



do your thing

# Time to read the fine print.

ING Commercial Loans  
Terms and Conditions

18 May 2026

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# Introduction

These are the ING Commercial Loans Terms and Conditions incorporated into *loan* agreements referring to these *Terms and Conditions*. They form part of your *loan* agreement, and therefore the *contract* between you and us. This document does not contain all the pre-contractual information required by law to be given to you. You must read this document together with your *loan* agreement.

Words printed *like this* have a special meaning - see your *loan* agreement and this document. If there is any conflict or inconsistency between any provisions of the following documents, then the document listed higher prevails to the extent of the conflict or inconsistency:

- your *loan* agreement;
- this document;
- any *security* or guarantee.

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

You must read and comply with:

- your *loan* agreement;
- these *Terms and Conditions*;
- your mortgage and the Mortgage Common Provisions; and
- any terms and conditions relating to how you can access your account.

Take particular notice of the things you must do, and must not do with the *mortgaged property*, and when your payments are due. If you are unsure, call us on 133 464.

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## When is there a binding legal agreement between you and us?

There is no binding legal agreement between us and you until the *settlement date*. This means that until the *settlement date*:

- you are not able to drawdown the *loan*;
- we are not bound to advance the *loan* to you; and
- we have the right to change the terms of this *loan* agreement or to withdraw it altogether and decline to make an advance of funds to you. We will not make an advance of funds until we are satisfied that all relevant conditions are fulfilled. You may be liable for costs even if we decide not to proceed.

# Part A Interest

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## How we calculate interest

We calculate interest each day by applying the *daily percentage rate* to the *amount you owe us* at the end of that day. The *daily percentage rate* is equal to the *interest rate* applicable to your account(s) on that day divided by 365. If more than one *interest rate* applies to your account(s), we will apply the applicable *daily percentage rate* to the relevant portion of the *amount you owe us*.

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## When interest is debited

Interest charges accrue daily. This means that we are entitled to the interest charges each day even if they have not been debited to your account. Interest charges are debited to your account on the last day of each month. When you pay out your account(s), interest charges for the final period will be debited on the day you pay out the account(s). We may also debit interest on any day when you split an account, close an account, make a permanent reduction of principal, or on any other date there is a change to the terms applicable to your account.



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## Interest rates

### ▪ Variable Interest Rate

We may, acting reasonably, change any variable *interest rate* (including line of credit *interest rates*) at any time without your consent. We will tell you of a change in the variable *interest rate* on or before the day it takes effect by writing to you, or publishing an advertisement in national or local media. The variable *interest rate* shown in your *loan* agreement is only a guide and may have changed by the date on which it starts applying to your *loan*. You can find out about current *interest rates* by asking us.

### ▪ Fixed Interest Rate

Unless the *loan* agreement says otherwise, we will determine the *interest rate* that applies for the *fixed interest period* on or about the day on which that period starts.

When a fixed rate applies to an account, even if *interest rates* fall, the *interest rate* applying to that account will not change during the *fixed interest period*. When deciding to borrow on a fixed rate basis, you should rely on your own view as to future movement of *interest rates*.

At the end of the *fixed interest period* the *interest rate* applying to that account will automatically change to a variable *interest rate* as stated in your *loan* agreement unless we agree to a *further fixed interest period* or we agree to switch the account to another account type.

You cannot select a *fixed interest period* that extends beyond the term of the *loan*.

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## How we calculate and charge default interest

If any amount due by you is not paid on the due date, we will charge you the default rate of interest on the total *amount you owe us* for each day the overdue amount remains unpaid. You may also be liable for default fees as specified in your *loan* agreement. If for any reason your entire *loan* amount becomes due, interest at the applicable default rate is payable on the entire amount.

Acting reasonably, we may change the default rate at any time without your consent. You will be notified of any changes in the default rate in the same way any variations to the *interest rate* are notified to you. Default interest is calculated and debited in the same way as ordinary interest.

# Part B

## Repayments

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### Variation in payments

The amount of each payment or repayment is set out in your *loan* agreement. The actual amount you must pay will change if the applicable *interest rate* changes. You can find out about your current *interest rate* and repayments at any time by asking us.

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### Payments due on a non-business day

If any payment or repayment date is not a *business day*, the payment or repayment must be made on the following *business day*.

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### Fortnightly/Monthly payments

With our consent you can make payments monthly or fortnightly. Fortnightly payments may not be available in respect of certain *loan* types.



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## Payments

Payment must be made by direct debit or by such other method as we approve. You cannot reduce a payment if you believe we owe you anything. You must sign the necessary direct debit form before the *settlement date*. While this *loan* continues you must maintain an account with direct debit authorisation to us.

Payments may be made by:

- a) direct crediting (for example, of all or part of your salary);
- b) posting us a cheque made payable to you or cash or correctly endorsed to you.

You authorise us to debit any of your accounts with any money due to us by you at any time.

Payments will be credited to you only when actually received by us. We can apply any payment or other credit to any *amount you owe us* in any order we determine.

If you have more than one account with us and you make a payment without telling us in writing how the payment is to be applied, we can apply it to any one or more of the accounts in any way we think fit.

If you have more than one account with us and one of those accounts is in arrears while the other has available redraw, you irrevocably request and authorise us to re-lend you, without notice, an amount up to the available redraw and apply that amount to the amount in arrears in the other account.

Please note that unless we inform you otherwise, you cannot make payments by depositing money at an ATM.

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## Repayment at the end of your loan

You must pay us the *amount you owe us* on the date on which your *loan* ends. This is the date set out in your *loan* agreement, or such other date which we agree with you.

Ten business days before your *loan* ends or if you require the *mortgaged property* to be discharged or if we terminate the *loan*, you must immediately pay us the *amount you owe us* on demand, including any transactions which have not yet been processed and any fees, charges, taxes or duties which are payable. Any termination by us will only occur in accordance with the terms of your *loan* agreement or these Terms and Conditions. In terminating any *loan* we must act reasonably.

You cannot use the *loan* or facility after the date we cancel the *loan*. You must repay us any amounts that are debited to any of your accounts after the date we cancel your account.

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## Repaying your loan early and additional payments

You may repay the whole or any part of the *amount you owe us* at any time. There may be fees and charges payable. If you have a fixed *interest rate* account at the time you repay, you may also have to pay break costs. Refer to Part F for an explanation of break costs.

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## Redraw facility (principal and interest and interest only loans only - for redraw under *line of credit* see Part C below)

We will tell you if redraw facilities are available. We may, acting reasonably, review, suspend or cancel redraw facilities at any time. Redraws will be processed as we decide from time to time. If you request a redraw we have full discretion whether to approve or refuse your request.

If you have made extra payments above your minimum repayment amount that total \$10,000 or more, you may redraw all or any part of those extra payments provided:

- you are not in default of your obligations under your *loan* agreement;
- no other redraw restrictions are set out in your *loan* agreement;
- the *interest rate* applying to your account(s) is a variable *interest rate*; and
- you redraw not less than \$10,000 at any one time or such other amount as we agree.

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



You must keep the method of making redraws from your accounts confidential to ensure there are no unauthorised transactions or other dealings with your account(s).

If you attempt to redraw more than your available funds limit, we may (but are not obliged to) stop or prevent the payment including by:

- not processing a direct transfer from your account;
- dishonouring a cheque (where you have chosen the cheque facility) drawn on your account.

You must make sure that the *amount you owe us* does not exceed your credit limit. However, if it does exceed the credit limit, you must repay the excess immediately.

Redraw will no longer be available, if you or your representative request a final payout figure on your *loan* (this is usually just before final *loan* repayment).

You can redraw using any method approved by us from time to time. The funds will be made available by direct credit to the bank account from which you make payments or to such other account or such other way as we agree. If we have approved the use of *Internet Banking*, funds may not be credited until 2 *business days* after your request.

If you're a joint borrower for a *loan* account with a redraw facility, and each borrower is acting in their personal capacity, you or any of the joint borrowers may ask us to change the account authority so all borrowers must approve any redraws from the redraw facility (we call this an all to operate authority).

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## Adjustments to the *balance of your loan*

We may adjust the *balance of your loan* account, including backdating debits or credits or account corrections, to take into account any processing error, because a payment has been dishonoured, because there are refunds or corrections to your *loan* account or otherwise so as to accurately reflect the legal position between you and us.

# Part C

## Amount you may borrow – line of credit accounts only

This part only applies to the *line of credit* accounts.

Subject to any restrictions set out in these *Terms and Conditions* or in your *loan* agreement, you may borrow any amount up to your available funds limit.

We may, acting reasonably, suspend or cancel your right to borrow further amounts at any time.

If you default under this *loan* agreement, without notice we can cancel the *line of credit* account or reduce the *line of credit* limit in which case you must immediately repay the entire facility (if the *line of credit* facility is cancelled) or the amount owing in excess of the changed *line of credit* limit (if the *line of credit* limit is reduced).

We calculate your available funds limit on each day by taking your credit limit and deducting the following from it:

- the *amount you owe us*;
  - any withdrawal amounts for which we have received instructions but which have not yet been processed (not including future periodical payments);
  - the amount of any payments by cheque which have been credited to your account, but which have not cleared yet;
- and
- the amount of any other proposed payments on your *line of credit* account which we have been told about, but which have not yet been debited to your account, e.g. certain types of deposits for goods or services.

If you attempt to borrow more than your available funds limit, we may stop or prevent the payment including by not processing a direct transfer from your account.

You must make sure that the *amount you owe us* does not go over your *line of credit* limit. If it does go over the *line of credit* limit, you must repay the excess immediately. You must also ensure that you do not exceed your *line of credit* limit.



# Part D

## Ways in which you may borrow money - line of credit accounts only

This part only applies to *line of credit* accounts.

- Direct transfer. This is a direct transfer from your account to another account. This can be done three ways.
  - a) For regular direct debits and one-off payments, you must give us in writing the account number and BSB number of the account to which the payment is to be made and the amount of the payment.
  - b) You can request payments to a bank account by *Internet Banking* (if this service is available on your account). Usually we will only pay to accounts you have nominated to us prior to requesting the payment, and usually you can nominate up to four accounts for this purpose. You must first give us the following in writing:
    - your account number;
    - your nominated bank account number and BSB number; and
    - your chosen password, if applicable.
  - c) With our approval, you can arrange for third parties to have a right to debit any of your *line of credit* accounts. Once set up, any request by a third party for payment under a direct debit authority will be treated as having been properly authorised by you. Any arrangement must be confirmed before the settlement date and may not be available after the settlement date without our approval. We may impose an additional fee for any arrangement requested after the settlement date. We are not liable for any loss or damage if payment is not made under a third party payment arrangement. Each request by that third party for payment under a direct debit authority will be deemed to be a request for a redraw by you of the amount of that payment.
  - d) If you ask us, we will give you a list of direct debits on your *line of credit* accounts for up to the previous 13 months. This list will include only those direct debits that are known to us from the information we receive about your transactions.
  - e) Direct transfers can also occur by any other method which we agree to make available to you.
  - f) We may refuse to make any transfers or payments at any time if an event of default occurs or is declared, if we suspect fraudulent use of your *line of credit* account, if in our view, it is necessary for compliance with anti-money laundering and counter-terrorism financing laws or sanctions laws, or for any other reason as determined by us acting reasonably.

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### Stopping a direct payment

If you want to stop a direct transfer from your account you must tell us in writing at least 5 business days before the payment is due to be made. You must tell us the amount of the payment, who it is paid to and when it is due. You may ask us to cancel a direct debit or to investigate an unauthorised direct debit on your behalf, and we'll promptly do these things. When we handle your cancellation or complaint, we will do so without needing to first raise the cancellation or complaint directly with the merchant to whom direct debit payments are made. However, we also suggest that you contact that merchant to let them know you have cancelled the direct debit.



# Part E

## Switching

You may with our approval from time to time affect a switch under this *loan* agreement. The following are examples of switches. Some or all of these options may not be available to you.

- Convert from variable rate to fixed rate and vice versa.
- Split the *loan* into one or more accounts.
- Consolidate one or more accounts.
- Convert from interest only to principal and interest repayments and vice versa.
- Convert from one type of account to another type of account (for example, from a variable rate account to a *line of credit* account).

You may request a switch prior to the initial advance being made to you, in which case the switch takes effect from the *settlement date*. Where a new account is created, separate repayment dates and interest debit dates may apply to that new account. Further, interest may be debited to your account on the date that any account is repaid in full.

If you switch from a *fixed rate loan* to a variable rate loan during the fixed rate period, a fixed rate break cost fee and/or a switch/split administration fee may be payable - see your loan agreement.

# Part F - Fees and charges

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## Our fees

You must pay us the credit fees and charges set out in the *loan* agreement which are payable at the times specified in the *loan* agreement. These include fees for dishonoured transactions and fees that apply when your *loan* is in arrears or you are in default under these *Terms and Conditions*.

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## Government charges

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

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

You must pay these duties, taxes and charges whether or not someone else is liable to pay them. We may debit them to your *loan* account as and when they become payable. If you terminate this *contract* before the *loan* is made, you must pay any duties, taxes and charges we still have to pay in respect of services we have provided to you or carried out in preparation for providing the *loan* to you.

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## Enforcement expenses

Enforcement expenses may become payable under your *loan* agreement and any security if you default. You must pay on demand and we may debit your account with our costs in connection with any exercise or non-exercise of rights arising from any default, including:

- legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is higher; and
- our internal costs.

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



These expenses include our expenses incurred in preserving or maintaining the *mortgaged property* (including insurance, rates and taxes payable in respect of any *security*), collection expenses and expenses resulting from dishonour of a cheque or payment.

These expenses may be debited to your *loan* at any time after they are incurred.

You indemnify us from and against any expense, loss, loss of profit, damage, or liability which we incur as a consequence of a default occurring. If the contract is a *Small Business Contract*, you will not be liable for any loss that arises from fraud, negligence or wilful misconduct by us or our employees.

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## Break costs

If you have a *fixed rate loan* you may be charged break costs if, before the expiry date of the *fixed interest period*:

- a) you make an *additional payment* of \$20,000 or more, or make *additional payments* totalling \$20,000 or more in any one-year period (starting on an anniversary of the *settlement date* (inclusive)); or
- b) you pay out that *fixed rate loan* or an amount becomes due and payable under Part G; or
- c) we agree to change your *loan type* or *fixed interest period* that applies to your *loan*. For example, if we agree to a request from you to switch from a 5 year *fixed rate loan* to a 2 year *fixed rate loan* or to a variable rate *loan*.

In the remainder of this Part, the actions detailed in (a), (b) and (c) above are referred to collectively as an “early payment”.

When we fund a *fixed rate loan* we borrow funds from the market specifically for the *fixed interest period* you want, and provide the funds to you at the rate and for the *fixed interest period* outlined in your *loan agreement*.

To do this, we lock in our funding costs at a particular rate for the full *fixed interest period*. If you make an early payment during the *fixed interest period*, the interest we receive from the *fixed rate loan* for the amount of that early payment stops but our funding costs continue for the remaining *fixed interest period*.

We do not make a profit from charging break costs. These costs simply compensate us for any financial loss we incur.

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## How break costs are calculated

In calculating break costs, we look at the movement in our costs of borrowing funds from the market. We do this by comparing:

- the cost of funds for the full *fixed interest period* either at the date we provided the funds to you; and
- the cost of funds for the remaining term of the *fixed interest period* at the date you make an early payment.

We work out the movement in our cost of funds by reference to the movement in the rates at which banks lend to each other, or “wholesale *interest rates*”, between the relevant dates. Specifically, we look to the wholesale market swap rates.

If the wholesale swap rate applicable for the remaining term of the *fixed interest period* on the date you make an early payment is less than the wholesale swap rate on the date we provided the funds to you, we will make a loss, as we must continue to pay interest on those funds at a higher rate for the remainder of your *fixed interest period*.

Break costs are calculated by multiplying the amount of loan principal remaining at the time of the early payment by the remaining term of the *fixed interest period* and by the change in our cost of funds (adjusted for receiving the money earlier than we otherwise would have).

### Example

Assume that you borrowed \$250,000 from us for a *fixed interest period* of four years. Two years later, you tell us you would like to pay out your *fixed rate loan* in full. On this date, you have two years remaining of your *fixed interest period* and your *loan balance* has reduced to \$240,000.

Say that on the date we provide you the funds (*settlement date*), the wholesale swap rate for 4 year fixed terms was 7.00%p.a. and now two years later, the wholesale swap rate for 2 year fixed terms (the amount of your *fixed interest period* remaining) is 4.00%p.a. The difference, or the movement in our cost of funds, will be 3.00%p.a.

The break cost calculation will be:

**the amount of *loan principal* remaining**      x      **the remaining term of the *fixed interest period***      x      **the movement in our cost of funds**

For the purposes of this example, the calculation will be \$240,000 x 2 x 3.00%p.a., which equals \$14,400.

This amount is then “discounted” back to the present day value using a formula that calculates how much the inflow of that value in the future would be worth if it were made in full today. In the example above, the discount period remaining is two years.



The above example is based on a situation where you pay out your *fixed rate loan* in full, and would also apply to a situation where you wish to switch your *fixed rate loan* to a variable rate or to a different *fixed interest period*. However, the calculation would be different if you made *additional payments* in accordance with (a) above. In that case, we would only multiply the amount of any *additional payment* by the remaining term of the *fixed interest period* and the movement in our cost of funds.

**Warning:** Break costs could be substantial, particularly if *interest rates* fall during the *fixed interest period*. Before you decide to repay a portion of or pay out a *fixed rate loan*, or ask us to change your *loan type* or *fixed interest period*, contact us for an estimate of the amount of the break costs.

## Part G Default

### 1. Financial difficulty

You should inform us as soon as possible if you are in financial difficulty. We will discuss your problems with you, with a view to finding an acceptable solution.

### 2. When there is default if you are not a *Small Business Customer*

You must ensure no event of default occurs. If any one or more of the following occur we may determine, at our sole discretion that an event of default has occurred:

- you breach any term of your *loan* agreement, including these *Terms and Conditions*;
- there is default under any mortgage or other *security* given under your *loan agreement*;
- you fail to pay any person (including us and/or other lenders) any money by the due date;
- if you are a company, partnership, joint venture or a trust, any of the following occur (as applicable):
  - a) an *insolvency event* occurs;
  - b) you cease, or threaten to cease, to carry on your business or a material part of your business or you dispose of or threaten to dispose of substantially all your assets;
  - c) there is any change in ownership or control of you or any company of which you are a Subsidiary (as defined in the Corporations Act);
  - d) any action is initiated by any competent authority with a view to striking your name off any register of companies;
  - e) if your shares are at any time listed on any stock exchange, the listing is suspended or revoked and the suspension or revocation remains in force for a period greater than 14 days;
  - f) any distress or execution is levied or enforced against any of your assets or property;
  - g) you or any person on your behalf breaches any undertaking at any time given to us or our solicitors or any condition imposed by us in agreeing to anything;
  - h) you are unable to pay your debts as they fall due or you are unable to certify that you are able to pay your debts as they fall due, commence negotiations with any one or more of your creditors with a view to the general readjustment or rescheduling of its indebtedness, or enters or proposes to enter into any arrangement or composition with your creditors;
  - i) a receiver, manager, receiver and manager, administrator, controller, provisional liquidator, or liquidator is appointed to any part of your assets;
  - j) in our opinion there is a material adverse change in your financial condition;
  - k) you reduce your issued capital or attempts to do so without our prior written consent;
  - l) you change your constitution without our prior written consent;
  - m) you commit an offence under the Corporations Act;



- n) You do any of the things contemplated by Part 2B.7 (changing of status), Part 2J.2 (self acquisition and control of shares) or Part 2J.3 (financial assistance in respect of shares) of the Corporations Act, or vary in any way the rights or obligations attached to shares in you without our prior written consent;
- o) any of the events in sub-clauses (a) to (m) inclusive of this clause occurs in relation to any Guarantor or any related body corporate (as defined in the Corporations Act) of you or the Guarantor.
- any part of this document, any *security* or guarantee becomes wholly or partly void, illegal, invalid, unenforceable, or of limited or of reduced force, effect or value;
- you or a *security provider* defaults under a *security* or withdraws from it;
- any representations or warranties made by you or on your behalf to us or our agents prove to be untrue or misleading;
- you use any amount advanced under your *loan* agreement for a purpose other than the purpose provided in your *loan* agreement;
- any indebtedness or obligation of you to any person including to us is not paid, met, or satisfied when due or becomes due and payable before its specified maturity or any creditor of you becomes entitled to declare any indebtedness of you due or you default under any charge or *security* in favour of any person;
- the *security* suffers a material diminution in value or utility or a material part of the *security* suffers total loss or destruction or damage beyond repair or damage to an extent which in our opinion renders repair impractical or uneconomical;
- you, or another person acting with your knowledge or permission, give us incorrect or misleading information in connection with this *loan* agreement or a *security*;
- we reasonably believe you, or another person acting with your knowledge or permission, have acted fraudulently in connection with this *loan* agreement;
- you materially default under any other credit contract you have entered into with us, or there is material default under any *security interest* you or a *security provider* has given to us which is not a *security*;
- you do not maintain appropriate fire and general insurance over all *mortgaged property* on terms acceptable to us;
- a power of sale arises under any *security interest* you or a *security provider* has given to us over any *mortgaged property*;
- you commit an act of bankruptcy;
- you are convicted of a criminal offence or are jailed;
- you pass away or become incapable of managing your affairs; or
- we reasonably believe that continuing this loan with you would cause us to breach a relevant law or would otherwise represent an unacceptable level of risk for us given our obligations under anti-money laundering and counter-terrorism financing laws and sanctions laws.

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### 3. Our rights on default if you are not a *Small Business Customer*

If you are in default, you will become liable to pay us the *amount you owe us* immediately. At any time after default occurs, we can take any of the following action after giving any notice required by law:

- require you to pay us the *amount you owe us*;
- exercise our other rights under your *loan* agreement or available to us under the law;
- exercise any right, power, or privilege conferred by any law, under your *loan agreement* or under any *security*; or
- use any money of yours in any account you may have with us to reduce the *amount you owe us*.

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

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

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

We are not liable for any loss caused by the exercise, attempted exercise, failure to exercise, or delay in exercising any of our rights or remedies.



#### 4. When there is default if you are a *Small Business Customer*

Despite any other provision of this *loan* agreement, the terms and conditions and any mortgage or other security document, we will not declare default unless an event of default occurs. If any one or more of the following occur we may determine, at our sole discretion that an event of default has occurred:

- You fail to pay any money to us on or before the due date under the terms of the *loan* agreement .
- Any of the following occur:
  - a) an *insolvency* event occurs, or you are or become bankrupt;
  - b) you cease to carry on your business or a material part of your business or you dispose of or threaten to dispose of substantially all your assets and we have not given our written consent (which we will not unreasonably withhold);
  - c) there is any change in ownership or control of you or any company of which you are a subsidiary (as defined in the Corporations Act 2001) and we have not given our written consent (which we will not unreasonably withhold);
  - d) if you are a company and your shares are at any time listed on any stock exchange, the listing is suspended or revoked and the suspension or revocation remains in force for a period greater than 14 days;
  - e) any distress or execution is levied or enforced against any of your assets or property;
  - f) you or any person on your behalf, breaches any undertaking at any time given to us or our solicitors or any condition imposed by us in agreeing to anything;
  - g) you are unable to pay your debts as they fall due or you are unable to certify that you are able to pay your debts as they fall due, commence negotiations with any one or more of your creditors with a view to the general readjustment or rescheduling of its indebtedness, or enters or proposes to enter into any arrangement or composition with your creditors;
  - h) a receiver, manager, receiver and manager, administrator, controller, provisional liquidator, or liquidator is appointed to any significant part of your assets;
  - i) you reduce your issued capital or attempt to do so without our prior written consent (which will not unreasonably be withheld);
  - j) you change your constitution, partnership agreement, joint venture agreement or trust deed in a way that would change your status, capacity or composition, without our prior written consent (which we will not unreasonably withhold);
  - k) you commit an offence under the Corporations Act;
  - l) you do any of the things contemplated by Part 2B.7 (changing of status), Part 2J.2 (self acquisition and control of shares) or Part 2J.3 (financial assistance in respect of shares) of the Corporations Act, or vary in any way the rights or obligations attached to shares in you without our prior written consent (which will not be unreasonably withheld);
  - m) any of the events in sub-clauses (a) to (m) inclusive of this clause occurs in relation to any Guarantor or any related body corporate (as defined in the Corporations Act) of you or the Guarantor;
  - n) any part of this document, any *security* or guarantee becomes wholly or partly void, illegal, invalid or unenforceable;
  - o) any representations or warranties made by you or a Guarantor, or on yours or a Guarantor's behalf, to us or our agents prove to be materially untrue or misleading (in our reasonable opinion);
  - p) you or the Guarantor use any amount advanced under your *loan* agreement for a purpose other than the purpose provided in your *loan* agreement and we, acting reasonably, have the view that because of the event it is unlikely to recover all amounts that you owe;
  - q) any indebtedness or monetary obligation of you to any person (other than us) is not paid, met, or satisfied when due or becomes due and payable before its specified maturity or any creditor of yours becomes entitled to declare any indebtedness due or default under any charge or security in favour of any person and we form the view (in our reasonable opinion) that you are unlikely to be able to pay future indebtedness, or monetary obligation, owing to us;
  - r) we reasonably believe you, or another person acting with your knowledge or permission, have acted fraudulently in connection with this *loan* agreement;
  - s) a power of sale arises under any security interest you or a security provider has given to us over any mortgaged property;
  - t) you commit an act of bankruptcy;



- u) we reasonably believe that continuing this loan with you would cause us to breach a relevant law or would otherwise represent an unacceptable level of risk for us given our obligations under *anti-money laundering and counter-terrorism financing laws* and *sanctions laws*.
- v) you are convicted of a criminal offence or are jailed;
- w) you no longer have legal capacity or pass away or become incapable of managing your affairs;
- x) we believe on reasonable ground that you, any of your agents or any guarantor has not complied with the law or any requirement of a statutory authority, or it becomes unlawful for you or us to continue with the *loan*;
- y) your assets, or a guarantor's assets, are dealt with, or attempted to be dealt with in breach of the *loan* agreement, or any *security* or agreement with us without our consent;
- z) you or a guarantor do not provide financial information required by this *contract* or any other agreement with us;
- aa) you or a guarantor do not maintain a licence or permit necessary to conduct your business;
- bb) you or a guarantor does not maintain insurance required by this *contract*;
- cc) if any of the funds advanced under the *loan* agreement are used for an illegal or improper purpose or to finance an illegal, improper or terrorism activity;
- dd) if you are a company, any action is initiated by any competent authority with a view to striking your name off any register of companies; and
- ee) early repayment is required under a separate financing arrangement that you or a guarantor has with us, or default based action is taken against you or a guarantor by us, due to an event of default.

## 5. Our rights on default if you are a *Small Business Customer*

- 1) We may only do any of the things referred to in clause 5(4) of this section where:
  - a) an event of default under clause 4 of this section occurs;
  - b) subject to clause 5(2) of this section, we have given you at least 30 days' written notice of an event of default and, if you can fix the event of default, you have not fixed that event of default.
- 2) We may give you less than 30 days' notice, or no notice, if:
  - a) based on our reasonable opinion, it is necessary for us to act to manage an immediate risk to any *security* or to us;
  - b) a non-monetary default under clauses 4(2)(a), 4(2)(b), 4(2)(d), 4(2)(f), 4(2)(h), 4(2)(k), 4(2)(m) (where relevant), 4(2)(t), 4(2)(u), 4(2)(v), 4(2)(x) of this section occurs in respect of you;
  - c) enforcement action is taken against you by another credit provider; or
  - d) we have already given you a period to fix a non-monetary default which arise under clause 4(2) of this section and it has not been satisfactorily fixed within the prescribed time.
- 3) We will only act on a specific event of clause 4(2) if the event by its nature is material, or we reasonably consider that the event has had, or is likely to have, a material impact on:
  - a) you or your guarantor's ability to meet your or their financial obligations to us;
  - b) our credit or security risk (or our ability to assess these); or
  - c) our legal or reputation risk where clauses 4(2)(k), 4(2)(o), 4(2)(p), 4(2)(s), 4(2)(v), 4(2)(x) or 4(2)(cc) of this section occurs.

Our decision in relation to a matter under this clause 4(2)(c) of this section is final.

- 4) When your *loan* agreement or *security* documents authorise us to exercise our default rights, we can do any one of the following:
  - a) demand and require immediate payment of the *amount you owe us*. If we do this, our notice will tell you the date by which you must pay. You must pay by that date;
  - b) exercise our other rights under your *loan* agreement or available to us under the law;
  - c) exercise any right, power, or privilege conferred by any law, under your *loan* agreement or under any *security*; or
  - d) use any money of yours in any account you may have with us to reduce the amount you owe us.

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

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

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



We are not liable for any loss caused by the exercise, attempted exercise, failure to exercise, or delay in exercising any of our rights or remedies, except where such loss arises from fraud, negligence or wilful misconduct by us, our employees or agents.

## Part H - General

### Representations and warranties

You represent and warrant that all information you have given us regarding your financial and personal affairs, and any *mortgaged property* is true and correct. You represent and warrant to us that the following is true and correct at the *disclosure date* and at all times until payment of all of all amounts owing to us at any time.

- **(no Event of Default)** No event has occurred which constitutes or which with the giving of notice and/or the lapse of time and/or a relevant determination by us would constitute a default under this *loan* agreement.
- **(no litigation)** No litigation, arbitration, or administrative proceedings or claims are presently in progress, pending, or threatened against you or any of your assets, which might by itself (or together with other proceedings or claims) have a material adverse effect on your assets or adversely affect your ability to observe or perform your obligations under this *loan* agreement.
- **(disclosure)** You have fully disclosed to us in writing, all facts material for disclosure in the context of this *loan* agreement.
- **(duly incorporated or established)** You, if a corporation, partnership, joint venture or trust, are duly incorporated or established under the laws of your place of incorporation or establishment and have the power and authority to enter the *loan* agreement and have undertaken and complied with the necessary corporate proceedings to ensure the *loan* agreement is enforceable and binding on you.
- **(financials)** If you or any guarantor is a corporation, all financial accounts provided to us were prepared in accordance with accounting principles and standards generally accepted in Australia; and here has been no adverse change in that financial position since the date when the financial accounts which have been provided to us were prepared.
- **(valid and enforceable)** The *loan* agreement constitutes legally valid, binding, and enforceable obligations of you.
- **(no contravention)** The execution and delivery of the *loan* agreement and the performance of any of the transactions contemplated by it will not contravene or constitute a default under any provision contained in any agreement, instrument, law, judgment, order, licence, permit, or consent by which you are bound or affected.
- **(no registration)** No registration with or approval of any authority is necessary for the performance by you of the *loan* agreement and if required, all registrations and approvals have been, or will be, duly made or obtained and certified copies will be delivered to us.
- **(information true and correct)** All information provided by you to us is true and correct to the best of your knowledge, information, and belief.
- **(no unpaid rates)** There are no unpaid rates or taxes owing in respect of the *mortgaged property*.
- **(no notices or defects)** There are no notices or proposals from any government or other authority adversely affecting the *mortgaged property*, or defects or disputes relating to the *mortgaged property*.
- **(no structural alterations)** There are no structural alterations or improvements on the *mortgaged property* which require approval by the council or any other authority which have not been approved.
- **(capacity)** You have full legal capacity to own your assets and to carry on your business (if any) as it is now being conducted and to enter into and perform your obligations under the *loan* agreement.
- **(ownership)** You and any guarantor own all of their property and assets and no other person has any mortgage or other right or claim to any interests in any of them except as previously disclosed in writing to us.
- **(no property subject to trust)** The property(s) disclosed to us as an asset of you or any guarantor or any related party is not subject to any trust other than as disclosed in writing to us.

### No reliance on ING

Except as expressly stated in this contract, you acknowledge that you have not entered into the contract relying on any representation, warranty, promise or statement made by us or any person on our behalf.

This clause does not apply if the contract is a *Small Business Contract*.



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## Account opening

You can obtain information about how to open a *loan* account from us. We do not have to lend you all or any money or can end this *contract* before we have lent you any of the *loan* if you have not provided ING with all of the information we require to determine your *Foreign Tax Residency Status* and that of any *controlling person*.

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## Loan extensions

You may request a *loan* extension.

We may, at our sole discretion, grant a *loan* extension and is not required to do so on the same terms.

If you are not in default and the loan is not due to be fully repaid at the end of its scheduled term by its normal, scheduled repayments, we will give you notice of our decision not to extend the *loan* at least three months before the date on which you are required to repay your *loan* in full.

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## Guarantee

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

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

If you are an individual or *Small Business Customer* (unless the *loan* relates to commercial asset finance, or the guarantor is a sole director guarantor or a trustee guarantor), in addition to the documents above, you allow us to disclose the following additional documents to each guarantor named in your *loan* agreement:

- the proposed *loan* contract;
- a list of any related *security* contracts;
- any current credit-related insurance contract that is in our possession; and
- any financial accounts or statements of financial position that you have given us in the previous two years for the purposes of the *loan*.

These documents, any unsatisfied notice of demand we have issued to you in relation to the guaranteed *loan* and a current credit report will be provided to the guarantor, if you are an individual or *Small Business Customer* and we agree to your request to increase your limit.

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## What happens when your security includes a mortgage?

If your *security* includes *mortgaged property*, you need to be aware of what's involved and what you're actually agreeing to. It's better to know than to have any surprises.

If the *security* includes *mortgaged property*:

- you must ensure the mortgagor meets their obligations under the mortgage;
  - any expenses incurred by us in preserving or maintaining the *mortgaged property* (including insurance, rates and taxes payable for that property) after a breach occurs and which are authorised by the mortgage will be an enforcement expense under Part F; and
  - if the *mortgaged property* can be insured, you must ensure that the *mortgaged property* is adequately insured and that the insurer knows and notes on the policy, us as mortgagee. If you do not, we may take out that insurance and any premium we pay will be an enforcement expense under Part F.
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## What law applies to your loan agreement?

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



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## What about any relevant legislation or statutes?

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

There may be some statutes (i.e. laws passed by parliament) or other law (usually called common law) intended to limit our rights. None of those statutes or laws will operate to limit our rights under your *loan* agreement unless by law those statutes or laws cannot be negated. If any of the provisions of your *loan* agreement are illegal or become illegal at any time, the affected provisions will cease to have effect, but the *balance* of your *loan* agreement will remain in full force and effect, and we may by notice vary your *loan* agreement so that the provision is no longer illegal.

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## Statements

We will forward a statement of your *loan* account at least once every six months and more frequently when required by law.

You should check the entries carefully and tell us immediately if you want to question a transaction shown on the statement. You may ask us for extra statements at any time, as long as you pay any charge we may have for this service.

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## Must you provide financial statements?

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

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## Credit balances

If you repay us more than the *amount you owe us*, your *loan* account will have a positive *balance* and we may place the excess funds into a suspense account, deposit it with a bank or pay it to you. We will not pay you interest on that positive *balance*. We calculate the fees and charges payable on the positive *balance* as if the *loan* account has a nil *balance*.

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## Review

We may carry out a review of your *loan* at any time. We may ask you at any time for information relating to your, or any guarantor's business, assets and financial affairs, for example:

- a copy of your tax return or an assets and liabilities statement if you are an individual;
- a balance sheet and profit & loss statement if you are a company, partnership, joint venture and trust; and
- any other information which we may require.

We may require this information to be certified or audited at your expense. You must give us this information within 14 days of the request.

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## Foreign Tax Residency Status

We collect certain information about you and your *controlling persons* in order to determine your *Foreign Tax Residency Status* and that of any *controlling person*. Where required by law, we will report that information, as well as information about any account you hold, to the Australian Taxation Office. The Australian Taxation Office is required to exchange that information with equivalent foreign country tax authorities in accordance with the Australian Government's international obligations.

In order to determine your *Foreign Tax Residency Status* and that of any *controlling person*, we may need to obtain additional information from you, including documentation and certifications. If you don't provide any information we reasonably request by the time we require it, we may seek the information from a third party.

Any determination made by ING regarding your *Foreign Tax Residency Status* does not constitute tax advice.



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## Valuation

At any time over the *loan term*, we may, acting reasonably, inspect or have your mortgaged property valued. We carry out a valuation to verify the value of your property against the original mortgage valuation.

Generally, we will only inspect or have your *mortgaged property* valued:

- a) when you apply for the *loan*;
- b) when you apply to vary the *loan*;
- c) if the *loan* is in default; and
- d) if you propose to sell the *mortgaged property* for an amount which is less than the *loan balance*.

We use the valuation specifically for our own purposes. If you wish to have a valuation for your own personal needs, we recommend you organise this separately. We are not obliged to inform you of anything adverse contained in these reports. If the contents of any of these documents become known to you, we accept no responsibility if you rely on them.

Any valuations will be at your cost.

If you are a *Small Business Customer*, we will:

- ensure that our processes in relation to external expert valuations will be fair and transparent and will explain the purpose of the valuation to you;
- only appoint appropriately qualified and experienced valuers who are members of professional organisations which abide by a code of practice which is similar to the Banking Code of Practice; and
- provide copies of property valuations and valuer instructions (except when enforcement action has already commenced).

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## Change in value of mortgaged property

If at any time the value of the *mortgaged property* at any time falls below the value given to it in the first valuation obtained by us, you must within 60 days after we ask you:

- a) repay a portion of any *loan* - if you are a company;
- b) provide us with additional security which is acceptable to us;
- c) pay for any lender's mortgage insurance which we take out; or
- d) do a combination of any of the above.

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

If the contract is a *small business contract*, we agree not to call a default unless your breach of the above creates, in our reasonable opinion, a material risk to us.

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## Changes to these Terms and Conditions if you are a *Small Business Customer* or the contract is a *Small Business Contract*

1. Acting reasonably, we can change this contract (such as by varying an existing provision or adding a new provision) at any time without your consent for one or more of the following reasons:
  - a) to comply with any change or anticipated change in any relevant law, code of practice, guidance or general banking practice;
  - b) to reflect any decision of a court, ombudsman or regulator;
  - c) to reflect a change in our systems or procedures, including for security reasons;
  - d) as a result of changed circumstances (including adding benefits or new features);
  - e) to respond proportionately to changes in the cost of providing the loan (including by changing *interest rates*); or
  - f) to make them clearer.
2. The types of changes we may make include:
  - a) imposing a new credit fee or charge or changing the amount or frequency of payment of a credit fee or charge;
  - b) changing the amount of repayments, the way in which repayments are calculated or when they're due;
  - c) changing the way interest is calculated or applied; and/or
  - d) changing any *interest rate* (other than fixed rates during a fixed interest period).



We will notify you when we make a change described in clauses (a) to (c) that doesn't reduce your obligations or extend the time for payment. Where we make such a change relating to the amount of a credit fee or charge or introduce a new credit fee or charge, we'll give you at least 30 days' notice (either by advertisement in a newspaper or in writing to you). For the other changes referred to in clauses (a) to (c), where the change doesn't reduce your obligations or extend the time for payment, we'll give you at least 30 days' notice in writing. If a change referred to in clauses (a) or (b) reduces your obligations or extends the time for payment, we'll notify you of the change in your next statement of account after the change is made.

Where we change an *interest rate* or a reference rate and the change doesn't reduce your obligations, we'll notify you either by advertisement in the newspaper or in writing no later than the day the change takes effect.

If any law regulates a change we decide to make, we can only make the change to the extent permitted by law.

If we notify you of a change to the terms of your loan agreement, you may cancel your loan or facility by giving us written notice of your intention to cancel. If you give us that notice, you must:

1. pay all monies that are payable under your loan agreement; and
2. comply with any remaining obligations under any part of this document, any security or guarantee.

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## Changes to these Terms and Conditions if you are not a **Small Business Customer** or the contract is not a **Small Business Contract**

Acting reasonably, we can change any terms of your *loan* agreement including the *interest rate*, the credit fees or charges, and the repayments. We can introduce new credit fees or charges. You will be notified in accordance with applicable laws on or before the day the change takes effect in writing or by advertisement in a major newspaper or (if you have consented) by electronic means.

You may not be notified of changes which reduce your obligations.

The *interest rates* and repayments shown in the financial information section in your *loan* agreement are correct at the *disclosure date* but may change prior to the *settlement date* if the rate changes.

We may change the *interest rate* at any time, except in respect of a *fixed rate loan* during the fixed rate term. The variable rate is an individual rate set for your *loan*, and acting reasonably we may vary as we see fit from time to time.

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## Identification and other information

You must promptly produce documents or other evidence we require to enable us to verify your identity or other information about you. Sometimes we may be required to obtain additional information, documents and/or certifications to enable us to satisfy our obligations under laws which apply to us (for example, we may need these things to enable us to satisfy our know your customer requirements or to evidence your *Foreign Tax Residency Status*).

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## Notices

We may send you notice or any document by any means permitted by law, including by personal delivery, sending it by electronic communication (including email) or sending it by post to your:

- a) address shown in the *loan* agreement;
- b) registered office (if you are a company); or
- c) last address known to us (including an electronic address).

Electronic communication may include sending you the notice or document by email, SMS, making it available for a reasonable period of time on our website, or by making it available to you through *Internet Banking* (if we provide a notice or document through *Internet Banking*, we'll send you an email or SMS letting you know that is available).

A notice may be signed by any of our employees, solicitors or agents on our behalf. The notice will be deemed to be validly served even if you don't receive it.

You may give us notice by email, personal delivery or by post to the address stated in the *loan* agreement.

If, in reliance on notices received by us from you, you or we suffer loss or damage because your instructions were:

- a) in error;
- b) a result of fraud; or
- c) unclear, illegible or not accurate; you'll be liable for any such loss or damage.

If the contract is a *Small Business Contract*, you will not be liable to the extent that the costs or loss arises from negligence, fraud or wilful default by us or our officers, employees, contractors or agents we appoint.



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## Copies of documents

If you are an individual or a *Small Business Customer*, we will provide you with a copy of the following documents within 30 days of your request:

- a) your *contract* (ie your *loan* agreement and these *Terms and Conditions*);
- b) any *security* document, such as mortgage or guarantee;
- c) statements of your *loan* account, unless we have already provided you with a statement within the last 3 months; and
- d) any notice issued to you which is relevant to us exercising our rights, unless the notice required you to take action and you took that action within the last 2 years.

We may charge a reasonable fee for providing you with a copy of these documents. However, in certain circumstances we may waive or refund the fee.

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## If there are two or more borrowers

If there are two or more of you, your obligations as borrowers are both joint (meaning we can take action against any one or more of you) and several (meaning that we can take action against any one of you for all the outstanding amounts).

We may accept instructions in any matter relating to your *loan* from any one of you. You agree that each borrower can bind each other borrower. For example, any one of the borrowers can authorise a redraw, a split into one or more sub-loans, or any other activity in respect of your *loan*. Each other borrower and any Guarantor will be liable even though they did not know about or did not agree to the transaction. Despite this clause, we may require all borrowers and guarantors to authorise any activity with respect to your *loan*.

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

If your *loan* account has a positive *balance*, we may pay the balance to any one of you.

We may deliver any documents, deeds, or other items that we hold to any one of you.

You agree that any one of you may have access to information relating to your *loan* account without the consent of the rest of you.

If you are an individual joint borrower (excluding where you are a trustee, company, partnership or joint venture), you may request in writing to end your liability under the *loan*:

- a) where the *loan* has not yet been provided or relied upon; or
- b) for any future advances under the *loan*, where we can terminate any obligation we have to extend further credit to any other co-borrower under the same *loan*.

If one or more of the joint borrowers die:

- a) the remaining borrower(s) under a joint *loan* may continue to operate the *loan* account subject to the terms of the *contract*; and
- b) title to any positive balance in your *loan* account will vest in the surviving borrower(s).

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## Assignment

We may assign, novate or otherwise deal with our rights under your *loan* agreement in any way we consider appropriate. We do not have to tell you first or obtain your consent. You must sign or do anything we reasonably require to enable us to do this. Any dealing with our rights will not change your obligations under your *loan* agreement.

You must not assign your rights or obligations under your *loan* agreement without obtaining our written consent, which will not be unreasonably withheld.

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



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## Your Warranties

You warrant that all representations you make and all information and documents you, or another person acting with your knowledge or permission, given to us in connection with this *loan* agreement are true and correct.

You acknowledge that we have relied upon the accuracy of those representations, information and documents in entering into this *loan* agreement and will continue to do so in dealing with you.

You undertake and agree:

- a) that you will not default under, or withdraw from, any *security*;
- b) to ensure that any other *security provider* does not default under, or withdraw from, any *security*;
- c) that you will not materially default under any other credit contract you have entered into with us;
- d) that you will not materially default under any *security interest* you have given to us which is not a *security*;
- e) to ensure that any other *security provider*, in relation to any other credit contract you have entered into with us, does not materially default under that *security interest*;
- f) that you must not commit an act of bankruptcy; and
- g) that you must not be convicted of a criminal offence.

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## Disputes

You can notify us of any concern you may have with our products or services.

The aim is to resolve your concern at your first point of contact. If we're unable to resolve your concern or complaint we'll give you details in writing of our procedures for investigating and resolving problems. We'll let you know in writing the outcome of the investigation, that we need more time to complete our investigation or we're awaiting further information from you. We usually provide this information within 21 days of receiving the relevant details of your complaint. However, if we resolve your complaint within 5 business days we won't provide you with this information unless you ask us to do so.

If there are exceptional circumstances where we can't complete the investigation within 45 days, we'll; inform you of the reasons for the delay, give you monthly updates and let you know when a decision can reasonably be expected, unless we're waiting on a response from you, which we have told you we require. Once we've completed our investigation we'll confirm the outcome and the reasons for that outcome.

If you are not satisfied with our resolution of your complaint, you can ask that our Complaints Contact Person review your concern. In the unlikely event that your complaint cannot be resolved directly with us you may be able to seek assistance from the Australian Financial Complaints Authority (**AFCA**) if you meet their qualification criteria. AFCA provides a free and independent dispute resolution service. You can contact them by:

- a) calling 1800 931 678;
- b) going to [afca.org.au](http://afca.org.au);
- c) emailing [info@afca.org.au](mailto:info@afca.org.au); or
- d) writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne VIC 3001.

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## What if you are a trustee?

If you are at any time trustee of any trust, you must disclose this information to us. You are liable under your *loan* agreement in your own right and as trustee of the trust. We can recover against the trust assets as well as from you. You acknowledge that:

- your *loan* agreement is for a proper purpose and for the benefit of the trust;
- you have the power and authority to enter into your *loan* agreement; and
- you have the right to be indemnified fully out of the trust property for all liabilities that you incur under your *loan* agreement.

You *must* not amend or change any of the terms of the trust without obtaining our consent first. Default occurs if there is a change of trustee, a termination of the trust, or any change to the terms of the trust without our consent.

If the *contract* is a *Small Business Contract*, our consent will not be unreasonably withheld.



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## Banking Code of Practice

We have subscribed to the Banking Code of Practice, a voluntary code which sets standards of good banking practice when dealing with individual and *Small Business Customers* and their guarantors, published by the Australian Bankers Association (ABA). The BCOP will apply to the *loan* account if you are an individual or *Small Business Customer*.

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## Change of circumstances and address

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

If you believe that there has been a change to your *Foreign Tax Residency Status* or that of any *controlling person*, you need to let us know within 30 days. We may require you to provide additional information, documentation and certification regarding your *Foreign Tax Residency Status* or that of any *controlling person*. If you don't provide any information we reasonably request by the time we require it, we may seek the information from a third party.

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## Privacy

We collect personal information about you to provide you with information about financial products or services; to assess your application and eligibility for a financial product or service; to provide you with the financial products and services that you've requested (including arranging, providing or insuring credit); to administer our relationship with you; and to communicate with you about us and the products and services offered by us or any organisation we are affiliated with or represent, unless you tell us not to. We also collect any personal information necessary for the purposes of complying with our legal and regulatory obligations, including to identify customers under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and to determine and report in respect of your *Foreign Tax Residency Status*.

If you do not provide personal information, we may be unable to provide credit.

The general rule is that we will not use or disclose your personal information other than for the purposes stated at the time of the collection. If we want to use your personal information for another purpose, we will seek further consent from you, unless that other purpose is related to one of the original purposes of collection and you would reasonably expect us to use your personal information for that other purpose.

It may be necessary for us to disclose your personal information to certain third parties in order to assist us in providing, managing and administering your products or services or for other related purposes.

These include:

### i Other financial institutions

Other financial institutions, such as banks, credit unions and building societies, in order to set up and manage your *account* and manage banking transactions.

### ii Other organisations

Other ING Group entities and third parties, such as:

- ING Group companies in order to service other ING products you may have within the Group and portfolio analysis;
- ING Group entities located in the Netherlands, the Philippines, Poland, Singapore and Slovakia for account administration, security purposes or to comply with Australian and global regulatory requirements that apply to us or the ING Group;
- government bodies and agencies, such as the Australian Taxation Office, in order to satisfy legal and regulatory requirements;
- any third party product and service supplier that we have an arrangement with (so that either us or they may provide you with the product or service you have requested or in which you have expressed an interest);
- organisations undertaking reviews of the integrity of our operations, including the completeness of our information;
- authorised organisations providing services or functions on our behalf (including mailing services, document storage services, direct marketing, data verification services, information technology support and printing our standard documents and correspondence);
- our solicitors, valuers and insurers (for *loan* products);
- credit reporting or information verification bodies (or their affiliated entities) in order to obtain and provide details about your credit history or status, to verify other information about you including your identity, to carry out your request to correct your credit information or to resolve your complaint about the handling, use or disclosure of your credit information; and
- any person acting on your behalf including mortgage intermediaries, your financial adviser, power of attorney, solicitor or accountant



Any example used above to indicate when we might disclose personal information may not be limited to those examples (or examples of a similar kind).

Personal information will only be disclosed to third parties other than those listed above if you have consented; if you would reasonably expect us to disclose information of that kind to those third parties; if we are authorised or required to do so by law; or it is necessary to assist with law enforcement.

You also agree that we and any other financier who at any time provides or has an interest in the credit, can, subject to that party's obligations under the Privacy Act, do any of the following at any time:

**1. Commercial credit information**

Collect any commercial credit information from a business that provides commercial credit worthiness information and use that information to assess an application for consumer credit or commercial credit.

**2. Consumer credit information**

Collect any consumer credit information from credit reporting bodies and use that information to assess an application for consumer credit or commercial credit.

**3. Collection of overdue payments**

Collect and use a credit report provided by a credit reporting body to collect overdue payments.

**4. Provide information to mortgage insurer**

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

**5. Exchange of information between credit providers**

Collect, use or disclose to another credit provider (including without limitation any other credit provider who has lent money on the same *security*) any information or opinion about credit worthiness, credit standing, credit history or credit capacity.

**6. Exchange of information with introducers**

Collect any consumer or commercial credit information from, or disclose that information to; any introducer, financial consultant, accountant, lawyer, or intermediary (including any introducer mentioned on the front page of the application form) acting in connection with any financing provided.

**7. Provide information to credit reporting bodies**

Disclose to credit reporting body personal or commercial credit-related information. The information may include identity particulars; the fact that credit has been applied for, the amount and type of credit and the applicable terms and conditions; repayment history information; the fact that we are a current credit provider; in specified circumstances, payments which become overdue more than 60 days, and for which action has been commenced; advice that payments are no longer overdue; in specified circumstances that in our opinion, there has been a serious credit infringement; and the credit provided has been paid or otherwise discharged and the date on which this occurs.

**8. Provide information for securitisation**

Disclose any report or personal information to another person in connection with funding financial accommodation by means of an arrangement involving securitisation.

**9. Provide information to guarantors**

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

**10. Provide information in relation to disputes and enquiries**

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

**11. Authority in relation to a mortgage insurer**

You also agree that this authority applies to any mortgage insurer, who may have to use any personal information they collect in order to assess whether to insure the risk of providing mortgage insurance or to assess the risk of default, as well as for other internal management and risk purposes.

**12. Exchange of information with advisors**

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

Your personal information (including credit-related personal information) provided to us will be held by us. Our Privacy Policy contains information about how you:



- can access your personal information that we hold and seek the correction of that information; and
- the additional information we may collect about you and how it may be used;
- may complain about a breach of the Australian Privacy Principles, Part IIIA of the Privacy Act or the Credit Reporting Privacy Code, and how we will deal with such a complaint.

Our website includes information about credit reporting, including the credit reporting bodies to which we're likely to disclose your credit information.

If you would like further information regarding privacy you can review our Privacy Policy online at our website at <https://www.ing.com.au/privacy.html> or request a copy by either calling or writing to us. It's important that you read and understand this Privacy Policy.

If you have any further questions about privacy at ING please contact us by:

- calling 133 464
- emailing [privacyaccessrequests.au@ing.com](mailto:privacyaccessrequests.au@ing.com)
- writing to:  
ING Privacy Officer  
GPO Box 4094  
Sydney NSW 2001

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## Access Restrictions in Sanctioned Jurisdictions

We may, without notice, cancel or suspend access to the use of *Internet Banking* maintained and operated by us if you are traveling to or residing in a sanctioned jurisdiction. A list of sanctioned jurisdictions may be found on our website.

# Part I

## Meaning of words and interpretation

**account** means each *loan* account opened in your name.

**additional payments** means payments in addition to those required under the *loan* agreement.

**amount you owe us** means in respect of each *account* the total amount outstanding from time to time.

**anti-money laundering and counter-terrorism financing laws** means the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) and Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) and any other legislation, regulations or rules that apply to us in respect of anti-money laundering and counter-terrorism financing.

**balance** in relation to an *account*, means the difference between all amounts credited and all amounts debited to that *account* where the amounts debited exceed the amounts credited.

**break cost fee method** means the method of calculating break costs described in Part F of these *Terms and Conditions*.

**business account** means an account which is primarily used by a business and is established for business purposes.

**business day** means a day other than a Saturday or Sunday or public or bank holiday when we conduct financial transactions in Sydney, New South Wales.

**client number** means the number we give you, that you must keep secret, so you can access the *interactive services*.

**contract** this is the *contract* (as varied from time to time) you make with us when you accept our *loan* agreement. It consists of the *loan* agreement and these *Terms and Conditions*.

**controlling person** means, where you are a partnership, company, trust or association, any individual who controls you.

**daily balance** means for a day on which an interest charge is debited to your *account* and where the debit made on that day includes the interest charge for that day, the *balance* of that account immediately before the end of that day; and for any other day, the *balance* of your *account* at the end of that day.

**daily percentage rate** means the *interest rate* determined by dividing the annual percentage rate by 365.

**disclosure date** is the date defined as such in the *loan* agreement.



**Foreign Tax Residency Status** refers to a person's status, as a resident of a foreign country for tax purposes, in light of ING's obligations under:

- a) the global standard for the collection, reporting and exchange of financial account information of foreign tax residents; and
- b) the withholding tax and reporting regime in relation to tax residents of the United States of America, known as the Foreign Account Tax Compliance Act, imposed by the United States Hiring Incentives to Restore Employment Act 2010, which is incorporated into Australian law in Schedule 1 of the *Taxation Administration Act 1953* (Cth);

**fixed interest period** means any period described as such in the *loan* agreement, any other period for which your *interest rate* is fixed, or such other period which we may agree is a *fixed interest period*.

**fixed rate loan** means a loan where the *interest rate* is fixed for a *fixed interest period*.

**insolvency event** means the happening of any of the following events:

- a) an application is made to a court for an order, or an order is made appointing a liquidator, provisional liquidator in respect of you (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
- b) proceedings are initiated with a view to obtaining an order for the winding up or similar process of you, or an order is made or any effective resolution is passed for the winding up of you;
- c) except to reconstruct or amalgamate while solvent on terms approved by us, you enter into, or resolve to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any class of your creditors;

**interest rate** means each rate described as an annual percentage rate or an *interest rate* in the *loan* agreement and any other annual percentage rate or *interest rate* that applies under your *contract*.

**Internet Banking** means our internet loans transaction facility you use by accessing the *website*.

**line of credit** means a Commercial Equity Line of Credit account.

**loan** means any credit facility provided or to be provided under your *contract* and, where applicable, includes any part of the credit provided under that credit facility.

**loan term or term** means the period described as the *loan term* or *term* of the loan in the *loan* agreement. If the *loan* term is varied, the *loan term* will be the term as *varied*.

**mortgaged property** means the property the subject of any *security*.

**Principal** means the principal payable under the *loan*. For the avoidance of doubt, this excludes any interest payable under the *loan*.

**principal and interest repayment calculation** is a repayment calculation for a *loan* (rounded up to the next cent), based on the *balance* of the *account* for that *loan* on the date of calculation. This will result in that *loan* being paid out at the end of the *loan term*, on the assumption that the *interest rate* that applies on the day of calculation does not change and repayments and all credit fees and charges are paid when they are due.

**sanctions laws or sanctions obligations** means any Australian or international laws, regulations, rules or government directives relating to the imposition, implementation or enforcement of economic or trade sanctions, restrictions or prohibitions. This includes, without limitation, laws administered by the Australian Government (such as the Autonomous Sanctions Act 2011 (Cth) and associated regulations), as well as sanctions laws and regulations administered by foreign authorities (including the United Nations, the United States Office of Foreign Assets Control (OFAC), the European Union, and the United Kingdom).

**security** means each *security interest* described in the *loan* agreement under "Security" and any substitute or additional *security interest* given to the *Lender* in connection with this *loan* agreement.

**security interest** means any mortgage, charge, lien, pledge, trust, power or other rights given or to be given as or in effect as *security* for the payment of money or performance of obligations. It also includes a guarantee and indemnity.

**security provider** means each person (other than yourself) who gives security over the *mortgaged property*.

**settlement date** is the date defined as such in the *loan* agreement.

**settlement letter** means the letter sent by us to you following the *settlement date*. This letter briefly describes *interactive services*, advises your *client number* and how to contact us.

**Small Business contract** means any of the following as of the date of the *loan* agreement and at each time the *loan* agreement is amended:

- a) that this contract with the Borrower is a "small business contract" with the meaning of section 12BF of the Australian Securities and Investments Commission Act 2001 (Cth); and/or



- b) that at the time the contract is entered into with the Borrower, the Borrower is a “small business” within the meaning of the Banking Code of Practice.

**Small Business Customer** means any borrower who has a *Small Business contract*.

**Terms and Conditions** means this document.

**website** means the internet website through which we provide the *Internet Banking*.

**we, us, our** refers to the lender, ING Bank (Australia) Limited ABN 24 000 893 292 Australian Financial Services Licence and Australian Credit Licence 229823 trading as ING.

**you** refers to the borrower under the *loan* agreement.

### Interpretation

In this document:

- a) a reference to the singular includes the plural,
- b) reference to a document includes any variation or replacement of it,
- c) headings in this agreement are for ease of reference only and not to assist interpretation, and
- d) use of examples is illustrative of the context only and does not limit the natural meaning of the terms of your loan agreement.
- e) a controller is appointed to or over or takes possession of all or a substantial part of the assets or undertaking of you;
- f) you are or are deemed or presumed by law or a court to be insolvent;
- g) you take any step to obtain protection or are granted protection from your creditors, under any applicable legislation or an administrator is appointed to you and
- h) anything analogous or having a substantially similar effect to any of the events specified above happens in respect of you under the law of any applicable jurisdiction.

## Information Statement

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

### Things you should know about your proposed credit contract

This statement tells you about some of the rights and obligations of yourself and your credit provider. It does not state the terms and conditions of your contract.

If you have any concerns about your contract, contact the credit provider and, if you still have concerns the AFCA scheme, or get legal advice.

### The contract

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

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

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

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

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

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



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

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

### **3. Can I terminate the contract?**

Yes. You can terminate the contract by writing to the credit provider so long as -

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

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

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

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

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

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

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

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

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

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

Yes, but only if your contract says so.

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

That depends on the type of change. For example -

- you get at least same day notice for a change to an annual percentage rate. That notice may be a written notice to you or a notice published in a newspaper.
- you get 30 days advance written notice for -
  - a change in the way in which interest is calculated;
  - a change in credit fees and charges; or
  - any other changes by your credit provider;

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

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

Yes. You should first talk to your credit provider. Discuss the matter and see if you can come to some arrangement. If that is not successful, you may contact the AFCA scheme. The AFCA scheme is a free service established to provide you with an independent mechanism to resolve specific complaints. The AFCA scheme can be contacted by:

- a) calling 1800 931 678,
- b) going to [afca.org.au](http://afca.org.au),
- c) emailing [info@afca.org.au](mailto:info@afca.org.au); or
- d) in writing to Australian Financial Complaints Authority, GPO Box 3, Melbourne VIC 3001.

Alternatively, you can go to court. You may wish to get legal advice, for example from your community legal centre or Legal Aid.

You can also contact ASIC, the regulator, for information on 1300 300 630 or through ASIC's website at <http://www.asic.gov.au>.



## Insurance

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

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

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

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

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

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

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

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

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

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

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

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

## Mortgages

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

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

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

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

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

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

The law says you can not assign or dispose of the property unless you have your credit provider's, or the court's, permission.

You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or can not do with the property.

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

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

- if the *mortgaged property* is goods - give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;
- sell the property, but only if your credit provider gives permission first; OR
- give the property to someone who may then take over the repayments - but only if your credit provider gives permission first.

If your credit provider won't give permission, you can contact the AFCA scheme for help.

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

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

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

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



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

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

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

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

## General

### 22. What do I do if I can not make a repayment?

Get in touch with your credit provider immediately. Discuss the matter and see if you can come to some arrangement.

You can ask your credit provider to change your contract in a number of ways:

- to extend the term of your contract and reduce payments; or
- to extend the term of your contract and delay payments for a set time; or
- to delay payments for a set time.

### 23. What if my credit provider and I can not agree on a suitable arrangement?

If the credit provider refuses your request to change the repayments, you can ask the credit provider to review this decision if you think it is wrong.

If the credit provider still refuses your request you can complain to the AFCA scheme that your credit provider belongs to. Further details about this scheme are set out below in question 25.

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

Yes, if you are in default under your contract. But the law says that you can not be unduly harassed or threatened for repayments. If you think you are being unduly harassed or threatened, contact the AFCA scheme or ASIC, or get legal advice.

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

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

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

**THE AFCA SCHEME IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. THE AFCA SCHEME CAN BE CONTACTED ON 1800 931 678, BY GOING TO AFCA.ORG.AU, BY EMAIL AT INFO@AFCA.ORG.AU OR IN WRITING TO GPO BOX 3, MELBOURNE VIC 3001.**

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

