

Things you should know about your loan

**Standard Commercial Conditions to
Security Agreement - Individuals/Sole Traders**



For the better

Thanks for choosing RAC Finance

In this brochure, you'll find important information about your credit contract, as well as contact details for your local RAC Member Service Centre. Please feel free to speak to us if you have any further questions about your loan.

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Loan terms and conditions

1. Introduction

- 1.1 Capitalised words and phrases in this document are defined in clause 25 (unless otherwise defined in the Security Agreement).
- 1.2 These Standard Conditions are to be read together with the Security Agreement Form signed by You, the Additional Covenantor and Us.
- 1.3 Collectively, these Standard Conditions and the Security Agreement form are the “Security Agreement”.
- 1.4 You acknowledge that You have entered into the Security Agreement for valuable consideration from Us.
- 1.5 When the Security Agreement Form has been signed by You, the Additional Covenantor, and by Us, the Security Agreement becomes binding.
- 1.6 You acknowledge that We will register a Financing Statement on the PPSR to protect Our Security Interest in the Secured Property.

2. Consideration

- 2.1 In consideration of You entering into this Security Agreement, We will provide a secured Commercial Loan to You, subject to the terms of this Security Agreement.
- 2.2 The Loan Amount referred to in the Security Agreement Form is the total amount that may be drawn down by You and You must use the Loan Amount for the Purpose.
- 2.3 We may debit or charge to the Loan Amount interest, Taxes and any other amount referred to in the Security Agreement.

3. Title and Security (Personal Property Securities Act 2009 (PPSA))

- 3.1 You grant to Us a purchase money security interest (PMSI) in the Motor Vehicle and agree that the PMSI has attached to the Motor Vehicle and that the attachment of the PMSI has in no way been deferred or postponed from the date of this Security Agreement.
- 3.2 You will provide all information required by Us, including the serial number of the Motor Vehicle to enable registration, renewal or making an amendment demand of a security interest and/or PMSI under the PPSA and the PPS Reg.

- 3.3 Our interest in the Secured Property is as the secured party and is a legal interest.
- 3.4 We may enter into this Security Agreement as principal or as agent for another person and We may transfer Our interests in the Secured Property or in this Security Agreement, or give another person an interest in or form of Security over either of them, without getting Your consent.
- 3.5 You agree that nothing in sections 130 or 143 of the PPSA will apply to this Security Agreement, or the collateral under this Security Agreement.
- 3.6 You agree to waive Your rights to do any of the following:
 - » receive notice of removal of an accession under s 95 of the PPSA;
 - » receive notice of an intention to seize collateral under s 123 of the PPSA;
 - » receive notice of disposal of collateral under s 130 of the PPSA;
 - » receive a statement of account if there is no disposal under s130(4) of the PPSA;
 - » receive notice of retention of collateral under s 135 of the PPSA;
 - » redeem the collateral under s 142 of the PPSA;
 - » reinstate the Security Agreement under s 143 of the PPSA;
 - » object to the purchase of the collateral by the secured party under s 129 of the PPSA; and
 - » receive a statement of account under s 132(3)(d) of the PPSA following a disposal showing the amounts paid to other secured parties and whether Security Interests held by other secured parties have been discharged.

For further information on the Personal Property Securities Act 2009 refer to www.ppsr.gov.au.

4. Repayment of Secured Money

- 4.1 Unless a Transaction Document states otherwise, the Secured Money is repayable on demand but We will not make demand for repayment of the whole of the Secured Money until the end of the Term, or such other Term as might be agreed by Us in writing, unless You are in default under the Security Agreement.
- 4.2 When We have received all the money payable to Us and, provided You are not in default under the Security Agreement, We will release the Secured Property from the PMSI referred to in clause 3.

5. Representations and Warranties

General

- 5.1 Each Transaction Party represents and warrants to Us that:
- » **Business purpose** - You will use the Motor Vehicle for business purposes;
 - » **Capacity** - each Transaction Party has capacity to unconditionally execute and comply with its Obligations under the Transaction Document;
 - » **Binding obligations** - each Transaction Document binds each Transaction Party who is a party to it, and is enforceable by Us against that Transaction Party;
 - » **No contravention** - no Transaction Party will breach any law, its constituent documents or any Obligations it has to any other person by executing and complying with the Transaction Document;
 - » **Disclosure** - information given to Us by the Transaction Party is correct, complete and not misleading in a material respect and in circumstances that may have a Material effect;
 - » **Trust** - no Transaction Party is trustee of any trust, other than a trust You have told Us about prior to entering into the Transaction Document;
 - » **Insurance** - each Policy is enforceable against the relevant insurer in accordance with its terms and is not void or voidable;
 - » **Financial statements** - Financial Statements of the Transaction Party given to Us are true, fair and accurate at the date on which they are prepared;
 - » **No change in financial position** - there has been no material change in the financial position of any Transaction Party since the date the last Financial Statements were given to Us;
 - » **No default** - no Event of Default subsists;
 - » **No potential Event of Default** - no event has occurred which with the giving of notice, lapse of time, fulfilment of any condition or determination of materiality will constitute, or would be likely to constitute, an Event of Default; and
 - » **Application** - each of the representations and warranties set out in any Application are true and correct and not incorrect or misleading in a material respect and in circumstances that may have a Material Effect.

Further information

- 5.2 You undertake to sign any further documents and/or provide any further information (to be complete, accurate and up-to-date in all respects), which We may reasonably require to register a Financing Statement or financing change statement on the PPSR in respect of the PMSI granted to Us under clause 31.

Secured property

5.3 You represent and warrant to Us that in respect of the Secured Property:

- » **Ownership** – You are the sole legal and (except to the extent it is held in a trust) beneficial owner;
- » **No sale** – You have not sold, agreed to sell, or given any option to purchase, the Secured Property except as disclosed to Us in writing;
- » **No encumbrances** – the Secured Property is free from Encumbrances, other than Encumbrances listed on a title search of the Secured Property or Encumbrances We have consented to in writing;
- » **No outstanding charges** – there are no charges (including licence fees) due to any person or Government Body in respect of the Secured Property.

5.4 The representations and warranties set out above are taken to be made each day that the Secured Money is owing.

Acknowledgements

5.5 Each Transaction Party acknowledges that:

- » any person who introduces You to Us or vice versa:
 - (i) is not Our agent for the purposes of this Security Agreement;
 - (ii) has made no representation, warranty or undertaking on Our behalf;
 - (iii) is not authorised to make representations on Our behalf.
- » We may give to any Transaction Party:
 - (i) a copy of the Security Agreement; and
 - (ii) a copy of any notice sent to You under this Security Agreement.

6. The Motor Vehicle

6.1 Delivery

You are responsible for obtaining the Motor Vehicle.

6.2 Use

Provided there has been no breach of the Security Agreement, You may have custody of the Motor Vehicle during the Term and We may not interfere with Your right to use the Motor Vehicle unless this Security Agreement permits Us to do so.

6.3 Acknowledgement

You acknowledge that:

- » You have not relied on Our skill and judgment in deciding to acquire the Motor Vehicle;
- » We have not made any representation, warranty or undertaking of the safety of the Motor Vehicle.

6.4 Warranty

You acknowledge that You:

- » hold and will continue to hold a current Motor Vehicle Driver's Licence during the Term;
- » will use the Motor Vehicle for commercial purposes.

7. Your Obligations

7.1 You must:

- » **Purpose** - use the Motor Vehicle only for the purpose for which the Motor Vehicle was designed and must observe any law relating to the use of the Motor Vehicle;
- » **Registration** - ensure that the Motor Vehicle is registered at all times with the Department of Transport;
- » not, without Our consent:
 - (i) mortgage the Secured Property to another person or use the Secured Property to secure other loans;
 - (ii) sell or part with possession of the Secured Property;
 - (iii) make any alterations to the Secured Property or add to the Secured Property which has or will have a Material Effect;
 - (iv) do anything or allow anything to happen that might materially reduce the value of the Secured Property;
- » make it clear to others that We have a Security Interest over the Secured Property;
- » **Pay secured money** - pay the Secured Money to Us in accordance with the Transaction Documents;
- » **Pay interest** - pay interest on any Secured Money from time to time owing by You to Us in accordance with the requirements of the Transaction Documents;

- » **Secured property** – not transfer, lease or otherwise deal with any of the Secured Property without Our written consent, or allow any Encumbrances over of the Secured Property, other than Encumbrances to which We have consented in writing;
- » **Possession of Secured Property** – not part with possession of the Secured Property;
- » **Change of control** – if a Transaction Party is a corporation, not permit a Change of Control without Our prior written consent;
- » **Maintain status** – do everything necessary to maintain and to ensure that You have the right, and are properly qualified, to conduct Your business and You obtain and maintain all necessary licences and franchises;
- » **Information** – within 5 Business Days of our request, give Us any information in relation to a Transaction Document, any Secured Property and Your financial affairs and business operations;
- » **Obligations** – You must comply with Your Obligations, including under any Encumbrance or law relating to the Secured Property and institute or defend any legal proceedings which We reasonably require to protect the Secured Property;
- » **Give notices** – give notice to Us (as soon as You reasonably can) upon becoming aware of any Event of Default, any Encumbrance being created (other than a Security), any litigation or claim in respect of You or the Secured Property or any event which may have a Material Effect;
- » tell Us if the place where the Motor Vehicle is ordinarily kept has changed from the address specified in the Security Agreement Form.

8. Insurance

- 8.1 Until the Secured Money has been repaid in full and the Security is discharged, You:
- » must keep the Secured Property insured as required by law and against all risks against which insurance is usually taken in relation to the Secured Property. The terms of each insurance policy and the insurer must be acceptable to Us and Our interest in the Secured Property must be noted on any insurance policy over the Secured Property;
 - » must give Us copies of all insurance policies and evidence that they are current if We ask You to do so;
 - » must ensure that all insurance policies are enforceable against the insurer and that the insurer is not entitled to cancel them;

- » must tell Us promptly of any event that may give rise to a Claim under any insurance policy and give Us any information that it requests in relation to the event;
- » upon receipt of any money in payment of a Claim or on cancellation of any insurance policy, You must either use the money to repair the damage to the Secured Property or pay the money to Us to reduce the Secured Money (but You must also repair the Secured Property);
- » may consent to Us making, negotiating and settling Claims in relation to the insurance of the Secured Property. However, You authorise Us, acting reasonably, to make, negotiate and settle Claims in relation to the insurance of the Secured Property in order to manage a material and immediate risk to Our legitimate business interests (without requiring further consent from You). You must accept any settlement We reach with the insurer of the Secured Property.
- » upon making a Claim pursuant to an insurance policy in relation to the Secured Property which is refused by the insurer, must promptly tell Us of the refusal and, if requested by Us, grant and transfer to Us Your rights to take further action against the insurer in relation to the Claim;
- » agree that while an Event of Default is continuing, We are entitled to the proceeds of money received from an insurance Claim in relation to the Secured Property. We acknowledge and confirm that We are not entitled to any amount which is in excess of the Secured Money at the time of receipt of the proceeds from the insurance Claim;
- » agree that We may use the proceeds paid by an insurer pursuant to an insurance Claim to:
 - > repair the Secured Property ; or
 - > apply the proceeds to the Secured Money.

9. Maintenance

- 9.1 You must keep the Secured Property in good repair (fair wear and tear excepted) and ensure that the Secured Property is serviced and maintained in accordance with the supplier's specifications;
- 9.2 You must ensure that any repairs on the Secured Property are carried out by qualified and competent persons;
- 9.3 Alterations, Accessions or additions which may cause a Material Effect may not be made to the Secured Property without the prior written consent of Us;
- 9.4 You acknowledge that any Accessions or replacement parts become part of the Secured Property.

10. Access

10.1 You must allow Us and/or Our Representatives and You hereby authorise Us and/or Our Representatives, to enter the place where the Secured Property is usually kept (during normal business hours):

- » to inspect the condition of the Secured Property;
- » to check whether the terms of this Security Agreement are being complied with;
- » to exercise any of Our rights under this Security Agreement.

10.2 We must give You reasonable notice of entry.

11. Repayments

11.1 You must pay to Us:

- » on or before the Payment Date, the Repayment Instalment;
- » at the same time as the Repayment Instalment, any fees and charges payable to Us under the Security Agreement;
- » on request from Us all other moneys, duties and Taxes (including GST) payable in connection with the Security Agreement or Transaction Document.

11.2 You must sign all documents (including direct debit authority form) and maintain all procedures necessary to enable Us to debit direct from Your bank account when they become due, Repayment Instalments and any other amount under this Security Agreement.

11.3 You must not withhold any or part of any payment under this Security Agreement from Us because:

- » the Secured Property is damaged, does not operate or is not in Your possession;
- » You claim to have a set off, counterclaim or other right against Us or any other person.

12. Indemnities

12.1 You, and the Additional Covenantor indemnify Us against any liability or loss arising from any Costs, charges and expenses (including on account of funds borrowed, contracted for or used to fund any amount payable by it) reasonably incurred in connection with the provision of the Loan Amount or this Security Agreement or any Event of Default and Our collection agent fees, legal fees and expenses on an indemnity basis reasonably incurred caused or contributed by:

- » Us exercising or attempting to exercise a right under this Security Agreement or any Transaction Document;
- » Us endorsing duty and/or registering the PMSI;
- » You not complying with this Security Agreement or any Transaction Document;
- » Us being required to repossess the Secured Property;
- » Us being required to repair/restore the Secured Property and to sell the Secured Property;
- » Us receiving payments under this Security Agreement other than on the due dates;
- » any prepayment or any payment being made on a date other than a repayment date, or;
- » anything We do in reliance on any communication purporting to be from a Transaction Party.

12.2 Each indemnity is a continuing obligation, separate and independent from Your other Obligations. Each indemnity continues after this Security Agreement ends or is terminated. It is not necessary for Us to incur expenses or make a payment before We can enforce a right of indemnity.

12.3 You do not have to pay or reimburse Us for any fees, charges and Costs under this Security Agreement which arises from negligence, fraud, willful misconduct or mistake by Us or Our officers, employees, contractors or agents.

13. Commission

13.1 You agree to Us paying commission, fees or other remuneration to any person who introduces You to Us or vice versa. You acknowledge that We may take any such payment into account when calculating the Repayment Instalments.

14. Events of Default

14.1 Each of the following is an Event of Default:

- » **Failure to pay** - a Transaction Party fails to pay on time any money due for payment by it under a Transaction Document;
- » **Failure to comply** - a Transaction Party fails to do something it must do under a Transaction Document, or does something that it is not permitted to do under a Transaction Document;

- » **Untrue warranty** – a warranty or representation made or deemed to be made to Us by a Transaction Party is untrue or misleading in any material respect;
- » **Void document** – a Transaction Document is void, voidable or otherwise cannot be enforced by Us, or is claimed to be so by a Transaction Party;
- » **Loss of priority** – a Security does not have, or ceases to have, the priority which it purports to have under the relevant Transaction Document;
- » **Authorisation ceasing** – an authorisation from a Government Body necessary to enable a Transaction Party to comply with its obligations under the Transaction Documents or carry on its principal activity is withheld or ceases to be in full force and effect;
- » **Legal action** – any court, tribunal, authority or regulatory body does anything relating to any property of a Transaction Party (for example issuing a notice or making an order confiscating or forfeiting property) which, in Our opinion has or is likely to have a Material Effect;
- » **Judgment to pay** – an order for payment is made or judgment is entered against You and is not paid by You within 10 Business Days;
- » **Enforcement of other Security** – a person who holds a Security Interest over any property of a Transaction Party takes any step to enforce that Security Interest;
- » **Insolvency** – an Insolvency Event occurs in relation to a Transaction Party;
- » **Cessation of business** – any Transaction Party ceases or threatens to cease to carry on any substantial part of its business;
- » **Change of control** – Change of Control occurs without Our prior written consent;
- » **Death or incapacity** – a Transaction Party who is a natural person dies, ceases to have legal capacity or becomes a person protected by the State;

15. Default Powers

- 15.1 Before We act on an Event of Default, We will allow You a reasonable time (being not less than 30 days) to remedy the Event of Default if it is able to be remedied, and notify You of this time period. However, We can give You a shorter notice, or no notice at all if it is reasonable for Us to act to manage a material and immediate risk relating to:
- » the Event of Default;
 - » the Your particular circumstances; and
 - » the value of the Secured Property.

15.2 If You remedy the Event of Default during the period set out in Our notice (if any), and no other Event of Default has occurred, then We will not exercise Our default rights after You have remedied it.

General

15.3 While an Event of Default subsists, We may exercise any or all of the rights set out in this Security Agreement in any way and at any time that We think fit. Our rights set out in the Security Agreement may be exercised without the need for any demand or notice.

Acceleration

15.4 While an Event of Default subsists, We may give You a notice in accordance with this Security Agreement determining that the Secured Money is immediately due for payment. When You receive the notice, You must immediately pay in full the amount referred to in that notice.

Statutory and implied powers

15.5 While an Event of Default subsists, We may exercise all rights capable of being conferred by law on secured parties under Security Interests or otherwise.

Repossession of the Motor Vehicle

15.6 If You do not pay the Secured Money set out in the notice referred to in this clause, We, or Our Representative may:

- » enter and remain upon any premises where the Motor Vehicle is or where We suspect the Motor Vehicle is without liability for trespass or otherwise, and take possession and control of the Motor Vehicle.

Repossessed Motor Vehicle

15.7 As soon as practicable after the Motor Vehicle is repossessed by Us, We must:

- » offer it for sale by public auction or tender and need not include any warranty on the condition of suitability of the Motor Vehicle; or
- » take any other steps permitted by law We decide to mitigate Our loss.
- » Ancillary powers

15.8 While an Event of Default subsists, We may:

- » execute any deed or other document as Attorney for You for the purpose of exercising any of Our rights under this Security Agreement;
- » delegate to any person any right (including this right of delegation) under this Security Agreement; and
- » do anything reasonably incidental or conducive to the exercise of any of Our other rights under this Security Agreement.

16. Exercise of Default Rights

Exclusion of legislation

- 16.1 The provisions implied in security agreements by the PPSA are negated or varied only so far as they are inconsistent with this Security Agreement and are otherwise varied so as to become consistent with this Security Agreement.
- 16.2 Any statutory restrictions (other than mandatory restrictions) on any of Our rights or an Attorney to lease or otherwise deal with the Secured Property do not apply.

Default notice

- 16.3 We, and an Attorney may exercise any right under this Security Agreement in relation to an Event of Default without first giving notice to You or allowing the lapse of any period of time to the extent that the law permits.
- 16.4 If a law requires that a notice be given or a lapse of time occur before any right can be exercised, then the period of notice or lapse of time is one day.

Application of money

- 16.5 Subject to any mandatory statutory requirements and to the rights of the holder of any Security Interest ranking in priority to, or equally with, this Security Interest, the Remedy Proceeds will be applied by Us, or an Attorney as follows:
- » first, towards the payment or reimbursement of the Costs of and incidental to the exercise or enforcement or attempted exercise or enforcement of Our rights;
 - » secondly, towards the remuneration of any Attorney;
 - » thirdly, towards the Secured Money, and the Remedy Proceeds must be appropriated between them as We think fit; and
 - » fourthly, to any person entitled to the Secured Property or authorised to give receipts for that money.

Contingent indebtedness

- 16.6 If part of the Secured Money is contingently owing, or in Our reasonable opinion, there is a prospect that it may become owing (whether actually or contingently) and We receive any money under this Security Agreement, We may:
- » pay that money into a suspense account and hold it as security for the payment of the Secured Money;

- » at any time appropriate any money in the suspense account towards the satisfaction of any money due for payment by You to Us in any way that We think fit, and
- » when the Secured Money is satisfied in full or We no longer hold that opinion, We must pay the balance to any person entitled to the Secured Property or authorised to give receipts for that money.

Third party dealings

16.7 Any person dealing with Us, or an Attorney in relation to this Security Agreement:

- » need not be concerned to enquire whether the right is exercisable or properly exercised; the Attorney is properly appointed; or any money paid by it to Us, or an Attorney is properly applied; and
- » the title of that person to any property acquired by it from Us, or an Attorney will not be adversely affected by the right not being exercisable or any improper appointment, exercise of the right or application of money of which it does not have actual notice.

16.8 The benefit of this clause is held on trust for the benefit of Us, each Attorney and each person dealing with any of them.

17. Preservation of Our Rights

Primary obligations

17.1 Your obligation to pay the Secured Money is a primary obligation. We are not obliged to enforce any right against any person or property before making a demand for payment by You.

Preservation of Your obligations

17.2 Your Obligations and Our rights under this Security Agreement will not be affected by anything which, but for this clause, might prejudice them.

Suspension of Your rights

17.3 You waive any right to be subrogated to, or otherwise have the benefit of, this Security Agreement until the Secured Money has been satisfied in full and in Our reasonable opinion, any payment towards the satisfaction of the Secured Money is not void, voidable or otherwise unenforceable or refundable.

17.4 We are not obliged to marshal in Your favour any Security or any property that We have an interest in or may be entitled to receive.

Reinstatement of Our rights

- 17.5 If a transaction or payment relating to the Secured Money is void, voidable or otherwise unenforceable or refundable because of laws relating to insolvency:
- » We are entitled against You to all rights under this Security Agreement that We would have had if the transaction or payment was not void, voidable or unenforceable or refundable; and
 - » You must do all things and sign such documents necessary or convenient to restore to Us the Security Interests created by this Security Agreement and Our rights under this Security Agreement immediately before that transaction or payment.

18. Our Rights and Obligations

Additional security

- 18.1 If We reasonably believe that:
- » the value of any Secured Property has declined; or
 - » the amount secured by a Security has increased for any reason, which has or may result in a Material Effect, You agree to provide Us with any additional security We reasonably ask for so that we may manage our material risk, within the timeframes We reasonably require.

Appointment of valuers and consultants

- 18.2 We may appoint a valuer to value the Secured Property (at Your cost) every 3 years during the Term of this Security Agreement.
- 18.3 If We reasonably believe that an Event of Default is subsisting or circumstances exist which could lead to an Event of Default occurring, We may appoint any Consultants to do any of the following:
- » investigate and report to Us on the Secured Property, affairs, financial condition, assets and business of a Transaction Party;
 - » inspect the records (and take copies of them), Secured Property and assets of the Transaction Party during normal business hours; or
 - » value the Secured Property.
- 18.4 You must provide reasonable assistance to any Consultant (including by providing them with any documentation or other information they reasonably request). You must pay the reasonable Costs associated with the appointment of the Consultant.

18.5 You acknowledge and agree that:

- » any valuer and any Consultant We appoint pursuant to this clause is an independent contractor and is not Our agent or employee; and
- » any report or other information We obtain from a valuer or Consultant is for Our use only.

18.6 You release Us, Our affiliates, officers, employees, contractors or agents and any Consultant from any loss, liability, or Costs that arise in connection with anything that a Consultant does or does not do arising out of the provision of a service to Us, except to the extent they were avoidable, mitigable, or arise from the negligence, fraud or willful misconduct of Us, Our affiliates, officers, employees, contractors or agents or any Consultant.

Authority to complete and amend

18.7 Each Transaction Party authorises Us to:

- » fill in any blanks in the Transaction Document; and
- » make any amendments to any Transaction Document to accurately reflect or give effect to the terms of this Security Agreement.

19. Costs and Expenses

19.1 You, and the Additional Covenantor must pay to Us on demand:

- » Our reasonable Costs relating to the negotiation, preparation, execution and duty payable in respect of this Security Agreement, the PMSI and any variation or discharge of it;
- » Our Costs relating to any Event of Default or the exercise or attempted exercise or the preservation of any of Our rights under this Security Agreement; and
- » any Taxes and registration or other fees (including fines and penalties relating to the Taxes and fees) which are payable in relation to this Security Agreement or any transaction contemplated by it.

19.2 If We must pay GST on any Supply made under this Security Agreement, You must pay to Us an amount equal to the GST payable on the Supply, when the consideration for the Supply is to be provided under this Security Agreement, in addition to the consideration.

19.3 If You, and the Additional Covenantor are required to pay for or reimburse Us for Our Costs or any expense We incur, or if You are required to make a payment under an indemnity in relation to any cost or expense, the amount You must pay Us the sum of:

- » the amount of the expense or outgoing less any input tax credit in respect of that expense or outgoing that We are entitled to; and
- » if Our recovery from You is in respect of a taxable Supply, an amount equal to the GST payable by Us in relation to that recovery.

19.4 You do not have to pay or reimburse Us for any fees, charges and Costs under this Security Agreement which arises from negligence, fraud, willful misconduct or mistake by Us or Our officers, employees, contractors or agents.

20. Attorney

Appointment

20.1 You irrevocably appoint Us or any of Our Authorised Representative as Your Attorney with the power, after a notice is given under this Security Agreement that an Event of Default is subsisting, to do all acts and things which You are obliged to do under this Security Agreement or which in the Attorney's opinion are reasonable and necessary in connection with the Secured Property, the protection or perfection of Our interest in the Secured Property or to enable the exercise of any of Our rights.

General

20.2 Any Attorney may exercise any right solely for the benefit of Us, even if the exercise of the right constitutes a conflict of interest or duty.

20.3 You ratify anything done or not done by the Attorney under the power of attorney.

20.4 The power of attorney is granted to secure the compliance of Your Obligations to Us and any proprietary interests under this Security Agreement, and for valuable consideration (receipt of which is acknowledged).

21. Notice Provisions

- 21.1 Any notice under this Security Agreement must be in writing.
- 21.2 In addition to any other lawful means, We may serve a notice on any Transaction Party by:
- » personally delivering or leaving it at a Transaction Party's Current Address;
 - » mailing the notice by pre-paid post to a Transaction Party's Current Address, in which case the notice will be taken to have been received by the Transaction Party on the second Business Day after posting; or
 - » emailing the notice to the Transaction Party's Current address, in which case the notice will be taken as received when We receive an automated message confirming delivery or 4 hours after the time We sent the email (whichever is earlier).
- 21.3 Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Security Agreement may be served by any method contemplated by this Security Agreement or in accordance with any applicable law.
- 21.4 We are not taken to receive a notice under this Security Agreement until We actually receive the notice in legible form.

22. General Provisions

Assignment

- 22.1 We will not Assign any rights under this Security Agreement without Your consent, unless it is to give effect to:
- » a sale of debt (for example to third party debt collectors);
 - » a sale of business, assets or portfolios;
 - » business restructuring; or
 - » securitisation or other finance structure.
- We may, without Your consent:
- » disclose any information or documents We consider necessary; and
 - » execute any documents We reasonably specify, to assist Us to exercise any of these rights.
- 22.2 You must not Assign any rights or Obligations under this Security Agreement without Our written consent.

Governing law

22.3 This Security Agreement is governed by the laws of the State of Western Australia.

22.4 You irrevocably submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

Waiver

22.5 A waiver of Our rights under this Security Agreement will not be effective unless it is in writing.

22.6 A waiver or indulgence We grant under this Security Agreement does not affect Our rights in relation to any further breach of this Security Agreement.

23. Capacity of the Transaction Parties Trusts

23.1 If You enter into this Security Agreement as trustee of a trust (whether or not You have told Us about the trust) then:

- » You warrant that the trust does not have an ABN for the trust for the enterprise that holds or has an interest in the Secured Property;
- » You are liable under this Security Agreement as trustee of the trust and in its own right;
- » a reference to You includes You as trustee of the trust and in Your own right;
- » a reference to Your property or business includes property owned and business carried on by You as trustee of the trust and property owned and business carried on by You in Your own right;
- » You warrant that You have power as trustee of the trust to execute and perform Your Obligations under this Security Agreement and have properly performed Your Obligations to the beneficiaries;
- » You warrant that all action required by the trust deed to authorise Your execution and performance of this Security Agreement has been taken;
- » You warrant that You have not defaulted in the performance of Your obligations as trustee;
- » You warrant that no action has been taken to terminate the trust;
- » You warrant that except where the Application states otherwise, You are the only trustee of the trust and will ensure that You remain the only trustee of the trust;

- » You warrant that You have a right to be fully indemnified out of Trust Property in relation to Your Obligations under this Security Agreement. You must not release or dispose of Your equitable lien over the Trust Property which secures that indemnity;
- » You warrant that You are properly incorporated and solvent;
- » You warrant that the rights of the beneficiaries in relation to the Trust Property are subject to Our rights and interests in the Trust Property and any rights or interests to which We may from time to time be subrogated; and
- » You must comply with Your obligations as trustee of the trust, must ensure that the Trust Property is not mixed with any other property and must ensure that the trust is not terminated or its terms varied, that Trust Property is not resettled and that the capital of the Trust Property is not distributed at any time.

Partnerships

23.2 If any two or more of You enter into this Security Agreement as partners of a partnership (whether or not You have told Us about the partnership):

- » You warrant that the partnership has an ABN for the partnership for the enterprise that holds or has an interest in the Secured Property;
- » both You and the partnership are liable under this Security Agreement;
- » a reference to Your property or business includes property owned and business carried on by the partnership, Your partnership interests and property owned and business carried on by You in Your own right;
- » You warrant that the partnership is duly constituted in accordance with the partnership agreement and each of You are all of the partners of the partnership at the date of this Security Agreement;
- » You warrant that all necessary action required by the partnership agreement to authorise the unconditional execution and delivery of, and compliance with Your Obligations under, this Security Agreement has been taken;
- » You must not vary, amend, revoke or terminate the partnership agreement except with Our consent; and
- » You must not permit any other person to become a partner in the partnership except with Our consent and after the incoming partner has executed such documents as We required so that the incoming partner is bound under the PMSI and this Security Agreement.

24. General

- 24.1 **Amendment** - No variation or waiver of, or any consent to any departure by a party from, a provision of this Security Agreement is of any force and effect unless it is confirmed in writing signed by the parties and then that variation, waiver or consent is effective only to the extent for which it is made or given.
- 24.2 **Waiver** - The failure, delay, relaxation or indulgence on the part of any Transaction Party in exercising any power or right conferred upon that Transaction Party by this Security Agreement does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it the exercise of any other power or right under this Security Agreement.
- 24.3 **Liability of parties** - If any Transaction Party to this Security Agreement consists of more than one person then the liability of those persons in all respects under this agreement is a joint liability of all those person and a separate liability of each of those persons.
- 24.4 **Severance** - If any provision of this agreement is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.
- 24.5 **Further assurance** - Each party must do, sign and execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required or contemplated of it or them by notice from another party to effectively carry out and give full effect to this Security Agreement and the rights and obligations of the parties under it, both before and after the end of the term.
- 24.6 **Counterparts** - This Security Agreement may be executed by any number of counterparts and all of these counterparts taken together constitute one and the same instrument.
- 24.7 **Attorneys** - Where this Security Agreement is executed on behalf of a party by an attorney, that attorney by executing declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney executes the agreement on behalf of that party.
- 24.8 **Time of the essence** - Time shall be of the essence of this Security Agreement in all respects.

25. Meaning and Interpretation of Words

Meanings of words

25.1 In the Transaction Documents, terms have the following meanings, unless a contrary intention appears:

Accession means goods that are installed in, or affixed to, the Secured Property.

Additional Covenantor means the additional covenantor described in the Security Agreement Form.

Application means, in relation to a Facility, the application completed on-line at the office of the agent.

Applicable Legislation means in respect of the goods the Chattel Securities Act 1987 (as amended) and the Personal Property Securities Act 2009 (as amended) and in respect of real property the Transfer of Land Act 1893 (as amended), any subsidiary legislation and any other laws in those places applicable to or affecting the Secured Property.

Arrears means any unpaid overdue Secured Money as described in the Security Agreement Form.

Attorney means any attorney appointed under this Security Interest and any person who derives a right by delegation directly or indirectly from an attorney.

Assign includes an assignment, transfer, mortgage and anything with a similar effect including the giving of an interest in or form of Security Interest to a person, and assignment has a corresponding meaning.

Authorised Representative means in relation to any party:

- » If that party is a corporation, a director or secretary of that party or an officer of that corporation whose title contains the word “manager” or “director”, or a person performing the functions of any of them;
- » That party’s lawyer; and
- » A person appointed by that party to act as an authorised representative for the purpose of this document and whose appointment is notified in writing by the appointor to the other party.
- » Bankruptcy means:
- » In relation to any corporation the appointment of an administrator, provisional liquidator or liquidator in respect of it because it is or may be insolvent; and
- » In relation to an individual, that person becoming an insolvent under administration as defined in section of the Bankruptcy Act 1966 (Cth).

Business Day means a day which is not a Saturday, Sunday or a public holiday in Western Australia.

Change of Control means where a Transaction Party is a corporation or a trustee the person or persons who control it cease to have that control, or a change takes place in the Transaction Party's directors, or a transfer of shares in the Transaction Party is registered or new shares or options for shares in its capital are issued. Where the party is a trustee the person or persons who is or are the trustee or trustees is or are removed and ceases to have control of the trust.

Commercial Loan means the loan We will provide to You upon consideration of You, the Additional Covenantor and the Grantor entering into the Security Agreement.

Consultant means accountants or financial managers or any other experts whom We have approved.

Corporations Act means the Corporations Act 2001 (Cth).

Costs include Our reasonable internal administration costs and legal costs.

Current Address means:

- » for notices sent to Us, the Current Address of the loan office; or
- » for notices sent to You, the last address which You advise Us of in writing.

Default Notice means a notice under clause 16.

Early Termination Fee means the amount specified in the Security Agreement Form.

Encumbrance means:

- » any interest in or right over the Secured Property;
- » anything which prevents, restricts or delays:
 - (i) the exercise of any right over the Secured Property;
 - (ii) the use of the Secured Property; or
 - (iii) the registration of any interest in or dealing with the Secured Property.

Event of Default means any event described in clause 14.

Facility means in relation to each borrower, the facilities described in the Application.

Facility Limit means in relation to a Facility, the amount described in the Application.

Financial Statements means statements of financial performance and statements of financial position together with statements, reports and notes attached to or intended to be read with any of those statements. If a Transaction Party is required by law to have its Financial Statements audited, or if We otherwise require a Transaction Party to prepare audited Financial Statements, they must be audited, by an auditor We have approved.

Financing Statement means a document registered on the PPSR to notify a Security Interest.

Government Body means:

- » any person, agency or other thing exercising an executive, legislative, judicial or other governmental function of any country or political sub-division of any country;
- » any public authority constituted by or under a law of any country or political sub-division of any country; and
- » any person deriving a right by delegation directly or indirectly from any other Government Body.

Grantor means You.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999.

Insolvency Event means in relation to a person:

- » the person is or states that it is unable to pay from its own money all its debts as and when they become due and payable;
- » the person is taken or must be presumed to be insolvent or unable to pay its debts under any Applicable Legislation;
- » an application or order is made for the winding up or dissolution of the person or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- » an administrator, liquidator, controller or person with a similar function is appointed in respect of the person, or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- » the person is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- » a distress, attachment or execution is levied or becomes enforceable against any property of the person;
- » the person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;

- » a petition for the making of a sequestration order against the estate of the person is presented and the petition is not stayed, withdrawn or dismissed within seven days or the person presents a petition against itself;
- » the person presents a declaration of intention under the Bankruptcy Act 1966 (Cth);
- » anything analogous to or of a similar effect to anything described above under the law of any Relevant Jurisdiction occurs in respect of the person;
- » any indebtedness of the person becomes due for payment before its stated maturity other than by the exercise of an option of the person to pay it before its maturity; or
- » the person fails to pay when due for payment any indebtedness.

Loan Amount means the Loan Amount referred to in the Commercial Loan agreement form.

Material Effect means a material adverse effect on either:

- » Your ability to perform its obligations under this document;
- » the effectiveness, priority enforceability of this or any other credit support, Security Agreement Form and these Standard Conditions;
- » Our rights or interests under the Security Agreement; or
- » the value of the Secured Property.

Motor Vehicle means a motor vehicle built to be propelled wholly on land, by a motor that forms part of the property and:

- » is capable of a speed of at least 10 Km/h; or
- » has 1 or more motors that have a total power of greater than 200W; and
- » does not run on rails, tram lines or other fixed paths, being a passenger motor vehicle, light commercial motor vehicle being no more than 5 tonnes used for commercial purposes only, but which excludes trucks or motor vehicles over 5 tonnes and agricultural equipment.

Monthly Account Keeping Fee means the fee defined in the Security Agreement Form.

Motor Vehicle Driver's Licence means any licence or permit which allows You to drive the goods.

Obligations means all the obligations and liabilities of You to Us under the Security Agreement whether related to the payment of money or the performance or omission of any act or thing, including non-liquidated and contingent liabilities.

Payment Date means the payment date detailed in the Security Agreement Form.

Permitted Encumbrance means an Encumbrance created with Our consent and is an Encumbrance that is an Encumbrance arising by operation of law to secure a monetary obligation maturing not more than 90 days after the date on which it is originally incurred.

Potential Event of Default means anything which with the giving of notice, lapse of time, fulfilment of any condition or determination of materiality will constitute, or would be likely to constitute, an Event of Default.

Policy means each insurance policy which a Transaction Party is obliged to take out or maintain under a Transaction Document.

PPSA means the Personal Property Securities Act 2009.

PPSR means the Personal Property Securities Register.

PPS Reg means the Personal Property Securities Regulations 2010.

Purpose means the purpose described in the Security Agreement Form.

Relevant Jurisdiction means the State of Western Australia.

Remedy Proceeds means any money received from the exercise of any right against the Secured Property.

Repayment Instalment means the repayment instalment detailed in the commercial finance agreement form.

Representative of a person means an officer, employee, contractor or agent of that person.

Secured Money means all money which You (whether or not with another person) are or at any time may become actually or contingently liable to pay to Us or for Our account for any reason whatsoever. It includes money by way of principal, interest, fees, Taxes, Costs, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages for which You are or at any time may become so liable.

Secured Property means the Secured Property referred to in the Security Agreement Form together with any Accessions, fixtures and/or fittings made to the Secured Property from time to time.

Security means any instrument or transaction which reserves or creates a Security Interest or under which a person agrees to create a Security Interest.

Security Agreement comprises the Standard Conditions and Security Agreement Form.

Security Agreement Form means the form entitled Security Agreement Form which incorporates the Standard Conditions.

Security Interest means any interest in or right over property which secures the payment of a debt or other monetary obligation or the performance of any other obligation.

Standard Conditions means the terms and conditions contained in this document.

Supply has the same meaning as taxable supply in the GST Act;

Taxes means taxes (including any tax in the nature of a goods and services tax), rates, levies, imposts or duties (other than those on the net overall income of the creditor) and any interest, penalties, fines and expenses relating to any of them.

Term means the term of the Commercial Loan as set out in the Security Agreement Form or such other period as the parties may in writing agree.

Transaction Document means:

- » the Security Agreement Form;
- » the Security;
- » the Financing Statement and the PMSI;
- » any agreement relating to the priority of a Security;
- » any other present or future document or agreement under which Secured Money is or may become payable at any time;
- » any document which We agree in writing to be a Transaction Document for the purposes of this Security Agreement;
- » any agreement or instrument created under any of them; and
- » each document entered into for the purpose of amending, novating, restating, renewing or replacing any of them.

Transaction Party means:

- » You;
- » the Additional Covenantor;
- » where any Security Interest is granted or created by any person or persons in addition to the mortgagor to secure the Secured Money, the mortgagor and that person or those persons; and
- » where any person enters into a loan or other facility agreement or a credit support agreement or any other document in relation to the secured money or the Secured Property or both, that person or those persons.

Trust Property means the present and future rights, undertaking and property comprising the trust fund of any trust.

Us means the mortgagee described in the commercial finance agreement form and We and Our has a corresponding meaning

You means the granter described in the commercial finance agreement form and Your has a corresponding meaning.

26. Interpretation

- 26.1 Terms consideration, GST, input tax credit, supply and taxable supply each has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999.
- 26.2 Headings are only for convenience and do not affect the interpretation of this mortgage.
- 26.3 References to the singular include references to the plural and vice versa.
- 26.4 "Includes" and "including" are not words of limitation.
- 26.5 Examples are descriptive only, and are not exhaustive.
- 26.6 A reference to a thing includes all or any part of that thing.
- 26.7 A reference to a person includes any company, partnership, trust, joint venture or association.
- 26.8 A reference to a document or statute includes all variations, supplements or replacements to it.
- 26.9 Where this Security Agreement requires You to do anything on a day which is not a Business Day, then You must do that thing on the preceding Business Day.
- 26.10 References to time are to Perth time.

Please staple your Loan Contract documents here.



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Email **finance@rac.com.au**

f **[facebook.com.au/RACWA](https://www.facebook.com.au/RACWA)**

W **[rac.com.au/finance](https://www.rac.com.au/finance)**

For deaf, hearing or speech impaired members:
General enquiries **[accesshub.gov.au](https://www.accesshub.gov.au)**

Metropolitan Member Service Centres

- Carousel** Shop 1098, Westfield Carousel Shopping Centre, Albany Highway
- Mandurah** Shop SP037, 14 Guava Way Halls Head
- Dianella** Shop 20, Dianella Plaza, 360/366 Grand Promenade
- West Perth** 832 Wellington Street

Regional Member Service Centres

- Albany** 110 Albany Highway
- Bunbury** Primewest Bunbury Centrepoint Shopping Centre 60 Blair Street
- Geraldton** Stirlings Central Shopping Centre 54 Sanford Street