



Rabobank

Standard Loan Terms

April 2017

These Standard Loan Terms are incorporated into and form part of any document which refers to or annexes these Standard Loan Terms.

1. Definitions and interpretation

1.1. Definitions

In these Standard Loan Terms and the Letter of Offer, unless the context otherwise requires:

"Account" means an account held with the Bank in the name of the Borrower.

"All In One Facility" means a Facility on an Account known as an "All In One Account".

"Amounts Owning" means, on any date, the Debit Balance, interest (including default interest), Break Costs, fees and all other costs and expenses, and all other moneys owing to the Bank under the Contract on such date together with all contingent liabilities of the Bank under any Trade Facility, Bank Guarantee or other document of surety.

"Bank" means Rabobank New Zealand Limited, a company registered under the Companies Act 1993 with number 2874, and its successors and assigns.

"Bank Guarantee" means a bank guarantee or like document issued by the Bank to a third party at the request of the Borrower (whether for the benefit of a Borrower or another person), other than a Trade Facility.

"Borrower" means the person(s) specified as borrower(s) in the Letter of Offer.

"Break Costs" means the costs described in clause 9.

"Business Day" means a day on which banks are generally open for business in Wellington, New Zealand.

"Co-operative Dairy Company" has the same meaning as it has in section 34 of the Co-operative Companies Act 1996.

"Contract" means these Standard Loan Terms, each applicable Letter of Offer, each applicable Equipment Finance Offer, each applicable Security, the General Terms and Conditions, the Trade Facility Conditions (if a Trade Facility has been opened) and all other terms and conditions applying to the relevant Facility including any other document that:

- (a) may be required to be executed by either a Relevant Person and/or the Bank as part of or as a condition of any Facility provided or to be provided by the Bank to the Borrower; or
- (b) incorporates by reference these Standard Loan Terms, in each case as varied or replaced.

"Debit Balance"

- (a) means:
 - (i) all amounts advanced to the Borrower under a Facility and not yet repaid;
 - (ii) any amount otherwise debited to the Account; and
 - (iii) all amounts paid by the Bank pursuant to a Bank Guarantee and/or Trade Facility; less
 - (iv) all amounts credited to the Account; and
- (b) to avoid doubt, includes any Excess.

"Default Interest Rate" means the ordinary Interest Rate stated in the Contract as applying to the relevant Facility plus any additional margin added to that Interest Rate, as determined by the Bank from time to time.

"Distribution" has the meaning given to it in the Companies Act 1993 and, in addition, includes any form of financial assistance given by a company to any person (whether or not a shareholder in the company) to enable that person to purchase shares in the company.

"Documentary Credit" has the meaning given to it by the UCP.

"Drawing" means each utilisation of the relevant Facility including, but not limited to:

- (a) a drawdown; and
- (b) a debit to the Account otherwise authorised by the Borrower; and
- (c) a utilisation of a Trade Facility.

"Excess" means the amount (if any) by which the Debit Balance exceeds the Loan Limit or, as appropriate, the fact of such an excess.

"Equipment Finance Facility" means an uncommitted facility for equipment finance, as documented under the Contract.

"Equipment Finance Offer" means an offer of finance in respect of a specific item of equipment, issued to the Borrower under the Equipment Finance Facility.

"Establishment Fee" means the fee described as such in the Letter of Offer.

"Event of Default" means any of the events listed in clause 13.

"Facility" means any facility provided at any time to the Borrower by the Bank, including but without limitation the following types of credit contract, financial transactions or indebtedness:

- (a) any loans, credits, advances or other financial services including any All In One Facility, Bank Guarantee, Equipment Finance Facility, Equipment Finance Offer or Trade Facility made or given to, for the accommodation of, or at the request of the Borrower;
- (b) any bill of exchange, promissory note, draft, order or other negotiable instrument drawn, accepted, endorsed, paid, discounted or held by the Bank at the request of the Borrower notwithstanding that such bill of exchange, promissory note, draft, order or other negotiable instrument may not have arrived at maturity;
- (c) any goods or services supplied by the Bank to or at the request of the Borrower;
- (d) any payment made by the Bank for or at the request of the Borrower for goods or services acquired by the Borrower or any other person;
- (e) any financing, shipment or confirmation of goods on behalf of or at the request of the Borrower;
- (f) the Bank:
 - (i) entering into any lease, hire purchase or conditional purchase agreement or other similar agreement in respect of any real or personal property as lessor or vendor with the Borrower or any other person at the request of the Borrower;
 - (ii) acquiring such property for such purpose; or
 - (iii) at the request of the Borrower taking an assignment (whether absolute or by way of security) of any such lease, hire

purchase, conditional purchase or other agreement and of any property relating to those agreements;

- (g) any indebtedness arising out of any guarantee, indemnity, bond or other obligation given or undertaken by the Bank to the Borrower or given or undertaken by the Bank for or at the request of the Borrower;
- (h) any/all interest, commission, costs and charges payable by the Borrower to the Bank or incurred by the Bank in relation to the Contract or any indebtedness secured by these Standard Loan Terms including all those incurred by the Bank in the exercise or attempted exercise of the Bank's rights powers and remedies pursuant to these Standard Loan Terms; and
- (i) any other indebtedness whatsoever of the Borrower to the Bank.

"Facility Review" means a review of a Facility under clause 8.

"Facility Review Date" means each date for a Facility Review, as specified in the Letter of Offer.

"Financial Market Transactions Master Agreement" means the Bank's Master Agreement for Financial Market Transactions and each financial market transaction entered into under that document.

"Fixed Interest Option" means the option under the Contract for the Borrower to select a Fixed Rate Period to apply to a Drawing.

"Fixed Rate Period" means a period over which the Interest Rate applicable to all or part of the Debit Balance is or may be fixed.

"General Terms and Conditions" means the Bank's General Terms and Conditions applicable to all Accounts, as amended or replaced from time to time.

"Guarantee" means a document, under which a third party guarantees the indebtedness of the Borrower to the Bank.

"Guarantor" means any person specified as guarantor in the Contract.

"Interest Payment Date" means the date specified as such in the Contract.

"Interest Rate" means the rate or rates described in the Letter of Offer, as amended from time to time pursuant to clause 4 (as is applicable).

"Letter of Offer" means the letter from the Bank offering an All In One Facility and/or Equipment Finance Facility and/or other Facility to the Borrower or a variation or extension of the same upon the terms of these Standard Loan Terms and any other terms of the Contract.

"Loan Limit" means, as the context requires:

- (a) in respect of an All In One Facility, the loan limit specified in the Letter of Offer, less any Withheld Amount and subject to any reduction in the loan limit made in accordance with these Standard Loan Terms;
- (b) in respect of a Trade Facility, the Trade Facility Sub-Limit;
- (c) in respect of an Equipment Finance Facility, the limit specified in the Letter of Offer or Equipment Finance offer;
- (d) in respect of any other type of Facility, the specified loan limit; and
- (e) the aggregate of those limits.

"Loan Period" means the period during which the relevant Facility is available to the Borrower, as specified in the Contract.

"Loan Purpose" means the purpose or purposes for which the proceeds of a loan must be applied by the Borrower as described in the Contract and any other purpose approved by the Bank, in writing, at any time.

"On Demand" means on demand being made by notice in writing signed on behalf of the Bank by any officer, employee, or agent of the Bank served upon the Relevant Person either personally or by posting it in a letter addressed to that Relevant Person's usual or last known place of business or residence or by such other means as is agreed by the Relevant Person, provided in the Contract or permitted by law.

"Payment Dates" means:

- (a) the last day of each month;
- (b) where such last day is not a Business Day, the next Business Day after such day; or
- (c) such other dates as the Bank may approve.

"PPSA" means the Personal Property Securities Act 1999.

"Relevant Person" means the Borrower and each Security Provider and Guarantor, including a trustee, executor or administrator, severally, and if the Borrower or any Security Provider is a corporation, each related company of the Borrower or Security Provider.

"Security" means all securities granted to the Bank in respect of the Facilities (whether or not specified in the Contract) and includes without limitation any Guarantee or indemnity given in respect of an obligation of the Borrower under the Contract and any Security Interest, legal or equitable mortgage, charge or other security of any nature which secures any obligation or liability of the Borrower or of a Security Provider to the Bank.

"Security Interest" includes any security interest (as defined in section 17(1)(a) of the PPSA), mortgage, charge, encumbrance, lien, pledge, hypothecation, financial lease, deferred purchase, sale and repurchase, sale and leaseback, title retention or any other arrangement (however described) which in effect is, or has the commercial effect of, a security, but does not include any of the foregoing which arises in the ordinary course of business solely by operation of law and which is discharged within 90 days.

"Security Provider" means any person who at any time gives a Security to the Bank.

"Shares" means, at any date, any shares in any company held by the Borrower including Co-Operative Dairy Company shares.

"Supplying Shareholder" has the same meaning as it has in section 34 of the Co-operative Companies Act 1996.

"Tax" includes any present or future tax, levy, impost, duty, charge, fee deduction, custom or withholding of any nature and whatever called, imposed by any agency, on whomsoever imposed, levied, collected, withheld or assessed.

"Temporary Limit Increase" means an increase in the Loan Limit for a specified period allowed by the Bank.

"Trade Facility" means any facility, arrangement or agreement relating to the issue or confirmation of any Documentary Credit provided or to be provided by the Bank to or at the request of the Borrower, including any such Documentary Credit provided under the Financial Market Transactions Master Agreement.

"Trade Facility Conditions" means the terms and conditions of a Trade Facility.

"Trade Facility Sub-Limit" means the amount described in the Letter of Offer as the maximum amount of the Trade Facility from time to time.

"UCP" means the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce, Publication No. 600 as amended, replaced or supplemented from time to time.

"Undrawn Amount" means, in relation to a particular Facility, the Loan Limit applicable to the Facility less:

- (a) the aggregate of the Bank's contingent liability under any Trade Facility, Bank Guarantee or other document of surety; and
- (b) the Debit Balance.

"Undrawn Loan Fee" means a fee payable by the Borrower in accordance with clause 3.6.

"Variable Rate" means the Bank's variable interest rate applicable to the Borrower.

"Withheld Amount" means any amount of the Loan Limit the availability of which to the Borrower is conditional on satisfaction of conditions contained in the Contract, to the extent and for such time as those conditions remain unsatisfied.

1.2. Interpretation

- (a) A reference to an agreement, deed or any other document is to the agreement, deed or that other document as amended, supplemented, novated, or replaced from time to time.
- (b) Unless the context otherwise requires, a word which denotes:
 - (i) the singular includes the plural and vice versa;
 - (ii) any gender includes the other genders;
 - (iii) a person includes an individual, a body corporate, a firm and a government; and
 - (iv) the whole includes any part.
- (c) References to any specific statute, regulation, order, by-law or other legislation are references to such statutes, regulations, orders, by-laws or other legislation as amended, consolidated, re-enacted, substituted or extended from time to time.
- (d) Where any term is defined in these Standard Loan Terms and that term is used in the Letter of Offer, such definitions apply to the Letter of Offer.
- (e) A reference to a clause is a reference to a clause in these Standard Loan Terms.
- (f) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- (g) A date or a time on any date means New Zealand time unless otherwise stated.
- (h) "\$" means the lawful currency of New Zealand.

1.3. Joint and several

Any agreement, warranty, representation, undertaking or obligation, expressed or implied, which binds or benefits two or more persons under the Contract, binds such persons jointly and severally as principal debtors.

1.4. Successors and assigns

Where any Relevant Person is bound to perform any obligation or assumes any liability under the Contract, that obligation or liability also applies to and binds any successor and assign of that Relevant Person.

1.5. Headings and table of contents

Headings and the table of contents must be ignored in the interpretation of the Contract.

1.6. Priority of documents

If there is any inconsistency, the following order of priority prevails in the interpretation of the following:

- (a) the Letter of Offer;
- (b) the Trade Facility Conditions;
- (c) any other specific terms and conditions that apply to the relevant Facility;
- (d) these Standard Loan Terms;
- (e) the General Terms and Conditions; and
- (f) the Security.

1.7. Related Companies

A reference to a company being related to another company has the same meaning as in the Companies Act 1993.

1.8. Relevant Person obligations

Any obligation of a Relevant Person under these Standard Loan Terms includes an obligation of the Borrower to procure that the Relevant Person performs and complies with that obligation.

2. Conditions which must be satisfied before settlement

2.1. First Drawing

The first Drawing is subject to, and conditional on, all pre-settlement conditions in the Letter of Offer, and the terms of this clause 2, being complied with, to the Bank's satisfaction, 2 clear Business Days prior to the date of the Drawing.

2.2. Security

- (a) To effect settlement of the Facility or any variation to the Facility, the Security described in the Contract together with any supporting or associated documents required by the Bank or the Bank's solicitor must be validly executed and in registrable form, where appropriate, and delivered to the Bank or the Bank's solicitor.
- (b) Prior to settlement of the Facility, evidence must also be provided to the Bank or the Bank's solicitor that the Security will rank as set out in the Contract and that no Security Interest has been granted in favour of any other person by the Security Provider other than those previously approved by the Bank.
- (c) Before effect is given to any variation of the Contract, the Bank may require that the Borrower procures that the Security Providers:
 - (i) affirm the existing Security;
 - (ii) warrant that such Security has been validly executed and has not been affected by any dispute, government proposal or notice of any actual or proposed dealing;
 - (iii) warrant that rates, Tax and other outgoings payable have been paid;
 - (iv) if applicable, warrant that there has been no change in the constitution of any trust or the powers of any trustee and there has been no breach of trust; and
 - (v) if applicable and where a Security Provider is a corporation or trustee, warrant to the Bank that the provision of the Security continues to benefit the Security Provider.
- (d) If there is any Security Interest ranking prior to the Bank's Security, then settlement of the Facility or any variation to the Facility is conditional upon the holder of the prior Security Interest subordinating the priority of the Security Interest to that of the Bank's Security, and if there is any Security Interest ranking subsequent to the Bank's Security, then (if specifically required by the Bank) settlement is conditional upon the holder of the subsequent Security Interest subordinating priority to the Bank's Security for fluctuating amounts from time to time on terms required by the Bank.
- (e) At any time before or after a Drawing is made under an Equipment Finance Facility, the Borrower must, if required by the Bank, grant the Bank specific security in the equipment being financed through the Equipment Finance Facility, including execute as a deed the Bank's standard form of specific security document and deliver it to the Bank, even if the Bank already holds other Securities.

2.3. Guarantor to be advised

If any Security is a Guarantee or otherwise given by a third party, then prior to settlement the Borrower must produce evidence that each individual Security Provider clearly understood their obligations to the Bank and the commercial and financial risks in giving the Security before it was executed and that each individual executed the Security voluntarily and obtained all necessary legal and other advice.

2.4. Trusts

If a Relevant Person is a trustee, then before settlement the Borrower must produce evidence that the giving of the Security is a proper exercise of the trustees' powers and is for the benefit of the trust, and if necessary has been authorised by the beneficiaries with full legal capacity.

2.5. Executors or administrators

If a Relevant Person is an executor or administrator of a deceased estate, then, prior to settlement, the Borrower must produce evidence that the Relevant Person has authority to bind the estate and that the executor/administrator has capacity to enter into the relevant transaction and (if relevant) charge estate assets as security.

2.6. Searches and enquiries

Prior to settlement of the Facility, the Borrower must, if required by the Bank, provide evidence to the Bank's satisfaction that the assets to be mortgaged or in which a Security Interest is to be granted under the Security are not encumbered or affected in any way which may adversely affect their value (as determined by the Bank).

2.7. Where purpose of the Facility is to purchase land

If the Loan Purpose includes the purchase of land, a copy of the contract must, upon request, be provided to the Bank or its solicitor prior to settlement. The terms of such contract must be consistent with information provided to the Bank in connection with the Borrower's application for the Facility.

2.8. Borrower must open an account

- (a) Before settlement or the initial Drawing, the Borrower must sign and deliver to the Bank all the documents required by the Bank to open an Account.
- (b) Before settlement or the initial Drawing, the Borrower must nominate an account to which the Bank may debit all amounts payable (including interest) in respect of that Facility.

2.9. Mortgagor to be in occupation or lease to be satisfactory

The Borrower must satisfy the Bank that the mortgagor under any mortgage Security is, or will be, in exclusive occupation of the land. If the Bank has approved the Facility on the basis of any disclosed tenancy, sharefarming agreement or similar arrangement, a certified copy of that agreement must be provided to the Bank or its solicitor prior to settlement. The terms of such agreement must be consistent with information provided to the Bank in connection with the Borrower's application for the Facility and acceptable to the Bank in all respects.

2.10. Real and Personal Property Insurance

Unless otherwise specified in the Contract, any property provided to the Bank as Security must be insured for its full replacement value including earthquake cover to a value acceptable to the Bank and upon terms and with an insurer approved by the Bank.

The Bank's interest must be noted on the relevant policy and a copy of the certificate of currency must be provided to the Bank prior to settlement of the Facility.

2.11. Other insurance

Prior to settlement the Borrower must produce evidence that it has current public liability insurance to a minimum of \$2,000,000, and any other insurance as required by the Bank. Public liability insurance is not required if the Loan Purpose is solely the purchase of a residential property.

2.12. Establishment Fee and legal costs

- (a) Establishment Fee is not refundable and must be paid at or prior to settlement, or, if settlement does not proceed then On Demand.
- (b) The Bank's legal costs (on a full indemnity basis) and any valuation, search, registration, agency, local authority and other costs incurred in relation to the Facility, taking the Security and in the process of satisfaction of these conditions precedent must be paid by the Borrower at or prior to settlement or, if settlement does not proceed then On Demand.

2.13. Other matters

The Borrower must satisfy such other matters as the Bank's solicitors recommend.

3. Loan Limits and Undrawn Amounts

3.1. No obligation to allow Excess

With respect to any Facility, the Bank is not obliged to allow any Drawing that would cause the Facility to go into, or remain in, Excess. Any attempt by the Borrower to make such a Drawing is deemed to be, and will be treated by the Bank as, an application by the Borrower for Excess credit.

3.2. Bank may require repayment of Excess

If at any time the Facility is in Excess, the Bank may by notice to the Borrower:

- (a) require the Borrower, within such period as is specified in the notice (being at least 1 Business Day after the date of the notice), to repay the Excess, in which case the Borrower must repay the Excess in accordance with the terms of the notice; and/or
- (b) reduce the Loan Limit to such amount as the Bank in its absolute discretion may determine.

3.3. The Bank may reduce the Loan Limit by any Undrawn Amount

At its discretion, the Bank may, at any time, reduce the Loan Limit by any amount which is the whole or part of the Undrawn Amount. If the Bank so reduces the Loan Limit, it will notify the Borrower of the reduction no later than the day of the reduction.

3.4. Borrower may reduce the Loan Limit by any Undrawn Amount

The Borrower may cancel the whole or any part of the Undrawn Amount by giving the Bank at least three Business Days' written notice. The notice must specify the date on which the cancellation is to take effect and the amount of the Undrawn Amount to be cancelled. A notice cannot be revoked unless the Bank agrees.

The Undrawn Amount will automatically be cancelled in accordance with the Borrower's notice and the Loan Limit will be reduced by an amount equivalent to the cancelled Undrawn Amount.

3.5. The Bank may cancel the Facility if no Drawing is made

If no Drawing has been made within 3 months of the date of the Letter of Offer, the Bank may, by written notice to the Borrower, cancel all or any one of the Facilities. Upon the Bank giving notice to that effect, the Bank's obligation to allow any Drawing terminates and the Borrower is not entitled to any refund of fees and must compensate the Bank for any loss it has suffered including without limitation legal fees, Establishment Fees, Break Costs and valuation fees.

3.6. Undrawn Loan Fee

The Borrower must pay to the Bank an Undrawn Loan Fee calculated daily at the rate and in accordance with the terms specified in the Letter of Offer on any Undrawn Amount. This fee is payable by the Borrower from the date when the Facility is made available to the Borrower, by way of establishment of a Loan Limit, irrespective of whether any conditions in clause 2 or any special conditions specified in the Letter of Offer have been satisfied. This fee is debited to the Account in arrear on each Interest Payment Date. The amount of Undrawn Loan Fee debited on each Interest Payment Date is the sum of the daily amounts of the fee calculated in accordance with this clause for the period commencing on the date when the Loan Limit is first made available to the Borrower (in the case of the first debit of this fee) or the previous Interest Payment Date and ending on the day before the Interest Payment Date on which the amount is to be debited. The Undrawn Loan Fee may also be debited on the last day of the Loan Period, immediately before the Facility is repaid or cancelled, or when the Loan Limit is reduced to zero or the Bank demands or requires repayment of the Facility.

3.7. The Bank may withdraw Letter of Offer

The Bank may withdraw its offer to provide Facilities at any time before such offer is accepted by the Borrower.

4. Method of calculating interest and payment of interest

4.1. Calculating and paying Interest on all Facilities other than Equipment Finance Facilities

- (a) The Borrower must pay interest at the applicable Interest Rate.

- (b) Interest will be calculated on a daily basis by applying the applicable daily Interest Rate to the relevant portion of the Debit Balance (subject to any right of the Bank to require additional interest or other payment on early repayment).
- (c) Except as specifically provided in the Contract or allowed by law, the Bank may not vary the Interest Rate on any Fixed Interest Option during the Fixed Rate Period. However, the Bank may vary the Variable Rate to such rate and with effect from such date as the Bank in its sole discretion may decide. The Variable Rate(s) applying for the period covered by a statement is the Variable Rate(s) specified in the statement.
Other than as stated in this clause, there is no obligation on the Bank to give any form of notice of any changes to the Variable Rate.
- (d) Interest is payable in arrear on each Interest Payment Date. The amount owed is the sum of the daily amounts of interest for the period commencing on the day of the first Drawing under the Facility (in the case of the first debit of interest) or on the previous Interest Payment Date, and ending on the day before the Interest Payment Date on which the amount is to be paid. Interest is also payable on the last day of the Loan Period, or immediately before the Facility is repaid or cancelled, the Loan Limit is reduced to zero or the Bank demands or requires repayment of the Facility in accordance with the Contract.
- (e) Unless the Bank agrees that Interest will be paid from an external account, Interest will be debited to the Account on each Interest Payment Date and form part of the Debit Balance.

4.2 Payments in respect of Equipment Finance Offer

The Borrower must pay all amounts payable in respect of an Equipment Finance Offer in accordance with the applicable Equipment Finance Offer, with the aggregate of such payments being:

- (a) the relevant Drawing; and
- (b) all interest charges, and other applicable fees and amounts.

4.3. Interest on Excess

The applicable Interest Rate on any Excess is the aggregate of the Variable Rate and 6% per annum. Interest at that rate is payable in accordance with clause 4.1(e) from when the Excess first occurs until the Excess ceases.

4.4. Default Interest

- (a) Without limiting any other right of the Bank, if the Borrower fails to pay any amount due to the Bank under the Contract, then the Bank may charge the Borrower default interest (both before and after judgment) at the Default Interest Rate on the amount due on a daily basis for the period beginning on its due date and ending on the date of receipt by the Bank of the amount due.
- (b) If the Borrower fails to comply with any other term of the Contract (other than a payment default) within 14 days after the date compliance was due, then the Bank may increase the Interest Rate payable on the Debit Balance to the Default Interest Rate for the period beginning on the due date for compliance and ending on the date on which the failure to comply has been remedied and the Bank has been paid all default interest and all expenses and legal costs in relation to obtaining remedy of the Borrower's failure to comply.

4.5. Interest on judgment

If the Bank obtains judgment against the Borrower for the Amounts Owning of any Facility, the Borrower must pay interest on the sum on which judgment is obtained at the judicature rate awarded and if no such award is made then pursuant to the relevant terms of the Contract at the Default Interest Rate from the date of judgment until the date of payment of such sum.

5. Procedure for a Drawing and selection of a Fixed Interest Option

5.1. Requesting a Drawing

- (a) The Borrower may make a Drawing by requesting or authorizing the Bank to make a payment to, for or at the direction of the Borrower, by such means as the Bank may provide including internet banking.
- (b) The Borrower authorises the Bank to debit the Facility, including for settlement of any Equipment Finance Facility, in accordance with the express directions of the Borrower.
- (c) The Bank may, at its discretion, allow a Temporary Limit Increase for a specified period. If it does, then at the end of that period:
 - (i) the Loan Limit reduces to the original Loan Limit; and
 - (ii) the Borrower must immediately make a payment to reduce the Debit Balance to within the original Loan Limit.
- (d) A Drawing under an Equipment Finance Facility may only be made after the Borrower executes and delivers to the Bank an Equipment Finance Offer (and any other documents required under that Equipment Finance Offer in respect of separate items of equipment). Each Equipment Finance Offer may have different terms and conditions and the Bank is not required to match terms offered in one Equipment Finance Offer in subsequent Equipment Finance Offers.

5.2. Minimum amount for manual Drawing for All in One Facility

The Bank may refuse to manually process any Drawing for an amount less than \$5,000.

5.3. Minimum amount of Drawing for Equipment Finance Facility

- (a) Unless specifically otherwise provided in an Equipment Finance Offer, the whole amount of equipment finance specified in an Equipment Finance Offer must be drawn in one Drawing.
- (b) The Bank may, at its discretion, rather than advancing a Drawing under an Equipment Finance Offer, pay that Drawing directly to the third party supplier of the relevant equipment, such payment being made on behalf of the Borrower.

5.4. Details of first Drawing

The Borrower must give the Bank details of the first Drawing at least two Business Days before it is required.

5.5. Drawing to be applied to Loan Purpose

Each Facility must be applied to the Loan Purpose and the Borrower must produce to the Bank evidence of such application when requested.

5.6. When Fixed Interest Options may be selected

The Borrower may select a Fixed Interest Option:

- (a) when requesting a Drawing of the All In One Facility;
- (b) at any time for any portion of Debit Balance that is subject to a Variable Rate;
- (c) as provided for in clause 6; or
- (d) at the end of each Fixed Rate Period previously selected.

5.7. When Fixed Rate Periods end

At the end of a Fixed Rate Period (either through expiry or early termination), the portion of the Debit Balance subject to a Fixed Interest Option will become subject to the Variable Rate unless the Borrower has selected a further Fixed Interest Option to apply to that portion from such end.

6. Future Fixed Interest Options

6.1. Booking of Fixed Interest Options commencing within 30 or 180 days of the date of selection

If the Bank in its discretion agrees, a Fixed Interest Option may be reserved for future use on the following basis:

- (a) The Borrower must nominate the date upon which the Fixed Rate Period will commence.
- (b) Such date must be within 180 days after the date of reservation if the expiry date of the Fixed Rate Period is one year or more, or within 30 days after the date of reservation if expiry date of the Fixed Rate Period is less than one year.
- (c) If the Borrower does not use the Fixed Interest Option, as reserved, then the Borrower agrees to reimburse the Bank for any cost or loss suffered and the Bank may debit any such cost or loss to the Account.

6.2. Booking Fixed Interest Options more than 180 days and up to 4 years ahead

If the amount of a future Fixed Interest Option is at least \$500,000 and if the Bank, in its absolute discretion, agrees, the Borrower may select a Fixed Interest Option commencing more than 180 days and up to 4 years in the future on the following basis:

- (a) The period from the date of reservation to the expiry date must not exceed 5 years.
- (b) Once selected, there is no flexibility as to when the future Fixed Rate Period commences.
- (c) If the Borrower does not utilise the future Fixed Interest Option as reserved, the Borrower agrees to reimburse the Bank for any cost or loss suffered and the Bank may debit any such cost or loss to the Account.

6.3. Borrower's acknowledgement

The Borrower acknowledges that while there are potential benefits from having certainty in the interest payable in respect of a Drawing, the Borrower may, in selecting Fixed Interest Options, lose the benefit of subsequent reductions in rates of interest. The Borrower warrants to the Bank that in making any selection of a Fixed Interest Option:

- (a) The Borrower will, independently of the Bank, have assessed and accepted the risk of interest rate movements.
- (b) The Borrower will have considered and accepts the consequences of having to make repayment during the Fixed Rate Period.
- (c) The Borrower will not have relied on any advice, recommendation, opinion or statement made by the Bank in relation to those matters.

7. Decline of a Drawing or Fixed Interest Option

7.1. The Bank may decline a Drawing or selection of a Fixed Interest Option

- (a) The Bank may decline a Drawing if the Facility is in Excess or, if the Drawing were made, would be in Excess.
- (b) The Borrower may not select a Fixed Interest Option if the end of the Fixed Rate Period would be after the Loan Period.
- (c) The Bank may decline a Drawing and the Borrower cannot select a Fixed Interest Option if:
 - (i) an Event of Default has occurred or in the Bank's opinion is likely to occur;
 - (ii) repayment is required under clause 8; or
 - (iii) subject to clause 7.5, the conditions in clause 2 and/or clause 5.5 have not been satisfied.

7.2. Adverse change

The Bank may decline a Drawing and the Borrower cannot select a Fixed Interest Option if the Bank considers that there has been a material adverse change from the circumstances disclosed to the Bank in:

- (a) the financial position or projected financial position of any Relevant Person;

- (b) the value of any Security given or required; or
- (c) the Borrower's ability to repay the Facility.

7.3. Borrower unable to meet obligations

The Bank may decline a Drawing, or decline or restrict the selection of a Fixed Interest Option, if the Bank considers that the Borrower's actual or potential obligations to the Bank (including, without limitation, for Break Costs) may not be able to be performed.

7.4. Changed market conditions

If, in the Bank's opinion, it is not able at any time to obtain fixed rate funds to match the Borrower's selection of a Fixed Interest Option in substantially the same manner and with both substantially the same availability and choice as it is able to do so at the date of the Contract, it may restrict or refuse the Borrower's selection of a Fixed Interest Option.

7.5. Conditions unsatisfied

If any of the conditions of settlement contained in the Contract are not met, then the Bank may, at its discretion, permit the Borrower to select a Fixed Interest Option, provided the Borrower has deposited with the Bank such amount as the Bank requires, until such conditions have been satisfied, at which time the deposit and any interest earned will be refunded, subject to the Bank's right of set off.

8. Facility and credit reviews

8.1 Facility Reviews

The Bank may carry out a Facility Review at or about each Facility Review Date. At any Facility Review, the Bank in its absolute discretion may do any of the following:

- (a) The Bank may by notice to the Borrower require the Borrower to fully or partially repay the Facility, in which case the Loan Limit is deemed to be cancelled or reduced accordingly. If the Bank requires full or partial repayment of the Facility, then the Borrower must make such repayment of Amounts Owing within 3 months of the date of the notice to the Borrower.
- (b) The Bank may by notice to the Borrower vary any terms of the Contract, including without limitation the Facility Review Dates, any fees and the required Securities. Any such variations take effect 2 business days after the date of the notice to the Borrower.

8.2 Variations to Contract

If the Bank varies the terms of the Contract under clause 8.1(b), the Bank will provide to the Borrower a new Letter of Offer and any other documents (including Security documents) reflecting the variations, for execution by the Borrower and any Guarantors and/or Security Providers.

8.3 Consequences of non-execution/provision

If, within 1 month of the provision of a new Letter of Offer and any other documents under clause 8.2, that Letter of Offer or any such other document is not fully executed, or further Securities have not been provided under clause 8.1(b), the Bank may require full or partial repayment of the Facility in accordance with clause 8.1(a).

8.4 Credit reviews

The Borrower acknowledges that the Bank generally undertakes a credit review annually or more regularly at its discretion, which may involve an inspection of the Borrower's property (and any other property secured to the Bank in relation to the Facility) and a review of the past, present and projected performance of the Borrower's business. The Borrower undertakes to set time aside for these credit reviews and fully co-operate with the Bank's officers and to provide the Bank with such financial and other information concerning any Relevant Person. Such information may include (but is not limited to) statements of financial position, performance and cash flows, cash flow forecasts and programs and taxation returns.

9. Break Costs

9.1. Break Costs

- (a) Where all or any portion of the Debit Balance is for any reason (including on enforcement of any Security or the sale of any asset subject to a Security) repaid during a Fixed Rate Period when a Fixed Interest Option applies to the Debit Balance or that portion, the Borrower must pay to the Bank, and the Bank may debit to the Account, the amount (if any) which the Bank determines (before or after repayment or receipt) is necessary to compensate the Bank for any loss it determines it will suffer or has suffered as a consequence of the repayment including, without limitation, any cost it may incur in reversing or breaking any swap or similar agreement entered into wholly or partially in connection with the relevant Fixed Interest Option.
- (b) The Bank may require payment under this clause where repayment of an amount is required or received pursuant to the Bank exercising any right:
 - (i) consequent upon an Event of Default; or
 - (ii) under clause 8.1(a) (require the Borrower to fully or partially repay the Facility).

9.2. Break Costs, variations to a Drawing and interest selections

The Borrower must pay the Bank, and the Bank may debit to the Account, the amount (if any) the Bank determines is necessary to compensate it for any loss it determines it will suffer or has suffered:

- (a) because the Borrower for any reason does not make a Drawing consistent with its selection of a Fixed Interest Option (including, without limitation, under clause 6); or
- (b) by making any variation to a Fixed Interest Option at the request of the Borrower (which the Bank is not bound to do).

10. Payments

10.1. Repayments generally

- (a) The Bank may debit the Account, including by deduction from a Drawing, with all or part of the Amounts Owning. The Borrower owes the Bank, and must pay to it on each applicable Payment Date and otherwise in accordance with the Contract (or, if not stated in the Contract, On Demand), the Amounts Owning.
- (b) Subject to clause 9 and in addition to any repayment required to be made under the Contract, the Borrower may at any time repay any or all of the Debit Balance. At the time of full repayment of an All In One Facility, the Borrower must specify if the repayment is a permanent repayment. All repayments of an Equipment Finance Facility are permanent.
- (c) The Debit Balance and the Loan Limit will be reduced by the amount of any permanent repayment on and from the date that the Bank receives the repayment in clear funds. If a permanent repayment is required under the Contract, the Loan Limit will be reduced by the amount of the repayment on the date it is due, if that is earlier.
- (d) In the case of a repayment which is not a permanent repayment, only the Debit Balance is reduced, but not the Loan Limit.
- (e) If an amount is due or action is required to be taken on a day which is not a Business Day, the Relevant Person must pay that amount or take that action on the next Business Day. If applicable, any amount due will be adjusted accordingly.
- (f) If any payment to the Bank under the Contract is avoided by law, the Borrower's obligation to have made such payment will be deemed not to have been affected or discharged and the Borrower must On Demand indemnify the Bank against any costs, claims, losses, expenses or liabilities (together with any Tax thereon) sustained or incurred by the Bank as a result of it being required for any reason (including any dissolution law) to refund all or part of any amount received or recovered by it in respect of such payment and in any event pay to the Bank On Demand the amount so refunded by the Bank. The Bank and the Borrower will, in any such case, be deemed to be restored to the position in which each would have been, and will be entitled to exercise the rights they respectively would have had, if that payment had not been made.

10.2. No deductions and gross up

- (a) All payments required in connection with the Contract must be made by the Borrower in full without any restriction, condition, deduction or withholding (whether in respect of Tax, set-off, counterclaim or otherwise). The Borrower waives any right of, and must not make any, set-off, combination or counterclaim in relation to such payments.
- (b) If:
 - (i) the Borrower is required by law to make any deduction or withholding in respect of any payment; or
 - (ii) the Bank is required to make any payment, on account of Tax (other than Tax on overall net income of the Bank) or otherwise, on or in relation to any amount received or receivable by it under the Contract,then the Borrower must ensure that such deduction or withholding does not exceed the minimum legal liability for such deduction or withholding and the Borrower must immediately gross up the relevant payment by paying to the Bank such additional amount which, after any further such deductions, withholdings or payments, will result in the receipt by the Bank of the full amount which would otherwise have been payable.

10.3. Application of payments

The Borrower irrevocably waives its right to determine the appropriation of any money paid to the Bank. Where some or all of the Debit Balance is subject to the Variable Rate, the Bank may apply that money to its repayment, and to the repayment of any Fixed Interest Option on its maturity. The appropriation of that money may result in credit funds being held in the Account, from which funds any subsequent Drawing may be drawn instead of from any Undrawn Amount. However, all payments will be applied to any Account of the Borrower held with the Bank or the Bank's related companies, at the sole election of the Bank notwithstanding any rule determining application of payments.

10.4. Repayment of Amounts Owning

If a Facility has not already become repayable, upon expiry of the Loan Period the Borrower must immediately, without demand, repay the Amounts Owning.

11. Borrower's Continuing Representations, Warranties and Undertakings

11.1. Continuing representations and warranties

The Borrower represents and warrants to the Bank, both in relation to itself and each other Relevant Person, that:

- (a) all information provided to the Bank from time to time is, and will be true, complete and accurate in all material respects and that the Borrower is not aware of any facts or circumstances which have not been disclosed to the Bank and which, if disclosed, might affect the decision of a prudent person considering whether to provide financial accommodation to the Borrower;
- (b) the Borrower (if an natural person) has not committed an act of bankruptcy and has not been adjudicated bankrupt or made an assignment or an assignment of property or composition of debts under any law relating to bankruptcy;
- (c) if the Relevant Person is a company or body corporate, it is solvent and no order has been made, proceedings taken or resolution passed for its liquidation or dissolution, and no receiver or manager has been applied for or appointed for all or any part of its assets, and the directors are not accustomed or under any obligation to act in accordance with the directions of any one or more of its creditors, and there have been no changes to its constitutive documents other than those notified to the Bank;
- (d) if the Relevant Person is a partnership, it has not been dissolved and there have been no changes to its partnership deed (if applicable) other than those notified to the Bank in writing;
- (e) the Borrower has not suspended payments of any of its debts and is able to pay its debts and is solvent, and has not commenced negotiations with one or more of its creditors with a view to a general re-scheduling of all or part of its indebtedness or entered

- into any arrangement for the benefit of its creditors, and has not ceased or threatened to cease to carry on its business;
- (f) no distress or execution has been levied or issued upon or against any of the property or undertakings of any Relevant Person, and no judgment has been obtained against the Borrower has remained unsatisfied for a period of seven days or more;
 - (g) each Security Provider is, and will at all times be, the sole legal and (other than in respect of a Security Provider that is a trustee of a trust) beneficial owner of all its assets and no Security Interest exists over any of its property (except as expressly permitted by the Contract or with the prior written consent of the Bank);
 - (h) the value of any Security or any other securities held by the Bank from any Security Provider has not changed adversely to a material extent, and no Security Provider has given notice terminating or reducing their liability;
 - (i) no event or change has occurred affecting the assets, affairs or financial condition of any Relevant Person, as a result of which the Relevant Person may not be able to perform and observe their obligations under the Contract;
 - (j) no Relevant Person has failed to comply with any law or regulation applicable to the assets secured under any Security;
 - (k) no Relevant Person has defaulted under any other agreement or security to which it is a party to an extent or in a manner which might, in the Bank's opinion, have a material adverse effect on the Relevant Person's business or financial position;
 - (l) the execution of the Contract and any Security is valid and does not violate any existing law or regulation or any document or agreement to which a Relevant Person is a party or which is binding upon the Relevant Person or any of its assets;
 - (m) all consents, licences, approvals and authorisations of every government authority required to be obtained by the Relevant Person in connection with the execution, delivery and performance of the Contract and any Security have been obtained and are valid and subsisting;
 - (n) all rates, Tax and other outgoings of each Relevant Person have been paid, and where such amounts have not been paid the Bank has been informed;
 - (o) each Relevant Person has complied with all laws relating to it and the business carried on by it;
 - (p) no litigation or other proceedings are current, pending or threatened which could have a material effect on the business or financial condition of a Relevant Person;
 - (q) no event has occurred or is occurring which constitutes an Event of Default;
 - (r) no event has occurred which with the giving of notice and/ or the lapse of time and/or a relevant determination by the Bank would constitute an Event of Default; and
 - (s) in respect of each Relevant Person that is a body corporate:
 - (i) the Relevant Person is duly incorporated and has the corporate power to own its own property and to carry on its own business as is now being conducted;
 - (ii) the execution, delivery and performance of the Contract to which any Relevant Person is a party does not violate the constitutive documents of any Relevant Person or, if any Relevant Person is listed on any other stock exchange, the listing requirements (or equivalent) thereof;
 - (iii) any Relevant Person has the power, and has taken all corporate and other action required, to enter into the Contract to which it is party and to authorise the execution and delivery of the Contract and the performance of its obligations under the Contract; and
 - (iv) the Relevant Person has filed all corporate notices and effected all registrations with the relevant authorities as required by law, and all such filing and registrations are current complete and accurate;
 - (t) each Security Provider is aware that:
 - (i) by giving a guarantee or providing security, it may become liable instead of, or as well as, the Borrower;
 - (ii) it should seek legal or, if required, other professional advice before providing the Security; and
 - (iii) the Bank may also claim any interest owed and any costs incurred in the recovery process.

The Borrower must give the Bank written notice if anything covered by any of these statements changes, ceases to be true, or becomes misleading. The Borrower acknowledges that the Bank has agreed to provide the Facility relying on the statements set out in this clause being true.

11.2 Warranties to continue

The representations and warranties contained in these Standard Loan Terms and the Letter of Offer, including this clause 11, are deemed to be repeated by the Borrower on every day during the term of the Facility by reference to the facts and circumstances then subsisting on each such day until the Facility is terminated and all Amounts Owing are repaid.

11.3 Continuing Undertakings

So long as there are any Amounts Owing, each Relevant Person undertakes:

- (b) where the Relevant Person is a company, within one month of the time by which it is required by the Financial Reporting Act 2013 to have completed its accounts for a financial year (or if none, within three months after its balance date), to deliver to the Bank a copy of the consolidated financial statements of the Relevant Person and its subsidiaries including every document required by the Financial Reporting Act 2013 to be annexed thereto;
- (c) whether or not the Relevant Person is a company, to provide annually to the Bank such financial information relating to the Relevant Person as the Bank may reasonably require;
- (d) to provide on the written request of the Bank such financial information relating to the Relevant Person and its related companies as the Bank may reasonably require including business and/or property valuations, cash forecasts, annual accounts, half-yearly accounts and management or other financial accounts;
- (e) to maintain the insurance required by clauses 2.10, 2.11 and as specified in the Letter of Offer;
- (f) where the Relevant Person is a company, that the Relevant Person must not without the Bank's prior written consent:
 - (i) make any Distribution other than the commercially prudent and lawful payment of dividends;

- (ii) enter into any amalgamation or merger arrangement (including, without limitation, the forms of amalgamation permitted by the Companies Act 1993);
 - (iii) repay any amount of shareholders' or directors' loans;
 - (iv) enter into a major transaction (as such term is defined in the Companies Act 1993); or
 - (v) give financial assistance to any person in connection with the purchase of shares issued or to be issued by its holding company;
- (g) duly and punctually to obtain, observe all laws applicable thereto and perform under and keep in force, all licences, consents and authorities required for the purpose of the Borrower's business, and to obtain renewals of all such licences, consents and authorities, including:
- (i) all resource consents required under the Resource Management Act 1991; and
 - (ii) all certificates of compliance, warrants of fitness and other necessary authorities under the Building Act 2004;
- (h) not to charge, surrender, vary, assign or transfer any such licences, consents or authorities referred to in (f) above without the Bank's prior written consent;
- (i) not to discontinue, materially alter or put at risk by sale, guarantee or otherwise any part of the Borrower's business undertaking or property;
- (j) not to lend or provide any finance to, give any guarantee in respect of, or take on debt of, any person;
- (k) promptly to inform the Bank of any breach or anticipated breach of the undertakings made in this clause, and of any representation or warranty made in clause 11.1 becoming or being likely to become incorrect;
- (l) duly and punctually to lodge all forms and returns as required by any regulatory body and to pay all outgoings (including, without limitation, rent and Tax) payable by it;
- (m) to ensure that its payment obligations under the Contract rank at all times ahead of all of its other debt except debt preferred by law;
- (n) not to sell or otherwise dispose of or create any Security Interest in all or a substantial part of its assets, unless for full value and in the ordinary course of day to day trading and subject to the terms of any Security. This clause does not apply to any Security Interest which arises by operation of law or any purchase money security interest (as that term is defined in the PPSA) in after-acquired goods arising only because of the normal trade terms of the supplier of those goods, which secures obligations that are not overdue and results from a transaction in the ordinary course, and for the purposes of its ordinary business;
- (o) to appoint at the request of the Bank, or allow the Bank to appoint, any person to investigate the affairs and financial position of a Relevant Person, and to ensure that the Relevant Person co-operates with the Bank and any such investigating person in relation to any such investigation;
- (p) to keep confidential all Account numbers and the identification and authorisation procedures advised to the Borrower by the Bank, and
- (q) ensure that the Bank has the sole and exclusive right and power to make, conduct, enforce, settle and compromise an insurance claim under any insurance policy in respect of any property which is the subject of a Security, even if the policy has been effected in breach of this clause or covers other property.

12. Bank Guarantee option

12.1. Bank Guarantee amount

If requested by the Borrower, the Bank may (at its discretion) issue Bank Guarantees for any amount, in any currency and in a form and substance satisfactory to the Bank. The Borrower must ensure that the Debit Balance plus the Bank's contingent liability under any Bank Guarantee (including any proposed Bank Guarantee) does not exceed the Loan Limit at any time. The Bank may debit the Facility, or otherwise make provision in the Facility for, any amount owing, contingently or otherwise, under a Bank Guarantee.

12.2. Borrower's acknowledgements

The Borrower acknowledges that, under a Bank Guarantee, the Bank may be required to pay without reference to the Borrower and that the Bank has the right to make any payment necessary to end its liability (actual and contingent) under the Bank Guarantee and to make payment under it.

12.3. Drawing under Bank Guarantee

Any amount paid by the Bank in relation to a Bank Guarantee is a Drawing and forms part of the Debit Balance.

12.4. Bank Guarantee Fee

- (a) For so long as the Bank has any contingent liability under a Bank Guarantee, the Borrower must pay the Bank Guarantee fee (as detailed in the Letter of Offer) on the daily amount of the contingent liability. The amount payable by the Borrower is the sum of the daily amounts of the fee calculated in accordance with this clause for the period commencing on the day that a Bank Guarantee is first issued (in the case of the first debit of this fee) or on the previous Interest Payment Date, and ending on the day before the date on which the Bank Guarantee fee is to be debited.
- (b) The fee is debited to the Account in arrear on each Interest Payment Date, or, if none, annually. The Bank Guarantee fee is also debited on the last day of the Loan Period, or immediately before the Facility is repaid or cancelled, the Loan Limit is reduced to zero or the Bank demands or requires repayment of the Facility in accordance with the Contract.

13. Events of Default

13.1. Events of Default

An Event of Default occurs under the Contract if in the Bank's opinion:

- (a) the Borrower fails to repay an Excess accordance with clause 3.2(a);
- (b) any Relevant Person fails to pay any amount due to the Bank under the Contract;
- (c) any Relevant Person does not comply with any term of the Contract or any other agreement between the Relevant Person and the Bank;
- (d) any of the representations and warranties in clause 11.1 are or become incorrect;
- (e) a warranty, representation, answer to requisition, statutory declaration or certificate made or given by or on behalf of any Relevant Person or any other person in connection with the Contract is found to be or becomes untrue, incorrect or misleading;
- (f) any Security Provider does not comply with any provision of the relevant Security document;
- (g) the Bank becomes entitled to exercise any remedy under any Security or would have been entitled to do so but for any legislation requiring notice or lapse of time;
- (h) any Drawing is applied for any purpose other than the Loan Purpose;
- (i) any security in favour of any person over any of the assets of any Relevant Person is enforced or becomes enforceable;
- (j) any consent necessary at any time in connection with any Security or the implementation or performance of it, expires or is revoked, cancelled, withdrawn or modified in a manner unacceptable to the Bank or otherwise ceases to remain in full force and effect, and is not replaced by a consent acceptable to the Bank;
- (k) attachment, distress or any other execution is levied or enforced or commenced against any of the property of any Relevant Person, or a judgment is obtained against any Relevant Person;
- (l) there occurs, or any step is taken to achieve (where any Relevant Person is a company), the rehabilitation, administration, receivership, liquidation, dissolution or statutory management of the Relevant Person, or (where the Relevant Person is one or more of the partners in a partnership or the trustees of a trust) the dissolution or winding-up of the partnership or trust, or (where the Relevant Person is a natural person, including individual partners or trustees where the Relevant Person is a partner in a partnership or the trustees of a trust) the death or bankruptcy of the Relevant Person, or any one of them;
- (m) all or any part of the Contract:
 - (i) does not or ceases to have effect in accordance with its terms; or
 - (ii) is or becomes void, voidable, illegal or unenforceable or of limited or reduced force, effect or value, or the Relevant Person claims any of the matters referred to in paragraph (i) and or this paragraph (ii) to be the case;
- (n) any Relevant Person stops, or threatens to stop, carrying on all or a material part of its business;
- (o) any Relevant Person:
 - (i) suspends payment of its debts;
 - (ii) is, or claims to be, or is presumed by law to be, insolvent or unable to pay its debts;
 - (iii) takes a step for the purpose of entering into a compromise or arrangement with any of its creditors, or an assignment for their benefit or, if it is a company, with its members; or
 - (iv) commits an act of bankruptcy;
- (p) any change occurs in the legal and/or beneficial ownership of any Relevant Person, or any holding entity in the case of a body corporate, or the Relevant Person ceases to be controlled by the same persons;
- (q) any change occurs in the statute, constitutive documents, rules or other governing document of any Relevant Person which is prejudicial to the Relevant Person's obligations;
- (r) circumstances arise that, in the Bank's opinion, may have a material adverse effect on the Relevant Person's ability to perform its obligations under the Contract;
- (s) if the Relevant Person is a company or other body corporate:
 - (i) without the Bank's prior written consent, the Relevant Person reduces or takes any action to reduce its capital (including by way of purchase of its own shares, but not including by redemption of redeemable preference shares) or cancels or reduces, or takes any action to cancel or reduce, the liability of any shareholder of that Relevant Person in respect of any shares held by that person; or
 - (ii) where the Relevant Person's shares are listed on any stock exchange, the listing is suspended or revoked;
- (t) a receiver, provisional liquidator, administrator, controller, trustee for creditors in bankruptcy or analogous person is appointed to, or the holder of a security interest takes (or appoints an agent or controller to take) possession of, any of the Relevant Person's property;
- (u) the Relevant Person ceases for any reason to be able lawfully to carry out all the transactions which the Contract contemplate may be carried out by the Relevant Person;
- (v) if the Borrower is a partnership, the Borrower changes the constitutive documents of the partnership or dissolves the partnership without (in either case) the Bank's prior written consent;
- (w) if the Relevant Person is an individual, the Relevant Person dies or becomes of unsound mind or otherwise unable to conduct his affairs or is convicted of a criminal offence and imprisoned for a period exceeding 30 days;
- (x) a judgment is entered against any Relevant Person;
- (y) any action is initiated by any competent authority with a view to deregistering any Relevant Person from any register of companies or similar register and such action is not withdrawn within 21 days of initiation;

- (z) any property of a Relevant Person becomes subject to a restraining order or clean up notice under environmental law (including the Building Act 2004 and Resource Management Act 1991);
- (aa) any event of default (howsoever described) occurs under or in respect of any Security; or
- (bb) any indebtedness of the Borrower (whether or not owing to the Bank) exceeding \$5,000 is not paid when due, or becomes due because of a default (however described), or any Security Interest in respect of that indebtedness becomes enforceable.

13.2. Notification by Relevant Person

Each Relevant Person must immediately notify the Bank of the occurrence of any Event of Default or anything which with the giving of notice or passage of time or both would become an Event of Default.

14. The Bank's rights in Event of Default

14.1. At any time after any Event of Default occurs, in the manner and at the times the Bank in its discretion deems appropriate, despite any omission, negligence, delay or waiver of the right to exercise the option, and without liability for loss, the Bank may do any one or more of the following:

- (a) require that the Borrower and/or any Relevant Person must, On Demand and in accordance with the terms specified in the demand, pay to the Bank the Amounts Owing. If such a demand is made, the Account and, to the extent that the Bank is able to do so, any Bank Guarantee or Trade Facility under which a contingent liability remains, is cancelled. Unless the Bank specifies a period within which the Borrower and/or the Relevant Person must pay to the Bank the Amounts Owing, the Borrower and/or the Relevant Person is not entitled to any period within which to pay under any such demand;
- (b) terminate or reduce any obligation the Bank may otherwise have to provide financial accommodation or other services to the Borrower, including cancel any Facility and/or cancel or reduce any Loan Limit or Loan Period;
- (c) reduce the Loan Limit to such amount as the Bank in its absolute discretion may determine;
- (d) do anything the Bank considers appropriate to recover the Amounts Owing, including enforcing any Security; and
- (e) otherwise exercise any right, power, or privilege conferred by law or the Contract.

14.2. The Bank's rights under clause 14.1 are subject only to any statutory requirements which cannot be waived.

15. General provisions

15.1. Borrower's indemnities

- (a) The Borrower must indemnify and hold harmless the Bank against all actions, claims, demands, losses, damages, liabilities, costs, charges or expenses of any nature (including legal costs on a full indemnity solicitor - client basis) suffered or incurred at any time actually or contingently by the Bank arising at any time directly or indirectly from:
 - (i) the occurrence of any Event of Default or the Bank or a receiver exercising or attempting to exercise any right or option arising upon an Event of Default;
 - (ii) the rate of interest applying to a judgment debt being less than that applying to the original obligation to pay in respect of which judgment was obtained;
 - (iii) a claim that a payment, obligation, settlement, transaction, conveyance or transfer in connection with money owing by any Relevant Person to the Bank (or money which would be owing if the claim was valid) is void or voidable under any insolvency laws or for any other reason being upheld conceded or compromised;
 - (iv) the Bank paying (whether or not under a legally enforceable obligation) any loss, cost or expense incurred by any officer, employee, agent or consultant of the Bank in connection with the Facility, the Contract, a Bank Guarantee or any Security;
 - (v) the Bank acting as the Borrower's attorney or on any notice, request, direction or instruction given by or on behalf of any relevant person;
 - (vi) the Bank entering into any agreement or transaction in connection with the Facility or the Contract;
 - (vii) the establishment of a Bank Guarantee or Trade Facility or any dispute or litigation arising in relation to a Bank Guarantee or Trade Facility;
 - (viii) the exercise or attempted exercise by the Bank of any of its rights or powers;
 - (ix) any defect in the Borrower's title to any property that is subject to a Security;
 - (x) the breach of any of the Borrower's warranties, representations or undertakings; or
 - (xi) the Borrower not complying with any environmental law (including, without limitation, the Resource Management Act 1991 and Building Act 2004), or any obligation under any environmental law being imposed on the Bank, or the Bank doing (or instructing any person to do) anything to ensure any environmental law is complied with.
- (b) The amount of loss is payable on receipt of notice of the amount from the Bank and the Bank may debit the Account with that amount.
- (c) The Borrower's obligations to indemnify the Bank under this clause are absolute, irrevocable and unconditional and continue irrespective of repayment of the Facility or the discharge of any Security until an express release is given. The Borrower waives any right or claim, which has or may have the effect of denying, reducing or impairing the indemnities given by it.
- (d) Until the Bank is indemnified, the amount to be paid will form part of the Debit Balance.
- (e) Each of the indemnities above constitutes a separate and independent obligation from the other obligations under the Contract giving rise to an independent cause of action irrespective of any time, credit or other indulgence on the part of the Bank or any other matter.

15.2. Continuing liability

Each Relevant Person will remain liable under the Contract notwithstanding that another Relevant Person has ceased to be liable for any reason.

15.3. Illegality, Increased Costs and Market Disruption

- (a) If the Bank's compliance with its obligations under the Contract becomes illegal, the Bank may by written notice immediately cancel any Facility, the Contract or any part of the Contract. Upon such cancellation, the Borrower must immediately repay to the Bank the Amounts Owing or any amount due under the relevant Facility.
- (b) The Bank need not make an advance under a Facility or may cancel the Contract if, as a result of any law or directive or any change to or in the interpretation or application of any law or directive by a court or governmental agency:
 - (i) the cost to the Bank of performing any obligations or exercising any rights under the Contract is increased;
 - (ii) any sum received or receivable by the Bank under the Contract is reduced (except by Tax on the Bank's overall income); or
 - (iii) the Bank makes any payment (except for Tax on the Bank's overall income) or does not receive any expected return on, or in relation to, or calculated by reference to, any amount received or receivable by it under the Contract, including, in each such case, any diminished yield to the Bank arising from any imposition of, or increase in, any capital adequacy, risk weighting, reserve asset, balance sheet or similar requirement.
- (c) The Bank may by written notice immediately suspend or cancel, in whole or in part and for such period and upon such terms and conditions as the Bank may reasonably determine, its obligations under the Contract and may require payment of the Amounts Owing on a date specified by the Bank if, in the reasonable opinion of the Bank, such action is necessary as a result of any change in national or international monetary, financial, political or economic conditions or currency exchange rates or exchange controls or in the overall availability of funds in the market which has materially adversely affected or would be likely to so affect the ability of the Bank to make, fund or continue to provide any Facility or to exercise its rights or perform its obligations under the Contract.

15.4. Collateral Security

Each Security is collateral one with the other to the effect that:

- (a) each Security secures all Amounts Owing even if a Security may have been executed prior to or after a Facility being made available to the Borrower; and
- (b) a breach of any term of any one or more of the Securities is a default under all the other Securities and under the Contract and the Bank may exercise its rights and remedies under all or any of the Securities and under the Contract either separately or concurrently.

15.5. Consent to disclosure of information

- (a) Each Relevant Person authorises the Bank to:
 - (i) disclose any information about the Relevant Person to any Guarantor, or prospective Guarantor; and
 - (ii) disclose any information about the Relevant Person to any of the Bank's related companies for any purpose.
- (b) The Borrower acknowledges that:
 - (i) if all or any part of the information requested by the Bank is not provided, the Bank may decline any credit application made by the Borrower;
 - (ii) it is aware that the information collected by the Bank will be held by the Bank and it has the right of access to and correction of any personal information collected and held by the Bank about it;
 - (iii) the information will be accessible to any servants or agents of the Bank who need access to it or for the purposes for which it was collected; and
 - (iv) the authorities and acknowledgements contained in this clause 15.5 will continue in force until all Amounts Owing are repaid in full.
- (c) Each Relevant Person acknowledges that:
 - (i) it is aware that the information collected may be held at any of the offices of the Bank in New Zealand and Australia, the addresses of which are available from any branch of the Bank, and that they may see and correct any personal information held about them (a fee may be payable);
 - (ii) the information will be accessible to any employees or agents of the Bank who need access to it for the purposes for which it was collected; and
 - (iii) the authorisations and acknowledgements contained herein will continue in force until all moneys advanced are repaid in full and the Facility is terminated.

15.6. Exclusion of Statute

So far as is lawful, the provisions of all statutes and regulations at any time operating directly or indirectly to:

- (a) lessen, modify, or affect the Borrower's obligations in favour of the Bank;
- (b) stay, postpone, or otherwise prevent or prejudicially affect the exercise of all or any of the Bank's rights, powers, and remedies conferred by the Contract; or
- (c) postpone payment of money, reduce or fix rates of interest

are negated and excluded from and will not apply to the Contract. All powers, rights, and remedies conferred on the Bank or any receiver by law, in equity, or by any statute will be in addition to those contained in the Contract and will not curtail, diminish, or qualify any of them.

15.7. The Bank's certificate

A certificate signed by or on behalf of the Bank or its solicitor as to a matter or as to an amount payable to or by the Bank in connection with the Facility is conclusive and binding on each Relevant Person as to the amount stated in it or any other matter of a factual nature except in the case of manifest error.

15.8. Severability

If any term, agreement, or condition of the Contract, or the application of any such term, agreement, or condition to any person or circumstance, is or becomes illegal, invalid, or unenforceable in any jurisdiction, it will be severed and neither the remaining terms, agreements, and conditions nor the application, validity, or enforceability of the severed term, agreement, or condition in any other jurisdiction will be affected or impaired thereby.

15.9. No representations to Relevant Persons

- (a) No Relevant Person enters into or executes the Contract as a result of or in reliance on any promise, representation, statement, or information of any kind given or offered by or on behalf of the Bank whether in answer to any enquiry by or on behalf of the Relevant Person or not.
- (b) The Bank is not obliged to do anything (including, without limitation, disclose anything or give advice), except as expressly set out in the Contract.
- (c) The Bank can exercise any discretion under the Contract freely and no Relevant Person has relied upon any statement, representation or undertaking that the Bank will exercise any such discretion in a particular way or not exercise it.

15.10. Authority to complete and date

The Bank is authorised to complete and date the Contract and any Security in any way in which they require completion or dating. Each Relevant Person undertakes to sign anything and do anything reasonably required by the Bank to fix up the same if they are defective in any way.

15.11. Other security

The Contract will not merge with, discharge, extinguish, postpone, or prejudice any other security or right held by the Bank and no other security or right will affect the Facility.

15.12. Supplying Shareholder covenants

If the Borrower enters into the Contract as a Supplying Shareholder it must not without the prior written consent of the Bank:

- (a) create or allow to subsist any Security Interest whatsoever over the Shares and the rights attached to the Shares;
- (b) dispose by whatever means of the Shares or the rights attached to the Shares;
- (c) offer to surrender the Shares to the Co-operative Dairy Company;
- (d) cease to be a Supplying Shareholder; or
- (e) do, or omit to do, any act or thing that will permit the Cooperative Dairy Company to require the surrender of the Shares to the Co-operative Dairy Company.

15.13. Exclusion of liability

The Bank is not liable:

- (a) for the consequences of any advice or information given to any Relevant Person in relation to any matter whatsoever and no Relevant Person has any right of action in relation to that advice or information; or
- (b) to account to the Borrower as mortgagee in possession.

15.14. Bank's approvals and consents

The Bank will have discretion to give or withhold its approval or consent, and may give its approval or consent subject to any condition it wishes.

15.15. No merger

The Bank's rights to payment of any amounts will not merge in a mortgagor's obligation to pay those amounts under any Security.

15.16. No Drawings on cancellation of Account

If the Bank requires repayment of the Amounts Owing or cancels any Facility in accordance with the Contract, the Borrower may not, and must not attempt to, make any Drawing.

15.17. Death of Relevant Person

On the death of a Relevant Person other than a trustee of a trust, the estate of that deceased person will be substituted for the deceased in relation to all the Relevant Person's rights and obligations, and contrary to the rule in Clayton's Case. This includes but is not limited to the obligation to repay any debts incurred before and after notification of the death to the Bank.

15.18. Divorce or civil union proceedings

In addition to any other obligations in the Contract, the Relevant Person must notify the Bank in the event of the commencement, or likely commencement, of any divorce or civil union proceedings to which they are a party. The amount of any costs incurred by the Bank as a result of such proceedings will be debited to the Account.

15.19. Amendment

Except as otherwise provided in the Contract, no amendment to the Contract is effective unless the Bank agrees in writing.

15.20. Obligations after termination

The payment and indemnity obligations of each Relevant Person under the Contract continue after repayment of any amount under, and termination of, the Contract.

15.21. Capacities and personal liability

Each Relevant Person enters into the Contract and any Guarantee in all capacities that apply to the Relevant Person in respect of the Contract and any Guarantee, including in the Relevant Person's personal capacity and any other applicable capacity, including where applicable as trustee. Each Relevant Person's liability is personal and also in any other capacity in which the Relevant Person enters into the Contract and any Guarantee, except that, if the Relevant Person enters into the Contract and/or any Guarantee as a trustee and has no right to or interest in any of the assets of the trust except in the Relevant Person's capacity as trustee, the Relevant Person's liability in that capacity is subject to the Bank's standard independent trustee limitation of liability.

16. Costs and Duties

16.1. Borrower to pay costs

The Borrower must pay to the Bank, or as it may direct, and the Bank may debit the Account with, all costs and expenses (including legal costs on a full indemnity solicitor/client basis) incurred by the Bank, the Bank's solicitors, any receiver appointed by the Bank under a Security and any officer of the Bank acting as permitted under a Security and arising from:

- (a) the preparation, negotiation, registration, variation, discharge or release of the Contract, and any associated investigation, enquiries and searches;
- (b) the assessment of the Security and the Bank's rights and duties;
- (c) the valuation of any property secured by a Security, including any valuation which the Bank may require following an Event of Default;
- (d) the exercise or attempted exercise of any power conferred on the Bank (or any receiver or attorney) under the Contract;
- (e) any application for the Bank's approval in connection with the Contract and the issue or refusal of consent or approval;
- (f) any request to provide any information or to produce any documents, files and vouchers either during or after the expiry of the Loan Period;
- (g) any action taken by the Bank under or in relation to the PPSA;
- (h) the appointment of any person to investigate the financial situation of a Relevant Person, and the conduct of any such investigation.

16.2. Payment of the Bank's administration costs following default

The Borrower must pay to the Bank an amount determined by the Bank as will compensate the Bank for exercising its rights and powers, and taking any action to recover money owing, under the Contract following the occurrence of an Event of Default.

17. Security

17.1. Security for all direct and contingent liabilities.

Any Security now or in the future granted to the Bank by, or on behalf of, the Borrower or the Guarantor shall secure all direct and contingent liabilities of the Borrower or the Guarantor to the Bank, whether or not under the Contract.

17.2. Further Security

Each Security is deemed to include:

- (a) an assignment by the Security Provider of all its right, title and interest in any licences or other rights attaching to or benefiting the Security property; and
- (b) those provisions which a prudent mortgagee would include in its securities for the better protection of its interests.

17.3. Guarantees

If a Security Provider is not a Borrower, then that Security Provider must execute a guarantee and indemnity in a form acceptable to the Bank. If a Security is being given by a company or body corporate then the Bank may require its directors individually to execute guarantees and indemnities in a form acceptable to the Bank.