

**export
finance
australia**

**Small Business Export Loan
Standard Terms
1 July 2020**



Table of Contents

	CLAUSE	PAGE
1	These Standard Terms.....	3
2	National Credit Code and Banking Code of Practice	3
3	The Loan Agreement.....	3
4	Loan.....	3
5	Advance of funds	3
6	Making payments.....	3
7	Direct Debit.....	3
8	Interest you must pay	3
9	You must repay the Loan and pay interest.....	3
10	You may voluntarily prepay the Loan.....	3
11	You may have to pay more if you pay late.....	3
12	Withholding Tax.....	4
13	What if it becomes unlawful for us to provide the Loan?	4
14	Representations and warranties (what you and the Guarantor tell us)	4
15	Undertakings (what you and the Guarantor must or must not do)	5
16	Defaults.....	7
17	Consequences of a Default.....	7
18	Guarantee and Indemnity.....	8
19	General Indemnities provided by you and the Guarantor.....	10
20	Taxes.....	10
21	Costs and Expenses.....	10
22	GST.....	10
23	Our rights of set-off.....	10
24	Reinstatement of our rights.....	10
25	Anti-Money Laundering.....	11
26	Notices.....	11
27	Assignment.....	11
28	Administrative provisions	11
29	Interpretation	12
30	Definitions.....	13

In the Loan Agreement “you” is a reference to the borrower, “us” is a reference to Export Finance Australia, and “Guarantor” is a reference to any person who is specified as a guarantor in the Offer. See also the rules for interpreting the Loan Agreement in clause 29.

1 These Standard Terms

To the extent that any provision of these Standard Terms is inconsistent with any other provision of the Offer, that other provision will prevail.

2 National Credit Code and Banking Code of Practice

You and the Guarantor acknowledge that neither the National Credit Code nor the Banking Code of Practice is intended to apply to or affect the Loan or any Finance Document.

3 The Loan Agreement

- 3.1 We agree to provide the Loan to you on the terms set out in:
- the Offer accepted by you and binding on the Guarantor;
 - these Standard Terms;
 - the Confirmations;
 - any other Finance Document or other document or agreement that you and we agree will form part of the Loan Agreement;
 - any document or agreement created under or contemplated by any of the above documents; and
 - any document or agreement that amends, varies or replaces any of the above documents.
- 3.2 The date of the Loan Agreement is the Acceptance Date.

4 Loan

- 4.1 At your request, we agree to make available to you a loan for the Loan Amount for the period of the Loan Term on the terms of the Loan Agreement.
- 4.2 You must only use the Loan to assist you in meeting your obligations under, or in connection with, an Export Transaction.

5 Advance of funds

- 5.1 Subject to the other provisions of the Loan Agreement, we agree to advance funds equal to the Loan Amount to the Nominated Account by no later than 2 Business Days after the Acceptance Date.
- 5.2 We will make one advance only.

6 Making payments

Subject to any Direct Debit Request Service Agreement, you or any Guarantor (as applicable) must make all payments to us under the Finance Documents:

- in Australian dollars in immediately available funds;
- not later than 11.00am (local time in the place of payment) on the due date (or, if that is not a Business Day, on the next Business Day); and
- to the account specified by us or as we otherwise direct from time to time.

7 Direct Debit

- 7.1 For so long as any Direct Debit Request Service Agreement you have entered into with us is in effect, payments denominated in Australian dollars, due to us from you will be by direct debit in accordance with the applicable Direct Debit Service Agreement unless otherwise notified by us.
- 7.2 It is your responsibility to ensure that there are sufficient clear funds available in the Nominated Account to allow a debit payment to be made in accordance with the Direct Debit Request and clause 7.1.

8 Interest you must pay

- 8.1 You must pay interest to us on the Principal Outstanding at the Interest Rate.
- 8.2 Interest accrues and is calculated on a daily basis on the basis of a 360 day year and a 30 day month for the actual number of days elapsed. The accrued interest is payable on each Payment Date in accordance with clause 9.1.

9 You must repay the Loan and pay interest

- 9.1 Subject to clause 9.2, on each Payment Date, you must pay to us the Monthly Payment in repayment of the Loan and payment of accrued interest on the Principal Outstanding.
- 9.2 On the last day of the Loan Term, you must pay the Money Owing to us in full.

10 You may voluntarily prepay the Loan

- 10.1 If you want to make a voluntary prepayment in respect of the whole of the Principal Outstanding, you may do so only on a Payment Date and provided that you give us prior written notice of your intention to do so. That notice must specify the date on which you want to make the prepayment and must be given to us no less than 5 Business Days before the date on which you want to make the prepayment.
- 10.2 We will make a direct debit from the Nominated Account in the amount of the prepayment along with all interest on the amount prepaid up to the date of payment including any amounts payable under clause 19(g), in accordance with, and on the date specified in, any notice given to us under clause 10.1.
- 10.3 Amounts repaid or prepaid in accordance with this clause 10 may not be re-borrowed.

11 You may have to pay more if you pay late

- 11.1 You and the Guarantor must pay interest on any unpaid amount which is due and payable by you or the Guarantor (as the case may be) under any Finance Document (including any capitalised interest) as follows:
- for unpaid amounts due and payable up to and including A\$1,000,000 at a rate of 4% p.a. over the Interest Rate; and
 - for unpaid amounts due and payable greater than A\$1,000,000 at a rate of 2% per annum over the Interest Rate. Interest on any unpaid amount is payable within 2 Business Days of demand by us and accrues daily from the relevant due date up to the actual date of payment and will be calculated on the basis of a 360-day year.
- 11.2 We can capitalise any interest that is not paid when due on each Payment Date. Any amount capitalised under the Loan Agreement or otherwise forms part of the Principal Outstanding.

- 11.3 If any Money Owing is not paid by its due date, you will be charged a late payment fee of A\$50.

12 Withholding Tax

- 12.1 You and the Guarantor must make all payments to us under the Finance Documents without any withholding or deduction, unless required by law.
- 12.2 If a law requires you or the Guarantor to deduct or withhold an amount on account of Taxes from any payment made by you or the Guarantor under a Finance Document (other than a Tax on our net income), then you or the Guarantor (as applicable) must:
- make that required withholding or deduction and pay the required amount to the relevant taxing authority within the time allowed and in the minimum amount required by law;
 - provide us with the original receipts for that payment to the relevant taxing authority (or any other evidence reasonably satisfactory to us); and
 - pay an additional amount to us (and the amount payable by you or the Guarantor under the relevant Finance Document is increased) so that, after making all required withholdings or deductions, we receive an amount equal to the payment we would have received if those withholdings or deductions had not been required.

13 What if it becomes unlawful for us to provide the Loan?

If we decide that it is unlawful to continue to provide the Loan or to fund or maintain our obligations under it:

- we will promptly notify you of that decision and the Loan will be cancelled on the date on which we provide that notice; and
- if required by us, you must pay the Money Owing on the date specified by us in our notice to you, provided that, if the law permits, such date will be at least 30 days after the date on which we give notice under clause 13(a).

14 Representations and warranties (what you and the Guarantor tell us)

- 14.1 Each of you and the Guarantor separately represents and warrants to us (as if references to “you” and “your” in paragraphs (a) to (i) are taken to include the Guarantor) that:
- (status)** if a corporation, you are duly incorporated and have all required power and hold all necessary Authorisations required for carrying on your business as now conducted;
 - (benefit)** you will benefit by entering into the Finance Documents to which you are a party;
 - (no breach of obligations)** in entering into and performing your obligations under the Finance Documents to which you are a party, you will not breach your constitutional documents or any law, obligation or instrument binding on you;
 - (power)** you have all necessary power and, if a corporation, have obtained all Authorisations required to enable you to enter into and perform your obligations under the Finance Documents to which you are a party;
 - (disclosure)** you have disclosed to us all information you hold that was requested in the Application (or by our Agent or representative in connection with the Application), or it has been disclosed to us by your

Agent or representative, and all information which is likely to be material to an assessment of the risk to us in entering into the Finance Documents and all such information is complete, correct and not misleading by omission or otherwise;

- (Agents' commissions)** you have disclosed to us details of all commissions or other payments made (or to be made) to an Agent in connection with a Relevant Matter. All such commissions and payments are:
 - on arm's length terms for fair market value for the services rendered;
 - paid in the ordinary course of business;
 - readily identifiable on the party's books and records as to amount, purpose and recipient;
 - in an amount customary for the services rendered, or to be rendered, with respect to each counterparty's country; and
 - not intended to be used for any illicit or corrupt purpose;
- (insolvent)** no Insolvency Event has occurred in respect of you;
- (Corrupt Activity)** you are not aware, having made reasonable enquiries, of any Corrupt Activity in relation to any Relevant Matter;
- (Anti-Bribery Declaration)** the Anti-Bribery Declaration is true and correct in all respects;
- (Sanctions)** you will not, directly or indirectly, use the Loan provided by us or its proceeds for the purposes of investment in, or otherwise for the benefit of:
 - any country or jurisdiction that is the subject of Sanctions;
 - a person that has a primary place of business in, or is incorporated or organised under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions; or
 - any person or entity that is a target of Sanctions (including without limitation by way of beneficial ownership),in each case in any manner that would result in any violation of Sanctions by us or any Obligor as applicable to any of those parties;
- (Export Transaction)** performance of each Export Transaction, or completion of the project to which it relates:
 - involves an Australian Benefit; and
 - will not in itself result in any reduction in the total number of your or the Guarantor's full time equivalent Australian-based employees taken as a whole;
- (trustee)** you do not enter into the Finance Documents as a trustee of any trust, except as disclosed in writing to us. If (whether disclosed to us or not) you are entering into any Finance Documents as trustee of a Trust:
 - the Trust has been properly constituted;
 - you are the sole trustee of the Trust (or if you are a joint trustee, then all trustees are party to the relevant Finance Documents, to our satisfaction) and, as far as you are aware, no action has been proposed or taken to remove you as trustee;

- (iii) your entry into and performance of your obligations under the Finance Documents to which you are a party will benefit the Trust;
- (iv) you have given us a complete copy of the relevant Trust Deed which has been duly executed and stamped and has not been revoked;
- (v) you have the power and authority as trustee to enter into and perform your obligations under the Finance Documents to which you are a party;
- (vi) you have an unrestricted right to be fully indemnified from the Trust's assets in relation to all liabilities incurred by you in connection with the Finance Documents to which you are a party;
- (vii) you are not in breach of any of your obligations as trustee of the Trust;
- (viii) no action has been taken or proposed to terminate the Trust; and
- (ix) you have not delegated any of your powers as trustee or exercised any power of appointment; and

(l) **(Exploitation)** you have conducted a reasonable examination of your Supply Chain and there is no evidence of Exploitation.

14.2 **(Repetition)** The representations and warranties in clause 14.1 are taken to be repeated each time the Customer uses the facility detailed in the Loan Agreement and on the last day of each calendar month during the Loan Term except to the extent that you or the Guarantor provides a written statement to us outlining why you or the Guarantor cannot accurately give any representation or warranty and we have accepted that statement in writing.

14.3 **(Reliance acknowledged)** You and the Guarantor each acknowledge that, in entering into the Finance Documents and agreeing to provide the Loan, we have relied on these representations and warranties.

15 Undertakings (what you and the Guarantor must or must not do)

15.1 **(Information that must be provided to us)** Each of you and the Guarantor must promptly give us (as if references to "you" and "your" in paragraphs (a) to (d) are taken to include the Guarantor):

- (a) **(changes)** as soon as possible after becoming aware of it, written details of any material change to any information provided by you (or your Agent or representative) to us in connection with the Loan, including any information in an Anti-Bribery Declaration or any information provided in an application to us for the provision of the Loan;
- (b) **(Default or Potential Default)** as soon as possible after a Default or Potential Default occurs, written details of that Default or Potential Default and the steps being taken to remedy it;
- (c) **(Corrupt Activity)** immediately after becoming aware of it, written details of the occurrence of Corrupt Activity in relation to any Relevant Matter;
- (d) **(Exploitation)** as soon as possible after becoming aware of it, written details of the occurrence of Exploitation in your Supply Chain;
- (e) **(PPSA Information)** all necessary information (including serial numbers) to enable us to register financing statements or financing change statements

in relation to any Security Interest held or intended to be held by us under the Security Documents at any time; and

(f) **(other information)** any other information we reasonably request.

15.2 **(Things you and the Guarantor must not do)** Each of you and the Guarantor must not do any of the following things, or agree or attempt to do any of them (as if references to "you" and "your" in paragraphs (a) to (m) are taken to include the Guarantor):

- (a) **(create a Security Interest)** create or allow any Security Interest over or affecting any of its Secured Property or, if it is a corporation, other assets, except for a Permitted Security Interest;
- (b) **(dispose of secured property)** sell, transfer, part with possession of, surrender or otherwise deal with any of its Secured Property which is a non-circulating asset or any of its rights in connection with that Secured Property;
- (c) **(dispose of assets)** sell, transfer, part with possession of, surrender or otherwise deal with any of your assets or any of your rights in connection with those assets, except in the ordinary course of your ordinary business;
- (d) **(Finance Debt)** obtain or permit to exist any Finance Debt from any person, or provide or continue to provide any Finance Debt to any person, other than Permitted Finance Debt;
- (e) **(move secured Property outside Australia)** move any Secured Property outside Australia except in the ordinary course of its ordinary business;
- (f) **(arm's length dealings)** deal in any way with any person except at arm's length in the ordinary course of your ordinary business for valuable commercial consideration;
- (g) **(Distributions)** make any Distribution other than a Permitted Distribution;
- (h) **(change of business)** cease or materially change the nature of your business or relocate your principal place of business outside Australia or change your place of registration or incorporation or change your name, ACN or ABN or the name, ABN, ARSN of any Trust;
- (i) **(obtain protection prejudicing us)** take steps to obtain protection under any statute or any other law which detrimentally affects our rights in relation to its Secured Property;
- (j) **(reduce value of Secured Property)** otherwise do or permit anything to be done which results in the realisable value of the Secured Property being reduced, or which may harm or impair our rights under any Transaction Document;
- (k) **(acquisitions)** outside of the ordinary course of your ordinary business, acquire or invest in any assets, property, business or any company or any shares in any company acquisitions or investments (or agree to do any of these things);
- (l) **(change in Control)** permit any change in Control, ownership or management of you; or
- (m) **(corporate reconstruction)** enter into any amalgamation, merger, corporate reconstruction, joint venture or other business venture.

- 15.3 **(Other)** Each of you and the Guarantor must (as if references to “you” and “your” in paragraphs (a) to (c) are taken to include the Guarantor):
- (a) **(financial records)** keep proper accounting and written financial records which record correctly your transactions, financial position and performance in accordance with Accepted Accounting Principles, make your business and financial records available for inspection at all reasonable times by us and persons acting on our behalf and allow us and persons acting on our behalf to take copies of or extracts from your business and financial records (including trust records);
 - (b) **(access)** subject to us giving prior notice and to complying with your reasonable security, health and safety requirements, allow, or obtain for our and persons acting on our behalf, full access at all times to any land or building owned or occupied by you; and
 - (c) **(insurance)** take out and maintain insurances with a reputable insurer in accordance with prudent business practice having regard to the nature of the business and assets of you (including all insurance required by applicable law).
- 15.4 **(General undertakings)** Each of you and the Guarantor must (as if references to “you” and “your” in paragraphs (a) to (c) are taken to include the Guarantor):
- (a) **(Authorisations)** obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required to enable you to perform your obligations under the Finance Documents and to ensure the legality, validity, enforceability and admissibility in evidence in your jurisdiction of incorporation of any Finance Document, as well as any Authorisation required for you to carry on your business, if failing to obtain or maintain that Authorisation will give rise to a Material Impact;
 - (b) **(comply with applicable laws)** comply in all respects with all laws to which you may be subject, if failure to comply would materially impair your ability to perform your obligations under the Finance Documents;
 - (c) **(Obligor capacities)** promptly advise us if any Obligor enters into any Finance Document in the capacity as Agent and promptly supply, or procure the supply of, such information as may be reasonably requested by us from time to time in relation to any principal for whom an Obligor may be acting;
 - (d) **(Agent commissions and fees)** disclose to us, upon demand at any time, in connection with any Approved Transaction:
 - (i) the identity of any Agents acting on any party's behalf;
 - (ii) the amount and purpose of commissions or payments paid, or agreed to be paid, to such Agents; and
 - (iii) the country or jurisdiction in which such commissions or payments have been paid, or have been agreed to be paid;
 - (e) **(Anti-money laundering)** exercise its rights and perform its obligations under the Finance Documents in accordance with all applicable laws, regulations and measures relating to anti-money laundering, counter-terrorism financing, criminal activity, Sanctions and restrictive measures;
 - (f) **(Adequate procedures)** maintain and comply in all material respects with internal procedures and controls in compliance with applicable laws of the jurisdictions in which it operates, preventing it and any of its Subsidiaries participating in money laundering, the financing of terrorist activity, bribery, fraud, Sanctions breaches or other criminal, illegal or Corrupt Practices; and
- (g) **(PPSA undertakings)** at your own cost do any of the following things if reasonably requested by us;
- (i) **(Finance Documents effective)** do anything required by us to ensure any Finance Document (or any Security Interest, right or power under any Finance Document) is fully effective, enforceable and perfected with the contemplated priority under the PPSA;
 - (ii) **(further assurance)** to more satisfactorily assure or secure to us the property the subject of any such Security Interest in a manner consistent with the Finance Documents;
 - (iii) **(assist in exercise of power)** do anything required by Export Finance Australia to assist in the exercise of any right or power in any Finance Document; and
 - (iv) **(protect its own PPSA interests)** promptly take all reasonable steps which are prudent for you and the Guarantor's business under or in relation to the PPSA. For example, you and the Guarantor must create and implement appropriate policies and systems and, where appropriate, take reasonable steps to identify security interests (as defined in the PPSA) in your and the Guarantor's favour and to continuously perfect and protect them, with the highest priority reasonably available, and reduce as far as possible the risk of a third party acquiring an interest free of that security interest.
- 15.5 **(Subordination of Related Party Debt)** Until all of the Money Owing has been fully and finally paid to us (as if references to “you” and “your” in paragraphs (a) and (b) are taken to include the Guarantor):
- (a) except as expressly permitted under the Loan Agreement, no Related Party Debt is payable and you must not accept, and you must not make, any payment of any Related Party Debt; and
 - (b) you must not exercise any rights of indemnification, contribution or subrogation or any similar rights, or prove or claim or exercise any voting or other rights, in the administration, liquidation, winding up, bankruptcy or any analogous process in relation to you or the Guarantor, unless we otherwise direct.
- 15.6 **(Trustee undertakings)** If you enter, or the Guarantor enters, into any Finance Document as trustee of a Trust, you or the Guarantor (as applicable) must ensure that (as if references to “you” and “your” in paragraphs (a) to (i) are taken to include the Guarantor):
- (a) **(no variation)** the Trust Deed is not varied or revoked in any which may affect your right of indemnity from the Trust's property;
 - (b) **(no resettlement)** there is no resettlement, setting aside or transfer to any other trust, settlement or person or blending or mixing of the Trust's property except in accordance with the Trust Deed;
 - (c) **(no other trustee)** no other person is appointed trustee of the Trust;
 - (d) **(priority over beneficiaries)** your lien over the Trust assets has priority over the rights of the beneficiaries or the unitholders of the Trust;

- (e) **(comply with trust obligations)** you comply with your trustee obligations under the Trust Deed and at law;
- (f) **(removal or retirement as trustee)** you do not retire or do anything which would cause or enable your removal as trustee of the Trust;
- (g) **(distribution or vesting)** you do not make any appointment, distribution or vesting of the Trust's capital;
- (h) **(proper accounts)** you prepare and maintain proper and adequate books of account in relation to the Trust; and
- (i) **(no Security Interest)** you do not create, permit or allow to exist any Security Interest on any of the Trust's assets, except for any Permitted Security Interest.

16 Defaults

A Default occurs if (as if references to "you" and "your" in paragraphs (a) to (g) are taken to include the Guarantor):

- (a) **(payment default)** you do not pay any amount payable under a Finance Document when due and that non-payment is not remedied within 2 Business Days;
- (b) **(Insolvency Event)** an Insolvency Event has occurred in respect of you;
- (c) **(death or incapacity)** if you are a natural person, you die or become, or are declared to be, mentally or physically incapable of managing your affairs;
- (d) **(creditor enforcement)** another creditor takes Enforcement Proceedings against you or the Guarantor (or any of their assets);
- (e) **(cross default)** we exercise a right against you (such as calling for early repayment, requiring cash cover or taking Enforcement Proceedings) in relation to:
 - (i) any of your Finance Debt owed to us under any other facility or arrangement; or
 - (ii) any Security Document,
 due to an event of default (however described) which is an event of default that would be permitted if the Australian Banking Association banking code of practice applied to the facility, arrangement or Security Document;
- (f) **(illegality)** it becomes unlawful for you or the Guarantor to continue with the facility detailed in Loan Agreement;
- (g) **(unlawful behaviour)** we believe on reasonable grounds that you have not complied with any law or any requirement of a statutory authority and that has a Material Impact, including (without limitation) where any of the following events occurs:
 - (i) any Corrupt Activity occurs in connection with any Relevant Matter;
 - (ii) you are not meeting or complying with any of your obligations relating to superannuation, taxation or any arrangement in place with the Australian Taxation Office or becomes subject to an Australian Taxation Office arrangement;
 - (iii) you have any Exploitation in your Supply Chain.
- (h) **(misrepresentation)** any information or representation given by you is incomplete, incorrect or misleading (including through any representation or warranty made or deemed to be made by you in any Finance Document) and that has a Material Impact; or

- (i) **(unapproved use of the facility)** the facility detailed in the Loan Agreement is used for a purpose which has not been approved by us and that has a Material Impact;
- (j) **(improper dealings)** your or the Guarantor's assets are dealt with (or attempted to be dealt with) in breach of a Finance Document and that has a Material Impact;
- (k) **(financial information)** you or the Guarantor does not comply with any provision of any Finance Document requiring it to provide to us copies of its financial statements or other financial information and that has a Material Impact;
- (l) **(Authorisations)** you or the Guarantor do not maintain any Authorisation necessary to carry on its business and that has a Material Impact;
- (m) **(insurance)** you or the Guarantor do not maintain any insurances required to be maintained under any Finance Document and that has a Material Impact;
- (n) **(change in ownership or control)** there is a change in Control, ownership or management of you or the Guarantor or a change in your or the Guarantor's business (without our consent) and that has a Material Impact; or
- (o) **(change in status, capacity or composition)** your status, capacity or composition changes without our consent (e.g. if you are a trustee and there is a change in trustee or the trust ends).

17 Consequences of a Default

- 17.1 If a Default has occurred, in addition to any other rights provided by law or any Finance Document, we can do all or any of the following:
- (a) **(accelerate Money Owing)** by notice to you and the Guarantor declare that all or part of the Money Owing is either immediately due and payable or otherwise payable on demand, at which time it will immediately become so; or
 - (b) **(credit reporting bodies)** provide credit information relating to you or the Guarantor to any credit reporting agency in accordance with our credit information policy (made available from time to time on our website at www.exportfinance.gov.au); or
 - (c) **(investigating experts)** by notice to you and the Guarantor at your and the Guarantor's cost, appoint an accountant, insolvency practitioner or other expert to investigate and report on the Finance Documents and the affairs and financial position of you and/or the Guarantor and/or the Secured Property. You and the Guarantor authorise and agree to give reasonable assistance to any such investigating experts to undertake that investigation and agree that any investigating expert can disclose to us any information in connection with the investigation.
- 17.2 Before we take any of the actions set out in clause 17.1 in respect to a Default which can be remedied, we will give you and the Guarantor 30 days' notice to allow you and the Guarantor an opportunity to remedy the Default. However, we need not give any such notice to you and the Guarantor or wait until the end of any period given in any such notice if:
- (a) We are of the reasonable opinion that it is necessary for us to take any of the actions set out in clause 17.1 to manage a material and immediate risk relating to the nature of the relevant Default, your or the Guarantor's particular circumstances or the value of the Secured Property; or

- (b) a Default under paragraph (a) - (f) (inclusive) of clause 16 is continuing.

18 Guarantee and Indemnity

- 18.1 For valuable consideration, the Guarantor unconditionally and irrevocably guarantees the due and punctual payment to us of the Guaranteed Money.
- 18.2 As an independent and principal obligation, the Guarantor indemnifies us against any liability or direct loss sustained by us (including all charges, costs and expenses reasonably incurred by us) directly or indirectly in connection with:
- (a) **(failure to pay)** any failure by you to duly and punctually pay to us the Guaranteed Money;
 - (b) **(liability unenforceable)** any liability of you to pay the Guaranteed Money being or becoming void or otherwise unenforceable for any reason (including, as a result of any legal limitation, disability or incapacity affecting any person), irrespective of whether we knew or ought to have known of the relevant facts or circumstances;
 - (c) **(Guaranteed Money irrecoverable)** the Guaranteed Money (or money which, if recoverable, would have been Guaranteed Money) being or becoming irrecoverable from the Guarantor for any reason, irrespective of whether we knew or ought to have known of the relevant facts or circumstances; or
 - (d) **(Status Event)** you being the subject of an announcement, application, compromise, arrangement, the appointment of a managing controller, or administration as described in section 415D(1), 434J(1) or 451E(1) of the Corporations Act or any process which under any law with a similar purpose may give rise to a stay on, or prevention of, the exercise of contractual rights.
- 18.3 The Guarantor must pay to us within 2 Business Days the Guaranteed Money guaranteed under clause 18.1 and an amount equal to the amount of any liability or direct loss in respect of which it has given an indemnity under clause 18.2.
- 18.4 Demand may be made under this clause 18 at any time and from time to time.
- 18.5 The guarantee and indemnity in this clause 18 does not apply where the Guaranteed Money is illegal, void, voidable or unenforceable solely as a result of our fraud, negligence or willful default, or because the Guaranteed Money is void for unfairness or illegality under the laws of any State or Territory of Australia. The indemnity in this clause 18 is limited to an amount equal to the sum of the Guaranteed Money plus enforcement costs against you and the Guarantor.
- 18.6 Each obligation of the Guarantor under the Loan Agreement is:
- (a) **(principal obligation)** a principal obligation imposed on the Guarantor as principal debtor and is not to be regarded as ancillary or collateral to any other right or obligation; and
 - (b) **(independent of Security Document)** independent of and not affected by or in substitution for any Security Document or any obligation of any person.
- 18.7 Subject to clauses 18.13 and 18.14, the Loan Agreement is enforceable against the Guarantor irrespective of whether:
- (a) **(recourse to Security Document)** recourse has first been had to any Security Document;
 - (b) **(demands on other persons)** demand has been made on or notice is given to you or any other person;
 - (c) **(other enforcement action)** any other enforcement action has been taken against any person (including you or the Guarantor); or
 - (d) **(other events)** any of the events described in clause 18.11 has occurred.
- 18.8 The obligations of the Guarantor:
- (a) **(continuing guarantee)** are a continuing guarantee and indemnity;
 - (b) **(present and future)** extend to the present and any future balance of the Guaranteed Money; and
 - (c) **(remains in full force and effect until discharged)** remain in full force and effect until a final discharge of them is provided to the Guarantor, notwithstanding any settlement of account, intervening payment or other thing.
- 18.9 The obligations of the Guarantor extend to any increase in the Guaranteed Money as a result of any amendment, supplement, renewal or replacement of any of the Finance Documents or the occurrence of any other thing irrespective of whether the Guarantor is aware of or has consented to or is given notice of any such amendment, supplement, renewal or replacement or of that occurrence unless the effect of the amendment, supplement, renewal or replacement increases the Loan Amount.
- 18.10 The Guarantor acknowledges that the Guaranteed Money may include an amount which is contingently owing or which may become owing in the future and that, so long as we are entitled to make demand on you (without being obliged to make that demand), the Guarantor must pay to us an amount equal to any contingent or future amount included in the Guaranteed Money notwithstanding that that amount may not have fallen due as at the date of that demand.
- 18.11 Subject to clause 18.12, a Guarantor's liabilities and our rights in connection with any Finance Document or any receiver or receiver and manager or attorney appointed under any Security Document will not be affected by anything which might otherwise have that effect including:
- (a) **(indulgence)** the grant of any indulgence to any person;
 - (b) **(compromise)** a person compounding or compromising with or wholly or partially releasing any person in any way;
 - (c) **(acquiescence)** any acquiescence, act, delay, laches, mistake or omission on the part of any person;
 - (d) **(variation of rights)** any variation of a right of any person;
 - (e) **(alteration of documents)** any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a document;
 - (f) **(increase)** any increase in the amount of or other variation in connection with the Guaranteed Money or the Money Owing unless the effect of the increase or variation increases the Loan Amount;
 - (g) **(transaction of business)** the transaction of business with, for or at the request, whether express or implied, of any person;
 - (h) **(change in membership)** any change in the membership, name or business of a firm, partnership, committee or association;
 - (i) **(loss of Security Document)** the loss or impairment of a Security Document or any negotiable instrument;

- (j) **(abandonment of Security Document)** the abandoning, abstaining from perfecting or taking advantage, exchanging, realizing, release (whether whole or partial), taking or varying of any Security Document or of any judgement or negotiable instrument;
- (k) **(Insolvency)** the occurrence of an Insolvency Event in connection with any person;
- (l) **(change in capacity)** any change in the legal capacity, rights or obligations of any person;
- (m) **(trustee)** the fact that any person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- (n) **(judgment)** a judgment being made against any person;
- (o) **(money irrecoverable)** the Guaranteed Money or the Money Owing being or becoming irrecoverable against any person;
- (p) **(assignment)** any assignment of rights in connection with the Guaranteed Money or the Money Owing;
- (q) **(repudiation)** the acceptance of a repudiation or termination in connection with the Guaranteed Money or the Money Owing;
- (r) **(invalidity)** the invalidity or unenforceability of any person's obligations or liabilities;
- (s) **(Security Document void)** a Security Document being or becoming void, voidable or unenforceable or being determined, extinguished, forfeited or surrendered;
- (t) **(receipt of dividend)** the receipt of a dividend after an Insolvency Event or the payment of a sum into the account of any person;
- (u) **(discharge of obligation)** an obligation of any person (including a person comprising the Guarantor or co-surety) being discharged by operation of law or otherwise; and
- (v) **(obligation not effective)** any person who is intended to enter into the Loan Agreement or otherwise become the Guarantor or other party not doing so or not doing so effectively.

18.12 We will:

- (a) Obtain each Guarantor's consent to the release (whether full or partial) of any Security Document or guarantee of the Guaranteed Money prior to giving such release; and
- (b) Notify each Guarantor within 5 Business Days of:
 - (i) the commencement of legal proceedings by us against the Customer;
 - (ii) the appointment of a receiver to the Customer by us; and
 - (iii) the Customer being 30 calendar days behind in any scheduled payments under the Loan Agreement.

18.13 Subject to clause 18.14, we will not:

- (a) take Enforcement Proceedings with respect to any Security Interest or Security Document granted by the Guarantor in relation to a guarantee unless we have first taken Enforcement Proceedings with respect to any Security Interest or Security Document granted by you; and

- (b) enforce any judgment in its favour against the Guarantor resulting from Enforcement Proceedings in relation to a guarantee unless:

- i. we have first taken Enforcement Proceedings against you pursuant to any Security Interest or Security Document granted by you in respect of the Guaranteed Money, and one or more of the following has occurred:
 - (i) we have obtained a court judgment in its favour against you after Enforcement Proceedings for payment of the Guaranteed Money and the judgment debt remains outstanding after 30 days of a written demand by us for its payment; or
 - (ii) we have made reasonable attempts to locate you without success; or
 - (iii) you are presumed or deemed to be unable, or admit inability, to pay your debts as they fall due, or suspend making payment on any of your debts or a moratorium is declared in respect of any of your indebtedness.

18.14 We may:

- (a) take Enforcement Proceedings with respect to any Security Interest or Security Document granted by the Guarantor in relation to a guarantee; or
- (b) enforce any judgment in our favour against the Guarantor resulting from Enforcement Proceedings in relation to a guarantee, before first enforcing any mortgage or other security that you have provided if we reasonably expect that the net proceeds of that enforcement will not be sufficient to repay a substantial portion of the Guaranteed Money, or because of you not providing us with information, documents, or access to premises or assets as required, we are unable to reasonably assess whether the net proceeds of that enforcement will not be sufficient to repay a substantial portion of the Guaranteed Money.

18.15 We are not obliged to marshal or appropriate in favour of you or the Guarantor or to apply, enforce or exercise:

- (a) any Security Interest, Security Document or any other Finance Document or other instrument held by us; or
- (b) any asset which we hold or may otherwise be entitled to receive or have a claim on.

18.16 Until we have received payment or satisfaction of all the Guaranteed Money and all the Money Owing and we have given our prior written consent, the Guarantor must not:

- (a) **(no right of contribution)** assert as against us any right of contribution, indemnity or subrogation or otherwise claim or receive the benefit of or enforce any Security Interest or guarantee for the payment of the Guaranteed Money or the Money Owing;
- (b) **(no right of proof)** without limiting clause 18.17, exercise any right of proof or claim or receive the benefit of any distribution, dividend or payment if an Insolvency Event occurs in connection with you;
- (c) **(no set off)** raise any set off, counterclaim or defence in reduction or discharge of its obligations under the Loan Agreement; or
- (d) **(no other right)** otherwise exercise any right which it may have which is inconsistent with its obligations or our rights under any Finance Document.

18.17 If an Insolvency Event occurs in connection with you or the Guarantor (**Insolvent Party**), each other party other than us irrevocably and unconditionally authorises us to do anything that other party can do in connection with the insolvency of the Insolvent Party and to apply any money received by us in payment or satisfaction of the Guaranteed Money and the Money Owning.

19 General Indemnities provided by you and the Guarantor

Each of you and the Guarantor must pay or reimburse us within 2 Business Days of demand for any liability, direct loss or reasonable cost or expense (including legal fees) incurred by us as a result of:

- (a) **(Default or Potential Default)** the occurrence of any Default or Potential Default;
- (b) **(misleading information)** any information produced or approved by you or the Guarantor in relation to the Finance Documents being or being alleged to be misleading or deceptive in any way;
- (c) **(claim or demand)** any claim or demand made on us under any Finance Document;
- (d) **(investigation or litigation)** any enquiry, investigation, subpoena (or similar order) or litigation in relation to you or the Guarantor or any transaction contemplated or financed under the Loan Agreement;
- (e) **(acting on instructions)** acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
- (f) **(overdue payment)** any failure by you or the Guarantor to pay any amount when due under a Finance Document;
- (g) **(repayments and prepayments)** any repayment or prepayment of all or part of the Loan being made on a day other than its scheduled repayment date;
- (h) **(Increased Costs)** the introduction of or any change in (or in the interpretation or application of) any law or regulation made after the Loan Agreement or our compliance with any law or regulation made after the Loan Agreement; or
- (i) **(Currency)** any payment under a Finance Document being made in a currency that is not Australian dollars.

20 Taxes

You must pay or reimburse us within 2 Business Days of demand for all Taxes, registration and other fees, fines and penalties for late payment and account charges that are payable in respect of the Finance Documents.

21 Costs and Expenses

You must promptly pay or reimburse us within 2 Business Days of demand for all costs and expenses reasonably incurred by us in connection with:

- (a) **(Finance Documents)** the Finance Documents;
- (b) **(consents and waivers)** us considering a request for and giving any approval, waiver or consent under any Finance Document or the variation, renegotiation or discharge of any Finance Document;
- (c) **(Relevant Matters)** any Relevant Matter and any liabilities incurred or payable by us in connection with any Relevant Matter;

- (d) **(enforcement expenses)** the enforcement or preservation of any of our rights under any Finance Document (or considering doing so), including costs and expenses relating to travel and accommodation of our staff, and any valuation or other report or legal or other advice obtained by us in relation to any of these things; or
- (e) **(any cost under Finance Documents)** anything else we may be or are required to do under any Finance Document.

22 GST

- 22.1 Unless otherwise indicated, all amounts referred to in the Finance Documents are expressed on a GST-exclusive basis.
- 22.2 If we make a taxable supply under any Finance Document to another party, that other party (**Recipient**) must pay us, together with the GST-exclusive consideration, an amount equal to the GST for which we are liable in relation to that supply.
- 22.3 In this clause 22, each of “GST” and “taxable supply” has the meaning given in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*(Cth).

23 Our rights of set-off

We may without notice set-off any actual or contingent obligation or liability of you or the Guarantor under the Finance Documents against any obligation or liability owed by us to you or the Guarantor, in each case whether that obligation or liability has matured or not. If the obligations are in different currencies, we may convert either obligation at an exchange rate nominated by us, acting reasonably. We can do anything necessary to effect any set-off under this clause 23.

24 Reinstatement of our rights

- 24.1 This clause 24 applies if any payment, settlement, transaction, transfer or other dealing by or on behalf of you or the Guarantor in connection with any Finance Document is avoided for any reason, including:
 - (a) as a result of any law relating to bankruptcy, insolvency or the protection of creditors; and
 - (b) any legal limitation, disability or incapacity of or affecting any person.
- 24.2 If the circumstances described in clause 24.1 apply to any payment settlement, transaction, transfer or other dealing by or on behalf of you or the Guarantor in connection with any Finance Document, then despite anything that was or should have been within our knowledge:
 - (a) you or that Guarantor’s liability under the Finance Documents and our rights are the same as if the relevant transaction or dealing had not taken place;
 - (b) you or that Guarantor must immediately do all things to satisfactorily restore to us any guarantee held by us immediately before the relevant transaction or dealing took place; and
 - (c) we can recover from you or that Guarantor all charges, costs and expenses (including legal costs on a solicitor and own client basis or full indemnity basis, whichever is higher) and Taxes incurred by us in connection with that transaction or dealing, in addition to any other money that we are entitled to recover from you or that Guarantor.

25 Anti-Money Laundering

- 25.1 Despite any other provision of any Finance Document, we are not required to do anything, and may refuse to do anything (including without limitation delay, block or refuse to process any payment or other transaction) in relation to a Finance Document without incurring any liability if we reasonably suspect that doing such thing or entering into any transaction or the application of its proceeds will breach or cause us to breach, or subject us to any penalty under any anti-money laundering / counterterrorism financing laws and regulations, economic or trade sanctions or restrictive measures (including any Sanctions) or any other applicable laws or regulations.
- 25.2 You and the Guarantor must give us all information that we reasonably require to enable us to manage our anti-money laundering, counter-terrorism financing or economic and trade sanctions risk and to comply with any related laws or regulations that apply to us.
- 25.3 You and the Guarantor agree that we may disclose any information concerning you or the Guarantor to any law enforcement, regulatory agency or court where required by any law or regulation in Australia or elsewhere and to any correspondent we use to make any payment for the purpose of complying with any such law or regulation.
- 25.4 You and the Guarantor declare and undertake to us that, by processing any transaction under the Finance Documents in accordance with your or the Guarantor's instructions (as applicable), we will not breach any laws or regulations that apply to us.

26 Notices

- 26.1 All notices, demands, certificates, consents, waivers and any other communication in connection with any Finance Document must be in writing and signed by an Authorised Officer of the sender and may be:
- (a) **(left at address)** left at the recipient's last notified address;
 - (b) **(post)** sent by prepaid post (airmail if international) to the recipient's last notified address;
 - (c) **(email)** sent by email:
 - (i) where you or the Guarantor is the recipient, to the email address specified in the Application (or as subsequently notified to us in writing); and
 - (ii) where we are the recipient, to the email address displayed for this purpose from time to time on Exportonline (or as otherwise specified by us from time to time); and
 - (d) **(other)** delivered in any other way permitted by any Finance Document or the law.

Communications sent by email must state the first and last name and the title of the sender. Communications sent by email are taken to be signed by the named sender, including if the communication is in the form of a signed document in portable document format (pdf) and attached to the email or if the signing is otherwise in a manner or form that the parties agree in writing.

- 26.2 Written communications will take effect when received (unless a later time is specified in them) subject to the following:
- (a) **(post)** any communication sent by post, will be deemed received 3 Business Days after posting (or 7 Business Days after posting if sent to or from a place outside Australia); and

- (b) **(email)** any communication sent by email will be deemed received on the day and at the time at which the transmitting computer indicates that the email was sent to the email address of the recipient, unless a delivery failure report is received by the sender in relation to that email.

- 26.3 If any communication is received:
- (a) after 5pm (local time of the recipient); or
 - (b) on a day which is not a Business Day,
- it will be deemed to have been received on the next Business Day.
- 26.4 Any communication given to you in accordance with this clause 26 will be deemed to have been made or delivered to the Guarantor. The Guarantor irrevocably authorises you to give and receive notices and communications on the Guarantor's behalf. We may rely on any such notice or communication by you as given on behalf of the Guarantor, and the Guarantor is bound by it.

27 Assignment

- 27.1 We may assign, grant or allow to exist any Security Interest or otherwise deal with our rights under any Finance Document on any terms without the consent of you or the Guarantor.
- 27.2 You must not, and the Guarantor must not, assign any of your or the Guarantor's (as applicable) rights under any Finance Document or grant or allow to exist any Security Interest over any of those rights without our prior consent.

28 Administrative provisions

- 28.1 **(Governing law)** The Loan Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of its courts.
- 28.2 **(Further assurance)** You and the Guarantor must do anything that we reasonably require to bind you and the Guarantor, and your or the Guarantor's successors, under the Finance Documents and to otherwise perfect our rights under the Finance Documents.
- 28.3 **(PPSA)** to the extent permitted by section 275 of the PPSA:
- (a) You, the Guarantor and we agree that all information of the kind referred to in section 275(1) of the PPSA is protected by a duty of confidence and that neither of them will disclose that information to an interested person, or to any other person at the request of an interested person, unless allowed or required by law; and
 - (b) You and the Guarantor confirm and agree that you and the Guarantor will not authorise the disclosure of any information of the kind referred to in section 275(1) of the PPSA.

For the purposes of this clause 28.3, "interested person" has the meaning given to that expression for the purposes of section 275 of the PPSA.

You and the Guarantor waive, to the extent permitted by the PPSA, any right which you and the Guarantor have to receive notices of a verification statement or any other notice which we are required to give to you and the Guarantor under the PPSA.

- 28.4 **(Indemnities)** All indemnities and reimbursement obligations in the Finance Documents (including the indemnity in clause 18.2) are continuing and survive termination of any Finance Document, repayment of the Money Owing and cancellation or expiry of the Loan. An indemnity obligation in any Finance Document is payable within 2 Business Days of demand. It is not necessary for us to incur any expense or make any payment to any person before enforcing any right of indemnity conferred by any Finance Document. No indemnity or reimbursement obligation in the Finance Documents requires you or the Guarantor to indemnify or reimburse us for any costs, expenses, losses or liabilities to the extent caused by our (or its, employees', officers', Agents' or receivers') fraud, negligence or willful misconduct.
- 28.5 **(Amendments)** A Finance Document may only be amended by written agreement between the parties to it.
- 28.6 **(Remedies and waivers)** Any failure by us to exercise, or any delay by us in exercising, any right or remedy under a Finance Document will not operate as a waiver and any single or partial exercise of any right or remedy by us will not prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Loan Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 28.7 **(Partial invalidity)** If any provision of the Finance Documents becomes illegal, invalid or unenforceable under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.
- 28.8 **(Calculations and certificates)** Any certification or determination by us of a rate or amount under any Finance Document is conclusive evidence of the matters to which it relates, in the absence of manifest error.
- 28.9 **(Application of money)** Unless the right is excluded in a Finance Document, we may apply any money paid by you or the Guarantor in satisfaction of any obligations of you or the Guarantor under any Finance Document as we determine.
- 28.10 **(Cleared funds)** In applying any money towards the satisfaction of the Money Owing, you or the Guarantor are to be credited only with funds which have been cleared and are not subject to any set-off or claim.
- 28.11 **(Prompt performance)** You and the Guarantor undertake to do everything you and the Guarantor are required to do promptly unless a specific time for performing it is set out in this Loan Agreement.
- 28.12 **(Trustees)** If applicable, the Finance Documents are binding on you and the Guarantor in your or the Guarantor's (as applicable) personal capacity and in your or the Guarantor's capacity as trustee of any Trust. A reference to:
- you or the Guarantor in the Loan Agreement is a reference to that party in its personal capacity and as trustee of any Trust; and
 - any asset, liability, act or omission of you or the Guarantor includes any asset, liability, act or omission of you or the Guarantor as trustee of any Trust.
- 28.13 **(Joint and several obligations)** If more than one person is named as comprising you or the Guarantor:
- (references)** a reference to "you", "your" or the "Guarantor" (as applicable) will be a reference to each of those persons severally, and any 2 or more of them collectively;
 - (liability)** each person comprising you or the Guarantor will be liable individually for the performance of all of your and the Guarantor's obligations under this Loan Agreement;

- (multiple persons)** each person comprising you or the Guarantor will be liable individually for the payment of all of the Money Owing and for the performance of all of your or the Guarantor's obligations under the Loan Agreement; and
- (enforcement)** we may enforce the Loan Agreement against any one or more of the persons comprising you or the Guarantor without enforcing the Loan Agreement against all of them.

Each person who enters the Loan Agreement as you or the Guarantor will be bound by it, even though one or more of the persons named as you or the Guarantor may not have executed or accepted the Loan Agreement, may not be bound by it or may be released from it.

- 28.14 **(Counterparts)** If any Finance Document is signed by you, the Guarantor or us, it may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.
- 28.15 **(Sharing information with financiers)** You and the Guarantor consent and agree that we are authorised to share (to the extent permitted under s87 (Secrecy) of the *Export Finance and Insurance Corporation Act 1991* (Cth)) information relating to the pricing and terms of the Loan and any Finance Document with other financiers on a confidential basis.

29 Interpretation

In the Loan Agreement, unless the contrary intention appears:

- except as specified in this Loan Agreement, a reference to "you" or "your" is a reference to the person or persons named in the Offer as the "Borrower", "Customer" or "Client". If there are more than one, you means each of them separately and every two or more of them jointly. You includes your successors and assigns;
- a reference to "us", "we" or "our" is a reference to Export Finance Australia (established under the *Export Finance and Insurance Corporation Act 1991* (Cth)) ABN 96 874 024 697;
- a reference to any document or instrument is a reference to that document or instrument as amended, novated, supplemented, extended, restated or replaced;
- a reference to any statute includes regulations and other instruments under it and any consolidations, amendments, re-enactments and replacements of it;
- a reference to a person or entity includes an individual, a firm, body corporate, unincorporated association, governmental authority, trust and partnership and any two or more of the foregoing and any reference to a particular person or entity includes that person's or entity's executors, administrators, legal personal representatives, successors, substitutes (including by novation) and assigns;
- a reference to "includes" or "including" means "includes, without limitation" and "including, without limitation" respectively;
- a reference to any Default or Potential Default which is "continuing" is a reference to that event which has occurred and in respect of which we have not confirmed in writing to you that such event has been remedied to our satisfaction or waived by us;

- (h) where a word or phrase is given a defined meaning in the Loan Agreement, the other grammatical forms of the word or phrase have a corresponding meaning;
- (i) a reference to a time and date for performance of an obligation by a party is a reference to the time and date in Sydney, New South Wales and is to be adhered to strictly;
- (j) a heading is for reference only and it does not affect the meaning or interpretation of the Loan Agreement;
- (k) the singular includes the plural and vice versa and a reference to one gender includes the other gender;
- (l) a reference to a right includes an interest, power, remedy, privilege and cause of action however arising;
- (m) a reference to an accounting term is to be interpreted in accordance with Accepted Accounting Principles applicable from time to time; and
- (n) a reference to "A\$", "AUD" or "Australian dollars" denotes the lawful currency of the Commonwealth of Australia.

30 Definitions

In the Loan Agreement:

Accepted Accounting Principles means accounting standards under the Corporations Act and, if not inconsistent with those standards, generally accepted accounting principles, standards and practices in Australia, consistently applied, provided that where you or the Guarantor is incorporated or domiciled in a jurisdiction outside of Australia, accounting standards of International Financial Reporting Standards (IFRS) may instead be used.

Agent means, in relation to a party, any natural or legal person acting on its behalf or acting with its consent or authority, in each case whether directly or indirectly.

Anti-Bribery Declaration means the anti-bribery declaration given by the Customer in our favour in connection with the Loan.

Application means the application submitted by you (or on your behalf) on Exportonline (or by other means specified by us from time to time) in relation to the Loan and includes all information provided in connection with it.

Australian Benefit means a benefit flowing directly or indirectly from overseas to a person carrying on business or other activities in Australia in connection with performance of an Export Transaction or (if applicable) the project to which it relates.

Authorisation means:

- (a) any authorisation, consent, approval, resolution, licence, exemption, filing, lodgement, registration, agreement, notarisation, certificate, permission or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action by a Governmental Agency.

Authorised Officer means:

- (a) in the case of us, an officer or employee of us whose title contains the word "chief" "head", "director", "senior manager" or "counsel" or a person performing the functions of any of them; and
- (b) in the case of any other party, any director of that party.

Avoided Transaction means any payment, settlement, transaction, transfer or other dealing by or on behalf of you or the Guarantor in connection with any Finance Document which is or becomes avoided for any reason, including:

- (a) as a result of any law relating to bankruptcy, insolvency or the protection of creditors; and
- (b) any legal limitation, disability or incapacity of or affecting any person.

Business Day means a day (other than a Saturday, Sunday or a public holiday) on which banks are generally open for business in New South Wales.

Buyer means a person who purchases goods or services from you under an Export Transaction.

Contested Taxes means a Tax assessed as payable by a person where the person:

- (a) is contesting the assessment in good faith;
- (b) is not required to pay the Tax before the contest is determined; and
- (c) has set aside sufficient reserves to pay the Tax and any other cost payable if the contest is unsuccessful.

Confirmations means the confirmations made by you and the Guarantor (or on your or the Guarantor's behalf) on Exportonline at the point of submission of the Application.

Control has the meaning given in section 50AA of the Corporations Act and in relation to any entity includes the direct or indirect power to direct the management or policies of the entity or control the membership or voting of the board of directors or other governing body of the entity.

Corporations Act means the *Corporations Act 2001* (Cth).

Corrupt Activity means any activity, including without limitation any Corrupt Practice, which would in the ordinary course of business be understood to be corrupt, wrongful, dishonest or a criminal act or omission which has been:

- (a) found or is likely to be found by a court in a competent jurisdiction to render a Relevant Matter illegal, void, voidable or unenforceable under its governing law;
- (b) admitted by the person initiating or engaging in that activity to have taken place;
- (c) found or is likely to be found by a court in any local or foreign jurisdiction to constitute an offence under any applicable law (including without limitation within Australia under the *Criminal Code Act 1995* (Cth) and any equivalent offences under State-based applicable law); or
- (d) found or is likely to be found as part of any publicly-available arbitral award in any local or foreign jurisdiction to constitute an offence under any applicable law; or
- (e) or is likely to be, the subject of Equivalent Measures in relation to contravening any applicable law.

Corrupt Practice means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

Default means any event or circumstance described in clause 16.

Direct Debit Request means your direct debit request made on Exportonline (or by other means specified by us from time to time) at the point of acceptance of the Offer on the Acceptance Date in relation to the Loan.

Direct Debit Request Service Agreement means the direct debit request service agreement between us and you

on the terms published on Exportonline from time to time (or as otherwise provided to you before you accept the Offer), constituted by the Direct Debit Request (as amended from time to time).

Distribution means any payment made by way of dividend, benefit, entitlement and any other distribution of any kind relating to any management or other fee or interest, or to which any person may become entitled as a result of holding the office of a director in, or holding a shareholding in, you or the Guarantor or a unitholding or other beneficial interest in any Trust in respect of which you or the Guarantor is the trustee.

Equivalent Measures includes, without limitation, resolutions of bribery or Corrupt Practice violations using deferred prosecution agreements or non-prosecution agreements, as well as those resulting from any formal admission or voluntary self-reporting.

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Enforcement Proceedings means:

- (a) commencing proceedings in a court to recover a debt or to recover possession of property subject to a Security Interest;
- (b) otherwise enforcing a Security Interest by taking possession of property (or taking steps to do so), exercising a power of sale, appointing a receiver or receiver and manager or voluntary administrator;
- (c) applying to a court to appoint a provisional liquidator or a trustee in bankruptcy, or
- (d) enforcing a judgment against another person (including you and/or the Guarantor) or your and/or the Guarantor's assets.

Exploitation means any of the following:

- (a) use of labour that is not voluntarily performed but is exacted or coerced from a person under threat of force or penalty. This includes any kind of involuntary or compulsory labour, such as bonding, indenture or other forms of compulsion, and the use of trafficked persons;
- (b) employing a person under the age of 18 in any manner that is economically exploitive, or is likely to be hazardous, or to interfere with the person's education, or to be harmful to the person's health or physical, mental, spiritual, moral or social development;
- (c) without limiting the application of paragraphs (a) and (b) above, modern slavery as defined in section 4 of the *Modern Slavery Act 2018* (Cth).

Export Transaction means a contract, agreement or other arrangement for the export related provision of goods or services by you (as seller) described in the Application, evidence of which has been uploaded by you on Exportonline (or otherwise provided to us by means specified by us from time to time).

Finance Debt means any indebtedness of any kind (whether present or future, actual or contingent).

Finance Documents means:

- (a) the Loan Agreement;
- (b) each Security Document;
- (c) any Direct Debit Service Agreement;
- (d) any Direct Debit Request;

- (e) any other loan facility agreement entered into at any time between us and you or the Guarantor (with or without other parties);
- (f) any priority or intercreditor agreement entered into between us, you and/or the Guarantor and any other person;
- (g) each "Finance Document" howsoever defined in any loan facility agreement referred to in paragraph (b);
- (h) any other document that you and we agree will be a "Finance Document" for the purposes of the Loan Agreement; and
- (i) any document or agreement that amends, varies or replaces any of the above documents.

Financial Accounts means in respect of any period:

- (a) a statement of financial position as at the end of that period;
- (b) a statement of financial performance and comprehensive income for that period;
- (c) a statement of changes in equity for that period; and
- (d) a statement of cash flows for that period, together with any notes to those statements and any accompanying reports, statements, declarations and other documents or information.

Governmental Agency means any government or any governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any stock exchange.

Guaranteed Money means all of the Money Owing by you to us.

Guarantor means the person or persons specified as the Guarantor in the Offer.

Increased Costs means:

- (a) a reduction in the rate of return from the Loan or on our overall capital as a result of more capital being required to be allocated by us;
- (b) an additional or increased cost; or
- (c) a reduction of any amount due and payable under any Finance Document,

in each case, which is incurred or suffered by us as a result of us entering into and performing our obligations under any Finance Document.

An **Insolvency Event** occurs:

- (a) in relation to a corporation:
- (b) if it is presumed or deemed to be unable, or admits inability, to pay its debts as they fall due, or suspends making payment on any of its debts or a moratorium is declared in respect of any of its indebtedness;
- (c) if any action, proceedings or other procedure or step is taken in relation to:
- (d) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or re-organisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of that corporation;
- (e) a composition, assignment or arrangement with any creditor of that corporation;
- (f) the appointment of a liquidator, receiver, receiver and manager, administrator, administrative receiver, compulsory manager or other similar officer in respect of that corporation or any of its assets; or

- (g) the enforcement of any Security Interest over any assets of that corporation;
- (h) if any expropriation, attachment, sequestration, distress or execution affects any asset of that corporation; or
- (i) if an event occurs in relation to that corporation which is analogous to anything referred to above or which has a substantially similar effect; and
- (j) in relation to a natural person:
- (k) if the person is or states that they are unable to pay all of their debts as and when they become due and payable;
- (l) if a bankruptcy notice is issued against the person or a receiver or a trustee for creditors or a trustee in bankruptcy is appointed to any of that person's property;
- (m) if the person enters into, attempts to enter into, or convenes a meeting for the purpose of entering into, an arrangement, assignment or composition with their creditors; or
- (n) if an event occurs in relation to that person which is analogous to anything referred to above or which has a substantially similar effect.

Interest Rate means the interest rate per annum specified in the Offer.

Loan means the lump sum advance provided by us to you under the terms of the Loan Agreement.

Loan Agreement means the agreement constituted by the documents and agreements described in clause 3.1.

Loan Amount means the amount of the Loan denominated in Australia dollars specified in the Offer.

Loan Term means the period so specified in the Offer, commencing on the Acceptance Date.

An event has a **Material Impact** if:

- (a) the event by its nature is material; or
- (b) Export Finance Australia reasonably considers that the event has had, or is likely to have a material impact on:
- (c) the ability of you or the Guarantor to comply with its financial obligations under the Finance Documents,
- (d) Our ability to fully recover from the Secured Property or the Money Owed;
- (e) Our ability to assess either of the things described above; or
- (f) (in relation to the Default described in paragraphs (e) or (f) of clause 16 only) we reasonably consider that the event has given rise to, or is likely to have given rise to a material risk that we might not comply with law or a material risk to our reputation.

Money Owed means, at any time, all amounts that are actually or contingently owing by you or the Guarantor to us under the Finance Documents, including the Principal Outstanding and interest, fees and costs, as determined by us.

Monthly Payment means the amount specified as the monthly payment in the Offer (being an amount comprising a repayment of principal and payment of interest).

Nominated Account means the bank account nominated by you for the administration of the Loan in both the Application and the Direct Debit Request.

Obligors means you and each Guarantor.

Offer means the letter of offer from us to you in relation to the Loan issued through Exportonline (or by other means specified by us from time to time).

Payment Date means:

- (a) the date that is one month after the Acceptance Date or, if different, the date the Loan is made; and
- (b) the corresponding date in each subsequent month during the Loan Term and the last day of the Loan Term.

Permitted Distribution means a Distribution where:

- (a) no event of default (however described) is continuing under any facility provided by any lender to you or the Guarantor at the time that Distribution is made and no event of default (however described) will result from making that Distribution;
- (b) no Default is continuing at the time that Distribution is made and no Default will result from making that Distribution;
- (c) the value of the Distribution does not result in a reduction in your or the Guarantor's net assets; and
- (d) you have, or the Guarantor has, sufficient free cash to make the Distribution.

Permitted Finance Debt means:

- (a) Finance Debt incurred under the Loan or otherwise provided by us;
- (b) Finance Debt incurred under any facility made available to you or the Guarantor before the Acceptance Date that was disclosed in the Application, and in an amount not exceeding the aggregate limit of that facility as it exists on that date;
- (c) Finance Debt incurred under any facilities made available to you or the Guarantor on or after the date of the Loan Agreement up to an amount not exceeding A\$125,000 in aggregate;
- (d) Finance Debt incurred under any facility made available to you or the Guarantor on or after the Acceptance Date for the sole purpose of refinancing on substantially the same terms any facility described in paragraph (c) of this definition, and in an amount not exceeding the aggregate limit of that facility;
- (e) a loan made available by you or the Guarantor to you or the Guarantor (as applicable) on or before the Acceptance Date and that was disclosed in the Application; or
- (f) Finance Debt incurred with our prior consent.

Permitted Security Interest means:

- (a) any Security Interest registered against you or the Guarantor as at the Acceptance Date;
- (b) any Security Interest created after the Acceptance Date in relation to leasing or hire purchase arrangements entered into by you or the Guarantor that satisfy the requirements of paragraphs (d) or (e) of the definition of "Permitted Finance Debt" provided that the lessor's or owner's (as the case may be) recourse to you or the Guarantor is limited to the value of the asset the subject of the lease or hire purchase arrangement;
- (c) any lien arising by operation of law and in the ordinary course of trading so long as the debt it secures is paid when due, or contested in good faith and appropriately provisioned;

- (d) any title retention arrangements entered into by you or the Guarantor in the ordinary course of trading on the supplier's usual terms of sale so long as the debt it secures is paid when due, or contested in good faith and appropriately provisioned;
- (e) any netting or set-off arrangement entered into by you or the Guarantor in the ordinary course of your or its (as applicable) banking arrangements for the purpose of netting debt and credit balances;
- (f) any Security Interest provided for by any of the following transactions if the transaction does not, in substance, secure payment or performance of an obligation:
 - (g) a transfer of an account or chattel paper;
 - (h) a commercial consignment; or
 - (i) a PPS Lease; or
 - (j) any Security Interest created with our prior consent.

Potential Default means any event or circumstance which would (on the giving of notice, lapse of time or fulfilment of any condition, or any combination of those) become a Default.

PPS Lease has the meaning provided in the PPSA.

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

Principal Outstanding means, at any time, the outstanding balance of the Loan Amount at that time.

Related Party Debt means all money that, at any time and for any reason and on any basis, is or may become actually or contingently owing by you to the Guarantor or your shareholder or by the Guarantor or your shareholder to you.

Relevant Matter means any matter that relates to the Loan Agreement or a transaction, contract, arrangement or event contemplated by or referred to in the Loan Agreement including:

- (a) any Finance Document;
- (b) any Export Transaction; and
- (c) any Buyer.

Sanctions means the trade or economic sanctions, laws, regulations, embargoes or restrictive measures administered, enacted or enforced by:

- (a) Australia;
- (b) the United Nations;
- (c) the United States;
- (d) the European Union;
- (e) the United Kingdom; or
- (f) the respective governmental institutions and agencies of any of the foregoing, including, without limitation, the Department of Foreign Affairs and Trade, Office of Foreign Assets Control of the US Department of Treasury, the United States Department of State and Her Majesty's Treasury.

Secured Property means any asset which is subject to a Security Interest in favour of or for the benefit of us under a Security Document.

Security Documents means:

- (a) a document described as a security in the Offer;
- (b) any other document that we and the Customer agree will be a "Security Document" for the purposes of this Loan Agreement; and

- (c) any Security Interest at any time which is collateral to any of the above documents.

Security Interest means any:

- (a) security for the performance of obligations, including a mortgage, charge lien, pledge, trust or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or (2) of the PPSA;
- (b) right interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (c) right that a person (other than the owner) has to remove something from land (known as a profit a prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest, or any right arising as a consequence of the enforcement of a judgement,

or any agreement to create any of them or allow them to exist.

Standard Terms means this document which comprises part of the Loan Agreement.

Supply Chain means all stages of manufacture of goods, or rendering of services, that is the subject of an Export Transaction whether or not done by you or third parties.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

Trust means, in relation to you or the Guarantor, any trust specified in the Offer and any other trust (whether or not disclosed to us) in respect of which that party enters into a Finance Document as trustee.

Trust Deed means, in respect of a Trust, the trust deed and any other document establishing or evidencing that Trust

