

# Consumer Loan Terms And Conditions

## IMPORTANT INFORMATION:

This is an important document and you should read all of it carefully. This document does not contain all of the precontractual information required to be given to you. This document, the Loan Agreement, any documents which accompany your Loan Agreement, the Bank of Sydney Fees and Charges Booklet and any Security documents and other documents between us and you form the Entire Contract between you and us.

When you sign the Loan Agreement and return it to us, you become personally liable to us for all the amounts which are payable under the Loan Agreement and related agreements. We can claim those amounts from you as well as exercise our rights in relation to any Security. If we exercise our rights against you it may mean the loss of your family home if it constitutes the Security or part of the Security which you have provided.

We recommend that before you sign the Loan Agreement, you obtain independent legal advice. You may also wish to consider seeking independent financial advice before you sign.

## Part A – Loan Terms

### 1. What are these terms about?

These are the Bank of Sydney Personal Loan Terms and Conditions version 04.04.13 incorporated into Loan Agreements referring to these terms and conditions. They form part of your Entire Agreement.

### 2. Is there anything else you need to read and comply with?

In addition to complying with your Loan Agreement and these 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.

### 3. Definitions

**Entire Contract** means the Loan Agreement, these terms and conditions, any Future Loan Agreement, the mortgage, or other Security and other agreements relating to the loan including any priority agreement entered into by us in respect of the Security and any guarantee and indemnity.

**Loan Agreement** means that document containing some of the terms and conditions relating to the Entire Contract entitled “Loan Agreement” and which should be read in conjunction with these terms and conditions and the Bank of Sydney Fees and Charges Booklet.

**Security** means any security (including any mortgage or guarantee and indemnity) we require from you or from any other person as a condition of making the loan as stated in the Loan Agreement, and includes any security substituted for it at our request or with our written consent from time to time.

**Settlement Date** means the date we provide the loan to you.

### 4. When is there a binding legal agreement between you and the Lender?

There is no binding legal agreement between us until the Settlement Date or such earlier date as we decide. This means that until the Settlement Date:

- (a) you are not bound to go ahead; and
- (b) we have the right to change the terms of the Entire Contract (subject to the requirements of any law and the Electronic Funds Transfer Code of Conduct) 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 reasonable costs even if we decide not to proceed.

## **5. What can we do with your account?**

- 5.1 We can debit your account with any amounts lent to you or due under the Loan Agreement or the Entire Contract.
- 5.2 If a third party makes a payment to you on our behalf, we can debit your account on the date that money is made available to you and interest in accordance with the terms of your loan will accrue on the payment from that date.
- 5.3 You may with our approval vary your loan, for example you may split an account into two or more accounts or switch an account type. The following are examples of variations.
- Convert from variable rate to fixed rate and vice-versa.
  - Split the loan into one or more accounts.
  - Consolidate one or more accounts.
  - Convert from interest only to principal and interest repayments and vice-versa.
  - Convert from one type of account to another type of account (for example, from a variable rate account to a line of credit account).

You may request a change prior to the initial advance being made to you, in which case the change 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.

## **6. What payments must you make?**

- 6.1 In addition to making any repayments specified in your loan agreement, you must pay us the amount you owe us on the date on which your loan ends. This is the date set out in your loan agreement, or such other date which we agree with you. The amount you owe us means, in respect of each account, the total amount outstanding from time to time and includes all accrued interest, fees and charges and includes any fees or other costs arising on repayment.
- 6.2 You must pay all payments and pay all credit fees and charges as specified in your Loan Agreement. Payments will be credited to your loan account only when actually received by us.
- 6.3 You may with our approval make weekly or fortnightly repayments of the amount specified by us instead of making monthly repayments. If you want to make payments weekly or fortnightly, please make appropriate arrangements with us. Weekly or fortnightly repayments are not available for interest only loans.
- 6.4 Payments are to be made by periodical payment or any other method approved by us. You cannot make payments by drawing on your account. In either case, until your loan is repaid in full you must sign a periodical payment authority to allow us to debit an account from which repayments will be made and you must keep that account open and ensure that it has funds available. You authorise us to obtain any payment due under your loan agreement by using the periodical payment authority.
- 6.5 All payments must be made when they fall due, in full, without setting off any amounts you believe we owe you and without counter claiming any amounts from us.
- 6.6 The amount of each payment will include any applicable periodical payment fees, taxes or charges. If the interest rate changes, we may change the repayments due by you.

- 6.7 If any payment is due on a day which is not a business day, the payment must be made on the next business day. A business day is a day that is not a Saturday or Sunday, or a public holiday or any day where banks are generally not open to conduct business.
- 6.8 If any payment is due on a day which is the 29th, 30th or 31st of a month with no such date, the payment must be made on the first day of the next month. For example, if your settlement date is the 31st day of December, your February repayment will be due on 1st March as 31st February is a date which does not exist.
- 6.9 If any periodical payment or cheque used for repayment is dishonoured, the repayment will be treated as not having been made, and interest will continue to accrue on the unpaid daily balance at the relevant interest rate until actual payment is received by us. If you need to make a payment by way of cheque, cheques will normally take up to four business days to clear. You may ask for a cheque to be specially cleared upon paying a fee. If a cheque you draw is dishonoured, additional fees may apply.
- 6.10 If you become liable by a court order to pay any money due under the Entire Contract, you must pay interest at the higher of the rate ordered by the court or the rate payable under this agreement.

## **7. How are your payments credited?**

- 7.1 We can apply any payment or other credit to any amount you owe us in any order we determine.
- 7.2 Any payment received by us after 4pm Australian Eastern standard time on any day may be taken as having been made at 9am Australian Eastern standard time on the next business day.
- 7.3 If you have more than one account with us and you make a payment without telling us in writing how the payment is to be applied, we can apply it to any one or more of the accounts in any way we think fit.
- 7.4 We do not pay interest on any credit balance in your account unless your loan is a line of credit loan.
- 7.5 If you have more than one account with us and one of those accounts is in arrears, we can apply funds from one account to cover the amount in arrears in the other account.
- 7.6 If any payment made by you is dishonoured, we will treat that payment as not having been made. Any applicable interest will continue to accrue on the balance calculated as if the payment had not been made.

## **8. How is interest applied to your loan?**

- 8.1 You must pay interest on all amounts debited to your account until those amounts are paid.
- 8.2 Interest charges are debited to your account monthly in arrears on the same date each month as the Settlement Date.
- 8.3 Interest charges are calculated by applying the interest rate to the unpaid balance owing to the Lender at the end of each day. 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.

- 8.4 Interest accrues on a daily basis from the day the Lender 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.
- 8.5 In addition to debiting interest to your account on the monthly debit date, we may debit interest whenever the loan is in default, there is any repayment of the loan, the loan is over the agreed credit limit, there is any principal increase or variation in your loan agreement, or any change to the loan terms.
- 8.6 The charging of interest on arrears of interest and fees and charges does not mean that they are part of the principal sum or the loan amount. These amounts only become part of the principal sum or loan amount if we elect to convert them to principal.

## **9. Line of credit accounts**

- 9.1 If you have a line of credit account, with our consent, the account may be operated by either one or both of a debit card or cheque book.
- 9.2 You must ensure that you do not exceed your credit limit. If you exceed your credit limit without our written consent (such consent may be reasonably withheld), we may apply a higher interest rate as set out in your Loan Agreement and the amount by which you have exceeded the credit limit must be repaid within 30 days.
- 9.3 If we consent to you exceeding your credit limit, we may impose one or more of the following conditions:
- that the amount by which you have exceeded your credit limit be repaid within a certain period; or
  - that payments made to your line of credit account are first applied by us to the excess amount and any interest charged on that amount.

If you fail to comply with any conditions we impose, then you will be in default of your account and a default rate and default fees may apply.

- 9.4 Notwithstanding any term to the contrary, we may demand repayments of a line of credit facility at any time in accordance with the terms set out in your Loan Agreement. In making a demand for payment, we must act reasonably and in good faith.
- 9.5 Until we make a demand for repayment of the line of credit account, we may set minimum monthly repayments payable by you.
- 9.6 You may conduct your line of credit account with a credit balance. When this occurs, the terms and conditions regarding our savings transaction accounts will apply.
- 9.7 We may suspend, cancel or vary your line of credit at any time acting reasonably. We will notify you of any change, suspension or cancellation as soon as practicable.

## **10. What happens if you repay early?**

- 10.1 You may make additional payments at any time, however fees and charges may apply.

10.2 If you have a fixed rate loan, and you make early repayments totalling more than \$10,000 in any calendar year or make repayment in full, we may require you to pay administration fees and applicable Break Costs as set out in your Loan Agreement and these terms and conditions.

## **11. What if you have an offset account?**

11.1 For the purposes of this section your offset account means an account linked to a nominated loan account as described in this section. You cannot have a stand alone offset account and it forms part of your loan account.

11.2 You may only link an offset account to variable rate loan accounts, excluding Home Equity Loan Accounts.

11.3 We do not make any representations about the tax effectiveness of any offset account.

11.4 The number of offset accounts you may request us to open is one.

11.5 Your offset account is not a stand alone account and can not be severed from your nominated loan account. We can access the funds in your offset account to set-off any amount of which you are in default under your loan.

11.6 You may not link your offset account to a fixed rate account or line of credit account.

11.7 You have no right to receive interest payments or payments in the nature of interest on the amount in your offset account. Interest payable on your nominated loan account will be reduced to be equal to interest payable on the daily balance of your nominated loan account less the amount in your offset account. Where the balance in your offset account exceeds the amount outstanding in your nominated loan account, you will not receive any interest on the excess amount.

11.8 You may redraw funds from your offset account in accordance with these terms and conditions.

11.9 If you open an offset account and link it to your loan account, we calculate interest on the loan account in accordance with these terms and conditions except that interest is calculated on the difference between the sum of the debits in the loan account on the day of calculation and the credit balance on that day in your offset account.

11.10 You must keep the method of operating your offset account confidential to ensure there are no unauthorised transactions or other dealings with your offset account.

## **12. How do you use your redraw facility (if applicable)?**

12.1 If you have made extra payments, we may allow you to redraw all or any part of those extra payments provided you are not in default (although we may allow a redraw even if there is default). Redraws are not available for fixed rate accounts.

We may reduce the amount available to you to redraw by an amount approximately equal to the payments due for the next month.

12.2 A request for a redraw must be for at least the minimum amount set by us at the time. the current minimum redraw amount is \$2,000. You may obtain a redraw by contacting us. A fee may apply to obtaining a redraw of funds.

- 12.3 You must ensure that the redraw is not for more than you have paid early, although if it does, we may still allow the redraw and debit your account with the amount redrawn.
- 12.4 We may review, suspend or cancel the redraw facility at any time. 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.

**13. What happens if you want to pay third parties by periodical payment?**

- 13.1 With our approval, you can arrange for third parties to have a right to debit either your offset account or your line of credit accounts. Once set up, any request by a third party for payment under a periodical payment 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.
- 13.2 Each request by that third party for payment under a periodical payment authority will be deemed to be a request for a redraw by you of the amount of that payment.

**14. Can your obligations under your loan agreement change?**

- 14.1 Acting reasonably, we can change any terms of your Loan Agreement including the interest rates, 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.
- 14.2 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.
- 14.3 We may change the interest rate at any time, except in respect of a fixed rate loan during the fixed rate term.
- 14.4 If the annual percentage rate changes, we may, acting reasonably, change the amount of repayments. You will be notified of changes to repayments by a written notice.

**15. When will you receive account statements?**

Statements of account will be forwarded to you at least once every six months, once every three months in the case of a line of credit account or more frequently if requested by you or as required by law. You may also request a statement at any time.

You should check all entries on statements of account and tell us promptly of any error or possible unauthorised transaction.

**Part B – Construction loans**

This part only applies to loans made to assist in the construction of building works.

**16. How does your construction loan work?**

- 16.1 You must commence construction within the time period specified in the Loan Agreement. If your loan does not contemplate construction, you must apply for further approval in

order to commence construction. Further approval will not automatically be given and normal credit criteria will apply.

16.2 The amount of credit will be advanced progressively as and when we see fit to assist in the construction of building works.

16.3 We are under no obligation to make any progressive advances, and in particular 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.

16.4 If the insurer who has provided mortgage insurance in respect of this loan cancels, suspends, or limits that insurance, a default will have occurred, and we can demand repayment of the whole of the total amount outstanding.

## 17. What are your obligations in relation to construction?

17.1 Before we advance any progress payment under your loan agreement, we may require you to give us the following.

- A copy of the fixed price (inclusive of GST) HIA approved building contract including all variations, between you and the builder in relation to construction, with the time period specified in your loan agreement.
- A copy of the plans and specifications approved by the relevant authority in relation to construction.
- A copy of the relevant builder's certificate of registration or current builder's licence issued by a responsible authority.
- Home owners warranty insurance (where applicable).
- A builders all risk policy.
- Identification survey report completed by a licensed land surveyor.
- Progress payment authority signed by you.
- If we ask, a legally enforceable document addressed to us by the relevant builder (and/or any other person reasonably nominated by us) containing such undertakings in our favour as we may reasonably require in relation to the construction.
- Full particulars of costs and progress at each stage of the Construction.
- If we ask, a report from a licensed surveyor approved by us, given both at the commencement and at the completion of the construction, displaying the position of the construction on the property and certifying that the construction, including all walls, fences, drains and sewers, is wholly within the boundaries of the property.
- If we ask, a certificate from an architect (or other expert) approved by us, given at the completion of the construction, stating that the construction:
  - (A) is complete and complies with all laws, orders, notices, licences and permits applicable to the construction or issued by any competent authority in relation to the construction;
  - (B) complies with the plans and specifications; and
  - (C) is safe and is fit for use for its intended purpose.

- A certificate by a valuer approved by us stating at each stage of the construction or when reasonably required by us what part of the construction has been completed and the value of that work.

17.2 You must also do the following:

- obtain all necessary approvals before you carry out or commence the construction or enter into a contract to do so;
- ensure that the construction:
  - (A) is performed and completed in a timely, proper, professional and tradesmanlike manner, to our satisfaction and in accordance with the plans and specifications; and
  - (B) does not encroach on adjoining land;
- ensure that the construction is adequately insured:
  - (A) by a reputable insurer approved by us; and
  - (B) in respect of all applicable risks, including workers' compensation, public risk, industrial special risks, contractor's risk and liability insurance and other risks which a prudent person would seek to insure against; and
  - (C) that the construction insurance policies are maintained and renewed;
- comply with your obligations under the construction contract and notify us immediately if there is any likelihood that you will not be able to do so;
- tell us if there is a default under the construction contract or if anything happens which, with the lapse of time, will become a default if it is not remedied;
- not terminate the construction contract without first obtaining our written consent;
- enforce the performance of the construction contract against whomever you are entitled to enforce it and pursue any rights under the construction contract that you may have against whomever you are entitled to;
- not, without our prior written consent, consent or agree to the variation of the construction contract or the plans and specifications nor waive any breach or non-performance of the construction contract;
- give us a copy of any notice, demand or requirement you receive from any person (other than us) relating to the construction;
- open, maintain and allow us to inspect books of account in which you accurately and fully record all transactions relating to the construction and its performance;
- as soon as the building work is complete, provide us with a general insurance policy noting the Lender's interest as mortgagee. The policy must include cover for fire and damage, evidenced by a copy of the certificate of currency (a cover note is not acceptable);
- as soon as the building work is complete, provide to us a final certificate from the local council or other responsible authority confirming that building works have been completed in accordance with all relevant requirements;
- ensure that the agreed drawdown schedule is observed and that there is always a sufficient undrawn amount under this loan to complete construction;

- promptly comply with any condition imposed by us in relation to any progressive draw or the works; and
- commence and complete construction within the time periods specified in your loan agreement.

You are still liable under your loan agreement if we make any advances without requiring any of these things and despite anything in relation to the construction. We accept no responsibility for anything relating to the building works.

## **Part C – Default**

### **18. When will you be in 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 Entire Agreement.
- (b) There is default under any mortgage or other Security given under your loan agreement.
- (c) You fail to do something you are obliged to do under the Entire Contract, or you do something you are not permitted to do under the Entire Contract.
- (d) You fail to pay any person (including the Lender and/or other lenders) any money by the due date. This includes any arrears of over 12 months relating to the non payment of rates or taxes related to any security property.
- (e) Any representation made by you to us or our agents proves to be untrue or misleading.
- (f) You become bankrupt, enter into any kind of bankruptcy administration or are jailed.
- (g) You do not maintain appropriate fire and general insurance over all security property.
- (h) You breach any material undertaking given at any time to us.
- (i) 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.

We will notify you if, acting reasonably, we decide an event of default has occurred and we wish to take action.

**19. What can the Lender do when you are in default?**

- 19.1 At any time after default occurs, we can take any of the following action after giving any notice required by law, if the default remains.
- (a) Demand and require immediate payment of any money due under your loan agreement.
  - (b) Call up the loan and require payment of the entire balance owing under your loan agreement.
  - (c) Exercise any right, power, or privilege conferred by any law, your loan agreement, or any security.
  - (d) Use any money of yours in any account with us to reduce the amount you owe us.
- 19.2 We can take action even if we do not do so promptly after the default occurs in circumstances where the default remains to our disadvantage or detriment. We will provide you with notice prior to taking any action. We do not lose any rights or forgive any defaults unless we do so in writing.
- 19.3 We can exercise these rights with or without taking possession of any mortgaged property. If the Lender holds more than one security, we can enforce any one of the securities first or all of them at the same time.
- 19.4 Our rights and remedies under the loan agreement may be exercised by any of our employees or any other person we authorise.
- 19.5 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.

**20. Default rate**

- 20.1 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 your loan agreement. If for any reason your entire loan amount becomes due, interest at the applicable default rate is payable on the entire amount.
- 20.2 Acting reasonably, 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.
- 20.3 Default interest accrues daily calculated 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.

**21. Are you liable for enforcement expenses?**

- 21.1 Enforcement expenses may become payable under your loan agreement and any security if you default. You must pay on demand and we may debit your account with our reasonable 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 reasonable internal costs.

21.2 Where the loan is regulated by the National Credit Code or similar laws, these costs will not exceed our reasonable enforcement costs including internal costs.

## **Part D – General provisions**

### **22. Do you have to pay government charges?**

You must pay us on request any government duties, taxes and other charges on receipts, debits or withdrawals that apply to your loan. This includes (but is not limited to):

- stamp duty;
- registration fees;
- income tax payable by you (if the Commissioner of Taxation requires us to deduct this from your account);
- withholding tax; and
- goods and services tax.

You must pay these duties, taxes and charges whether or not someone else is liable to pay them and whether or not the loan is made. We may debit these duties, taxes and charges to your loan account as and when they become payable. We do not need to tell you first.

### **23. What happens if you have a guarantor?**

You agree to allow us to disclose the following documents to each guarantor named in your loan agreement:

- a copy of any notice, including correspondence, to us or to you;
- any credit report received in relation to you;
- any financial statements you have given us;
- any notice of demand, or information regarding a dishonour, on any loan with us;
- information on any excess or overdrawing;
- a copy of your loan account statement; and
- any other information about you and your accounts with us.

### **24. Must you provide financial statements?**

Within 14 days of our request, you must provide to us 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. What happens if your loan account has a credit balance?**

If you repay us more than the total amount outstanding, the excess funds will be placed into a suspense account and returned to you. We will not pay you interest on that amount.

**26. What does a certificate signed by the Lender mean?**

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

**27. Will the Lender obtain valuations of your property?**

We may obtain at your cost independent valuations or other reports concerning any security property whenever and as often as we decide, but not more often than once every 12 months. 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. What happens if the value of your property changes?**

If the value of the mortgaged property at any time falls below the value when the loan is first approved, you must within 14 days after we ask you:

- repay a portion of the loan;
- provide us with additional security which is acceptable to us;
- pay for any lender's mortgage insurance which we take out; or
- perform a combination of any of the above.

We can require you to comply with the terms of this clause more than once during the term of the loan. We may also refuse to approve any redraw request submitted by you.

**29. What law applies to your loan agreement?**

Your loan agreement is governed by and interpreted in accordance with the law for the time being in force in the place where the main security is located, or mostly located if there is more than one security.

**30. How can your loan agreement be dealt with?**

30.1 We may assign or otherwise deal with our rights under your loan agreement in any way we wish. You must sign anything and do anything we reasonably require to enable any dealing with your loan agreement. Of course, any dealing with our rights does not change your obligations under your loan agreement in any way.

30.2 You may not assign your rights under your loan agreement.

30.3 We may disclose information about you, your loan agreement, or the security to anybody involved in an actual or proposed assignment or dealing by us with our rights under your loan agreement.

**31. What about any relevant legislation or statutes?**

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

31.2 There may be some statutes (ie laws passed by parliament) or other law (usually called common law) intended to limit lender's rights. None of those statutes or laws will operate to limit our rights under your loan agreement unless by law those statutes or laws cannot

be negated. If any of the provisions of your loan agreement are illegal or become illegal at any time, the affected provisions will cease to have effect, but the balance of your loan agreement will remain in full force and effect, and we may by notice vary your loan agreement so that the provision is no longer illegal.

### 32. Interest on judgment

If a liability under your loan agreement or your mortgage becomes merged in a judgment or order then you must as an independent obligation pay interest to us or the mortgagee on the amount of that liability from the date it becomes payable until it is paid both before and after the judgment or order despite the bankruptcy or insolvency of you at a rate being the higher of the rate payable under the judgment, order, bankruptcy, or insolvency and the rate payable under this loan agreement.

### 33. What are break costs?

- 33.1 When a lender agrees to lend money to a customer for a fixed period at a fixed rate, the lender will often itself borrow money on similar terms. If the fixed rate loan is repaid before the end of the fixed rate period, the lender may still be obliged to pay the agreed rate for the balance of the period to its own lender. This may result in a cost to the lender (commonly known as break costs). Lenders normally pass on this cost to borrowers.

#### **Example**

*A lender may borrow money for five years at a fixed rate of 8% pa. The lender onlends this money to its customer, also for five years, at say 9% per annum.*

*If, after three years, the customer decides to repay the loan, the lender is left with the obligation to continue paying its own lender for a further two years.*

*However, interest rates may have dropped during the first three years to, say 7% pa. In this case the lender must continue to pay 8% pa to its lender but will now be able to achieve a return of only 7% for the last two years.*

*This cost (2% pa on the loan amount for two years) in the above example would therefore be passed onto the borrower.*

- 33.2 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.

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

- 33.3 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.

### 34. What happens if you are a trustee?

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

**35. What should you do if your residential address changes?**

You must tell us if you change your residential or postal address, or if you think there is any information that we should be aware of about your ability to comply with your loan agreement.

**36. How can the Lender give you notices about your loan?**

36.1 We may give you a notice by personal delivery, prepaid ordinary post, facsimile or email sent to your address shown on your loan agreement, sent to your registered office (if you are a company), or sent to your last address known to us. We may also give a notice in any other way authorised by law.

36.2 The notice may be signed by any employee, solicitor, or agent on our behalf.

**37. What is lenders mortgage insurance?**

37.1 If your loan agreement requires you to pay for lenders mortgage insurance, this insurance or fee protects the Lender and not you. The amount paid by you under your loan agreement is not refundable if you repay your loan early.

37.2 If you default under your mortgage, resulting in the sale of 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.

**38. What happens if there are two or more borrowers?**

38.1 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 amounts outstanding. 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, 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.**

38.2 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, we may allow the remaining borrower(s) to become the borrower(s) under the loan agreement. If we do 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.

**39. Know your customer**

39.1 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 that regard.

## **Part F – Interpretation**

### **40. Interpretation**

In this document (including your loan agreement):

- (a) a reference to the singular includes the plural,
- (b) reference to a document includes any variation or replacement of it,
- (c) headings in this agreement are for ease of reference only and not to assist interpretation, and
- (d) use of examples is illustrative of the context only and does not limit the natural meaning of the terms of your loan agreement.

If the borrower is a company or if this loan is predominantly used for business purposes or investment purposes (except for investment in residential property) it will not be regulated by the National Credit Code despite any statement that the National Credit Code applies to this loan. The information statement below only applies to you if your loan is regulated by the National Credit Code.

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 credit provider's external dispute resolution scheme, or get legal advice.

THE CONTRACT

1. **How can I get details of my proposed credit 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 out 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.	<p><b>Will I be told in advance if my credit provider is going to make a change in the contract?</b> That depends on the type of change. For example-</p> <ul style="list-style-type: none"> <li>• you get at least same day notice for a change to an annual percentage rate. That notice may be a written notice to you or a notice published in a newspaper.</li> <li>• you get 20 days advance written notice for- <ul style="list-style-type: none"> <li>• a change in the way in which interest is calculated;</li> <li>• a change in credit fees and charges; or</li> <li>• any other changes by your credit provider;</li> </ul> </li> </ul> <p>except where the change reduces what you have to pay or the change happens automatically under the contract.</p>
9.	<p><b>Is there anything I can do if I think that my contract is unjust?</b> 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 may contact your credit provider's external dispute resolution scheme. External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Your credit provider's external dispute resolution provider is the Financial Ombudsman Service and can be contacted on 1300 78 08 08, by email at <a href="mailto:info@fos.org.au">info@fos.org.au</a> or in writing to GPO Box 3, Melbourne, VIC, 3001.</p> <p>Alternatively, you can go to court. You may wish to get legal advice, for example from your community legal centre or Legal Aid.</p> <p>You can also contact ASIC, the regulator, for information on 1300 300 630 or through ASIC's website at <a href="http://www.asic.gov.au">http://www.asic.gov.au</a>.</p>
<b>INSURANCE</b>	
10.	<p><b>Do I have to take out insurance?</b> 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. If you take out insurance, the credit provider can not insist that you use any particular insurance company.</p>
11.	<p><b>Will I get details of my insurance cover?</b> 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.</p> <p>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.</p> <p>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.</p>
12.	<p><b>If the insurer does not accept my proposal, will I be told?</b> Yes, if the insurance was to be financed by the credit contract. The insurer will inform you if the proposal is rejected.</p>
13.	<p><b>In that case, what happens to the premiums?</b> Your credit provider must give you a refund or credit unless the insurance is to be arranged with another insurer.</p>
14.	<p><b>What happens if my credit contract ends before any insurance contract over mortgaged property?</b> You can end the insurance contract and get a proportionate rebate of any premium from the insurer.</p>
<b>MORTGAGES</b>	
15.	<p><b>If my contract says I have to give a mortgage, what does this mean?</b> 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.</p>
16.	<p><b>Should I get a copy of my mortgage?</b> 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.</p>

17.	<p>However, you need not be given a copy if the credit provider has previously given you a copy of the mortgage document to keep.</p> <p><b>Is there anything that I am not allowed to do with the property I have mortgaged?</b> 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.</p>
18.	<p><b>What can I do if I find that I cannot afford my repayments and there is a mortgage over property?</b> See the answers to questions 22 and 23. Otherwise you may-</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• sell the property, but only if your credit provider gives permission first;</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• give the property to someone who may then take over the repayments - but only if your credit provider gives permission first.</li> </ul> <p>If your credit provider won't give permission, you can contact their external dispute resolution scheme 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.</p>
19.	<p><b>Can my credit provider take or sell the mortgaged property?</b> Yes, if you have not carried out all of your obligations under your contract.</p>
20.	<p><b>If my credit provider writes asking me where the mortgaged goods are, do I have to say where they are?</b> 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.</p>
21.	<p><b>When can my credit provider or its agent come into a residence to take possession of mortgaged goods?</b> 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 National Credit Code.</p>
<b>GENERAL</b>	
22.	<p><b>What do I do if I cannot make a repayment?</b> 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:</p> <ul style="list-style-type: none"> <li>• to extend the term of the contract and reduce payments; or</li> <li>• to extend the term of your contract and delay payments for a set time; or</li> <li>• to delay payments for a set time.</li> <li>•</li> </ul>
23.	<p><b>What if my credit provider and I cannot agree on a suitable arrangement?</b> If the credit provider refuses your request to change the repayments, you can ask the credit provider to review this decision if you think it is wrong. If the credit provider still refuses your request you can complain to the external dispute resolution scheme that your credit provider belongs to. Further details about this scheme are set out below in question 25.</p>
24.	<p><b>Can my credit provider take action against me?</b> 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 the credit provider's external dispute resolution scheme or ASIC, or get legal advice.</p>

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 COMPLAINTS ABOUT YOUR CREDIT CONTRACT, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS THE FINANCIAL OMBUDSMAN SERVICE AND CAN BE CONTACTED ON 1300 78 08 08, BY EMAIL AT [INFO@FOS.ORG.AU](mailto:INFO@FOS.ORG.AU) OR IN WRITING TO GPO BOX 3, MELBOURNE, VIC, 3001.**

**PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.**

Call us on 1300 888 700

Visit our website [www.banksyd.com.au](http://www.banksyd.com.au)

Email us at [info@banksyd.com.au](mailto:info@banksyd.com.au)

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