

**General Terms & Conditions**

Version FM10 October 2008

BORROWER COPY

## **1. Introduction**

- 1.1 These are the general terms and conditions version FM10 incorporated into loan agreements referring to these terms and conditions. This document does not contain all the precontractual information required to be given to you. You must read this document together with your loan agreement.
- 1.2 In addition to complying with your loan agreement and these general terms and conditions, you must observe all the terms of your mortgage. You should read the mortgage conditions carefully. Your obligations under the mortgage include the obligation to keep any mortgaged property in good repair, and to pay all rates, taxes, and other expenses in relation to the property. You must not alter the property or change the use of the property without our prior written consent. You must not deal with the property in any way without our prior written consent. This means you cannot mortgage it, sell it, or lease it without our consent. You must insure the property in accordance with our requirements. If you do not observe all the terms of the mortgage, you may be in default and we may be entitled to obtain vacant possession of the property and sell it. This short summary does not replace your reading the mortgage in full.

## **2. Agreement with the Lender**

There is no binding legal agreement between you and the Lender until the *settlement date*. This means that until the *settlement date* we have the right to change the terms of this loan agreement or to withdraw it altogether and decline to make an advance of funds to you. We will not make an advance of funds until we are satisfied that all relevant conditions are fulfilled. You may be liable for costs even if we decide not to proceed.

## **3. Your Account**

- 3.1 We can debit your account with any amounts lent to you, or due under your loan agreement. This includes any money paid to you or at your direction (for example using a cheque book, card, internet banking, phone banking, or other access methods made available to you from time to time).
- 3.2 If a third party makes a payment for you on behalf of the Lender, we can debit your account on the date that payment is made available to you and interest will accrue from that date.

## **4. Payments**

- 4.1 You must pay all payments and credit fees and charges as specified in the loan agreement. Payments will be credited to your loan account only when actually received by the Lender. In addition to making any repayments specified in your loan agreement, on the date on which your loan ends you must pay us the amount you owe us together with any fees or other costs arising on repayment. The date on which your loan ends is the date set out in your loan agreement, or such other date as we agree with you. The amount you owe us means, in respect of each account, the total amount outstanding from time to time and include interest, fees, charges and any amounts outstanding under any debit or credit card issued to you as part of your loan facility.
- 4.2 You may with our approval make fortnightly or weekly repayments of the amount specified by the Originator/Manager instead of making monthly repayments. If you want to make fortnightly or weekly repayments, please make appropriate arrangements with the Originator/Manager. Fortnightly or weekly repayments are not available for interest only loans.
- 4.3 Payments are to be made by direct debit (and you must sign the necessary direct debit form), or such other method as we approve. Until the term has expired and all amounts owing to the Lender have been paid, you must maintain a current account with an Australian financial institution with direct debit authorization to the Lender. You authorise the Lender to obtain any payment due under your loan agreement by using the direct debit authority and try on more than one occasion.
- 4.4 All payments must be made when they fall due in full without setting off any amounts you believe the Lender owes you and without counter claiming any amounts from the Lender.

- 4.5 The amount of each payment will include any applicable direct debit fees, taxes or charges. If the interest rate changes, we may change the repayments due by you.
- 4.6 If any payment is due on a day which is not a business day, the payment must be made on the next following business day. A business day is a day that is not a Saturday or Sunday, or a day on which banks are not generally open to conduct business in Sydney.
- 4.7 If you become liable by a court order to pay any money due under your loan agreement, you must pay interest on that amount at the higher of the rate ordered by the court or the rate payable under your loan agreement.

## **5. Crediting of payments**

- 5.1 We can apply any payment or other credit to any amount you owe us in any order we determine.
- 5.2 If you have more than one account with us, we will credit the account you tell us to credit. However, if you are in default, we can credit any money we receive to whatever account we decide. If you make a payment without telling us which account to credit, we can credit any account we decide.
- 5.3 We do not pay interest on any credit balance in your account.
- 5.4 If you have more than one account with us and one of those accounts is in arrears, we can apply funds from any account to cover the amount in arrears in the other account.
- 5.5 To the extent permitted by law we may, without giving you prior notice, combine any of your accounts with any other account you have with us, or set-off and apply any money you have in another account against any amount you owe us. This means that a credit balance in any account can be applied in or towards satisfaction of a debit balance in another account.

## **6. Interest Charges**

- 6.1 With the exception of Line of Credit (including Lo Doc Line of Credit) accounts, interest charges are debited to your account monthly in arrears on the same day of each month as the *settlement date* for the period ending the day before. However, if the *settlement date* is the 29<sup>th</sup> 30<sup>th</sup> or 31<sup>st</sup> day of a month with no such date, interest will be debited on the last day.
- 6.2 For Line of Credit accounts, interest charges are debited to your account on the first day of each month.
- 6.3 Interest charges are calculated by applying the interest rate to the unpaid balance owing to the Lender at the end of each day.
- 6.4 Interest accrues on a daily basis from the day the Lender draws cheques or otherwise allocates money at your request to make the first advance. This applies whether or not any real estate transaction to which the advance relates (eg, refinance or purchase) occurs on that day.
- 6.5 The end of each day for calculating interest charges is 5.00 pm Eastern Standard time. The interest rate applied each day is equal to the annual percentage rate applicable to the loan at the time divided by 365.
- 6.6 In addition to debiting interest to your account on the monthly payment date, we may debit interest whenever the loan is in default, there is any repayment of the loan, there is any principal increase or variation in your loan agreement, or any change to the loan terms.
- 6.7 The debiting of interest and fees and charges to your account does not mean they are part of the principal sum. These amounts only become part of the principal sum, if we elect to convert them to principal.
- 6.8 If a fixed rate period or interest only period ends on a day which is not a business day your fixed rate or interest only period will end on the next business day.

## **7. Progressive drawdown**

If we agree, you may draw down the loan amount in two or more progressive advances. If this happens, interest accrues only on the amount lent to you.

## **8. Early repayment**

While the variable rate applies, you may make additional payments at any time without penalty. You may also make additional payments while a fixed rate applies, however, break costs may be payable. If you have a split loan (ie more than one account) additional payments are applied as we think fit, unless you otherwise direct in writing prior to payment. If you repay your loan in full or part within five years of the *settlement date* a deferred establishment fee may be payable irrespective of whether the loan is subject to a variable or fixed rate. Check your credit contract.

## **9. Offset/redraw facility**

- 9.1 We will establish an offset/redraw facility for you. We do not make any representations about the tax effectiveness of any offset/redraw facility and you should obtain advice in this regard. The amount which is available for you to redraw may be shown in a separate offset/redraw account statement forwarded to you periodically. If you have repaid early \$20 or more, so long as there is no default under the loan agreement, you may reborrow any amount by withdrawing money from the redraw/offset account for any purpose you wish provided you reborrow not less than \$20 and not more than the total amount you have repaid early.
- 9.2 The funds will be made available by direct credit to your nominated bank account or in such other way as we agree from time to time, and currently includes debit card, telephone banking, cheque and Internet facilities.
- 9.3 While the whole of the loan is fixed rate, no redraw is available. While the loan is a split rate loan and part of the loan is fixed rate, any redraw will be to the variable rate account.
- 9.4 Redraws will be processed as we decide from time to time. While you have one or more split loans, any re-borrowing will be made from the account specified by you, or if no account is specified, the account determined by us.
- 9.5 You must ensure that after any redraw is processed your account balance does not exceed the scheduled balance (ie the amount of your loan had you not made any additional repayments or redraws). Although if it does, we may still allow the redraw and debit your account with the amount redrawn.
- 9.6 If you have a construction loan, no redraw is available during the construction period.

## **10. Review or suspension of facilities**

We may review or suspend or cancel the Line of Credit (including Lo Doc Line of Credit) facility or the offset/redraw facility at any time.

## **11. Switching**

- 11.1 You may with our approval from time to time effect a switch under the loan agreement. The following are examples of switches:
  - (a) split the loan into one or more accounts;
  - (b) consolidate one or more accounts;
  - (c) convert from interest only to principal and interest repayments and vice-versa; and
  - (d) convert from a variable rate to a fixed rate and vice-versa.
- 11.2 You can even request a switch prior to the initial advance being made to you, in which case the switch takes effect from the *settlement date*. Where a new account is created, separate repayment dates and interest debit dates may apply to that new account (usually monthly in arrears from the date the new

account is established).

## 12. Third party direct debits

- 12.1 With our approval, you can arrange for third parties to have a right to debit your account. Once set up, any request by a third party for payment under a direct debit authority will be treated as having been properly authorised by you. We can cancel this arrangement at any time, and we are not liable to you or anyone else if a payment is not made for any reason.
- 12.2 Each request by that third party for payment under a direct debit authority will be deemed to be a request for a redraw by you of the amount of that payment.

## 13. Changes to your loan terms and conditions

- 13.1 Acting reasonably, we can change any terms of your loan agreement including the interest rate, the credit fees or charges, and the repayments. We can introduce new credit fees or charges. You will be notified in accordance with applicable laws on or before the day the change takes effect either in writing or by advertisement in a major newspaper or (if you have consented) by electronic means. If notified by newspaper, the change will also be confirmed in your next statement of account. You may not be notified of changes which reduce your obligations.
- 13.2 The interest rates and repayments shown in the financial information section in your loan agreement are correct at the *disclosure date* but may change prior to the *settlement date* if the rate changes. The Lender may change the interest rate at any time, except in respect of a fixed rate loan during the fixed rate term.
- 13.3 If the annual percentage rate changes, the Lender may change the amount of repayments. You will be notified of changes to repayments by written notice.

## 14. Statements of account

Statements of account will be forwarded to you at least once every six months or more frequently if required by law.

## 15. Default rate

- 15.1 If any amount due by you is not paid on the due date, you must pay default interest on the amount in default until it is paid. You may also be liable for default fees as specified in the financial table. If for any reason your entire loan amount becomes due, interest at the applicable default interest rate is payable on the entire amount.
- 15.2 We may change the default rate 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.
- 15.3 Default interest is calculated daily by applying the daily default rate to the amount in default at the end of each day while the default continues. The daily default rate is the annual default rate divided by 365. The end of each day for calculating default interest is 5.00 pm Eastern Standard time.

## 16. Line of credit facility

In relation to your Line of Credit Facility (if any):

- (a) we may cancel the facility at any time upon not less than 30 days notice, and convert the facility to a term loan under which you must make regular monthly installments of principal and interest to repay the loan by a specified date;
- (b) we may change the LOC Credit Limit at any time and you must then repay any amount owing in excess of the changed LOC Credit Limit within 90 days of the date we give notice to you; and
- (c) if you default under this loan agreement, without notice we can cancel the Line of Credit Facility or reduce the LOC Credit Limit in which case you must repay the entire whole facility or the

amount owing in excess of the changed LOC Credit Limit immediately.

## 17. Construction Advances

If your loan is a construction loan, the loan amount will be advanced progressively as and when we see fit to assist in the construction of building works. We are under no obligation to make any progressive advances, and in particular we can refuse to make any further advances if anything happens which in our opinion adversely affects the value of the mortgaged property or if the works are not proceeding satisfactorily.

## 18. Your obligations relating to the construction

18.1 If your loan is a construction loan, without affecting any of your other obligations, you must do the following.

- (a) Before construction commences provide us with a copy of the building contract executed by all parties and the builder's all risk insurance policy.
- (b) Promptly after completion of the slab, provide us with a survey of the slab and a certificate that appropriate treatment for termites has been completed.
- (c) On completion of the building works provide the Originator/Manager with a general insurance policy noting the Lender's interest as mortgagee.
- (d) Promptly after completion of construction provide us with a survey of the completed building and a certificate from the local council or other responsible authority that the work has been completed in accordance with all relevant requirements.
- (e) Ensure there is always sufficient undrawn under this loan agreement to complete construction. This means that you must contribute all of the funds you are contributing to the construction before the Lender's funds are lent to you.
- (f) Promptly comply with any condition we impose in relation to any progressive draw or the works.
- (g) Not vary or terminate the building contract without our prior written consent.
- (h) Ensure construction is completed within 12 months of the *settlement date*.
- (i) Notify us as soon as possible if the builder ceases construction for any reason.

18.2 We accept no responsibility in respect of the construction works irrespective of whether we conduct any inspections, make any comments or requirements, or make progress payments. You must satisfy yourself that the works are properly carried out.

## 19. Zero Interest Visa Card Account Terms

The following terms are only applicable if you have a Zero Interest Visa Account.

- (a) Interest will not be charged on the balance outstanding on your Zero Interest Visa account. On the last business day of each month the Lender will debit your Line of Credit account with the amount outstanding on your Zero Interest Visa account and thereafter interest will accrue in the ordinary way. If for any reason your Line of Credit account is not debited, interest still accrues on the balance outstanding at the Line of Credit Rate from the next business day.
- (b) The Lender may cancel or reduce your Zero Interest Visa account limit at any time whether or not you are in default under this agreement.
- (c) As your Zero Interest Visa card is provided by a third party, the Lender and the Originator/Manager accept no liability in relation to your use or the operation of the Zero Interest Visa card.

Further terms and conditions will be issued to you regarding the use of your Zero Interest Visa card.

## **Default**

### **20. When there is Default**

If any one or more of the following occur we may decide an event of default has occurred. You must ensure no event of default occurs.

- (a) There is default of any term or condition of the loan agreement.
- (b) There is default under any mortgage or other security given for the loan agreement.
- (c) You fail to pay any person (including the Lender and/or other lenders) any money by the due date.
- (d) Any representation made by you to us or our agents proves to be untrue or misleading.
- (e) You die or become bankrupt or are jailed.
- (f) You do not maintain appropriate fire and general insurance over all security property.
- (g) You breach any material undertaking given at any time to us.
- (h) If you are a company:
  - (i) there is any change in ownership or control of the company or any company of which you are a subsidiary;
  - (ii) a receiver, manager, receiver and manager, administrator, controller, provisional liquidator, or liquidator is appointed to any part of your assets;
  - (iii) any action is commenced to strike the company's name off any register of companies; or
  - (iv) the company reduces or proposes to reduce its authorised capital.

### **21. Lender's rights on default**

21.1 At any time after default occurs, we can take any of the following action after giving any notice required by law.

- (a) Demand and require immediate payment of the amount you owe us.
- (b) Call up the loan and require payment of the entire balance owing under the loan agreement.
- (c) Exercise any right, power, or privilege conferred by any law, the loan agreement, or any security.
- (d) Use any money in any of your accounts held with us to reduce the amount you owe us.

Our rights and remedies under the loan agreement may be exercised by any of our employees or any other person we authorise.

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.

21.2 We can take action even if we do not do so promptly after the default occurs. We do not lose any rights or forgive any defaults unless we do so in writing.

21.3 We can exercise these rights with or without taking possession of any mortgaged property. If the Lender holds more than one security, it can enforce any one of the securities first or all of them at the same time.

### **22. Enforcement expenses**

- 22.1 Enforcement expenses may become payable under the loan agreement and any security if you default. You must pay on demand and we may debit your account with our costs in connection with any exercise or non exercise of rights arising from any default, including:
- (a) legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is higher;
  - (b) our internal costs.
- 22.2 Where the loan is regulated by the Consumer Credit Code, these costs will not exceed our reasonable enforcement costs including internal costs.
- 22.3 You indemnify us from and against any expense, loss, loss of profit, damage, or liability which we incur as a consequence of default occurring.

## **General provisions**

### **23. Government charges**

You must pay to us on demand all government charges and duties on receipts relating to your loan. The Lender may debit your account with these items as incurred.

### **24. You must provide financial statements**

You must provide to us within 14 days of our request any information we require relating to your business, assets, and financial affairs. For example, we may require a copy of an individual's taxation return or an assets and liability statement. In relation to a company, we might require a balance sheet, a profit and loss account, or both. We may require this information to be certified or audited.

### **25. Know your customer**

You must from time to time promptly comply with any of our requirements regarding "know your customer" or similar identification procedures and produce any documents or other evidence requested by us in this regard.

### **26. Lender's Certificate**

A certificate signed by or on behalf of the Lender or the Originator/Manager as to an amount payable to the Lender is conclusive and binding on you. In making any decision the Lender will act reasonably.

### **27. Valuation reports**

We may obtain at your cost independent valuations or other reports concerning any security property whenever and as often as we decide. Any valuation or other report is for our use only. We are not obliged to inform you of anything adverse contained in these reports. If the contents of any of these documents become known to you, we accept no responsibility if you rely on them. You should obtain your own valuation in respect of any security property.

### **28. Governing Law**

This loan agreement is governed by and interpreted in accordance with the law for the time being in force in the place where the principal security is located.

### **29. How the Lender can deal with this loan agreement**

The Lender may assign or otherwise deal with its rights under this loan agreement in any way it wishes. You must sign anything and do anything the Lender reasonably requires to enable any dealing with this loan agreement. Of course, any dealing with the Lender's rights does not change your obligations under this loan agreement in any way.

### **30. Disclosure of information by the Lender**

In exercising its powers to assign or otherwise deal with its rights under this loan agreement, you agree that we may disclose to anybody any information about you or this loan agreement.

### 31. Consumer legislation

To the extent that this loan agreement is regulated under consumer legislation (eg the Consumer Credit Code) or any other law, any provisions which do not comply with that law have no effect, and to the extent necessary, this loan agreement is to be read so it does not impose obligations prohibited by that law.

### 32. Explanation of Break Costs

We enter into external finance arrangements to enable us to provide fixed rate finance to customers. If the fixed rate loan is repaid early, the Lender may incur costs in repaying those borrowings or terminating those contracts. This may result in a cost to the Lender (commonly known as break costs). Lenders normally pass on this cost to borrowers.

#### *Example*

*You want to borrow money at a fixed rate for three years. The Lender has or will enter into external contracts to ensure it can offer a rate for you. Later, you decide to repay the loan early. The Lender incurs a cost in cancelling the effect of the contracts it entered.*

This is an example only to assist your understanding of break costs. The Lender may use various funding techniques but the underlying principle holds true. Break costs may be payable even if there is no matching borrowing by the Lender.

**Warning: If a fixed rate loan or any part of it is terminated early, break costs could be substantial.**

There are a number of ways the Lender may calculate break costs. The method of calculation is not ascertainable at the *disclosure date* in your loan agreement.

### 33. If you are a trustee

If you are at any time trustee of any trust, you are liable under the loan agreement in your own right and as trustee of the trust. Accordingly, the Lender can recover against the trust assets as well as you. Default occurs if there is a change of trustee, a termination of the trust, or any change to the terms of the trust without our consent.

### 34. How notices may be given

34.1 Any communications, originating process, court document or other document to be given or served under or in connection with this loan agreement or any security associated with this loan agreement may be:

- delivered personally to you (of, if you are a company, to one of your directors);
- posted to or left at your residential address of business address last known to us;
- posted to or at the address shown in your loan agreement;
- posted to or left at the land charged by any mortgage relating to this loan agreement
- sent by fax to your residential or business fax number last known to us;
- sent by email to your residential or business email address last known to us (if you have consented as required by any applicable law) or;
- given in any other way permitted by law;

even if the borrower or mortgagor has died or any one of them has died.

A notice or communication may be signed by any employee, solicitor, or agent on our behalf.

- 34.2 You have to tell the Originator/Manager as soon as possible if you change your name or address or both or if you intend to make any of those changes.

### **35. Lenders mortgage insurance**

- 35.1 If your loan agreement requires you to pay for lenders mortgage insurance, this insurance protects the Lender and not you.

- 35.2 If you default in your mortgage, resulting in the need to sell the security property and the sale proceeds are insufficient to fully repay your loan, the Lender may incur loss. The Lender may recover this loss under its lenders mortgage insurance policy. However, you are still legally responsible for repaying the amount outstanding under the mortgage because you are not protected by the lenders mortgage insurance policy.

### **36. The Originator/Manager and the Trustee**

- 36.1 The Originator/Manager who arranges this loan for you may deal with a number of different funders. In this way, the Originator/Manager is able to provide borrowers with a broad range of loan products. As a result, interest rates may differ from time to time between the Originator/Manager's different products. Accordingly, you may see the Originator/Manager advertising a different rate to the rate applicable to your loan; this will probably be because that rate applies to a different funder. The Lender may inform you of a replacement Originator/Manager at any time.

- 36.2 The Originator/Manager will manage your loan agreement and securities and can exercise all the rights, powers and functions of the Lender under the loan agreement and any security on the Lender's behalf.

- 36.3 The Lender enters this loan agreement solely in its capacity as a trustee of a trust. The liability of the Lender is limited to the assets of that trust.

### **37. Joint borrowers**

- 37.1 If there are two or more of you, each of you is individually liable, and all of you are jointly liable. This means the Lender may sue any one of you for all the amount outstanding. A reference to "you" means each of you separately and together. References to a person includes companies and trusts and any other kind of body. Singular words include plural words and vice versa.

**You agree that each Borrower can bind each other Borrower. For example, any one of the Borrowers can authorise a redraw, a split into one or more sub-loans, a switch between various types of interest rate, or any other activity in respect of your loan. Each other Borrower and any Guarantor will be liable even though they did not know about or did not agree to the transaction.**

**WARNING.** This means that each one of you can be required to pay the whole amount even though you may have some other arrangement among yourselves or not all of you benefit equally.

- 37.2 If a borrower dies, the Lender may require the loan to be repaid in full. Alternatively, where there is more than one borrower, if a borrower dies or is released for any reason, the Lender may allow the remaining borrower(s) to become the borrower(s) under the loan agreement. If the Lender does not agree to the remaining borrower(s) becoming the borrower(s) under the loan agreement, the Lender may call up the loan even though further advances have been made after the death or release of a borrower.

### **38. Card and cheque facilities**

If we provide you a debit card or a chequebook to use in connection with the redraw of any excess payments on your loan and drawdowns on a Line of Credit (including Lo Doc Line of Credit) you may have using those facilities may be provided by other companies. Accordingly, the Lender and the

Originator/Manager accept no liability whatsoever in relation to these services. The conditions relating to any card or chequebook will be set out in a separate document. You should note that generally any Borrower will be entitled to use the card or chequebook and accordingly can bind each other Borrower. You should maintain significant security in relation to your card and your chequebook.

## **Telephone and Internet Banking (the *systems*)**

### **39. Introduction**

These terms and conditions only apply if we make telephone and Internet services available to you.

First Mortgage Company Pty Limited ACN 099 125 318 operates the *systems*. Accordingly, the Lender and the Originator/Manager accept no liability whatsoever in relation to the *systems*.

If you have a concern or question regarding these *systems*, you should make contact using the telephone number provided to you in connection with the *systems*.

### **40. Use of *systems***

We are entitled to give access to information regarding your accounts to any persons supplying the relevant access codes. We may also process any transactions on the account initiated by a person providing or inputting the access codes. You should therefore be careful allowing any third party to use the *systems* on your behalf as you will be liable for any action they make.

### **41. Security of access codes**

You must keep any access codes secure. You should not keep any written record of your access codes. Do not use a numeric access code that represents your date of birth. We can cancel any access code at any time without notice if we believe it is being used in a way that can cause loss to you or us.

### **42. Liability for loss**

You are not liable for loss of funds:

- Where it is clear that you have not contributed to the loss;
- That are caused by the same transaction being incorrectly debited more than once to the same account;
- Where unauthorised use takes place before you received your access codes;
- That are caused by the fraudulent or negligent conduct of our employees or agents or any company involved in our networking arrangement or of merchants linked to the electronic funds transfer system, or their employees or agents; or
- Where unauthorised use takes place after you inform the Originator/Manager that your access code has been lost or stolen or the security of the access code has been breached.

Where you have contributed to the loss resulting from unauthorised transactions by:

- acting fraudulently;
- disclosing your access codes to any person;
- failing to keep any record of your access codes details (without making any reasonable attempt to protect the security of the access codes) separate and apart from each other so that they are not liable to loss or theft simultaneously;

- when you change your access codes, and after our specific warning not to choose a numeric code that represents your date of birth and the consequences of doing so, selecting such a numeric code; or
- otherwise acting with extreme carelessness in failing to protect the security of the access codes or client number;

you are liable to the actual loss suffered before we are notified of the misuse, loss or theft or the breach of the security of the access method. You are not, however, liable for that portion of the losses incurred:

- on any one day that exceeds the daily transaction limit;
- in a period that exceeds any other periodic transaction limit applicable to the relevant period; or
- that exceeds the credit limit applying to your loan account during the period.

Where you have contributed to the loss resulting from unauthorised transactions by unreasonably delaying notification to us after becoming aware that the security of an access code has been breached, you are liable for the actual losses that occur between when you became aware, or should have reasonably become aware, and when we are actually notified. You are not, however, liable for that portion of the losses incurred:

- on any one day that exceeds the daily transaction limit;
- in a period that exceeds any other periodic transaction limit applicable to the relevant period; or
- that exceeds the credit limit applying to your loan account during the period.

Where it is not clear whether or not you have contributed to the loss resulting from unauthorised use, your liability will be limited to the least of:

- \$150;
- your credit limit at that time; or
- the actual loss suffered.

#### **43. Access to your account**

You can use the *systems* to access each of the accounts for which we grant access. We can change, terminate, or suspend access at any time.

#### **44. Availability of *systems***

We will try to ensure that the *systems* are generally available for your use, but accept no liability if the *systems* are temporarily unavailable for any reason. We are not responsible for errors in accuracy, omissions, interruptions, viruses or defects or delays from failure of the communication network, or failure of our *systems* to perform a function in whole or in part. If you have any problems using the *systems* you should contact us promptly so that we can endeavour to correct any problem, error, inaccuracy or omission. We will give you at least 20 days' notice of any change to the conditions applying to the use of the *systems*.

#### **45. Resolving disputes**

If you have a problem, please contact the Originator/Manager. The Originator/Manager may require you to put your problem in writing so the problem can be fully investigated. We will try to resolve it as soon as possible.

## **Privacy**

#### **46. Privacy and Confidentiality**

The Originator/Manager may use your personal information for arranging or providing credit, insuring credit and for direct marketing of products and services offered by the Originator/Manager or any organisation the Originator/Manager is affiliated with or represents.

The information provided by you will be held by the Originator/Manager. You can gain access to the information by contacting the Originator/Manager. You have the right to request not to receive direct marketing material.

You agree that the Originator/Manager, any mortgage broker, mortgage originator, mortgage manager, and any other person or company who at any time provides or has any interest in the credit can do any of the following at any time.

##### **(a) Commercial credit information**

Seek and use commercial credit information about you to assess an application for consumer credit or commercial credit.

##### **(b) Consumer information**

Seek and use consumer credit information about you to assess an application for commercial credit or consumer credit.

##### **(c) Collection of overdue payments**

Seek and use a credit report about you provided by a credit reporting agency to collect overdue payments from you.

##### **(d) Provide information to mortgage insurer**

Provide information to a mortgage insurer to assess the risk of providing mortgage insurance or to assess the risk of default.

##### **(e) Exchange of information between credit providers**

Seek from and use or give to another credit provider any information about your account, credit worthiness, credit standing, credit history or credit capacity. In particular, the Originator/Manager may provide a bank opinion on you.

##### **(f) Exchange of information with borrowers and advisers**

Seek from and use or give to any mortgage broker, mortgage originator, mortgage manager, financial consultant, accountant, lawyer, or other adviser acting in connection with any financing provided or proposed to be provided to you any personal information, consumer or commercial credit information.

##### **(g) Provide information to credit reporting agencies**

Give to a credit reporting agency personal or commercial information about you. The information may include identity particulars; the fact that credit has been applied for and the amount; the fact that the Lender is a current credit provider to you; payments which become overdue more than 60 days, and for which action is commenced; advice that payments are no longer overdue; advice that cheques in excess of \$100 drawn by you have been dishonoured more than once; in specified circumstances that in the opinion of the Lender you have committed a serious credit infringement; and the credit provided to you by the Lender has been paid or otherwise discharged.

##### **(h) Provide information for securitisation**

Disclose any report or personal information about you to another person in connection with funding financial accommodation by means of an arrangement involving securitisation, or any other proposed

transfer of or proposed dealing with your loan.

**(i) Provide information to Guarantors**

Provide information to any person who proposes to guarantee or has guaranteed repayment of any credit provided to you.

**(j) Provide information in relation to disputes and enquiries**

Disclose consumer credit information, commercial credit information, and personal information to any industry body, tribunal, or court or otherwise in connection with any complaint regarding the approval or management of your loan - for example if a complaint is lodged about any mortgage broker or lender who dealt with your loan.

**(k) Disclose personal information**

Disclose personal information about you as required by law, or to organisations involved in providing credit to you, or any associate, or contractor of the Originator/Manager, (including, for example, stationery printing houses, mail houses, lawyers, accountants), or people considering acquiring or taking an interest in our business, or our assets.

If you do not provide personal information, the Originator/Manager may be unable to arrange credit for you.

The information statement below will only apply to you if your loan is regulated by the Consumer Credit Code. This statement is prescribed by law.

## INFORMATION STATEMENT

### THINGS YOU SHOULD KNOW ABOUT YOUR PROPOSED CREDIT CONTRACT

This statement tells you about some of the rights and obligations of yourself and your credit provider.

It does not state the terms and conditions of your contract.

If you have any concerns about your contract, contact your credit provider and, if you still have concerns, your Government Consumer Agency, or get legal advice.

## THE CONTRACT

### 1. How can I get details of my proposed contract?

Your credit provider must give you a pre-contractual statement containing certain information about your contract. The pre-contractual statement, and this document, must be given to you before -

- your contract is entered into; or
- you make an offer to enter into the contract,

whichever happens first.

### 2. How can I get a copy of the final contract?

If the contract document is to be signed by you and returned to your credit provider, you must be given a copy to keep.

Also, the credit provider must give you a copy of the final contract within 14 days after it is made. This rule does not however, apply, if the credit provider has previously given you a copy of the contract document to keep.

If you want another copy of your contract write to your credit provider and ask for one. Your credit provider may charge you a fee. Your credit provider has to give you a copy-

- within 14 days of your written request if the original contract came into existence 1 year or less before your request; or
- otherwise within 30 days of your written request.

### 3. Can I terminate the contract?

Yes, you can terminate the contract by writing to the credit provider so long as-

- you have not obtained any credit under the contract; or
- a card or other means of obtaining credit given to you by your credit provider has not been used to acquire goods or services for which credit is to be provided under the contract.

However, you will still have to pay any fees or charges incurred before you terminated the contract.

### 4. Can I pay my credit contract out early?

Yes. Pay your credit provider the amount required to pay out your credit contract on the day you

wish to end your contract.

**5. How can I find out the pay figure?**

You can write to your credit provider at any time and ask for a statement of the pay out figure as at any date you specify. You can also ask for details of how the amount is made up.

Your credit provider must give you the statement within 7 days after you give your request to the credit provider. You may be charged a fee for the statement.

**6. Will I pay less interest if I pay out my contract early?**

Yes. The interest you can be charged depends on the actual time money is owing. However, you may have to pay an early termination charge (if your contract permits your credit provider to charge one) and other fees.

**7. Can my contract be changed by my credit provider**

Yes but only if your contract says so.

**8. Will I be told in advance if my credit provider is going to make a change in the contract?**

That depends on the type of change. For example-

- you get at least same day notice for a change to an annual percentage rate. That may be a written notice to you or a notice published in a newspaper.
- You get 20 days advance written notice for-
  - A change in the way in which interest is calculated;
  - A change in credit fees and charges; or
  - Any other charges by your credit provider;

except where the change reduces what you have to pay or the change happens automatically under the contract.

**9. Is there anything I can do if I think that my contract is unjust?**

Yes. You should first talk to your credit provider. Discuss the matter and see if you can come to some arrangement. If that is not successful you could apply to the court. Contact the Government Consumer Agency or get legal advice on how to go about this.

**INSURANCE**

**10. Do I have to take out insurance?**

Your credit provider can insist you take out or pay the cost of types of insurance specifically allowed by law. These are compulsory third party personal injury insurance, mortgage indemnity insurance or insurance over property covered by any mortgage. Otherwise, you can decide if you want to take out insurance or not.

**11. Will I get details of my insurance cover?**

Yes, if you have taken out insurance over mortgaged property or consumer credit insurance and the premium is financed by your credit provider. In that case the insurer must give you a copy of the policy within 14 days after the insurer has accepted the insurance proposal.

Also, if you acquire an interest in any such insurance policy which is taken out by your credit provider then, within 14 days of that happening, your credit provider must ensure you have a written notice of the particulars of that insurance.

You can always ask the insurer for details of your insurance contract. If you ask in writing your insurer must give you a statement containing all the provisions of the contract.

**12. If the insurer does not accept my proposal, will I be told?**

Yes, if the insurance was to be financed by the credit contract. The insurer will inform you if the proposal is rejected.

**13. In that case, what happens to the premiums?**

Your credit provider must give you a refund or credit unless the insurance is to be arranged with another insurer.

**14. What happens if my credit contract ends before any insurance contract over mortgaged property?**

You can end the insurance contract and get a proportionate rebate of any premium from the insurer.

## MORTGAGES

**15. If my contract says I have to give a mortgage, what does this mean?**

A mortgage means that you give your credit provider certain rights over any property you mortgage. If you default under your contract, you can lose that property and you might still owe money to the credit provider.

**16. Should I get a copy of my mortgage?**

Yes. It can be part of your credit contract or, if it is a separate document, you will be given a copy of the mortgage within 14 days after your mortgage is entered into.

However, you need not be given a copy if the credit provider has previously given you a copy of the mortgage document to keep.

**17. Is there anything that I am not allowed to do with the property I have mortgaged?**

The law says you cannot assign or dispose of the property unless you have your credit provider's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or cannot do with the property.

**18. What can I do if I find that I cannot afford my repayments and there is a mortgage over property?**

See the answers to questions 22 and 23. Otherwise you may-

- if the mortgaged property is goods - give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;
- sell the property, but only if your credit provider gives permission first;

OR

- give the property to someone who may then take over the repayments - but only if your credit provider gives permission first.

If your credit provider won't give permission contact your Government Consumer Agency for help.

If you have a guarantor, talk to the guarantor who may be able to help you.

You should understand that you may owe money to your credit provider even after mortgaged property is sold.

**19. Can my credit provider take or sell the mortgaged property?**

Yes, if you have not carried out all of your obligations under your contract.

**20. If my credit provider writes asking me where the mortgaged goods are, do I have to say where they are?**

Yes. You have 7 days after receiving your credit provider's request to tell your credit provider. If you do not have the goods you must give your credit provider all the information you have so they can be traced.

**21. When can my credit provider or its agent come into a residence to take possession of mortgaged goods?**

Your credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the Consumer Credit Code.

**GENERAL**

**22. What do I do if I cannot make a repayment?**

Get in touch with your credit provider immediately. Discuss the matter and see if you can come to some arrangement. You can ask your credit provider to change your contract in a number of ways. For example-

- to extend the term of the contract and either reduce the amount of each payment accordingly or defer payments for a specified period; or
- to simply defer payments for a specified period.

**23. What if my credit provider and I cannot agree on a suitable arrangement?**

If you have been unemployed, sick or there is another good reason why you are having problems with your contract, then your contract may be able to be changed to meet your situation. You may be able to apply to the court. Contact your Government Consumer Agency or get legal advice on how to go about this.

There are other people, such as financial counsellors, who may be able to help.

**24. Can my credit provider take action against me?**

Yes, if you are in default under your contract. But the law says that you cannot be unduly harassed or threatened for repayments. If you think you are being unduly harassed or threatened, contact your Government Consumer Agency or the Trade Practices Commission, or get legal advice.

**25. Do I have any other rights and obligations?**

Yes. The law will give you other rights and obligations. You should also **READ YOUR CONTRACT** carefully.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR GOVERNMENT CONSUMER AGENCY OR GET LEGAL ADVICE. PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.**