

## Part 1 – Your loan

### 1. Your Loan

- 1.1. We will provide you with the Loan Amount under the terms of this Agreement.
- 1.2. You instruct us to pay the Purchase Amount directly to the Preferred Supplier by:
  - 1.2.1. drawing the Loan Amount;
  - 1.2.2. redeeming the value of any Reward Points held by you as stated on the Financing Schedule; and
  - 1.2.3. applying any Deposit provided by you as stated on the Financing Schedule.
- 1.3. You agree that before we permit the Loan Amount to be drawn under clause 1.2:
  - 1.3.1. the conditions precedent in clause 2 must be satisfied by you or waived in writing by us; and
  - 1.3.2. we may require you to provide us evidence of any matters in clauses 21 and 22 being satisfied.
- 1.4. If the Loan Amount is not drawn within 30 days of you entering this Agreement, then we may terminate this Agreement and if we do terminate this Agreement, then we will return the Deposit to you upon your request, subject to clause 7.1.
- 1.5. We will open the Loan Account in your name for this Agreement and may debit against it the Loan Amount, interest charges and any fees and other charges and enforcement costs that may be payable by you under this Agreement.
- 1.6. You must repay the Loan Amount, and pay the interest charges and any fees and other charges and enforcement costs debited to the Loan Account under this Agreement.

### 2. Conditions precedent

- 2.1. We do not need to pay the Purchase Amount to the Preferred Supplier or permit the Loan Amount to be drawn:
  - 2.1.1. until you have provided to us:
    - 2.1.1.1. all necessary documentation correctly completed, including a direct debit authority;
    - 2.1.1.2. the Deposit in cleared funds by way of electronic funds transfer to a bank account nominated by us; and
    - 2.1.1.3. proof of identity for you and any other person authorised by you to act on your behalf regarding the Loan Account; or
  - 2.1.2. if, in our reasonable opinion, you:
    - 2.1.2.1. cannot comply with this Agreement;
    - 2.1.2.2. have failed to make a material disclosure; or
    - 2.1.2.3. have a material change in your circumstances (or the circumstances of any Guarantor) that make it undesirable for us to make available the Loan Amount.
- 2.2. If we have agreed in the Financial Schedule to provide the Purchase Amount in multiple drawdowns, then we do not need to provide the first drawdown unless we are satisfied that the requirements in clauses 2.1.1 and 2.1.2 have been satisfied.

2.3. We do not need to provide any subsequent drawdowns if you have not complied with your obligations under this Agreement.

2.4. This Agreement is of no effect unless and until we receive from you a declaration that the credit to be provided under this Agreement is for business purposes, in a form satisfactory to us in all respects.

### 3. Interest charges

3.1. Interest charges will accrue on and from the day the Loan Amount is drawn.

3.2. Interest charges will accrue daily calculated on the Daily Loan Account Balance at the Daily Interest Rate, where:

3.2.1. **Daily Loan Account Balance** means the balance of the Loan Account at 5.00pm on that day; and

3.2.2. **Daily Interest Rate** means the Interest Rate divided by 365 (366 in a leap year).

3.3. The interest charge will be debited to the Loan Account monthly in arrears on the last Business Day of each month starting at the end of the month in which the Loan Amount is drawn.

3.4. The Interest Rate is fixed during this Agreement.

### 4. Fees and charges

4.1. You must pay us any fees and charges set out in the Financing Schedule or that become payable under this Agreement.

4.2. We may debit any fees and charges to the Loan Account.

4.3. If we incur any:

4.3.1. government tax, duty, charge, levy, fee or other cost (including stamp duty or debit tax) regarding the Loan Account, any transaction on the Loan Account or this Agreement; or

4.3.2. bank or financial institution fee regarding any transaction on the Loan Account, we may charge an equal amount to your Loan Account which you must pay.

4.4. Amounts payable under clause 4.3 may differ from any amount, or not be stated, on the Financing Schedule due to being new and/or increased fees and charges since this Agreement was entered into.

### 5. Repayments

5.1. You must make repayments at the intervals and for the amounts specified in the Financing Schedule or as otherwise required under this Agreement.

5.2. If a repayment falls due on a day that is not a Business Day, the repayment will be due on the prior Business Day.

5.3. You must pay any unpaid balance of the Loan Account on the day the last scheduled repayment is due or, if you are in default, when required by clause 26.3.

5.4. We will apply any payments received as a credit to the Loan Account.

5.5. A payment will not be treated as received unless it is valid and identifiable. A payment will not be valid if, for example, a direct debit is dishonoured. A payment may not be identifiable if you do not tell us who the payment is from or what Loan Account it is to be applied to.

- 5.6. It is an ongoing condition that you authorise us to debit directly from your nominated bank account all repayments and other amounts payable under this Agreement.
- 5.7. Payments must be made without set-off or counterclaim.

## 6. Early repayment and additional partial payments

- 6.1. You may before the day the last scheduled repayment is due request to repay early all amounts due under this Agreement.
- 6.2. If you make a request to repay early, we will tell you the amount required to be paid on the proposed early repayment date in full satisfaction of all amounts due under this Agreement. This amount will include an Early Repayment Fee but you will not be required to pay any additional amount for interest that would have otherwise been payable after the early repayment date.
- 6.3. You may make partial payments in addition to the scheduled repayments. Making partial payments will not affect the amount of your scheduled repayments but will reduce interest charges after any partial payment and mean all amounts due under this Agreement will be paid earlier.

## 7. Refunds

- 7.1. Any surpluses due to you under this Agreement will not accrue interest including any Deposit that would be refundable pursuant to clause 1.4.
- 7.2. You authorise us to use the surpluses to make a set-off payment towards any other amount due and owing to us or any other part of the Capricorn Group.
- 7.3. Otherwise we will reimburse the surpluses to a bank account nominated by you.

## 8. The Goods

- 8.1. You agree that you have used your own skill and judgment in selecting the Goods as being fit for purpose.
- 8.2. You agree that we are not the seller or supplier of the Goods referenced in this Agreement and we have made no representations or warranties about the Goods.
- 8.3. You agree that any failure of the Goods to meet any dealer or manufacturer warranties (including any given by the Preferred Supplier) does not affect your obligations to us under this Agreement and you must enforce any such warranties in your own name and at your own expense.
- 8.4. You agree that all implied terms about the Goods not set out in this Agreement are excluded unless a law does not allow that exclusion.

## 9. Financing Schedule and amortisation tables

- 9.1. If the Financing Schedule or any amortisation table we provide specifies the total interest payable or the term in which the Loan Amount and all other amounts will be paid, they are based on the Interest Rate and assume:
  - 9.1.1. the Loan Amount is drawn in one amount, unless multiple drawdowns are specified in the Financing Schedule;
  - 9.1.2. you will make repayments at the intervals and for the amounts specified;
  - 9.1.3. interest will be debited one month after the Loan Amount is drawn; and
  - 9.1.4. you will not incur any fees and charges which do not form part of the Loan Amount but which may be debited to the Loan Account.

- 9.2. If one or more assumptions in clause 9.1 do not apply for the entire Agreement, then:
- 9.2.1. the total interest payable or the term in which the Loan Amount and all other amounts will be paid may be different than that provided in the Financing Schedule or any amortisation table; and
  - 9.2.2. upon payment of the last scheduled repayment the Loan Account may have a credit or a debit balance and:
    - 9.2.2.1. if there is a surplus of credit, clause 7 will take effect; or
    - 9.2.2.2. if there is a debt balance, it will become due and payable unless we have agreed in writing to an extended loan term.

## 10. Statements and communication

- 10.1. We will send you a statement for the Loan Account at the same time and by the same means as you are sent your statement in connection with your Trade Account.
- 10.2. Where you have given us or any part of the Capricorn Group an email address or mobile phone number for contacting you, either in connection with this Agreement or your Trade Account, we may use that to provide you with statements and any other communications under this Agreement.
- 10.3. We may email or send you by SMS message statements and other communications or may direct you to login to the Capricorn Portal (accessible via [www.capricorn.coop](http://www.capricorn.coop)) to view or download the statement or other communication.
- 10.4. You may change the email address or mobile phone number by contacting us.
- 10.5. We may send you paper statements or communications to any address provided by you in connection with this Agreement or your Trade Account, including if we cannot provide the information by email or SMS message.
- 10.6. If you do not believe that a statement is correct, please promptly inform us in writing.
- 10.7. You agree that we may assume a statement is correct unless you have previously informed us in writing of an error.

## 11. Changes

- 11.1. If you request a change to the Loan Amount or Loan Account (for example, an extension of the term or reduction of repayment amounts) and we agree to it we will send you a revised Financing Schedule which, on signing and returning to us will form part of this Agreement in replacement of any existing Financing Schedule.
- 11.2. We may change the terms of this Agreement. We will notify you of any changes to these terms and provide them on our website.
- 11.3. We may change the terms of this Agreement without your consent only in the following instances:
  - 11.3.1. the change(s) are to our fees and charges including any new fees and charges (but only to the extent that the fees and charges reflect the standard fees and charges that we ask our customers to pay from time to time);
  - 11.3.2. the change(s) are necessary to effect the requirements of law or government guidelines or directions;
  - 11.3.3. the change(s) relate to the timing of your regular repayments;
  - 11.3.4. the change(s) are ones that reduce any material increase in our credit risk not to our knowledge present during entering this Agreement;
  - 11.3.5. the changes do not increase your obligations including the Loan Amount; and

- 11.3.6. the change(s) relate to amending typographical errors.
- 11.4. Generally, we will give you 60 days' prior notice of any changes that we make under clause
- 11.5. If we make a change you dislike, you may cancel the contract by repaying under clause 6 and, if you do so, we may in our discretion waive any Early Repayment Fee.

## 12. Trusts

- 12.1. If you are entering this Agreement as the trustee of a trust then you warrant and confirm that:
  - 12.1.1. you have the power under the trust deed, and have complied with any necessary obligations and obtained any required authorisations to enter into this Agreement and perform all obligations;
  - 12.1.2. you enter into this Agreement in your personal capacity and in your capacity as trustee of the trust;
  - 12.1.3. the assets of the trust will satisfy your obligations under this Agreement and any right of indemnity you may have from the trust; and
  - 12.1.4. our rights under this Agreement, including the right to receiving repayments and benefits from the Security Interest, have priority over the interests of the beneficiaries to the trust.

## 13. New Zealand Consumer Law

- 13.1. If you are a "consumer" within the meaning of the *Consumer Guarantees Act 1993* (NZ), then we may be taken to have given you certain guarantees regarding the services which may be provided under this Agreement.
- 13.2. You agree that:
  - 13.2.1. you are operating in trade;
  - 13.2.2. you are acquiring the services which may be provided under this Agreement in trade; and
  - 13.2.3. to the extent that it is fair and reasonable to exclude them, the provisions of the *Consumer Guarantees Act 1993* (NZ) do not apply to this Agreement.
- 13.3. You agree that to the extent that it is fair and reasonable to exclude them, sections 9, 12A, 13 and 14(1) of the *Fair Trading Act 1986* (NZ) do not apply to this Agreement.

## 14. Personal information

- 14.1. You acknowledge that you have consented to the collection, use and disclosure of personal information under the Capricorn Group privacy policy, including consenting to the disclosure to us of credit reporting information, such as credit reports about you, by credit reporting bodies, and previously provided notifications of collection of personal information connected with the Offer and your Trade Account.
- 14.2. You agree that, if you give us personal information about another person in connection with this Agreement, you have their permission and such permission will apply during this Agreement and that you will tell them that their personal information has been provided to us for this Agreement.
- 14.3. The Capricorn Group privacy policy is available at [www.capricorn.coop](http://www.capricorn.coop) or on request. It contains more information about:
  - 14.3.1. ways we collect, store, use and disclose personal information;
  - 14.3.2. how you can access personal information or correct it if it is wrong; and

- 14.3.3. how you can make a privacy related complaint and how we will respond to any such complaint.

#### 15. General

- 15.1. This Agreement is subject to the laws of Western Australia and, to the extent applicable where you are located in New Zealand, the relevant laws of New Zealand.
- 15.2. If we decide not to exercise a right, remedy or power under this Agreement, that is not a waiver of that right and does not mean we cannot exercise it later.
- 15.3. To the extent permitted by law we can appoint agents to do anything that we can do under this Agreement.
- 15.4. We may assign, transfer or otherwise deal with our rights under this Agreement or any Security Interest as we consider appropriate.
- 15.5. If any provision of these terms is illegal, void or unenforceable for unfairness or any other reason, the remaining provisions will continue to apply to the extent possible as if the illegal, void or unenforceable part had never existed.

## Part 2 - Security

### 16. Security Interest

- 16.1. In consideration of us providing you with the Loan Amount you give us a Security Interest over the Goods as security for the Loan Amount and performance of your obligations under this Agreement. This Agreement is a security agreement for the purposes of the AUS PPS Law and NZ PPS Law.
- 16.2. The Security Interest granted by you is effective and attaches to the Goods and extends to all proceeds of the Goods when you enter this Agreement or (if you do not have legal and beneficial title in the Goods when you enter this Agreement) immediately after you acquire any rights or interests in the Goods.

### 17. Administration of Security Interest

- 17.1. You authorise us to register the Security Interest and take any other steps to perfect our Security Interest and ensure its priority as a purchase money security interest under the AUS PPS Law or NZ PPS Law, as applicable.
- 17.2. You must do anything that we ask you to do (including providing information which shall be held by us in accordance with the Capricorn Group privacy policy, providing consents or executing documents provided to you) to:
  - 17.2.1. ensure that we have effective security over the Goods including by ensuring that the Security Interest attaches to the Goods and is and remains registered, perfected and effective;
  - 17.2.2. enable us to exercise our rights and perform our obligations in connection with the Security Interest, the Goods and any proceeds of the Goods;
  - 17.2.3. protect our interests in the Goods; and
  - 17.2.4. to overcome any alleged or actual defect or challenge to the priority of our Security Interest arising under the AUS PPS Law or NZ PPS Law.

### 18. Exclusion of AUS PPS Law provisions

- 18.1. You waive any rights you may otherwise have under the AUS PPS Law to:
  - 18.1.1. receive a verification statement or notice from us in relation to registration events;
  - 18.1.2. give a notice of objection under section 137(2) of the AUS PPSA;
  - 18.1.3. register a financing change statement under the AUS PPS Law regarding the Security Interest without our prior written consent.
- 18.2. You agree to:
  - 18.2.1. give us, where practicable, at least 10 Business Days' prior written notice of any change in your name, address, email address, business characteristics such as your ABN or ACN, trading name or business practice; and
  - 18.2.2. indemnify us for all costs reasonably incurred by us (such as, but not limited to, legal fees and disbursements) in our obtaining an order under section 182 of the AUS PPSA (except to the extent prohibited by the AUS PPS Law or law).
- 18.3. To the extent permitted by the AUS PPS Law it is agreed that:
  - 18.3.1. for the purposes of sections 115(1) and 115(7) of the AUS PPSA:
    - 18.3.1.1. we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and

- 18.3.1.2. sections 142 and 143 are excluded;
- 18.3.2. for the purposes of section 115(7) of the AUS PPSA, we need not comply with sections 132 and 137(3);
- 18.3.3. you agree not to exercise your rights to make any request of us under section 275 of the AUS PPSA to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section;
- 18.3.4. we do not have to give any notice required under the AUS PPS Law (including as referred to in section 144 of the AUS PPSA unless the notice is required by the AUS PPS Law and cannot be excluded);
- 18.3.5. if the AUS PPS Law is amended to permit you and us to agree to not comply with or to exclude other provisions of the AUS PPS Law, we may notify you that any of these provisions is excluded, or that we need not comply with any of those provisions, as notified to you by us.

#### 19. Exclusion of NZ PPS Law provisions

- 19.1. Without limiting any other provision of this Agreement, you waive your right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interest created under this Agreement.
- 19.2. You and we agree that, to the extent permitted by law and in respect of this Agreement and each Security Interest created under it:
  - 19.2.1. you and we contract out of sections 114(1)(a), 133 and 134 of the NZ PPSA; and
  - 19.2.2. you and we contract out of your rights to (and you waive your rights to):
    - 19.2.2.1. receive a statement of account under section 116 of the NZ PPSA;
    - 19.2.2.2. receive notice of our proposal to retain the Goods under section 120(2) of the NZ PPSA;
    - 19.2.2.3. object to our proposal to retain the Goods under section 121 of the NZ PPSA;
    - 19.2.2.4. not have goods damaged when we (or any person on our behalf) removes an accession under section 125 of the NZ PPSA;
    - 19.2.2.5. be reimbursed for damage caused when we (or any person on our behalf) removes an accession under section 126 of the NZ PPSA;
    - 19.2.2.6. refuse permission to remove an accession under section 127 of the NZ PPSA;
    - 19.2.2.7. receive notice of the removal of an accession under section 129 of the NZ PPSA; and
    - 19.2.2.8. apply to the Court for an order concerning the removal of an accession under section 131 of the NZ PPSA.

#### 20. Use of Goods

- 20.1. You must:
  - 20.1.1. keep the Goods in good repair and condition and use and service them under any manufacturer recommendations;
  - 20.1.2. notify us immediately if the Goods are lost, stolen or damaged in any material respect, regardless of the cause;

- 20.1.3. promptly notify us of any change in the details of the Goods or any significant further acquisition of Goods;
  - 20.1.4. protect the Goods from theft, loss or damage;
  - 20.1.5. promptly restore the Goods to suitable working condition; and
  - 20.1.6. maintain and use the Goods in accordance with any law or obligation, including maintaining any licence or registration required to use or keep the Goods.
- 20.2. You must not:
- 20.2.1. do or omit to do anything or knowingly permit or cause anything to be done or omitted which could mean that the Goods are or are likely to become materially lessened in value;
  - 20.2.2. remove any fittings or machinery forming part of the Goods unless while maintaining the Goods;
  - 20.2.3. affix the Goods to any land or other goods or chattels unless as reasonably necessary to operate or otherwise use the Goods;
  - 20.2.4. dispose of, sell, hire, sublet, charge, deal with or part with possession of the Goods or any interest in the Goods or agree or attempt to do so or authorise any other person to do so, without our prior written consent;
  - 20.2.5. create or allow to come into existence any Encumbrance which affects the Goods, except under this Agreement;
  - 20.2.6. conceal the Goods or refuse to tell us where the Goods are located or alter or remove any identification mark (such as a serial number); or
  - 20.2.7. do or permit anything to be done that would reasonably result in the insurance or mutual protection required by clause 21 being reduced, cancelled or a claim declined.

## 21. Protection of the Goods

- 21.1. You must take out and maintain the following insurance or mutual protection of the Goods:
  - 21.1.1. comprehensive vehicle coverage if the Goods are a vehicle; or
  - 21.1.2. in any other case coverage against fire, theft, accident, any other risk against which a prudent person owning Goods like the Goods would protect them, and against any other risks we reasonably require, for their full insurable value on a reinstatement and replacement basis (or such other amount and basis as we specify).
- 21.2. The insurance or mutual protection must be on terms and for amounts and with a provider reasonably satisfactory to us.
- 21.3. If we request it, you must provide us with evidence satisfactory to us of insurance or mutual protection for the Goods, including a copy of the insurance policy.
- 21.4. Unless we agree otherwise, you must use all proceeds from a claim under insurance or mutual protection that covers the Goods to immediately:
  - 21.4.1. restore the Goods to working order; or
  - 21.4.2. if the Goods have been destroyed pay the Loan Amount under this Agreement as if you were making an early repayment under clause 6.
- 21.5. You must ensure that each insurance policy names us as loss payee.

- 21.6. You must promptly notify us of any cancellation of or reduction in the amount payable under any insurance policy or a claim under any insurance policy being declined or refused in whole or in part.
- 21.7. If:
- 21.7.1. you fail to take out or to keep in force insurance or mutual protection as required under this clause 21; or
  - 21.7.2. we reasonably determine that an insurer either may become entitled to cancel or avoid an insurance policy or may not be capable of meeting a claim under the insurance policy,
- you agree that we may do anything we determine reasonably necessary to take out, maintain or replace the insurance policy or mutual protection at your cost. We are not obliged to do anything under this clause 21.

## 22. Possession

- 22.1. If you are in default under clause 25.1 we may, subject to the requirements of any notice provided under clause 26.1, take possession of and sell the Goods for the best price reasonably obtainable and apply the sale proceeds towards satisfaction of amounts owed under this Agreement.
- 22.2. If we take possession of the Goods you authorise us to enter onto any land owned, leased or otherwise occupied by you on which the Goods are located to exercise our rights under this Agreement. You indemnify us against any claim, action, damages, costs or expense arising out of our exercise of this right except to the extent arising due to fraud, negligence or misconduct by us or our employees.
- 22.3. If we decide to take possession of the Goods, you must do everything reasonably necessary to make sure we can including:
- 22.3.1. informing us of the location of the Goods; and
  - 22.3.2. procuring access for us to any premises where the Goods are located.

## 23. Power of attorney

- 23.1. You irrevocably appoint us and our Authorised Employees, separately, as your attorney with the following rights:
- 23.1.1. to provide any information or perform any action reasonably necessary to make this Agreement complete and enforceable, including actions to perfect our Security Interest;
  - 23.1.2. to do anything which you can do as owner of the Goods that is reasonably necessary to protect our Security Interest;
  - 23.1.3. to delegate their powers (including this power) and revoke a delegation.
- 23.2. An attorney will not be liable to you for anything reasonably done under this power to perfect and protect our Security Interest except to the extent of fraud, negligence or misconduct by us or our employees.

## 24. Release

- 24.1. We will release the Security Interest when all amounts under this Agreement have been repaid and there are no outstanding breaches of this Agreement.

## Part 3 – Default

### 25. Default

- 25.1. If any of the following apply, then you are in default of this Agreement:
- 25.1.1. you do not pay an amount when due under this Agreement;
  - 25.1.2. any direct debit payment you have authorised is dishonoured;
  - 25.1.3. any direct debit authority you have provided is cancelled without a replacement direct debit authority being put in place;
  - 25.1.4. the Goods are dealt with in breach of this Agreement without our consent and in a manner that in our reasonably held opinion materially increases our risk in relation to amounts payable by you under this Agreement;
  - 25.1.5. any information you give us is (including by omission) incorrect or misleading which, in our reasonably held opinion, materially increases our risk in relation to amounts payable by you under this Agreement;
  - 25.1.6. you fail to maintain the required insurance or mutual protection regarding the Goods;
  - 25.1.7. you, or any Guarantor, becomes bankrupt or insolvent or fails to pay its debts as and when they fall due or becomes subject to any form of administration or liquidation or wind-up or deregistration proceedings or an administrator, controller, trustee, provisional liquidator, receiver or receiver and manager or any other person holding an analogous office is appointed to you or any Guarantor or to any of your assets or any of the Guarantor's assets or a step is taken to do so;
  - 25.1.8. a Serious Non-Monetary Default occurs in respect of you or any Guarantor;
  - 25.1.9. you, or any Guarantor, fail to pay an amount when due in respect of your Trade Account or any other agreement with us or any part of the Capricorn Group;
  - 25.1.10. you cease to be the legal and beneficial owner of the Goods; or
  - 25.1.11. any Encumbrance in respect of the Goods is enforced or becomes enforceable.

### 26. Notice of default

- 26.1. If you are in default we may give you notice of the default and, if the default can be remedied, an opportunity to remedy the default.
- 26.2. If the default is due to a failure to pay an amount when due or a dishonour of a direct debit arrangement, then we may charge you a Late Payment Fee which reflects our administrative costs. If you pay the amount due along with the Late Payment Fee before the expiry of the notice referred to in 26.1 and you are not otherwise in default of this Agreement then we will take no further enforcement action in respect of the default.
- 26.3. If upon expiry of the notice referred to in 26.1 you have failed to remedy the default or remedied the default but committed another default of the same type or the default is not remediable, then the unpaid balance of the Loan Account is due immediately and we may do any or all of the following:
- 26.3.1. exercise our rights regarding the Security Interest, including taking possession of and selling the Goods;
  - 26.3.2. charge you interest at the Default Rate on any amount due but unpaid until it is paid;
  - 26.3.3. transfer the unpaid balance of the Loan Account together with any other amount due under this Agreement to your Trade Account, in which case the

Authorised Purchaser Agreement will apply and for all purposes the amount will be considered the same as any other amount payable under the Authorised Purchaser Agreement, including regarding the liability and obligations of any Guarantors; and

- 26.3.4. sue you without notice for the unpaid balance of the Loan Account together with any other amount due under this Agreement, including any interest at the Default Rate and enforcement expenses.
- 26.4. If you are in default of this Agreement, we may set-off any amount we or any part of the Capricorn Group may owe you or be due to pay you against the unpaid balance of the Loan Account (this may include credits payable to your Trade Account or dividends or rebates payable to you or amounts for claims accepted by Capricorn Mutual Limited).
- 26.5. If you are in default of this Agreement, we and any part of the Capricorn Group may stop providing any products and services to you.

## 27. Enforcement expenses

- 27.1. If you are in default of this Agreement and we, or any person acting on our behalf, incurs expenses in enforcing our rights under this Agreement, then you must pay to us the expenses reasonably incurred by us. These expenses may include legal fees, remuneration and fees of a receiver or receiver and manager, debt recovery fees and commissions and valuer fees.
- 27.2. We may add any amount that we reasonably incur under clause 27.1 or any other amount for which you have given us an indemnity under this Agreement under the loan balance and charge interest on that outstanding amount.

## Part 4 – Definitions and interpretation

### 28. Definitions

These definitions apply to this Agreement:

**Agreement** means the agreement between you and us consisting of the Offer, the Financing Schedule and these terms, as each may be amended or replaced from time-to-time.

**AUS PPS Law** means:

- (a) the AUS PPSA and any regulation made at any time under the AUS PPSA, including the AUS PPS Regulations (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

**AUS PPS Regulations** means the *Personal Property Securities Regulations 2010* (Cth).

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

**Authorised Employees** means any of our officers within the meaning of the *Corporations Act 2001* (Cth) including each officer whose position title includes the word “manager” or “executive”.

**Authorised Purchaser Agreement** means the agreement between you and Capricorn Society Limited under which your Trade Account is provided.

**Business Day** means any day that is not a Saturday, Sunday or public holiday in:

- (a) if you are located in Australia, Western Australia; or
- (b) if you are located in New Zealand, Western Australia or New Zealand.

**Capricorn Group** means Capricorn Society Limited ACN 008 347 313 and its subsidiaries.

**Capricorn myCapricorn Portal** means our web-based portal.

**Default Rate** means the Interest Rate plus 3%.

**Deposit** means the amount set out as the deposit in the Financing Schedule.

**Early Repayment Fee** means the fee set out in the Financing Schedule.

**Encumbrance** means:

- (a) a mortgage, charge, lien, assignment, title retention arrangement or other interest securing the payment of money or performance of any obligation of any person or any other agreement, or arrangement having a similar effect;
- (b) a right, interest or arrangement which gives another person a preference, priority or advantage over creditors including any right of set-off;
- (c) a third party right or interest or any right arising because of the enforcement of a judgment; and
- (d) a security interest under AUS PPS Law or NZ PPS Law.

**Financing Schedule** means the financing schedule provided with the Offer (or any replacement Financing Schedule provided by us).

**Goods** means the item or items set out in the Financing Schedule and includes any additional or replacement parts for the Goods.

**Guarantor** means the person or persons who has/have provided us a guarantee and indemnity for your performance of obligations to us including under this Agreement.

**Interest Rate** means the rate set out in the Financing Schedule.

**Late Payment Fee** means the fee set out in the Financing Schedule.

**Loan Account** means the account opened by us in your name for this Agreement.

**Loan Amount** means the amount set out in the Financing Schedule.

**NZ PPS Law** means:

- (a) the NZ PPSA and any regulation made at any time under the NZ PPSA, including the *Personal Property Securities Regulations 2001* (NZ) (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

**NZ PPSA** means the *Personal Property Securities Act 1999* (NZ).

**Offer** means the letter offering you Capezifinance and providing you the Financing Schedule.

**Preferred Supplier** means the supplier of the Goods as set out in the Financing Schedule.

**Purchase Amount** means the price of the Goods as set out in the Financing Schedule.

**Reward Points** means reward points held by you in our *Capricorn Rewards* loyalty program.

**Security Interest** means our 'security interest' (as defined in the AUS PPSA or NZ PPSA, as applicable) in the Goods.

**Serious Non-Monetary Default** means a non-monetary default in respect of any of the following events:

- (a) unlawful behaviour;
- (b) any of your or any Guarantor's creditors commence enforcement action regarding any monetary liability due to that creditor;
- (c) use of the Loan Amount for any non-approved purposes;
- (d) loss of any licence, approval, permit or authorisation to conduct business; or
- (e) you or any Guarantor fails to provide to us proper financial statements on our request or in accordance with this Agreement.

**Trade Account** means the account provided by us to you permitting you to purchase goods and services using credit provided by us.

## 29. Interpretation

29.1. In this Agreement:

- 29.1.1. headings are for reference only and do not affect interpretation;
- 29.1.2. unless stated otherwise, all interest, amounts in the nature of interest (including discount amounts) and fees are to be calculated on a daily basis and a year of 365 days;

- 29.1.3. any obligation, undertaking, representation, warranty or indemnity by, or in favour of, two or more parties (including where two or more persons are included in the same defined term) binds or benefits (as applicable) them jointly and severally;
  - 29.1.4. the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
  - 29.1.5. unless stated otherwise, anything (other than making a payment) required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day; and
  - 29.1.6. examples and use of the word **including** and similar expressions do not limit what else may be included.
- 29.2. Unless the context requires otherwise, a reference in this Agreement to:
- 29.2.1. a person or a party to any document includes that person's or a party's employees, executors, administrators, personal representatives, successors and permitted substitutes and assigns;
  - 29.2.2. a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
  - 29.2.3. a person, corporation, body corporate, association, joint venture, trust, partnership, unincorporated body, government agency or other entity includes any of them;
  - 29.2.4. time is to Perth, Western Australia time; and
  - 29.2.5. legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement.