the <i>goods</i> or any defect in the <i>goods</i> or from the use or condition of the <i>goods</i> except to the extent that loss or damage arises due to <i>our</i> fraud, negligence or wilful misconduct or that of <i>our</i> employees or agents. | 14.2      | If a <i>breach of an essential term</i> occurs and this is not remedied within the applicable remedy period we are relieved from any further liability to perform any of <i>our</i> obligations under this <i>contract</i> . We may without prejudice to <i>our</i> other rights:   |
| 11.6      | Nothing in this <i>contract</i> is extended to exclude, restrict or modify any of <i>our</i> statutory obligations that cannot be lawfully excluded, restricted or modified.  | (1)       | treat this <i>contract</i> as repudiated;   |
| <b>12</b> | <b>Return of goods</b>  | (2)       | accept such repudiation; and  |
| 12.1      | You must at <i>your</i> own cost return the <i>goods</i> on the <i>termination</i> or <i>expiration</i> of this <i>contract</i> to the place specified by <i>us</i> . However this clause 12 does not apply if <i>you</i> have exercised the option to purchase the <i>goods</i> in clause 13.  | (3)       | by notice terminate this contract and your right to possession of the goods.  |
| 12.2      | The <i>goods</i> when returned must be in good working order and repair (fair wear and tear excepted) and in accordance with the terms of this <i>contract</i> .  |           | This right may be exercised notwithstanding any delay or previous waiver by <i>us</i> .   |
| 12.3      | You must sign any documents and do anything we reasonably require to properly return the <i>goods</i> to <i>us</i> including:   | 14.3      | If we <i>terminate</i> this <i>contract</i> under this clause, then:  |
|           | (1) returning all operating manuals and documents; and  | (1)       | we are entitled to immediately repossess the <i>goods</i> ; and   |
|           | (2) transferring to <i>us</i> all licences, approvals, consents, authorisations and certificates of registration relating to the <i>goods</i> .   | (2)       | we may enter upon any place where the <i>goods</i> are or where we suspect the <i>goods</i> are for the purpose of such repossession.   |
| <b>13</b> | <b>Option to purchase</b>   | 14.4      | Unless this is a <i>small business contract</i> or a <i>contract</i> to which the <i>banking code of practice</i> applies, if we determine that circumstances are such that giving <i>notice of termination</i> is impractical or would materially adversely affect <i>our</i> rights (including <i>our</i> right to possess the <i>goods</i> ) we may <i>terminate</i> this <i>contract</i> and <i>your</i> right to possession of the <i>goods</i> without the need for any <i>notice</i> . |
| 13.1      | You have an option at any time during the <i>term</i> or at <i>expiration</i> of this <i>contract</i> to purchase the <i>goods</i> .  | 14.5      | If this is a <i>small business contract</i> but not a <i>banking code contract</i> , we will only take action under this clause if the  |
| 13.2      | The option to purchase the <i>goods</i> may be exercised by <i>you</i> :  |           |   |
|           | (1) during the <i>term</i> by giving a <i>notice</i> to <i>us</i> and paying to <i>us</i> the <i>balance due</i> ; or   |           |   |

*breach of an essential term* creates a material risk that you may not pay any amount owing when it is due, or we may be unable to enforce our rights against any security, and provided we have given you 30 days to remedy the *breach of an essential term* (unless we reasonably consider a shorter remedy period, or no remedy period, is required for us to manage an immediate risk).

14.6 If you are an "individual" or "a small business" as defined in the *banking code of practice*:

(1) we will not enforce our rights under this clause 14 if you have met all your payment obligations under this *contract* unless:

- a default under paragraphs (f), (g), (h), (i) and (l) under the definition "*breach of an essential term*" has occurred;
- it is by its nature material or we reasonably consider that the default has had, or is likely to have, a material impact on:

- your or the guarantor's ability to meet your or their obligations to us under this *contract* (or our ability to assess this);
- our security risk (or our ability to assess this); and
- our legal or reputational risk (but only if default under paragraph (f) of the definition '*breach of an essential term*' has occurred); and

- we have given you at least 30 days to remedy the default, unless we consider a shorter notice period, or no notice period, to be reasonable in circumstances where:

- we reasonably determine that the default is unable to be remedied;
- based on our reasonable opinion, it is reasonable for us to act to manage an a material and immediate risk relating to the nature of the relevant *breach of an essential term*, your particular circumstances, or the value of any real property or other property or assets secured by a security; or
- we have already given you a reasonable period of time to remedy the default but you did not fix it during this time.

14.7 Nothing in this clause affects our obligation to give any notice that we are required at law to give.

14.8 You should inform us promptly if you are in financial difficulty.

## **15 Termination prior to expiry of the term**

15.1 If this *contract* is terminated prior to the expiry of the term by you or by us you must in addition to other amounts payable under this *contract* pay on demand the *balance*

*due*, the *early termination fee* set out in the Details as well as any *break costs*.

*Break costs* are our reasonable estimate of the loss we may incur as a result of the early repayment. We include in our calculation any difference between the interest rate included in each *rental instalment* for this *contract* on the date the *contract* started and the interest rate that would apply on the date on which the repayment is made, calculated by reference to the *balance due*.

The *early termination fee* is an amount to compensate us for administrative expenses arising out of the termination prior to the expiry of the term and is a fixed amount set out in the Details.

15.2 If we have obtained possession of the goods then the *balance due* is reduced by the *value of the goods*. If the *value of the goods* exceeds the *balance due* then subject to our rights under clause 28 such surplus must be paid to you.

15.3 Payments under clause 15.1 are to indemnify us for losses sustained in respect of *rental instalments* not then accrued due.

## **16 Overdue interest and costs**

16.1 You must pay us on demand any costs incurred by us arising out of any default by you under this *contract* or arising out of us enforcing our rights under this *contract* including our rights upon expiration or termination of this *contract*.

16.2 If you fail to pay any money payable under this *contract* when due (or on any judgment in respect of which those moneys become merged) then you must pay interest at the *higher rate* on that amount.

16.3 Interest at the *higher rate* is calculated from the date such moneys become payable until the date of actual payment and is payable on demand.

16.4 If you are a farmer and we have hired the goods to you for the purposes of a farming operation, we will not charge interest at the *higher rate* during any period that the land you use for the farming operation is in drought or subject to another natural disaster. We will refund any interest charged at the *higher rate*, or late payment fees charged by us, during the period the relevant land was in drought or subject to another natural disaster. We will consider land to be in drought or subject to another natural disaster when an Australian State or Territory government makes a declaration to that effect, or (if no such declaration is made) when we are satisfied on other grounds that the relevant land is in drought or subject to another natural disaster.

## **17 Remedy of breaches by you**

17.1 If you breach any of your obligations under this *contract* we may, after allowing for any applicable remedy period, take such steps as we reasonably consider necessary to remedy such breach.

17.2 You acknowledge that if we take any action under clause 17.1, we may do anything you should have done under this *contract* which you have not done, or which we reasonably consider you have not done properly.

17.3 Any costs incurred by us in exercising our rights under clause 17.1 incur interest at the *higher rate* from the date of payment by us until the date of repayment by you. Such money is payable on demand.

|           |  |  |
|-----------|--|--|
| <b>18</b> | <b>Duties and taxes</b>  | (3) thirdly, towards payment of the amounts due to <i>us</i> under this <i>contract</i>  |
| 18.1      | You must pay all stamp duty and other duty or taxes and any fees which in any way relate to this <i>contract</i> , any supply made under this <i>contract</i> or any transaction contemplated by this <i>contract</i> or the registration of this <i>contract</i> or any <i>security interest</i> related to it.   | <b>21</b> <b>Power of attorney</b>   |
| 18.2      | Unless GST is expressly included, a payment under this <i>contract</i> for any supply made under or in connection with this <i>contract</i> does not include GST. To the extent that any supply made under or in connection with this <i>contract</i> is a taxable supply, the GST excluded consideration otherwise payable or provided for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of such supply and subject to receipt of any tax invoice if required, is payable at the same time.   | In consideration of <i>us</i> entering into this <i>contract</i> you irrevocably appoint <i>us</i> and each <i>authorised officer</i> severally as <i>your attorney</i> . If there is a <i>breach of an essential term</i> which you have not been able to remedy within the applicable remedy period, we may do anything you are obliged to do or which we are empowered or authorised to do under this <i>contract</i> . |
| 18.3      | If payment to a party under this <i>contract</i> is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of such loss, cost or expense incurred by that party, then payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to clause 18.2.  | <b>22</b> <b>Trustee</b>   |
| 18.4      | Payments under this clause must be made at the time that the act or supply giving rise to such liability occurs.   | 22.1 The provisions of this clause apply if you or any <i>guarantor</i> enter into this <i>contract</i> (including the <i>guarantee</i> contained in this <i>contract</i> ) as the <i>trustee</i> of a <i>trust</i> .  |
| <b>19</b> | <b>Tax indemnity</b>   | 22.2 Each <i>trustee</i> enters into this <i>contract</i> both in its personal capacity and its capacity as <i>trustee</i> of the <i>trust</i> .   |
| 19.1      | You acknowledge that the <i>rent</i> and other moneys payable in connection with this <i>contract</i> have been calculated on the basis:   | 22.3 Each <i>trustee</i> warrants to <i>us</i> that:   |
| (1)       | that we will be entitled to claim a deduction for depreciation in respect of the <i>goods</i> under any laws relating to income tax; and   | (1) it is the sole <i>trustee</i> of the <i>trust</i> ;  |
| (2)       | of the rates of duty and tax applicable at the date of this <i>contract</i> .  | (2) no action has been taken to remove or replace it as <i>trustee</i> ;   |
| 19.2      | If <i>our</i> liability for income tax is increased or is payable earlier because deductions at the depreciation rates which we have relied upon for calculation of the <i>rent</i> are not for any reason allowed in full at the times when they would normally have been allowed, or if the rate of any duty or tax in connection with this <i>contract</i> (other than income tax on <i>our</i> net taxable income) is increased, then you must pay to <i>us</i> an amount which will result in the after tax yield to <i>us</i> being the same as it would have been but for such increase or acceleration in liability. We will give you 30 days' notice of any such increase or acceleration in liability. You may, on reviewing any notice of increase or acceleration in liability under this clause 19.2, opt to terminate this <i>contract</i> by paying <i>us</i> all amounts payable in accordance with clause 15.1 and returning the <i>goods</i> to <i>us</i> in accordance with clause 12 (unless you exercise your option to purchase the <i>goods</i> , in which case clause 13 applies). | (3) the <i>trustee</i> has full power under the <i>trust deed</i> to enter into this <i>contract</i> and to perform its obligations under this <i>contract</i> ;   |
| 19.3      | Indemnities in this clause continue in full force and effect notwithstanding any <i>termination</i> or expiry of this <i>contract</i> .  | (4) all necessary actions have been taken to authorise the entering into and performance of this <i>contract</i> ;   |
| <b>20</b> | <b>Application of moneys</b>   | (5) this <i>contract</i> is entered into as part of the due and proper administration of the <i>trust</i> and is for the benefit of the beneficiaries;   |
|           | We will apply all moneys received by <i>us</i> in respect of this <i>contract</i> :  | (6) the <i>trustee</i> has the right to be fully indemnified out of the <i>trust fund</i> and no action has been taken to restrict the limit of that right;  |
| (1)       | Firstly, in payment of <i>our</i> costs;   | (7) the <i>trust</i> has not terminated nor has any event for the vesting of the <i>trust assets</i> occurred; and   |
| (2)       | secondly, in payment of any other expenses in relation to the <i>goods</i> that we are empowered under this <i>contract</i> to appropriate and think fit to pay; and   | (8) <i>our</i> rights under this <i>contract</i> rank in priority with the claims of the beneficiaries under the <i>trust</i> .  |
|           |  | 22.4 Except with <i>our</i> prior written consent (such consent not to be unreasonably withheld):  |
|           |  | (1) the <i>trust deed</i> must not be varied;  |
|           |  | (2) the <i>trustee</i> must not retire as <i>trustee</i> of the <i>trust</i> or appoint any new or additional <i>trustee</i> ; and   |
|           |  | (3) the <i>trustee</i> must perform its obligations under the <i>trust</i> and not be in default.  |
|           |  | 22.5 Except as provided for in clause 22.6, the <i>trustee</i> may only distribute, transfer or set aside any part of the income or the capital of the <i>trust</i> if the <i>trust fund</i> has sufficient financial capacity to indemnify the <i>trustee</i> under clause 22.3(6) above following the distribution, transfer or setting aside of the income or capital.  |
|           |  | 22.6 Until the first to occur of:  |
|           |  | (1) written <i>notice</i> from <i>us</i> ; or  |
|           |  | (2) the occurrence of a <i>breach of an essential term</i> ,   |
|           |  | the <i>trustee</i> may distribute the income but not the capital of the <i>trust</i> in accordance with the <i>trust deed</i> .  |



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| <b>23</b> | <b>Farm goods</b>   | (2) the goods.   |
| 23.1      | If the provision of any legislation relating to farmers, farm business or operations or farming equipment or machinery (applicable legislation) applies to this <i>contract</i> and:  | when we reasonably require to manage our risk under this <i>contract</i> .   |
|           | (1) we are required to give any <i>notice</i> in addition to that provided for in this <i>contract</i> or provide <i>notice</i> for a longer period than provided for in this <i>contract</i> ;   | 25.3 You must not assign or otherwise transfer or deal with <i>your</i> rights and interests under this <i>contract</i> to any person.   |
|           | (2) the maximum amount we may recover from <i>you</i> is subject to any limitation or retention; or   | 25.4 We may at any time assign <i>our</i> rights and interest under this <i>contract</i> including the <i>guarantee</i> and <i>you</i> consent to us novating <i>our</i> obligations under this <i>contract</i> to any person at any time. We may also grant a <i>security interest</i> over the <i>goods</i> or <i>our</i> rights under this <i>contract</i> . If we do this, <i>you</i> may not claim against any assignee (or any other person who has an interest in this <i>contract</i> ) any right of set-off or other rights <i>you</i> have against us.   |
|           | (3) any of <i>our</i> rights against <i>you</i> are subject to any restriction or limitation,   |  |
|           | then:   | 25.5 If any provision of this <i>contract</i> is or at any time becomes void or unenforceable the remaining provisions will remain in full force and effect. Any void or unenforceable provision will be replaced or if not replaced then read down by a lawful and enforceable provision which so far as possible achieves the same economic benefit or burden for <i>us</i> and <i>you</i> as the unlawful or unenforceable provision was intended to achieve. All <i>your</i> obligations under this <i>contract</i> survive the <i>expiration</i> or <i>termination</i> of the <i>contract</i> to the extent required for their full observance and performance. |
|           | (4) we must give <i>you</i> the <i>notice</i> which complies with the applicable legislation;   | 25.6 If any law requires <i>you</i> or any <i>guarantor</i> to make any deduction or withholding from any payment in respect of this <i>contract</i> or the <i>guarantee</i> then:   |
|           | (5) the maximum amount we can recover from <i>you</i> is the lesser of the amount specified in the applicable legislation and the amount provided for in this <i>contract</i> ; and   | (1) <i>you</i> or any <i>guarantor</i> must pay to <i>us</i> such additional payments as are necessary to ensure that after the withholding or deduction we receive the sum equal to the sum we would have recovered if no deduction or withholding had been made; and   |
|           | (6) we must exercise <i>our</i> rights under this <i>contract</i> subject to <i>your</i> rights under the applicable legislation.   | (2) <i>you</i> and any <i>guarantor</i> indemnify <i>us</i> against any failure by <i>you</i> or any <i>guarantor</i> to make such deduction or withholding.   |
| 23.2      | You must disclose to <i>us</i> (if <i>you</i> have not already done so) if:   |  |
|           | (1) <i>you</i> are or become a farmer within the meaning of the applicable legislation;   |  |
|           | (2) the <i>goods</i> are or are intended to be used in connection with a farming business or operation within the meaning of the applicable legislation; or   |  |
|           | (3) the <i>goods</i> are or become farm equipment or farm machinery within the meaning of the applicable legislation.   |  |
| <b>24</b> | <b>Commission</b>   |  |
| 24.1      | You acknowledge that where <i>you</i> have been introduced to <i>us</i> by a <i>broker</i> :  | 25.7 Time is of the essence in respect of <i>your</i> obligations under this <i>contract</i> .   |
|           | (1) the <i>broker</i> has not acted as <i>our</i> agent to negotiate and enter into this <i>contract</i> ;  | 25.8 No failure or delay on <i>our</i> part to exercise any rights or powers under this <i>contract</i> will operate as a waiver of that right or power. We may only waive <i>our</i> rights under this <i>contract</i> in writing signed by an <i>authorised officer</i> .  |
|           | (2) the <i>broker</i> is not authorised to make any representations or warranties to <i>you</i> on <i>our</i> behalf regarding this <i>contract</i> or impose any obligations on <i>us</i> ;  | 25.9 You must at <i>your</i> expense do any further act and execute any further documents which we may reasonably request to protect <i>our</i> title to the <i>goods</i> and <i>our</i> rights and remedies under this <i>contract</i> .  |
|           | (3) we may pay commissions or fees or remuneration to that <i>broker</i> ; and  | 25.10 You and each <i>guarantor</i> authorise <i>us</i> to:  |
|           | (4) in calculating the <i>rent</i> payable by <i>you</i> under this <i>contract</i> , payments to the <i>broker</i> may be taken into consideration.  | (1) fill in any blanks in this <i>contract</i> and any document signed in connection with this <i>contract</i> ; and   |
| <b>25</b> | <b>General</b>  | (2) make any amendments to any of this <i>contract</i> and any document signed in connection with this <i>contract</i> to accurately reflect or give effect to the <i>terms</i> of this <i>contract</i> which have been agreed with <i>us</i> .  |
| 25.1      | Acceptance of any payment by <i>us</i> after we have become aware of any default under this <i>contract</i> or any <i>breach</i> of an <i>essential term</i> is without prejudice to the exercise by <i>us</i> of <i>our</i> powers under this <i>contract</i> . Acceptance does not operate as an election by <i>us</i> either to exercise or not exercise any of <i>our</i> rights or powers under this <i>contract</i> . | 25.11 We will give <i>you</i> a copy of this <i>contract</i> promptly following any amendments we make.  |
| 25.2      | You and any <i>guarantor</i> must give <i>us</i> information or documents we ask for about:   |  |
|           | (1) <i>your</i> or all of the <i>guarantors</i> ' financial positions; and  |  |
|           |   | <b>26</b> <b>Proper law</b>  |
|           |   | This <i>contract</i> is governed by the laws of the state and the laws of the Commonwealth of Australia. You irrevocably submit to the non-exclusive jurisdiction of the courts of the state.  |

## 27 Security

- (1) Where it is agreed that *your* obligations under this *contract* are to be secured by any *security* then moneys secured by that *security* include all moneys owing under this *contract* or in consequence of the *termination* of this *contract*.
- (2) Where it is agreed that the obligations of any *guarantor* in relation to this *contract* are to be secured by any *security* then moneys secured by that *security* include all moneys owing under the *guarantee*.

## 28 Set-off and combination of accounts

- 28.1 Except to the extent you have a right of set off granted by law which cannot be excluded by agreement (such as consumer credit legislation), you agree to pay us the amount owing in full without set-off, counterclaim or deduction in respect of taxes unless prohibited by law. However, we may at any time at *our* discretion apply and set-off any amounts due for payment by *us* to *you* or to any *guarantor* for any reason against any amounts owing or which may become owing by *you* to *us* on any account including but not limited to this *contract*.
- 28.2 We will promptly inform *you* if we exercise *our* rights of set-off contained in this clause or if we combine any accounts.
- 28.3 *You* must not set off an amount that *you* owe to *us* against any amount that we owe *you*.

## 29 Evidence

A certificate signed by an *authorised officer* is prima facie evidence of the matters set out in that certificate.

## 30 PPSA

- 30.1 If Chapter 4 of the *PPSA* would otherwise apply to the enforcement of this *contract* you agree the following provisions of the *PPSA* will not apply to the enforcement of this *contract*:
- (a) section 95 (*notice of removal of accession*), to the extent that it requires *us* to give a *notice* to *you*;
  - (b) section 96 (when a person with an interest in the whole may retain an accession);
  - (c) section 125 (obligation to dispose of or retain collateral);
  - (d) section 130 (*notice of disposal*), to the extent that it requires *us* to give a *notice* to *you*;
  - (e) paragraph 132(3)(d) (contents of statement of account after disposal);
  - (f) subsection 132(4) (statement of account if no disposal);
  - (g) section 142 (redemption of collateral);
  - (h) section 143 (reinstatement of security agreement).
- 30.2 Despite clause 34 *notices* or documents required or permitted to be given to *us* for the purposes of the *PPSA* must be given in accordance with the *PPSA*.
- 30.3 *You* consent to *us* effecting a registration on the *PPSR* (in any manner we consider appropriate) in relation to any *security interest* arising under or in connection with or

contemplated by this *contract* and *you* agree to provide all assistance reasonably required to facilitate this.

- 30.4 *You* waive the 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

## 31 Banking Code of Practice

- 31.1 The *banking code of practice* applies to this document if you are an individual or a "small business" as referred to in the *banking code of practice*.
- 31.2 The *banking code of practice* requires us to draw your attention to the availability of general descriptive information concerning our banking services and cheques. This includes information about:
- (a) account opening procedures;
  - (b) options available under the tax file number legislation;
  - (c) our obligations regarding the confidentiality of your information;
  - (d) complaint handling procedures;
  - (e) bank cheques;
  - (f) the advisability of you informing us promptly when you are experiencing vulnerability so that we may discuss your situation; and
  - (g) the advisability of you reading the terms and conditions applying to this banking service.

Some of this information is contained in this document. This information is also set out in full in the Business Accounts and Facilities Terms and Conditions document. A copy of the Business Accounts and Facilities Terms and Conditions document can be obtained by contacting any of our branches, by telephoning Bendigo On Call on 1300 236 344 or by visiting our website at [www.bendigobank.com.au](http://www.bendigobank.com.au). We recommend that *you* review yourself with these terms before *you* execute this *contract*.

- 31.3 You should inform us promptly if you are experiencing vulnerability so that we may discuss your situation.

## 32 Australian Financial Complaints Authority

We hope we never have a situation where we cannot resolve a concern or complaint to your satisfaction. However, if this happens, you can refer the matter to the Australian Financial Complaints Authority (AFCA).

AFCA's role is to investigate matters only after customers have fully exhausted the established complaint procedures of their bank.

You can get more information about this service by contacting AFCA at:

Australian Financial Complaints Authority  
GPO Box 3  
Melbourne VIC 3001  
Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Internet: <https://www.afca.org.au/make-a-complaint/complain/>

## 33 Guarantee and indemnity

- 33.1 In consideration of *us* at the request of the *guarantor* entering into this *contract*, the *guarantor* guarantees to *us*:

- (1) the due and punctual performance by *you* of *your* obligations under this *contract* or any holding over pursuant to this *contract*; and
- (2) payment of all moneys owing under this *contract* or consequent upon the expiration or *termination* of this *contract*.
- 33.2 As a separate obligation the *guarantor* indemnifies *us* against any loss or damage which we suffer or sustain as a result of the non-payment of any money or the non-performance of any of *your* obligations under this *contract*, any holding over pursuant to this *contract* or consequent upon *termination* or expiration of this *contract*. The *guarantor* is not liable to indemnify *us* against any loss or damage that arises due to *our* fraud, negligence or wilful misconduct, or that of *our* employees or agents.
- 33.3 The obligations of the *guarantor* under this *guarantee* are principal obligations imposed on the *guarantor*. We have the right to make a claim or demand upon the *guarantor* pursuant to this *guarantee* without having first taken any proceedings against *you* or any other person.
- 33.4 The *guarantor's* obligations under this *guarantee* are not impaired or discharged by:
- (1) any variation (with or without the consent of the *guarantor*) of this *contract*;
- (2) any breach, wilful or otherwise of any of *your* obligations under this *contract* whether or not with the consent or knowledge of *you* or any *guarantor* or *us*;
- (3) the granting of any time, credit, indulgence or concession to *you* or to any *guarantor*;
- (4) the fact that the whole or any part of the moneys payable by *you* under this *contract* may not be or may cease to be recoverable from *you* or from any other *guarantor*;
- (5) the fact that *you* or any other *guarantor* may be discharged from all or any of *your* obligations to pay any moneys under this *contract* for any reason other than that the same have been in full;
- (6) *you* or any *guarantor*, being an individual, dies, suffers from any mental incapacity or becomes *insolvent under administration*;
- (7) *You* or any *guarantor* being a company become an *externally administered body corporate*;
- (8) the avoidance for any reason of any payment by *you* or on *your* behalf or by any *guarantor*;
- (9) the fact that any person who was intended to execute this *contract* as *guarantor* or otherwise to become a co-surety for *your* obligations under this *contract* has not done so;
- (10) the transfer or assignment of the benefit of this *contract* including this *guarantee* to any person or corporation;
- (11) any other matter or thing which but for this provision could or might operate to abrogate or reduce *your* liability as *guarantor*.
- 33.5 *Our* rights under this *guarantee* are in addition to and do not merge with or affect any other securities now or subsequently held by *us* from *you* or from the *guarantor* from any other person.
- 33.6 We are not obliged to marshal in favour of the *guarantor* any security held by *us* or any other funds or assets that we may be entitled to receive or to have a claim upon.
- 33.7 Any security now or subsequently held by any *guarantor* from *you* for *your* obligations to indemnify that *guarantor* against liability under this *guarantee* must be held by the *guarantor* in *our* favour and at the cost of the *guarantor* as security for the *guarantor's* liability to *us*. The *guarantor* must upon request deposit that security with *us* or assign it by way of security to *us*.
- 33.8 The *guarantor* must not compete with *us* for any dividend or distribution in any winding up, scheme of arrangement or management or administration of *you* or claim any set-off or make any counter-claim against *you*.
- 33.9 All moneys received by *us* which are capable of being applied by *us* towards payment of any moneys then due, or which may become due under this *contract* must be regarded as payments in gross.
- 33.10 The *guarantor* has no right to claim the benefit of any moneys so received until we have received the whole of the moneys due or which may become payable to *us* under this *contract*.
- 33.11 Where the *banking code of practice* applies to this *contract*, and the *guarantor* is an individual or *small business* (as defined in the *banking code of practice*), the following additional provisions apply.
- (1) The *guarantor's* liability under this clause 33 is limited to the amount equal to the total *rent* stated in the *Details* plus GST, plus:
- (a) any costs; and
- (b) any overdue *interest*.
- (2) *Our* rights under clause 33.3 to make a claim or demand upon the *guarantor* pursuant to this *guarantee* without having first taken any proceedings against *you* are subject to the *code of banking practice*.
- (3) We will give the *guarantor* the following information within 14 days of it occurring:
- (a) a copy of any notice we provide you in relation to breach of an essential term;
- (b) a written notice if you have advised us that you are experiencing financial difficulty which has resulted in a change to this *contract*; and
- (c) a written notice if you are in continuing default for more than two months after we have issued a notice in relation to a breach of an essential term,
- except where the *guarantor* is a commercial asset financing *guarantor*, sole director *guarantor* or trustee *guarantor* (as defined in the *banking code of practice*).
- 34 Notices other communications and service of documents**
- 34.1 All notices, certificates, consents, approvals and other communications ('notices') in connection with this document must be in writing and in the English language, signed by an authorised officer of the sender. *You* should inform us if you have limited English so that we can discuss ways to assist *you*.
- 34.2 Notices must be:

- (1) left at the address set out in the Details;
- (2) sent by pre-paid post to any address (airmail, if appropriate) to the address set out in the Details;
- (3) sent by email to the email address set out in the Details; or
- (4) given by any way permitted by law.

But if the intended recipient has notified a changed postal address or changed email address, then the *notice* must be to that address, number or email address.

**34.3** Communications to us must be:

- (1) given personally to one of our employees or agents at:
  - the branch if applicable where you arranged this document; or
  - any other branch or branch of our agent that we tell you; or
  - our registered office or the registered office of our agent; or
- (2) sent by pre-paid post or electronically to any of those places.

**34.4** Notices take effect from the time they are received unless a later time is specified in them. If sent by post, notices are taken to be received three business days after posting. If sent by fax, notices are taken to be received at the time shown in the transmission report as the time that the whole fax was sent. If sent by email, notices are taken to be received when the relevant email enters the information system of the recipient's internet service provider.

**34.5** We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you or a Guarantor by delivering it to the address last known to us or the place where the collateral is kept last known to us, or by leaving it at either of those places. This clause 34 does not prevent any other method of service.

**35** **Variation of standard terms and conditions**

We will notify you of any change to these *standard terms and conditions* at any time. If any law regulates that change, we may only make changes to the extent permitted by, and subject to, the requirements of that law or code. Changes to fees are dealt with in clause 3. Any other change takes effect from the earlier of the date you receive written *notice* of the change or the date we publish details of the change by advertisement in a national newspaper.

**36** **Statements**

We will not provide periodic statements of amounts owing and/or paid by you under this *contract*. However, if you ask us, we will provide you with a statement of amounts owing under this *contract* as well as any break costs that are payable.

**37** **Privacy**

**37.1** Where you comprise more than one person, you agree that each of you may have access to information about this *contract* without the consent of the other parties.

**37.2** You acknowledge that where you have been introduced to us by a *broker*, you authorise us to disclose to that *broker* information about your application, credit file or other personal information held by us.

**37.3** Clause 37.4 applies if you are an individual or, if you are not an individual, to individuals about who we collect personal information in relation to your *contract*. You agree to show this clause to all individuals who you have authorised to deal with us in relation to your *contract*.

**37.4** We are committed to ensuring your privacy is protected and understand your concerns regarding the confidentiality and security of personal information you provide to us. We collect and use your personal information in order to provide you with financial products and services. To do that we may disclose your personal information to regulatory bodies or government agencies in order to verify your identity or to authenticate a document you provide to us. We may also disclose your personal information to organisations that carry out functions on our behalf, such as mailing houses and information technology service providers. Confidentiality agreements with those entities ensure this information is only used to carry out functions on our behalf. We may also share personal information regarding any one or more of you with prospective or existing guarantors or indemnifiers of any obligations of you. This information may also be shared with the Bendigo and Adelaide Bank Group and our joint venture partners so that you can be told about other financial products and services offered or distributed by us. In most cases you will be able to gain access to personal information held by us. We will take reasonable steps to amend or correct your personal information to keep it accurate and up to date. Our Customer Advocate Office will coordinate requests relating to access and correction of your personal information. You can opt out of receiving marketing material from us about other products and services at any time. If you opt out, we will continue to make contact with you to provide information in relation to your existing *contract* only. If you have any concerns or wish to make a complaint regarding the treatment of your personal information by us, please phone our Customer Advocate Office for assistance on 1300 361 911. You can obtain more information about privacy in our Privacy Policy which is available upon request at any of our branches or on our website at [www.bendigobank.com.au](http://www.bendigobank.com.au)

**38** **Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF), identification and information requirements**

**38.1** We may delay, block or refuse to make a payment to you or to a supplier or seller of goods under this *contract* if we believe on reasonable grounds that making a payment may breach any law in Australia or any other country. We will incur no liability if we do so.

**38.2** We may, and you consent to us doing so, seek verification of your identification and identification documents from independent sources and/or third parties.

**38.3** We may request, and you must provide, further documentary evidence of your identity as we deem necessary to confirm your identity.

**38.4** We may request that you produce, and you must provide in person if necessary, the original and/or certified true copies of all documentary evidence confirming your identity.

**38.5** In the event that we are unable to properly confirm your identity, we may at our sole discretion, refuse to make a payment to you or to a supplier or seller of goods under this *contract* or refuse to allow you to exercise the option to purchase the goods contained in this *contract* until such time as your identity can be confirmed.

**38.6** We may request, and you must provide:

- (1) any other additional information we deem necessary in relation to your identity, personal

affairs, business dealings and/ or the purpose of *your* relationship with *us*; and

- (2) any information which we reasonably require to comply with any laws in Australia or any other country.

reasonable period of time required by us acting reasonably;

- (d) if *you* or any *guarantor* fails to comply with any other provision of this *contract* and such failure continues for a period of seven days which creates a material credit risk for us;

38.7 We will keep copies of all documents provided by *you* and will disclose or provide copies of *your* identification documents or any other information provided by *you* to third parties as required by any laws in Australia or any other country.

- (e) we reasonably believe that the *goods* will be removed or concealed by *you* contrary to the provisions of this *contract* which has the effect of materially increasing our risk or ability to recover amounts owing under this *contract* and is not capable of being remedied within a reasonable period of time required by us acting reasonably;

### 39 Confidentiality

*You* and we agree that the *terms* and conditions of this *contract* and any related documents and information are confidential. *You* and we agree that the content of these documents and such information will not be disclosed except to the extent and for the purposes such disclosure is expressly permitted by this *contract* or required by law (other than section 275(1) of the *PPSA*).

- (f) *you* make any false, inaccurate or misleading statement in relation to the entering into of this *contract* or any *security* and we acting reasonably are of the opinion that we would not have entered into this *contract* if *you* had not made that false, inaccurate or misleading statement;

### 40 Definitions

40.1 In this *contract* unless the contrary intention otherwise appears:

- (1) *asset purchase contract* means a *contract* determined to be an asset purchase contract in accordance with clause 1.2;

- (g) *you* cease or threaten to cease to carry on *your* business or without *our* prior written consent transfer or dispose of all or a substantial part of *your* assets whether voluntary or due to compulsory acquisition;

- (2) *authorised officer* means any:

- (a) director or secretary of *us*;
- (b) any officer of *us*;
- (c) any other person from time to time designated by *us* as an *authorised officer*;

- (h) *you* or any *guarantor* being a company become an externally administered body corporate or any steps are taken to make *you* or any *guarantor* an *externally administered body corporate*;

- (3) *balance due* means at a relevant time the amount which is the total of:

- (a) all *rental instalments* and other amounts which have accrued due at that time but which are then unpaid;
- (b) any overdue interest; and
- (c) the sum of the *present value* calculated at that date, of each *rental instalment* which has not then accrued due but would have accrued due if this *contract* had continued for the remainder of the *term*.

- (i) *you* or any *guarantor* being a natural person become insolvent under administration or a bankruptcy *notice* is filed or any other step is taken to make *you* or any *guarantor* *insolvent under administration*;

- (4) *Bendigo and Adelaide Bank Group* means Bendigo and Adelaide Bank Limited and its related bodies corporate.

- (j) there is a material adverse change in *your* financial condition or the financial condition of any *guarantor* which has the effect of materially increasing our risk or ability to recover amounts owing under this *contract* and is not capable of being remedied within a reasonable period of time required by us acting reasonably;

- (5) *breach of an essential term* means the occurrence of any of the following:

- (a) *you* fail to pay any *rental instalment* or other monies due under this *contract*;
- (b) *you* by *your* conduct or in writing inform *us* that *you* are not or do not intend to be bound by this *contract*;
- (c) *you* fail to comply with *your* obligations under clauses 5.1, 5.4, 6.2, 6.4 or 9.1 which has the effect of materially increasing our risk or ability to recover amounts owing under this *contract* and is not capable of being remedied within a

- (k) *you* are a company and in *our* opinion the effective control of *you* is altered to any material extent from that subsisting at the date of this *contract*;

- (l) the *goods* are abandoned or condemned or seized or appropriated by any lawful authority;

- (m) *you* or any *guarantor* repudiates any other agreement *you* have with *us* for the hiring of *goods* or the provision of any loan, advance, credit or financial accommodation;

- (n) default occurs under any *security* given by *you* to *us* which has the effect of materially increasing our risk or ability to recover amounts owing under this

- contract* and is not capable of being remedied within a reasonable period of time required by us acting reasonably; and
- (o) there is any material breach of any other agreement you or any *guarantor* have with us and such breach has the effect of materially increasing our risk or ability to recover amounts owing under this *contract* and is not capable of being remedied within a reasonable period of time required by us acting reasonably.
- (6) *broker* means any broker, dealer or other person who may act, as your agent or otherwise, to negotiate and arrange this *contract*;
- (7) *business day* means a week day (except a national public holiday or a public holiday in the state) when we are open for business in the state;
- (8) *banking code of practice* means the Banking Code of Practice published by the Australian Banking Association;
- (9) *commencement date* means the date determined as set out in the *schedule*;
- (10) *contract* means this *asset purchase contract* incorporating these *standard terms and conditions* and the *schedule*. It includes the *guarantee* contained in this *contract*.
- (11) *Corporations Act* means the Corporations Act 2001 (Cth);
- (12) *costs* includes charges and expenses and costs including all costs of:
- (a) legal advisers on a full indemnity basis;
- (b) repossession, storage and inspection of the *goods*;
- (c) obtaining a valuation of the *goods*; and
- (d) obtaining any other advice in relation to the repossession, storage, repair or disposal of the *goods*;
- and to the extent you are an "individual" or a "small business" as defined in the *banking code of practice* our costs will be limited to reasonable costs only.
- (13) *Details* means the document headed Asset Purchase Contract Details which is executed by you and which forms part of this document and the *asset purchase contract*.
- (14) *deposit* means the amount if any specified in the *schedule* as the deposit. It includes both the cash amount and any trade-in or non-cash consideration shown as deposit;
- (15) *encumbrance* means any mortgage, charge, lien, *security interest* or other third party right whatsoever;
- (16) *expiration* in relation to this *contract* means the expiry of the *term*;
- (17) *externally administered body corporate* has the meaning given to it in the *Corporations Act*;
- (18) *farmer* means a 'farmer' as defined in section 4 of the Farm Debt Mediation Act 1994 (NSW)
- (meaning a person (whether an individual person or a corporation) who is solely or principally engaged in a *farm operation* and includes a person who owns land cultivated under a sharefarming agreement and the personal representatives of a deceased farmer);
- (19) *farm operation* means a 'farm operation' as defined in section 4AB of the Farm Debt Mediation Act 1994 (NSW), meaning a business undertaking that primarily involves one or more of the following activities:
- (a) agriculture (for example, crop growing, livestock or grain farming);
- (b) aquaculture;
- (c) the cultivation or harvesting of timber or native vegetation; or
- (d) any activity involving primary production carried out in connection with an activity referred to in the above;
- (20) *goods* means all or any part of the *goods* described in the *schedule* and includes any accessories attached to those *goods* and all manuals, log books, maintenance records and licenses held in conjunction with the *goods* and any alterations, additions or modifications of the *goods* or any *goods* acquired in the substitution for the *goods*;
- (21) GST and GST Law has the same meaning they are given in "A New Tax System (Goods and Services Tax) Act 1999 (Cth) except that GST Law also includes any applicable rulings issued by the Commissioner of Taxation;
- (22) *guarantee* means any *guarantee* or indemnity given by a *guarantor*;
- (23) *guarantor* means each person who has guaranteed your obligations under this *contract* and includes any *guarantor* referred to in the *schedule* and any person who, whether at the time of entering into this *contract* or subsequently, *guarantee your* obligations under this *contract*;
- (24) *higher rate* means a rate of interest which is 2% per annum above the rate of interest that we used for the purpose of calculating the *rent* due under this *contract*;
- (25) *insolvent under administration* has the same meaning as in the Corporations Act;
- (26) *net proceeds* of sale means the net proceeds of sale received by us less all costs in connection with that sale;
- (27) *notice* means any notice, demand or consent;
- (28) *OHS laws* means any laws, regulations or standards relating to occupational health and safety;
- (29) *overdue interest* means interest calculated and payable as provided for in clause 16;
- (30) *PPSA* means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it;
- (31) *PPSR* means the register established under the *PPSA*;

- (32) *premises* means the place where the *goods* are used or ordinarily located as set out in the *schedule*;
- (33) *present value* of an amount is calculated by discounting that amount on a monthly basis at the rate of interest that we used for the purpose of calculating the *rent* under this *contract* for the period of whole months by which that amount is brought forward. Calculations are made on a compounding monthly rate of return basis regardless of the actual payment period;
- (34) *rent* means the total *rent* specified in the *schedule*;
- (35) *rent payment date* means a date for payment of a rental instalment as set out in the *schedule*;
- (36) *rental instalment* means an instalment as set out in the *schedule*, including the final *rental instalment*;
- (37) *schedule* means the schedule which incorporates these *standard terms and conditions*;
- (38) *security* means any security given by *you*, any *guarantor* or any other person to secure *your* obligations or the obligations of any *guarantor* under this *contract*;
- (39) *security interest* has the same meaning as in the *PPSA*;
- (40) *small business contract* has the meaning given in section 12BF(4) of the Australian Securities and Investment Commission Act 2001(Cth);
- (41) *standard terms and conditions* means these standard terms and conditions;
- (42) *state* means the state or territory of *our* address specified in the *schedule*;
- (43) *term* means the term of this *contract* as set out in the *schedule*;
- (44) *termination* means a *termination* of this *contract* prior to the expiry of the *term* and *terminate* has a similar meaning;
- (45) *trust* means each trust in respect of which *you* or any *guarantor* is a *trustee*. It includes but is not limited to the trusts specified in the *schedule*;
- (46) *trustee* means each person (including any *guarantor*) who enters into this *contract* on behalf of a trust;
- (47) *value of the goods* means an amount determined at *our* option as either:
- (a) the net proceeds of sale of the *goods*; or
- (b) the amount certified to be the bona fide wholesale value of the *goods* at a date no later than four months after repossession of the *goods* by *us* by a dealer in *goods* of a similar description or a licensed or other competent valuer selected by *us*.
- (48) *we, us, our* means Bendigo and Adelaide Bank Limited ABN 11 068 049 178 and its successors and assigns;
- (49) *you, your* means the person described in the *schedule* as *you*, "Hirer", *your* successors and permitted assigns.
- 40.2 Each term referred to in the *schedule* has, subject to succeeding paragraphs, the meaning given to it in the *schedule*.
- 40.3 If there is more than one of *you* named in the *schedule* then the liability of each of *you* is joint and several.
- 40.4 If there is more than one *guarantor* named in the *schedule* then the liability of each *guarantor* is joint and several.
- 40.5 Words importing the singular number include the plural and vice versa. Any gender includes any other gender.
- 40.6 References to legislation include all regulations orders proclamations, notices and other requirements under that legislation and include the legislation as consolidated amended, modified or re-enacted.
- 40.7 Clause headings are for reference purposes only.
- 40.8 "Include", "includes" and "including" are not words of limitation.
- 40.9 A reference to a thing includes all or any part of that thing.
- 40.10 A reference to a person includes a reference to an individual, person, a trust, partnership, joint venture or other incorporated association and corporation or an authority as the case may be and includes that person's executive administrators, successors and permitted assigns.
- 40.11 Where any matter or thing is required to be done by *you* on a day which is not a business day, then it must be done on the preceding day which is a business day. Where the day on which any act, matter or thing to be done is the 29th, 30th, or 31st day of any month and such a day does not occur in that month, then, such act matter or thing must be done on the last business day of that month.
- 40.12 References to clauses are references to clauses of these *standard terms and conditions*.

## Contact us

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|---------------------|---|
| <b>In person</b>    | At your nearest Bendigo Bank branch                           |
| <b>On the phone</b> | Call <b>1300 236 344</b>                                      |
| <b>Online</b>       | At <a href="http://bendigobank.com.au">bendigobank.com.au</a> |
| <b>By mail</b>      | The Bendigo Centre<br>PO Box 480<br>Bendigo VIC 3552          |

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**[bendigobank.com.au](http://bendigobank.com.au)**

Bendigo Bank is a division of Bendigo and Adelaide Bank Limited ABN 11 068 049 178 AFSL/Australian Credit Licence No.237879.

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