

Standard Commercial Terms

Dated 15 March 2024

About this agreement

This document sets out *terms* that apply to your *facility*. These *terms* and conditions do not contain all the *terms* of your *facility agreement*.

Your *facility agreement* with us consists of:

- your letter of offer; and
- these Standard Commercial Terms; and
- if a Business+ Credit Card Facility is provided, the Business+ Credit Card – Conditions of Use.

If there is any inconsistency between the *letter of offer* and the Standard Commercial Terms, the *terms* of the *letter of offer* prevail to the extent of any inconsistency. To the extent the Business+ Credit Card – Conditions of Use and the Standard Commercial Terms are inconsistent, in the context of the Business+ Credit Card *facility*, the Business+ Credit Card – Conditions of Use take priority.

The provisions of the Customer Owned Banking Code of Practice may apply to this *facility agreement*.

While we strive to get things right, sometimes we may get things wrong. If you think this has happened, please let us know so we can make things right.

Contact us

How to contact us

You can contact us using any of the following methods:

Internet Banking/mobile app: log in and send us a secure message

Phone: 13 19 87. From overseas +61 2 4907 6501

Post: PO Box 5001 HRMC NSW 2310

In person: visit newcastlepermanent.com.au/locate-us to locate your nearest branch

Email: enquiries@newcastlepermanent.com.au

Or visit the website: newcastlepermanent.com.au/contact-us

You can also find out general information about our products and services by visiting our website at newcastlepermanent.com.au

Key words

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

Contents

1. Conditions to using the facilities and declarations	4	17. General matters	12
2. Interest	4	Notices and other communications.....	12
3. Fees and charges	4	Pay out figure	12
General	4	Prompt performance	12
Break costs	4	How we may exercise our rights.....	12
4. Redrawing amounts	5	Indemnities.....	12
5. Undertakings	5	Changes.....	12
Information	5	No waiver	13
Financial undertakings.....	6	Inconsistent law	13
Your business	6	Dealings	13
Partnerships	6	Disclosure of information	13
Authorisations.....	6	Dealings by telephone	13
Valuers, investigators and consultants	6	Trustee provisions	13
Security top-up	6	Applicable law and serving documents.....	13
Administrative matters.....	6	Severability.....	13
6. Personal Property Securities Act	7	Third party systems.....	14
PPSA further steps.....	7	Electronic communication.....	14
PPSA undertaking	7	Making a complaint.....	14
Costs of further steps and undertaking	7		
No PPSA notice required unless mandatory	7	18. Meaning of words	14
Exclusion of certain PPSA provisions	7		
7. Review	7		
8. Default interest	8		
9. Consequences of a breach of any term	8		
10. Monetary events of default	8		
11. Non-monetary events of default	8		
Combining accounts.....	9		
12. Notification of an event of default	9		
13. What we can do if an event of default occurs	9		
14. When we can take action if you are a small business	10		
15. Enforcement expenses	10		
16. Other terms	10		
General provisions in relation to payments	10		
Compensation for unforeseen circumstances.....	11		
Illegality or impossibility	11		
Third party obligations	11		
Multiple borrowers	11		
Statements	12		

1. Conditions to using the facilities and declarations

- 1.1 We require you to:
- (i) give us (other than for an overdraft *facility*) at least 3 *business days* notice of any drawdown; and
 - (ii) comply with any specific drawdown requirements specified in the *letter of offer*; and
 - (iii) complete a request for drawing in any form we require.
- 1.2 We need not provide any drawing if:
- (i) you or a *guarantor* is in default or in our reasonable opinion is likely to be in default under an *arrangement with us*; or
 - (ii) any of the declarations in this *facility agreement* would be incorrect at the time we receive the drawing request or at the *drawdown date*; or
 - (iii) in the case of a *facility* provided for the purpose of construction of any *works*, the drawing is not approved by our valuer, quantity surveyor or architect; or
 - (iv) we are prevented from doing so by matters outside our reasonable *control*.
- 1.3 An overdraft *facility* may be used by drawing cheques on your account, asking us to make direct debits to, or other payments from, your account, withdrawing cash from electronic banking terminals we nominate from time to time (if we issue you with a card linked to your account) and effecting payments or withdrawals through our internet banking facility.
- 1.4 Unless we agree otherwise in writing, you may use a *facility* only for the purpose specified in the *letter of offer* for that *facility*.
- 1.5 You declare that:
- (i) neither you nor, if you are a corporation, any director, or authorised person, breaches any law or any obligation to another person by signing any *arrangement with us* or entering transactions or performing obligations under them and that all necessary authorisations to do so have been obtained; and
 - (ii) your obligations under each *arrangement with us* to which you are a party are valid, binding, and enforceable in accordance with its *terms*; and
 - (iii) you benefit by entering into this *facility agreement* and the transactions contemplated by it; and
 - (iv) all the information given by you or on your behalf (such as financial statements) is correct and not misleading; and
 - (v) since the date the information was given, there has been no change in your financial circumstances which may have a material adverse effect on your ability to meet your obligations under any *arrangement with us*; and
 - (vi) you have not withheld any information that might have caused us not to enter into any *arrangement with us*; and
 - (vii) you are not in default (see clauses 10 and 11); and
 - (viii) all declarations made by you in each other *arrangement with us* are correct and not misleading; and
 - (ix) you have power to carry on your business and you are not in breach of any law or obligation; and
 - (x) there is no pending or threatened court or other proceeding affecting you except those in which a decision against you would be insignificant.

- 1.6 You must tell us whenever anything happens which would mean you could not truthfully repeat all the declarations in this *facility agreement*.

2. Interest

*This clause 2 only applies to facilities under which we lend you money. This means, for example, that it does not apply to a financial institution guarantee *facility*.

- 2.1 You must pay interest for each *facility* for each day. Interest for a *facility* for a day is calculated at the daily *interest rate* for that *facility* on the *balance owing* for that *facility* for the end of that day.
- 2.2 The daily *interest rate* for a *facility* is the *facility's interest rate* for that day divided by 365.
- 2.3 Interest for a drawing accrues daily from and including its *drawdown date*. Interest is debited monthly in arrears on the last day of each month, starting on the last day of the month in which a drawdown occurs, as well as on the day you repay the *facility*.
- 2.4 If you repay early the *total amount owing*, you must pay, at the time of repayment, all interest accrued on the amount repaid.
- 2.5 You can get information on our current *interest rates* by contacting us on 13 19 87.

3. Fees and charges

General

- 3.1 Fees and charges payable or which may become payable under this *facility agreement*, and when they are payable, are set out in the *letter of offer*.
- 3.2 Unless you have already paid them, you authorise us to debit these fees and charges to your account. We may do so on or after the date we pay them or the date they become due or payable by you or us (whichever is earlier). We do not need to notify you first.

If we:

- (i) reasonably decide that we are liable to pay goods and services or similar tax in Australia ("GST") on a supply made in connection with an *arrangement with us*; and
- (ii) certify to you that we have not priced the supply to include GST,

then you must pay us on demand an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate promptly after our demand.

Break costs

This clause only applies to facilities with a fixed *interest rate* and applies at our discretion. This is also outlined in our *letter of offer*.

- 3.3 If you "break" the fixed rate period by making a full or partial repayment before the end of the fixed rate option, you must pay us *break costs* as set out in this '*Break costs*' clause. Whenever the *interest rate* for a *facility* is a fixed rate, a *break costs event* is taken to have occurred if you:
- (i) repay all of the *total amount owing*; or
 - (ii) repay early more than a total of 10% of the *facility*

amount during a 12-month period commencing on 1 November and ending on 31 October; or

- (iii) switch to another product, *interest rate* or payment type; or
- (iv) are in default and the *total amount owing* becomes immediately due for payment.

3.4 Depending largely on movements in wholesale *interest rates*, we may suffer an economic loss if you break the fixed rate. You must pay us any economic loss we determine as set out in clauses 3.6 or 3.8 below. *Break costs* may be calculated by us using either one of the methods outlined in clauses 3.6 or 3.8 below.

3.5 Clause 3.6 describes how we calculate *break costs* on your fixed rate home loan if the disclosure date shown on your *letter of offer* is prior to 31 October 2023. This method for calculating the *break costs* on your fixed rate home loan will also apply if you convert your fixed rate home loan and the application to convert your loan is received by us prior to 31 October 2023.

3.6 We will require you to pay the lesser *break costs* calculated from using these methods:

- (i) *break costs* may be calculated as our reasonable estimate of the loss we incur on a fixed rate loan as a result of an early repayment or switch by using a calculation which takes into account the difference between our:
 - (a) wholesale *interest rate* for the *fixed interest period* on the date the *interest rate* was fixed; and
 - (b) wholesale *interest rate* as at the date of the break in the fixed rate period for the remaining term of the fixed *interest rate* period.

We also take into account any scheduled principal repayments and the present-day value of the *break costs*. The wholesale *interest rate* is the rate at which we can borrow money to fund our loans; or

- (ii) We may calculate *break costs* as an estimate of the loss we incur on a fixed rate loan as a result of an early repayment or switch as follows:
 - (a) For 3.3(i), if you repay the *balance owing* in full during a *fixed interest period*, a fee equal to 0.25% of the *facility amount* is payable on the date of repayment. This fee also applies if a *break costs event* outlined in 3.3(iii) or 3.3(iv) occurs; or
 - (b) For 3.3(ii) a 0.25% fee is payable on the amount repaid in excess of the 10% limit of the *facility amount*. We debit this fee to your account at the end of the 12-month period.

3.7 Clause 3.8 describes how we calculate *break costs* on your fixed rate home loan if the disclosure date shown on your *letter of offer* is 31 October 2023 or later. This method for calculating the *break costs* on your fixed rate home loan will also apply if you convert your fixed rate home loan and the application to convert your loan is received by us on 31 October 2023 or later.

3.8 *Break costs* are calculated as our reasonable estimate of the loss we incur on a fixed rate loan as a result of an early repayment or switch by using a calculation which takes into account the difference between our:

- (i) wholesale *interest rate* for the *fixed interest period* on the date the *interest rate* was fixed; and

- (ii) wholesale *interest rate* as at the date of the break in the fixed rate period for the remaining term of the fixed *interest rate* period.

We also take into account any scheduled principal repayments and the present-day value of the *break costs*. The wholesale *interest rate* is the rate at which we can borrow money to fund our loans.

Warning: *Break costs* can be quite high. We suggest you ask us for an estimate of the *break costs* and seek independent financial advice before you make any changes or early repayments to your fixed rate loan. A fixed rate option may not be suitable for you if you plan on breaking the fixed rate period.

4. Redrawing amounts

This clause 4 only applies whenever your facility has a variable interest rate.

4.1 If you have prepaid amounts under this *facility agreement* (for example, if you have made a one-off lump sum repayment, repayments more frequently than required or regular repayments of a greater amount than your standard repayment), you may ask us to allow you to redraw any amount prepaid. If we consent, any amount redrawn becomes part of the *balance owing*.

4.2 You may only ask to redraw up to the amount which results in the *balance owing* being not more than the amount which would be owing if you had paid all your standard repayments on time.

4.3 We may elect not to let you redraw money if:

- (i) you have repaid the *total amount owing* in full; or
- (ii) the amount you want to redraw is less than the minimum redraw amount we determine from time to time; or
- (iii) we have released any of the *securities* or any *security* is otherwise not in full force and effect; or
- (iv) we have consented to another *security interest* over any of the *secured property*; or
- (v) you are in default.

If you want to redraw an amount under this clause, you must tell us in writing at least 3 *business days* before the day you want to redraw it. We may impose additional reasonable conditions if you redraw an amount (and you must comply with these conditions).

4.4 We may review, suspend or cancel access to redraw at any time without prior notice to you. However, we will give you notice after we do so.

4.5 You may pay a redraw fee if you redraw. If a fee applies, it will be described in the *letter of offer* and be payable on the day you redraw.

5. Undertakings

Information

5.1 If you are a corporation, you must supply us with:

- (i) a copy of your annual return and any notification of change of officeholders, when lodged; and
- (ii) details of any notice received from the Australian Securities and Investments Commission in connection with any offence or alleged offence; and

- (iii) (if you are listed on a stock exchange), a copy of each release or notice you give the stock exchange or any notice received from the stock exchange in connection with any offence or alleged offence.

5.2 If we ask, you must supply us with any other reasonable information or documents relating to:

- (i) any *arrangement with us*; or
- (ii) any *secured property*; or
- (iii) your financial affairs or business or, if you are a corporation, the financial affairs or business of you and any of your subsidiaries, or the financial affairs or business of any *guarantor*.

Financial undertakings

5.3 You must:

- (i) not, without our consent (which will not be unreasonably withheld):
 - (a) provide financial accommodation to; or
 - (b) permit financial accommodation to remain owing to you by a *related entity* or satisfy any financial accommodation you now or in the future owe to a *related entity*;
- (ii) if you are a corporation, not, without our consent, pay any dividend, make any distribution or provide any loan otherwise than in the ordinary course of your ordinary business; and
- (iii) not deposit money with a person in circumstances where the money is not repayable unless you perform obligations (including to pay money) to that person; and
- (iv) if you are a corporation, ensure that your capital is not reduced or made capable of being called up only in certain circumstances.

If you are a corporation, you must ensure that none of your subsidiaries does anything which you are prohibited from doing under this clause.

Your business

5.4 You must:

- (i) conduct your business (including collecting debts owed to you) in a proper, orderly and efficient manner; and
- (ii) not cease conducting your business or change the general character of any business you conduct (or threaten to do any of these things), without our consent (which will not be unreasonably withheld).

Partnerships

5.5 If you are, or a *guarantor* is, a partnership, you must promptly notify us each time a new partner is admitted to the partnership and procure that the new partner does anything we reasonably ask (such as signing documents) to ensure they are bound by any *arrangement with us* to which the other partners in the partnership are bound, within 30 days of becoming a new partner.

Authorisations

5.6 You must:

- (i) obtain, renew on time and comply with the *terms* of each authorisation necessary for you to enter into each *arrangement with us*, observe obligations under them and allow them to be enforced; and

- (ii) obtain, renew on time and comply with the *terms* of each authorisation necessary for you to use the *secured property* for its current purpose and, if we ask, use your best efforts to obtain permission to use the *secured property* for any purpose we reasonably specify.

Valuers, investigators and consultants

5.7 We may obtain a valuation report on any *secured property* at any time. You must pay us all *costs* in connection with the valuation (however, you need only pay the *costs* of the valuation of any *secured property* that is land once in any twelve-month period unless you are in default).

5.8 If we reasonably believe you are or may be in default or we reasonably believe that circumstances exist which could lead to default, we may appoint a person to investigate whether this belief is accurate. You must co-operate with and comply with every reasonable request made by this person. If the investigation concludes that you are in default, you must pay us all reasonable *costs* in connection with the investigation.

5.9 You must pay us all reasonable *costs* in connection with any valuer or consultant we appoint in connection with any *works*.

5.10 Any valuer, investigator or consultant we may use is an independent contractor and is not our agent or employee. We are not responsible for any representation, action or inaction by them.

5.11 Any report we obtain from the valuer, investigator or consultant is for our use only and you cannot rely on it. You cannot sue us, the valuer, investigator or consultant if the report is wrong. You must obtain your own report if you wish to rely on it.

Security top-up

5.12 If the value we place on the *secured property* (based on our most recent valuation) has reduced by more than 10% from the previous valuation (or from the valuation provided when the *security* was provided), and the reduction in value, in our reasonable opinion, causes us a material credit risk we may ask you to:

- (i) pay us an amount sufficient to reinstate the ratio between the *facility limit* and the value of the *secured property* existing when we last approved any increase in the *facility limit*, release of *security* or extension of the *term* of a *facility*;
- (ii) provide additional *security* which:
 - (a) we value as being at least equal to the difference; and
 - (b) is of a type satisfactory to us; or
- (iii) a combination of (i) and (ii) above.

You must comply with our request within 90 days of us making it and you must do anything we reasonably request in connection with the provision of any additional *security* (such as providing us information and signing and providing us with documents).

Administrative matters

5.13 You must do anything we reasonably ask (such as obtaining consents, signing and producing documents, replying to questions, producing receipts and getting documents completed and signed):

- (i) to provide more effective *security* over the *secured property*; or

- (ii) to enable us to exercise our rights in connection with any *arrangement with us*; or
 - (iii) to show whether you comply with any *arrangement with us* (including giving us a certificate signed by you (or if you are a corporation, signed by 2 directors, or in the case of a sole director, the sole director) stating whether or not default has occurred or is likely to occur).
- 5.14 You agree that we may fill in blanks in any *arrangement with us*, for a purpose mentioned in clause 5.13(i) or (ii) or (iii) or where doing so is a routine administrative task so long as we will not fill in blanks in a way that would change the substance of what you and we have agreed.

6. Personal Property Securities Act

PPSA further steps

- 6.1 If we determine that an *arrangement with us* (or a transaction in connection with it) is or contains a *security interest* for the purposes of the *PPSA*, you agree to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which we ask and consider reasonably necessary for the purposes of:
- (i) ensuring that the *security interest* is enforceable, perfected (including, where possible, by *control* in addition to registration) and otherwise effective; or
 - (ii) enabling us to apply for any registration, or give any notification, in connection with the *security interest* so that the *security interest* has the priority required by us; or
 - (iii) enabling us to exercise rights in connection with the *security interest*.

PPSA undertaking

- 6.2 If you and the *guarantor* holds any *security interests* for the purposes of the *PPSA* and if failure by you or the *guarantor* to perfect such *security interests* would materially adversely affect your business, then you and the *guarantor* agree to implement, maintain and comply in all material respects with, procedures for the perfection of those *security interests*. These procedures must include procedures designed to ensure that you and the *guarantor* take all reasonable steps under the *PPSA* to continuously perfect any such *security interest* including all steps reasonably necessary:
- (i) for you and the *guarantor* to obtain, the highest-ranking priority possible in respect of the *security interest* (such as perfecting a purchase money *security interest* or perfecting a *security interest* by *control*); and
 - (ii) to reduce as far as possible the risk of a third party acquiring an interest free of the *security interest* (such as including the serial number in a financing statement for personal property that may or must be described by a serial number); and
 - (iii) If we ask, you and the *guarantor* agree to arrange at your expense an audit of the *PPSA* procedures. We may ask you and the *guarantor* to do this if we reasonably suspect that you or the *guarantor* is not complying with this clause.

Costs of further steps and undertaking

- 6.3 Everything you and the *guarantor* are required to do under this clause is at your expense. You agree to pay or reimburse our reasonable *costs* in connection with anything you or the *guarantor* is required to do under this clause when we ask.

No PPSA notice required unless mandatory

- 6.4 We need not give any notice under the *PPSA* (including a notice of a verification statement) unless the notice is required by the *PPSA* and cannot be excluded.

Exclusion of certain PPSA provisions

You agree that:

- (i) we need not comply with any of the following provisions of the *PPSA* to the extent the law permits them to be excluded:
 - (a) section 95 (notice of removal of accession), to the extent that it requires us to give a notice to you;
 - (b) section 118 (notice to enforce *security interest* under land law), to the extent that it requires us to give a notice to you;
 - (c) section 121(4) (enforcement of liquid assets – notice to grantor);
 - (d) section 125 (obligation to dispose of or retain collateral);
 - (e) section 130 (notice of disposal), to the extent that it requires us to give a notice to you;
 - (f) section 132(3)(d) (contents of statement of account after disposal);
 - (g) section 132(4) (statement of account if no disposal);
 - (h) section 135 (notice of retention of collateral); and
 - (i) any other provision of the *PPSA* notified to you by us.
- (ii) you may not exercise rights under section 143 (reinstatement of *security*) of the *PPSA* to the extent the law permits them to be excluded.

7. Review

- 7.1 We may review any *facility* (including the *facility limit*) at any time. Following a review, if we ask (acting reasonably), you must provide us with any information relevant to the *facility* or your ability to comply with the *terms* of the *facility* (including financial statements) we require relating to you and your business or any *security provider*.

You must take reasonable steps to ensure that each *security provider* cooperates with us in conducting our review.

- 7.2 Following a review, we may do any one or more of the following upon providing reasonable notice to you, if we deem it is necessary to do so to protect our interests under the *facility*, or to prevent us from suffering loss:
- (i) reduce the *facility limit*;
 - (ii) vary the *interest rate* or fees payable;
 - (iii) require you to provide *security* (or additional *security*); or
 - (iv) otherwise vary the *terms* of the *facility*. However, nothing in this clause affects:

- (a) our rights to cancel any *facility* which is repayable on demand (such as an overdraft *facility*) or demand repayment of it at any time; or
- (b) our rights under clause 17.14.

8. Default interest

IMPORTANT: If you do not make any payment by the due date, you must pay default interest on the overdue amount until it is paid. Default interest is payable on the whole of the amount you owe us if that amount becomes due.

- 8.1 Acting reasonably, we may change the *default rate* of interest at any time without your consent. You will be notified of any changes in the *default rate* in the same way any variations to the *interest rate* are notified to you.
- 8.2 If any amount due by you is not paid on the due date, you must pay default interest on the overdue amount until the overdue amount plus the default interest on that amount is paid. You will also be liable for any default fees specified in the *letter of offer* (as varied from time to time).
- 8.3 Default interest is also payable on the following amounts until paid:
- (i) the whole of the amount you owe us if that amount becomes due for any reason; and
 - (ii) any amount owing because you have drawn more than the amount available for redraw or because you have exceeded the credit limit of your line of credit account.
- 8.4 Default interest is calculated, accrues, is debited and is payable in the same way as ordinary interest.
- 8.5 Unless otherwise indicated in your *letter of offer*, the *default rate* for a *facility* is always 2% per annum more than the *interest rate* for that *facility* (if a *facility* does not have an *interest rate* it is to be taken for the purpose of this clause to have an *interest rate* equal to the *business base overdraft interest rate* plus a margin of 2% per annum). If the *interest rate* changes, so does the *default rate*.

9. Consequences of a breach of any term

- 9.1 If:
- (i) you breach any term of this *facility agreement* or any other agreement with us (including an agreement with any of our other brands such as Greater Bank); or
 - (ii) an *event of default* occurs; or
 - (iii) any *security* or *security interest* is terminated or is of reduced force and effect,
- 9.2 then:
- (iv) we will not be obliged to lend you any more money and we can stop any further drawdown under this *facility agreement*; and
 - (v) we may rectify the breach or *event of default* by performing your obligations under this *facility agreement* or any other agreement.

IMPORTANT: The events that may cause you to default under your loan are listed below. You may default under your loan even if you have made all your payments. If you do not make any

payment by the due date, you must pay default interest on the overdue amount until it is paid. If you default, you may lose your property.

10. Monetary events of default

- 10.1 A monetary *event of default* is an *event of default* that occurs as a result of your failure to make a payment. Each of the following is a monetary *event of default*:
- (i) you do not pay any money due to us under your *facility agreement* or any other agreement with us (including an agreement with any of our other brands such as Greater Bank) by the due date for payment; or
 - (ii) you do not pay any amount exceeding \$50,000 to any person other than us by the due date for payment.

11. Non-monetary events of default

- 11.1 A non-monetary *event of default* is an *event of default* that occurs even if you have made all your payments. Each of the following is a non-monetary *event of default*:
- (i) if you are an individual:
 - (a) you become bankrupt;
 - (b) you are unable to pay your debts as they fall due; or
 - (c) you make any arrangement with your creditors;
 - (ii) if you or a *security provider* is a company, the company is *insolvent*;
 - (iii) you or a *security provider* no longer has legal capacity;
 - (iv) enforcement proceedings are taken against you or a *security provider*, or your or their assets, by another creditor;
 - (v) early repayment is required under any other agreement with us, or default-based action is taken against you or a *security provider* by us under any other agreement, in each case due to a non-monetary *event of default* of the kind described in this clause 11;
 - (vi) we reasonably believe that you or a *security provider* has not complied with the law or any requirement of any competent authority, and such non-compliance has or may have a material adverse effect on the assets of you or a *security provider* or any business conducted by you or a *security provider*;
 - (vii) it becomes unlawful for you or us to continue with this *facility agreement* or any other agreement;
 - (viii) you or a *security provider* gives us information, or makes a representation or warranty to us, that is materially incorrect or misleading (including by omission), and is such that we would not have provided the loan, or would only have provided the loan on different *terms*, if we had known the correct information;
 - (ix) you use the *facility* for a purpose not approved by us;
 - (x) you use the *facility* for an illegal or improper purpose, or to finance an illegal or improper activity;
 - (xi) the assets of you or a *security provider* are dealt with, or attempted to be dealt with, in breach of the *terms* of this *facility agreement* or any other agreement without our prior written consent (which will not be unreasonably withheld), including:
 - (a) any of the *security* becomes subject to a mortgage

or charge without a priority agreement being in place between us and the other *security* holder on *terms* acceptable to us, acting reasonably;

- (b) any of the *security* becomes subject to a mortgage or charge without our prior written consent, which will not be unreasonably withheld; or
- (c) the amount secured by any mortgage or charge over the *security* is increased without our prior written consent, which will not be unreasonably withheld;
- (xii) you or a *security provider* does not provide financial information required by us in connection with your *facility*;
- (xiii) you or a *security provider* does not maintain a licence or permit necessary to conduct any business conducted by you or a *security provider*;
- (xiv) you or a *security provider* does not maintain insurance required by us in connection with your *facility*;
- (xv) legal or beneficial ownership, or management *control*, of you or a *security provider*, or your or their business, changes without our prior written consent, which will not be unreasonably withheld;
- (xvi) without our prior written consent (which will not be unreasonably withheld), the status, capacity or composition of you or a *security provider* changes, including:
 - (a) you or a *security provider* ceases to carry on all or a material part of your or their business, or disposes of all or a material part of your or their assets; or
 - (b) if you or a *security provider* is an individual, you or a *security provider* is sentenced to jail for a term of longer than 12 months;
- (xvii) the *security* is:
 - (a) materially damaged, destroyed or demolished, and we consider in our reasonable opinion that the *security* cannot be expected to be reinstated within a reasonable time and without material loss of any material income from the *security*; or
 - (b) taken out of your *control*;
- (xviii) there is a material reduction in the value of the *security*;
- (xix) any repairs necessary to keep the *security* in good repair are not made in a timely fashion;
- (xx) any amount required to be paid in connection with the *security* (including council rates, water rates, land tax or shared title contributions) is not paid within 90 days of the due date;
- (xxi) you have a construction loan and you are or are considered to be in default because you are unable to meet your obligations to pay *customer contribution amount* (including any shortfall that you must pay); and
- (xxii) any other event agreed in writing by you to be an *event of default* for the purposes of this *facility agreement* occurs.

Combining accounts

- 11.2 If you are in default and the *total amount owing* for all facilities has become payable under clause 13.1, we may use any money you have in another account with us towards repaying any *total amount owing* (this is known as “combining accounts”). We may combine accounts without giving you any notice but we will tell you promptly afterwards. We can combine your accounts even if they are held under different brands (such as Greater Bank). We will act reasonably in making any decision to combine your accounts.

12. Notification of an event of default

- 12.1 Without limiting our rights under this *facility agreement* in any way, you must promptly notify us in writing if any *event of default* occurs that you are aware of.

13. What we can do if an event of default occurs

- 13.1 Subject to this clause 13 and clause 14, at any time after an *event of default* occurs, so long as the *event of default* is existing at the time, we can take one or more of the following actions:
- (i) demand and require immediate payment of any money due under this *facility agreement*; and
 - (ii) call up the loan and require payment of the *total amount owing* under this *facility agreement*; and
 - (iii) exercise any right or power conferred by law, this *facility agreement* or any *security*, including taking possession of and selling any *security*.
- 13.2 We will only act on a non-monetary *event of default* if the event by its nature is material, or we reasonably consider that the event has had, or is likely to have, a material impact on:
- (i) the ability of you or a *security provider* to meet your or their financial obligations to us (or our ability to assess this); or
 - (ii) our *security risk* (or our ability to assess this); or
 - (iii) our legal or reputational risk where an event in clause 11(iv), 11(vii), 11(viii) or 11(ix) occurs.
- 13.3 We will not:
- (i) require you to repay the *total amount owing* under this *facility agreement*; or
 - (ii) take enforcement action against you; or
 - (iii) enforce any *security* held to secure repayment of your *facility*,
- unless:
- (iv) we have given you at least 30 days written notice of the *event of default*; and
 - (v) if the *event of default* is remediable, you have not remedied that *event of default* within 30 days.
- 13.4 If any *event of default* is remediable, and you remedy that *event of default* within 30 days, we may take any action specified in clauses 13.3(i), 13.3(ii) or 13.3(iii) if an *event of default* of the same type has arisen during that period.
- 13.5 We do not need to give you notice to repay an overdraft or on-demand *facility*.
- 13.6 We may give you less than 30 days notice or no notice if:
- (i) the *event of default* is unable to be remedied; or
 - (ii) it is reasonable for us to do so to manage a material and immediate risk relating to the nature of the relevant *event of default*, your particular circumstances, or the value of any *security*; or
 - (iii) we have already given you a notice to remedy a non-monetary *event of default* and you have not remedied that *event of default*.

- 13.7 We can take action even if we do not do so promptly after the *event of default* occurs. We do not lose any rights or forgive any *event of default* unless we do so in writing.
- 13.8 We can exercise these rights with or without taking possession of any *security*. If we hold more than one *security*, we can enforce any one of the *securities* first or all of them at the same time.
- 13.9 Our rights and remedies under this *facility agreement* may be exercised by any of our employees or any other person we authorise.
- 13.10 We are not liable for any loss caused by the exercise, attempted exercise, failure to exercise, or delay in exercising any of our rights or remedies, except where such loss arises from the mistake, error, fraud, negligence or wilful misconduct of us, our employees, our agents or a receiver we appoint.

14. When we can take action if you are a small business

- 14.1 Despite anything else in this *facility agreement*, if you are a *small business*, and an *event of default* occurs, we will not:
- (i) require you to repay the amounts owing under this *facility agreement*; or
 - (ii) take enforcement action against you; or
 - (iii) enforce any *security interest* held to secure repayment of your loan,
- unless:
- (iv) we have given you written notice of the *event of default* that complies with the notice period specified in clause 14.2; and
 - (v) if the *event of default* is remediable, you have not remedied that *event of default* within the notice period specified in clause 14.2.
- 14.2 If you are a *small business* and an *event of default* occurs:
- (i) we do not have to give you any notice if the *event of default* is a non-monetary *event of default* under clauses 11(i), 11(iii), 11(iv), 11(v), 11(vi) or 11(x); and
 - (ii) we will give you at least 30 days written notice if the *event of default* is a monetary *event of default*; and
 - (iii) we will give you at least three months written notice if the *event of default* is a non-monetary *event of default* other than an *event of default* under clauses 11(i), 11(iii), 11(iv), 11(v), 11(vi) or 11(x) that is remediable.

15. Enforcement expenses

IMPORTANT: If you default under this *facility agreement*, enforcement expenses may be payable. This means that you may have to pay any of our reasonable *costs* incurred in maintaining the *security*, collection expenses, and any other internal or external *costs* we incur as a result of your default.

- 15.1 Enforcement expenses may become payable under this *facility agreement* and any *security* if you breach this *facility agreement* or if an *event of default* occurs. We may debit your *facility* with our enforcement expenses at any time after they are incurred, and we may then require you to pay these *costs* on demand (including by using any direct debit or similar authority you have

given us), collect them with your regular repayments, or require them to be repaid by one or more repayments.

- 15.2 Enforcement expenses payable by you will not exceed our reasonable enforcement *costs* (including internal *costs*).
- 15.3 Enforcement expenses include the expenses we incur in preserving, maintaining or selling the *security* (including insurance, rates and *taxes* payable in respect of the *security*), collection expenses, expenses resulting from dishonour of a payment, and any internal or external *costs* we incur as a result of you breaching this *facility agreement* or an *event of default* occurring (including legal *costs* and expenses on a full indemnity basis or solicitor and own client basis, whichever is higher).
- 15.4 You indemnify us from and against any expense, loss, loss of profit, damage or liability that we incur as a consequence of a breach of this *facility agreement* or an *event of default* occurring, except where such loss arises from the mistake, error, fraud, negligence or wilful misconduct of us, our employees, our agents or a receiver we appoint, or is otherwise recovered by us.

16. Other terms

General provisions in relation to payments

- 16.1 You agree to maintain at least one account with us.
- 16.2 We may use any payment we receive in connection with a *facility* to reduce the *balance owing* for that *facility* or to repay any other amounts which you owe us in connection with that *facility* in any order we choose.
- 16.3 We may assign any date we reasonably consider appropriate to a debit or credit to an account (except that, in the case of a debit, the date must not be earlier than the date on which the relevant transaction occurs). However, we credit payments to an account as soon as practicable after we receive them. This may not be on the date of payment.
- 16.4 If an amount is due on a day which is not a *business day*, you must pay it to us on the *business day* before.
- 16.5 You must pay us all amounts you owe us in full without set-off, counterclaim or deduction. However, we may set-off against amounts you owe us any money we owe you.
- 16.6 If a law requires you to deduct an amount in respect of *taxes* from a payment under an *arrangement with us* with the result that we would not actually receive on the due date the full amount provided for under the *arrangement with us*, then:
- (i) you agree to deduct the amount for the *taxes* (and any further deduction applicable to any further payment due under (iii) below); and
 - (ii) you agree to pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipts to us; and
 - (iii) if the amount deducted is in respect of *accountable taxes*, the amount payable is increased so that, after making the deduction and further deductions applicable to additional amounts payable under this clause, we are entitled to receive (at the time the payment is due) the amount we would have received if no deductions had been required.

Compensation for unforeseen circumstances

- 16.7 You must compensate us on demand if we determine, acting reasonably, that:
- (i) a *directive*, or change in *directive*, in either case which comes into operation after the date of this *facility agreement*; or
 - (ii) a change in a *directive's* interpretation or administration by an authority after the date of this *facility agreement*; or
 - (iii) compliance by us or any of our *related entities* with such *directive*, changed *directive* or changed interpretation or administration,
- directly or indirectly:
- (iv) increases the cost of any facility to us; or
 - (v) reduces any amount received or receivable by us, or our effective return, in connection with any facility; or
 - (vi) reduces our return on capital allocated to any facility, or our overall return on capital.

However, a reference to a *directive* does not include a *directive* imposing or changing the basis of a *tax* on our overall net income.

Compensation need not be in the form of a lump sum and may be demanded as a series of payments.

- 16.8 You must compensate us whether or not the increase or reduction could have been avoided. However, at your request, we agree to consider ways of minimising any increase or reduction.

Illegality or impossibility

- 16.9 This clause applies if we determine that:
- (i) a change in a *directive*; or
 - (ii) a change in the interpretation or administration of a *directive* by an authority; or
 - (iii) a *directive* taking effect after the date of this *facility agreement*, makes it (or will make it) illegal or impossible for us to fund, provide, or continue to fund or provide any *facility*. In these circumstances, by giving a notice to you, we may suspend or cancel some or all of our obligations under this *facility agreement* as indicated in the notice.

The suspension or cancellation:

- (a) must apply only to the extent necessary to avoid the illegality or impossibility; and
- (b) in the case of suspension, may continue only for so long as the illegality or impossibility continues.

If the illegality or impossibility related to:

- (a) a drawing under a loan *facility*, by giving a notice to you, we may require repayment of all or part of the affected drawing and interest accrued on that part;
- (b) a letter of credit, performance bond or guarantee issued by us under a *facility*, by giving a notice to you, we may require payment of an amount equal to all or part of the total maximum liability under the affected document less any amount which has already been reimbursed to us by you in respect of that document.

You agree to pay the amount specified within 30 *business days* after receiving the notice (or, if earlier, on the date the illegality or impossibility arises).

Third party obligations

- 16.10 You authorise us to immediately pay any amount demanded or requested of us at any time under a *third party obligation*. You may not revoke this authorisation without 30 days written notice, and you may not revoke a financial institution guarantee. We:
- (i) need not first refer to you or obtain your authority for the payment; and
 - (ii) need not enquire whether the demand or request has been properly made; and
 - (iii) may meet any demand or request even if you dispute the validity of the demand or request.
- 16.11 You must pay an amount equal to each amount we pay under a *third party obligation*. You must pay us these amounts when we ask. We can also debit any of these amounts to your account even if we do not expressly ask you to pay us.
- 16.12 We may make a voluntary payment to end our liability under any *third party obligation* at any time without notice to you. You must pay us an amount to be maintained as a deposit with us to cover your liability under clause 16.11 if we ask you for it. We may ask for this at any time.
- 16.13 You indemnify us against, and you must therefore pay us on demand for liability, loss or *costs* we suffer or reasonably incur in connection with our issue of a *third party obligation*. This clause does not apply to the extent that the relevant liability, loss or *costs* are caused by the mistake, error, fraud, negligence or willful misconduct of us or of our employees or agents (including without limitation a receiver or attorney appointed by us).
- 16.14 Rights given to us under clause 16.10 and your liabilities under it are not affected by any act or omission by us or anything else that might otherwise affect them under law or otherwise, including:
- (i) any inaccuracy, insufficiency, forgery or alteration in any certificate, *third party obligation* or other document which purports to be made, issued or delivered under this *facility agreement* or under any *third party obligation*; or
 - (ii) the fact that we release you (or another person) or give you or them a concession, such as more time to pay, or compound or compromise with them (whether or not an additional burden is imposed at the same time); or
 - (iii) laches, acquiescence, delay, acts, omissions or mistakes on the part of another person; or
 - (iv) the fact that the obligations of any person other than you may not be enforceable, except to the extent caused by the mistake, error, fraud, negligence or willful misconduct of us or of our employees or agents (including without limitation a receiver or attorney appointed by us).

Multiple borrowers

- 16.15 If there are two or more borrowers named in the *letter of offer*, each of you is individually liable, and all of you are jointly liable. This means that we may take legal action against any one of you for all the outstanding amounts. Each borrower can bind each other borrower. For example, any one of you can authorise a redraw or transaction, a split into one or more accounts, or any other activity in respect of your *facility*. Each borrower and any *guarantor* will be liable even if they did not know about or agree to the transaction.

Despite this clause, we will comply with any request by any one of you:

- (i) that all borrowers be required to approve any future withdrawals; or
- (ii) to suspend any *facility* (or a redraw *facility* on any *facility*) to allow all borrowers time to reach agreement about dispersal of the account funds.

Statements

16.16 We issue statements for a *facility* each six months.

17. General matters

Notices and other communications

- 17.1 Notices, certificates, consents, approvals and other communications in connection with this *facility agreement* must be in writing. Communications from you must be signed by you, or if you are a corporation, by at least two directors (or a director and secretary) or, in the case of a sole director corporation, the director, or another person we approve.
- 17.2 They may be:
- (i) given personally (if they are for you and you are a corporation, to one of your directors; if they are for us, to one of our employees at the office where you arrange this *facility agreement* or any other office we tell you); or
 - (ii) left at the address last notified; or
 - (iii) sent by prepaid post to the address last notified; or
 - (iv) sent by electronic means to the electronic address last notified.
- 17.3 They take effect from the time they are received unless a later time is specified in them.
- 17.4 If they are sent by post, they are taken to be received when they would have been delivered in the ordinary course of post.
- 17.5 If they are sent electronically, on conclusion of transmission.

Pay out figure

17.6 If you request a pay out figure for your loan, we will provide it to you within 7 *business days*.

Prompt performance

17.7 If this *facility agreement* specifies when you must perform an obligation, you must perform it by the time specified. You must perform all other obligations promptly.

How we may exercise our rights

- 17.8 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate, acting reasonably, including by imposing conditions.
- 17.9 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.
- 17.10 We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.
- 17.11 Our rights and remedies under this *facility agreement*
- (i) are in addition to other rights and remedies given by law independently of this *facility agreement*; and
 - (ii) may be exercised even if this involves a conflict of duty or we have a personal interest in their exercise.

17.12 Our rights and remedies under this *facility agreement* may be exercised by any of our directors, any of our employees whose job title includes the word “manager” or “lawyer” or any other person we authorise.

Indemnities

17.13 The indemnities in this *facility agreement* are continuing obligations, independent of your other obligations.

Changes

IMPORTANT: We can make changes to your *facility agreement* at any time (except *interest rate* changes during a fixed rate period). In making any changes, we will act reasonably. We will endeavour to give you reasonable notice of changes, but we reserve the right to make immediate changes to variable *interest rates*.

- 17.14 Acting reasonably, we can change or vary any term of your *facility agreement*:
- (i) that deals with the pricing of your loan, such as your *interest rate*, repayments, and credit fees and charges (but subject to any specific agreement such as a fixed rate period);
 - (ii) that deals with the day you make repayments or we debit interest to your *facility*;
 - (iii) to accommodate a change in law or market practice;
 - (iv) to accommodate a change in technology or other ways of communication;
 - (v) to accommodate a change in payment methods; or
 - (vi) to make any other reasonable change.
- 17.15 If you are not satisfied with any change or variation to your *facility agreement*, you may repay your loan in accordance with this *facility agreement*.
- 17.16 We will give you:
- (i) not less than 20 days notice of a change to the manner in which interest is calculated or applied;
 - (ii) notice of a change to the *interest rate(s)* applicable to your *facility agreement* not later than the day on which the change takes effect;
 - (iii) not less than 20 days notice of a change to the amount or frequency of your repayments;
 - (iv) not less than 20 days notice of a change to the fees and charges payable;
 - (v) notice of a change to any government charge or tax reasonably promptly after the government notifies us (unless the government itself publicises the information); and
 - (vi) not less than 20 days notice of any other change we make to your *facility agreement* that we do not consider to be materially adverse to you.
- 17.17 We may give you a shorter notice period, or no notice, if:
- we are permitted to do so by law or any other code to which we subscribe;
 - we consider the changes to reduce your obligations; or
 - we reasonably consider that the changes are not materially adverse to you.

We will give you notice either in writing (including by electronic means or via our website) or by publishing a notice in a major newspaper, or in any other way permitted by law. Any variation

will take effect from the date specified in the notice of change we give you.

No waiver

- 17.18 A provision of this *facility agreement*, or right created under it, may not be waived except in writing signed by the party or parties to be bound.

Inconsistent law

- 17.19 To the extent permitted by law, this *facility agreement* prevails to the extent it is inconsistent with any law.

Dealings

- 17.20 You may not assign, novate or otherwise deal with your rights under your *facility agreement* or another *arrangement with us* without our consent, not to be unreasonably withheld.
- 17.21 We may assign, novate or otherwise deal with our rights under this *facility agreement* or another *arrangement with us* in any way we consider appropriate. You must sign anything and do anything we reasonably require for this purpose. Any dealings with our rights do not change your obligations under your *facility agreement* in any way.

Disclosure of information

- 17.22 We may disclose any confidential information you give us, or which we otherwise receive in connection with you:
- (i) if you consent (you may not unreasonably withhold your consent); or
 - (ii) if we reasonably believe is required by any authority or stock exchange or if allowed or required by law (except this paragraph does not permit us to disclose any information of the kind referred to in section 275(1) of the *PPSA* unless otherwise permitted under that Act); or
 - (iii) to any person in connection with our exercising rights or dealing with rights or obligations under any *arrangement with us* (including in connection with preparatory steps such as negotiating with any potential assignee or potential participant of our rights or other person who is considering contracting with us in connection with an *arrangement with us*); or
 - (iv) to our officers and employees and to legal advisers, auditors and other advisers; or
 - (v) to any of our *related entities*; or
 - (vi) if the information is generally and publicly available; or
 - (vii) to any *guarantor*.

Our Privacy and Credit Reporting Policy details what personal information we collect about you, why we need it, and how we use, store and share your information. The policy also lets you know how you can access and correct your personal information or make a complaint about how we have handled your information. The Privacy and Credit Reporting Policy is available at newcastlepermanent.com.au/privacy-policy or upon request.

Dealings by telephone

- 17.23 We may allow you to instruct us on certain matters by telephone. This may include selecting *interest rates* or *fixed interest periods* and advising discrepancies.

Trustee provisions

Clauses 17.24 and 17.25 apply if you enter into this *facility agreement* as trustee of any trust or settlement.

- 17.24 You make the following declarations:
- (i) this *facility agreement* is for the benefit of the trust;
 - (ii) you are the sole trustee of the trust;
 - (iii) you have authority to enter into this *facility agreement*;
 - (iv) true copies of the trust deed and other documents relating to the trust have been provided to us, and disclose all the *terms* of the trust;
 - (v) the trust has been properly constituted and the trust deed is enforceable;
 - (vi) you have complied with the trust deed and your obligations as trustee;
 - (vii) you have the right to be fully indemnified out of the trust assets for obligations incurred under this *facility agreement* and the trust fund is sufficient to satisfy that right of indemnity;
 - (viii) our rights under this *facility agreement* have priority over the interests of the beneficiaries of the trust;
 - (ix) no action has been taken or proposed to remove you as trustee, to appoint an additional or alternate trustee of the trust, to terminate the trust or to revoke any of your powers as trustee;
 - (x) you have not delegated any of your powers as trustee or exercised any power of appointment.

You must tell us whenever anything happens which would mean you could not truthfully repeat all these declarations (unless we consent to that thing happening).

- 17.25 Unless we otherwise consent, you must:
- (i) comply with your obligations as trustee; and
 - (ii) not retire or cease to act as trustee of the trust; and
 - (iii) ensure that the trust is not terminated and a vesting date is not declared; and
 - (iv) ensure that the trust deed is not changed and the *terms* of the trust are not otherwise varied; and
 - (v) ensure that your right to be indemnified out of the trust fund for obligations you incur under this *facility agreement* is not restricted; and
 - (vi) ensure that nothing is done to restrict your ability to comply with your obligations under this *facility agreement*.

Applicable law and serving documents

- 17.26 This *facility agreement* is governed by the law of New South Wales. You and we submit to the non-exclusive jurisdiction of the courts of that place.
- 17.27 We may serve any document in a court action on you by delivering it to, or leaving it at, your address set out in the *letter of offer* or such other address as you and we agree at any time. This clause does not prevent any other method of service.

Severability

- 17.28 If any provision of your *facility agreement* is illegal or becomes illegal at any time, the affected provision will cease to have effect, but the balance of your *facility agreement* will remain in full force and effect, and we may by notice vary your *facility agreement* so that the provision is no longer illegal.

Third party systems

- 17.29 Our provision of services and finance may be dependent on third party systems and financing. We will not be liable to you for any failure or delay beyond our reasonable *control*, including:
- (i) any disruption to financial markets; and
 - (ii) delays or failures in third party payments and settlement systems; and
 - (iii) any disruption of the internet, interference from third parties over the internet, or in relation to third party IT systems and infrastructure.

Electronic communication

- 17.30 Where the law and any industry code we have adopted allows it, we may communicate with you electronically. Examples of electronic communication include us sending you emails (including eStatements) to an email address you have supplied, or displaying information on the screen when you log into internet banking, sending push notifications on a banking application or other similar methods. You can contact us at any time to discuss your preferences for electronic communications.

Making a complaint

- 17.31 If you wish to raise a complaint or discuss a query, you can contact us using any of the contact methods listed in the 'How to contact us' section.

To help us assist you with your complaint you will need to provide us with the following:

- your address, phone number and email address so we can easily contact you;
- any relevant documents and other supporting information;
- how you would like your complaint resolved.

We endeavour to resolve complaints in a way that is suitable to both you and us. Where possible, we will address your concern as quickly as possible. In most cases, you can expect your concern to be resolved within 7 days. However, depending on the nature of the issue, in the event that it takes us longer than 7 days to resolve or investigate your complaint, we'll ensure you're regularly updated.

If we cannot resolve the matter immediately we will:

- (i) acknowledge your complaint promptly and inform you of the procedures we will follow to investigate and resolve the matter;
- (ii) investigate, considering all information;
- (iii) aim to find a fair resolution;
- (iv) keep you informed of our progress, and advise you if there will be a delay;
- (v) respond to your complaint within 21 days of receiving your formal complaint, advising you in writing of the outcome of the investigation or the need for more time to complete the investigation;
- (vi) detail the reasons for the outcome of the complaint;

However, we may not provide you with written advice if your dispute is settled (with your agreement) immediately or within 5 *business days*, unless you request a written response.

If you are unhappy with our response, you have two options:

1. You can ask for your complaint to be reviewed by Newcastle Permanent's Disputes Resolution Committee

('the Committee'). To have your complaint reviewed by the Committee, please let us know.

2. You may contact us through any available means including by visiting a branch, by phone, post and email.

Post: Disputes Resolution Committee, Newcastle Permanent, PO Box 5001, Hunter Region MC NSW 2310

Email: feedback@newcastlepermanent.com.au

Subject: Disputes Resolution Committee

Once all relevant information has been received the Committee will generally consider the complaint within 21 days. If we are unable to provide a final response within 30 days (including the time we spent considering your original complaint), we will advise you of the reasons for the delay and potential next steps.

If you are a consumer or *small business* and an issue has not been resolved to your satisfaction, you can lodge a complaint with the Australian Financial Complaints Authority (AFCA). AFCA provides fair and independent financial services complaint resolution that is free to consumers.

Website: www.afca.org.au

Email: info@afca.org.au

Phone: 1800 931 678 (free call)

Post: Australian Financial Complaints Authority
GPO Box 3, Melbourne VIC 3001

18. Meaning of words

"accountable taxes" means *taxes* imposed by a *relevant country* other than those which would not be required to be deducted by you if we provided you with any of our name, address, registration number or similar details or any relevant tax exemption or similar details.

"arrangement with us" means this *facility agreement*, each *security* and each other arrangement (including an agreement or a *security interest*) under which you or a *guarantor* has or could in the future have obligations to us.

"balance owing" for a particular *facility* means, at any time, the difference between all amounts credited and all amounts debited to you in connection with that *facility* at that time. When this amount is to be calculated for the end of a day, it includes all debits and credits assigned to that day.

"business base overdraft interest rate" means the rate we publish from time to time as our base overdraft rate.

"break costs" has the meaning described in clause 3.3.

"break costs event" has the meaning described in clause 3.3.

"break costs method" has the meaning described in clauses 3.6 and 3.8.

"business day" means a day we are open for business, but does not include a Saturday, Sunday or any public holiday or special holiday in New South Wales.

"completion" means, in the case of a construction finance *facility* or a financial institutional guarantee *facility* provided to a builder, the date of issue of a certificate of practical *completion* by a consultant we appoint or approve for the works.

"control" of a corporation includes the direct or indirect power

to directly or indirectly:

- direct the management or policies of the corporation; or
- *control* the membership of its board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.

“controller” has the meaning given to it in the *Corporations Act 2001* (Cth).

“costs” includes charges and expenses; and *costs*, charges and expenses in connection with advisers (in the case of legal advisers, on a full indemnity basis).

“customer contribution amount” means the difference between the total amount you are required to pay your builder (as set out in your construction contract with them) and the *facility amount* if the *facility agreement* stipulates your loan is a construction loan.

“default rate” means a per annum rate of interest payable under clause 8.

“directive” means a treaty, a law, an official *directive* or request having the force of law, and an official *directive*, request, guideline or policy with which financiers carrying on business in Australia generally comply.

“drawdown date” for a *facility* means each date on which that *facility* is drawn down (such as by the advance of loan funds to you or our issue of a financial institution guarantee).

“event of default” means any of the events listed in clauses 10 and 11.

“facility” means a *facility* we agree to provide you under this *facility agreement*;

- a document includes any variation or replacement of it;
- law means common law, principles of equity and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them);
- the Corporations Act is a reference to the *Corporations Act 2001* (Cth);
- any thing (such as an amount) includes the whole and each part of it;
- “payable”, in relation to an amount, means an amount which is currently payable or will or may be payable in the future;
- “for example”, “including” or “such as”, when introducing an example, does not limit the meaning of the words to which the example relates to that example or to examples of a similar kind;
- “person” includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- a “guarantee” includes an indemnity; and
- \$ is a reference to Australian dollars unless otherwise indicated.

“facility agreement” means the *terms* making up

- your *letter of offer*;

- these Standard Commercial Terms; and
- if a Business+ Credit Card *Facility* is provided, the Business+ Credit Card – Conditions of Use.

“facility amount” for a *facility* means the *facility amount* described in the section for that *facility* in the *letter of offer*.

“facility limit” for a *facility* has the meaning given to it in the *facility details* section of the offer relating to that *facility*.

“fixed interest period” means a *fixed interest period* offered by us and selected under a fixed rate loan.

“guarantor” means each person (other than you) who gives a *security*.

“insolvent” means being an *insolvent* under administration or *insolvent* (each as defined in the Corporations Act) or having a *controller* appointed, in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent), deregistered or otherwise unable to pay debts when they fall due.

“interest rate” for a *facility* means the *interest rate* for that *facility* as described in the section for that *facility* in the *letter of offer*.

“letter of offer” means the document entitled Commercial *Letter of Offer* that sets out specific details of your *facility*.

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

“reference rate” means the rate we publish from time to time as our *reference rate*.

“related entity” has the meaning given to it in the *Corporations Act 2001* (Cth).

“relevant country” means any country, or political sub-division of one or more countries, or any federation or association of countries in which you or a *guarantor* is either incorporated or is resident or domiciled for any tax purpose or in which you or a *guarantor* carry on business or own or lease property or from which, or through which, any payment under an *arrangement with us* is made.

“secured property” means property over which a *security* is held.

“security/securities” means each *security* described in the *security details* section of the *letter of offer* and any substitute or additional *security interest* given in connection with an *arrangement with us*.

“security provider” means each person who gives a *security* and includes a *guarantor*.

“security interest” means any *security interest* under the PPSA or *security* for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power or title retention arrangement, or flawed deposit arrangement. *Security interest* also includes a guarantee.

“small business” means a business or group having fewer than 100 full-time (or equivalent) employees.

“small business loan” means a loan to a small business with total debt to all credit providers (including any undrawn credit

under an existing loan plus the loan applied for) of less than \$5 million.

“taxes” means *taxes*, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on our overall net income.

“term” for a *facility* means the duration of the *facility* as defined or noted in the *letter of offer* for the *facility* (including as later varied by agreement between you and us if relevant).

“terms” means, for any *arrangement with us*, the *terms* of that arrangement, including this *facility agreement*.

“third party obligation” means a letter of credit, bank guarantee (including a financial institution guarantee), performance bond or other obligation to a third party assumed by us at your express or implied request.

“total amount owing” for a particular *facility* at any time means:

- where we provide you with loans under the *facility*, the *balance owing* for the *facility* plus all accrued interest and reasonable *costs* and other amounts you owe us in connection with that *facility* which have not been debited to the *facility* account at that time; and
- where we incur contingent obligations on your behalf or at your request under the *facility*, the sum of those contingent obligations existing at that time plus all other amounts you owe us in connection with that *facility* at that time; and
- in relation to any other *facility*, all amounts you owe us in connection with that *facility* at that time.

“we” and **“us”** means Newcastle Permanent, part of Newcastle Greater Mutual Group Ltd, ACN 087 651 992, Australian credit licence/Australian Financial Services Licence 238273 and its successors and assigns and extends to products or agreements operated under our other brands (such as Greater Bank), for example, for the purposes of combining accounts, set-off and cross-default under agreements with us.

“works” means the *works* described in the *letter of offer* for a

facility used to finance a construction or a financial institutional guarantee *facility* provided to a builder or other trade contractors (as applicable).

“you” means the person or persons named in the *letter of offer* as “Borrower” or “Account holder”. If there are more than one, you means each of them separately and every two or more of them jointly. You includes your successors and assigns.

When used in sections of the *letter of offer* relating to a specific *facility* the expressions *balance owing*, *drawdown date*, *facility limit*, *interest rate*, *term* and *total amount owing* refer to those expressions as they apply to that *facility*.

The singular includes the plural and vice versa.

An accounting term used in this *facility agreement* has the meaning given to it in accounting principles and standards generally accepted in Australia, unless otherwise expressly defined.

**Drop into your local branch,
visit the website or call 13 19 87.**

newcastlepermanent.com.au