

➤ Asset Based Facility

Terms and Conditions



ASSET BASED FACILITY

The offer we make

We, Scottish Pacific Business Finance Pty Ltd (ACN 008 636 388), provide asset based facilities. Those facilities can have up to four asset components: a debtor asset component; an inventory asset component; a plant and equipment asset component; and a land asset component. A debtor asset component is always included.

We may provide a letter of offer in which we offer to provide an asset based facility to you. The letter of offer will specify the components which will be included. You accept our offer by signing the acceptance provision in the letter of offer, or by accepting our offer in another way which is acceptable to us. If you accept our offer and satisfy all applicable conditions, we will provide the asset based facility to you in accordance with this document, as amended and supplemented by the letter of offer.

The letter of offer may refer to guarantors. The guarantors are bound if they sign the acceptance provision in the letter of offer or agree to be bound in another way which is acceptable to us. They will then provide a guarantee, indemnity, other undertakings and representations to us. Those obligations are set out in this document, as amended and supplemented by the letter of offer. In particular, a guarantee and indemnity is given for all money any transaction party (as defined in clause 105) owes and all obligations any transaction party has, at any time, to us under any document.

You and the guarantors give security interests to us as specified in this document, as amended and supplemented by the letter of offer. In particular, see clauses 14.6, 29.2(d), 37, 41.2(f) and 83. Other security documents will need to be signed. In particular, you will need to sign a General Security Deed and, if you receive funding in connection with land, the landowner will need to give us a mortgage over the land. A guarantor may also need to sign the General Security Deed.

The letter of offer may refer to a related lender. The related lender agrees that your obligations to it will be subordinated to your obligations to us. You agree to the subordination. A guarantor's obligations can be subordinated in an equivalent way. The letter of offer may refer to a related landlord. The related landlord agrees to give us access to sites where items, subject to a security interest, are located. It also gives us some rights in relation to those sites. The related lender and the related landlord are bound if they sign the acceptance provision in the letter of offer or agree to be bound in another way which is acceptable to us.

Overview of the facility we provide

We provide funding to you. On any day, the amount you can request is your availability. A minimum amount is agreed which you must request. This document, as amended and supplemented by the letter of offer, explains how the availability is calculated. You will give information to us concerning such things as asset values and liabilities. We then give you a facility base certificate which specifies amounts used to determine the availability. Our commitment to provide funding is subject to agreed conditions and limitations.

We purchase all of your present and future accounts. The accounts (also known as book debts) arise by you selling goods or providing services. Other assets are subject to a security interest arising under this document as amended and supplemented by the letter of offer, the General Security Deed or another document.

Agreed interest, charges, fees and expenses must be paid. Generally, they are deducted from the payments we are required to make or from your availability.

The facility agreement continues until it ends. You can end it by giving notice to us. Generally a fee is payable if you end it before the expiration of the minimum period specified in the letter of offer. The facility agreement specifies when we can end it and an amount is payable to us if we end it following a default event (as defined in clause 105).

Our facility agreement

Some words which are used in this document and the letter of offer are given a special meaning and rules are applied in the interpretation of this document and the letter of offer. Those meanings and rules are in clauses 103 to 106. In particular, the meaning of words printed in italics is explained in clause 105. When we need to approve something we will act reasonably (see clause 89.4).

This document and the letter of offer can change. How and when changes can be made is explained in clauses 65 and 66. If a change is made you, the guarantors, the related lender and the related landlord will be bound by it.

This page is only a summary of some features of the asset based facility we provide. It is essential that you and each person who is considering agreeing to be a guarantor, related lender or related landlord obtain a copy of the letter of offer, this document, the General Security Deed and all other relevant documents. It is also essential that you and each of those persons carefully read those documents before signing. In particular, we draw to your attention that clause 64 excludes some of our liabilities and clause 98 allows us to disclose specified information.

We recommend that you, and each person who is considering agreeing to be a guarantor, obtain independent legal, financial, accounting and taxation advice before signing.

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ASSET BASED FACILITY TERMS AND CONDITIONS

A. INTRODUCTION

1 Agreeing to the terms and conditions

- 1.1 The asset based facility is provided by Scottish Pacific Business Finance Pty Ltd (ACN 008 636 388) ("ScotPac"). The terms and conditions of the facility are found in this document and a separate *letter of offer*. The *letter of offer* provides various details which this document states will be found in the *letter of offer*. The *letter of offer* can also include conditions precedent, special provisions and operating conditions and it can change this document. This document, as amended and supplemented by the *letter of offer*, is called the *facility agreement*.
- 1.2 The *letter of offer* explains how the *client*, *guarantor*, *related lender* and *related landlord* agree to the *facility agreement*.
- 1.3 The meaning of words printed in italics is explained in clause 105. As explained in clauses 104 and 106 some other terms are given a special meaning.

2 Commencement

- 2.1 The *facility agreement* will come into force on the *commencement date*. It comes into force on that date even if the *letter of offer* was executed or delivered earlier.
- 2.2 The *client* must satisfy any conditions precedent included in the *letter of offer* and give ScotPac any other documents or information ScotPac, acting reasonably, requires. ScotPac does not have to pay anything to the *client* until those conditions precedent have been satisfied and the documents and information have been given to ScotPac. ScotPac can waive any of those requirements. ScotPac can give the waiver subject to any reasonable conditions ScotPac stipulates to the *client*. For example, ScotPac may stipulate that the waived condition precedent must be satisfied by a particular date.

B. FUNDING UNDER THE ASSET BASED FACILITY

3 The facility ScotPac provides

- 3.1 The asset based facility can have up to four asset components.
 - Debtor asset component. The *client* will have a debtor asset component.
 - Inventory asset component. The *client* will only have an inventory asset component if this is specified in the *letter of offer*.
 - Plant and equipment asset component. The *client* will only have a plant and equipment asset component if this is specified in the *letter of offer*.
 - Land asset component. The *client* will only have a land asset component if this is specified in the *letter of offer*.
- 3.2 On any day, the *client* can request that ScotPac pay all or any part of the *availability*. In any event, the *client* must request an amount which is not less than the minimum draw. The minimum draw is the minimum funding specified in the *letter of offer* less the *funds in use* (the resulting amount will be zero if that calculation results in a negative amount) or, if it is less, the *availability*. The *client's* right or obligation to request payment of the *availability* is subject to other provisions of this document (in particular, see clause 50) and any restrictions in the *letter of offer*.
- 3.3 If the *availability* is at any time and for any reason a negative amount the *client* must, in accordance with clause 49, make it zero or a positive amount.

4 Determining the client's availability

- 4.1 At any time, the *availability* will be the amount which (without double counting) is:
 - (a) the lesser of:
 - the *facility limit*; and

- the total of the *accounts availability*, the *inventory availability*, the *equipment availability* and the *land availability*,

plus

- (b) the total of all *collections* which have been paid to the credit of the *nominated account* and all amounts which the *client* or the *guarantor* has paid to ScotPac to reduce the funding provided by ScotPac. Clause 51.4 explains when these *collections* and other amounts are considered to have been paid,

less

- (c) the total of all amounts which ScotPac has paid to the *client* and the *facility amount owing*,

less

- (d) the total of the *asset realisation reserve*, the *general reserve* and, if the asset based facility has an inventory asset component, the *employee entitlement reserve*.

4.2 The *accounts availability* is determined in accordance with this clause 4.2. From the total *book value* of all *accounts* ScotPac deducts the total *book value* of all *ineligible accounts*. The resulting amount is the total *book value* of all *eligible accounts* and it is multiplied by the *early payment percentage* to give the *accounts availability*.

4.3 The *inventory availability* is determined in accordance with this clause 4.3 if the asset based facility has an inventory asset component. From the total *inventory value* of all *eligible inventory* ScotPac deducts the *supplier PMSI reserve*. The resulting amount is multiplied by the *inventory advance rate* to give the *inventory availability*.

4.4 The *equipment availability* is determined in accordance with this clause 4.4 if the asset based facility has a plant and equipment asset component. The total *equipment value* of all *designated equipment* is multiplied by the *P&E advance rate* to give the *equipment availability*.

4.5 The *land availability* is determined in accordance with this clause 4.5 if the asset based facility has a land asset component. The total *land value* of all *designated land* is multiplied by the *land advance rate* to give the total *scaled land value*. From the total *scaled land value* is deducted the *priority lender amount* to give the *land availability*.

5 Facility base packs

5.1 The *client* must deliver a *facility base pack* to ScotPac by no later than 4.00pm on the fifth *working day* of each *month*. ScotPac uses the *facility base pack* to prepare the *facility base certificate*, monitor the *client's* business and assist in confirming that the *client* is complying with its *obligations*. The *client* is also required to provide other information, in particular see clauses 15.1, 53 and 59. The provision of complete and accurate information is a fundamental requirement of the asset based facility.

5.2 The *facility base pack* will include the following.

- (a) An *aged receivables report*. This report will, amongst other things, show the total *book value* for all *accounts* as at the *calculation time* for each *customer* and an accounts receivable aged trial balance with a summary report in respect of all *accounts*, separately listing *accounts* aged 1 to 30 days, 31 to 60 days, 61 to 90 days and over 90 days.
- (b) An outstanding accounts payable report. This report will record all accounts payable and separately list the amounts owed aged 1 to 30 days, 31 to 60 days, 61 to 90 days and over 90 days.
- (c) Monthly management accounts (profit and loss and balance sheet) for the previous *month* and year to date.
- (d) An *inventory report*, if the asset based facility has an inventory asset component. This report will, amongst other things, show: the total *book value* of all *inventory* as at the *calculation time*; a breakdown of the *inventory* by category in raw materials and finished goods; the *book value* of the *inventory* in tonnage or units and location; and the gross inventory balance.
- (e) An employee entitlements report, if the asset based facility has an inventory asset component. This report will show the wages, superannuation contributions and other entitlements as defined in section 596AA(2) of the Corporations Act 2001.
- (f) A *compliance certificate*, signed by at least one director of the *client*, in the form provided by ScotPac before the *commencement date* or another form ScotPac, acting reasonably, requires.

5.3 The *compliance certificate* will include confirmation that: there is no continuing *default event*; there is no *potential default event*; and the warranties specified in clause 7.1 can be given. It will also provide details of any *accounts* which, as at the *calculation time*, have been disputed by the *customer*, are owed by a *customer* which is *insolvent* or are not able to be collected. If there are no *accounts* of that type this will be confirmed.

If the asset based facility has an inventory asset component, the *compliance certificate* will include each of the following.

- (a) Confirmation that the warranties specified in clause 7.2 can be given.
- (b) The total *book value* of any *inventory* which is held by the *client* on consignment or placed by the *client* on consignment (as at the *calculation time*).
- (c) The total *book value* of any *inventory* subject to or likely to be subject to an insurance claim (as at the *calculation time*).
- (d) The total amount owed (as at the *calculation time*) to *suppliers* which have supplied *inventory*.

If a confirmation mentioned in this clause 5.3 cannot be given the *compliance certificate* must specify why the confirmation cannot be given and the steps (if any) which have been taken to remedy the event or circumstance which means that the confirmation cannot be given.

6 Facility base certificates

6.1 Not later than ten *working days* after ScotPac receives the *facility base pack*, ScotPac will deliver the *facility base certificate* to the *client*. It can be delivered by the relevant information being made available on the *client platform*. The *facility base certificate* will include the following, each as at the *calculation time*.

- Total *book value* of all *accounts*.
- Total *book value* of all *ineligible accounts*.
- Total *book value* of all *eligible accounts*.
- *Accounts availability*.
- Total *book value* of all *inventory* (if applicable).
- Total *book value* of all *ineligible inventory* (if applicable).
- Total *book value* of all *eligible inventory* (if applicable).
- Total *inventory value* of all *eligible inventory* (if applicable).
- *Supplier PMSI reserve* (if applicable).
- *Inventory availability* (if applicable).
- Total *equipment value* of all *designated equipment* (if applicable).
- *Equipment availability* (if applicable).
- Total *land value* of all *designated land* (if applicable).
- Total *scaled land value* (if applicable).
- *Priority lender amount* (if applicable).
- *Land availability* (if applicable).
- *Asset realisation reserve*.
- *General reserve*.
- *Employee entitlement reserve* (if applicable).
- *Availability*.
- *Funds in use*. On the *calculation date* this is the amount which bears either a discount charge or interest. The amount which bears a discount charge or interest can change each day (see clause 9).

6.2 Each item, except the total *book value* of all *accounts* and the total *book value* of all *inventory*, is determined by ScotPac. Clause 8 explains how the determinations are made. The total *book value* of all *accounts* is taken from the *aged receivables report* unless there is an *actual calculation event*. The total *book value* of all *inventory* is taken from the *inventory report* unless there is an *actual calculation event*. In relation to an *actual calculation event* see clauses 8.1 and 8.2.

7 Facility base pack warranties

7.1 When the *client* gives ScotPac a *facility base pack* it warrants each of the following.

- (a) The details in the *facility base pack* (including the details in the *aged receivables report* and monthly management accounts) are correct in all material respects. Those details must be based on information that appears in the *client's* records, including its accounting records.
- (b) The amount specified in the *aged receivables report* as being the total *book value* of all *accounts* is, to the best of the *client's* knowledge, the total amount owed by the *customers* in connection with *accounts* as at the *calculation time*. That amount must be the same as the amount which appears in the *client's* records, including its accounting records, as owing at the *calculation time*. If the *client* cannot give that warranty (for example, because a discount has been allowed to the *customer*) the *client* must tell ScotPac in the *facility base pack*.

7.2 If the asset based facility has an inventory asset component this clause 7.2 applies. When the *client* gives ScotPac a *facility base pack* it also warrants each of the following.

- (a) The details in the *inventory report* are correct in all material respects. Those details must be based on information that appears in the *client's* records, including its accounting records.
- (b) The amount specified in the *inventory report* as being the total *book value* of all *inventory* is, to the best of the *client's* knowledge, the total *book value* of all *inventory* as at the *calculation time*. That amount must be the same as the amount which appears in the *client's* records, including its accounting records, as being the total *book value* of *inventory* at the *calculation time*. That amount must be determined using methodologies agreed between ScotPac and the *client* or, in the absence of that agreement, as required by generally accepted accounting principles.
- (c) The total *book value* of any *inventory* which is held by the *client* on consignment or placed by the *client* on consignment and the total *book value* of any *inventory* subject to or likely to be subject to an insurance claim (each as at the *calculation time*) specified in the *compliance certificate* is, to the best of the *client's* knowledge, accurate.
- (d) All *inventory* included in the *inventory report* meets all standards imposed by any government authority, including relating to its production, acquisition and importation.
- (e) None of the *inventory* included in the *inventory report* is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement or right or requires the consent of any person for completion, manufacture or sale.
- (f) None of the *inventory* included in the *inventory report* is manufactured to the unique specifications of the *client's* customer (unless it can be sold to a broader market).
- (g) None of the *inventory* included in the *inventory report* carries the branding of the *client's* customer.
- (h) None of the *inventory* included in the *inventory report* is held for rental or lease by or on behalf of the *client*.
- (i) None of the *inventory* included in the *inventory report* in any way fails to meet or violates any warranty, representation or covenant contained in the *facility agreement*.
- (j) The amount specified in the *compliance certificate* as being the total amount owed to *suppliers* which have supplied *inventory* is correct in all material respects.

8 When and how the amounts are determined

8.1 The following principles are applied to determine the *accounts availability*.

- (a) The total *book value* of all *accounts* (as at the *calculation time*) specified in the *aged receivables report* will be the *book value* of all *accounts* for the entire *certificate period*. However, if an *actual calculation event* occurs ScotPac may, by notice to the *client*, decide that ScotPac should determine the total *book value* of all *accounts* each *working day*. When ScotPac, acting reasonably, is satisfied that there is no continuing *actual calculation event* ScotPac will tell the *client* and the total *book value* of all *accounts* will once again be determined for *certificate periods* by reference to *aged receivables reports*.
- (b) ScotPac will determine the total *book value* of all *ineligible accounts*. In making that calculation it can apply the criteria in clause 18.2 to determine whether an *account* is an *eligible account* or an *ineligible account* or it can, acting reasonably at any time, determine an amount which is a bona fide estimate of what the *book value* of all *ineligible accounts* would be if each *account* had been categorised using that criteria as being an *eligible account* or an *ineligible account*. ScotPac will determine the total *book value* of all *eligible accounts* by deducting the total *book value* of all *ineligible accounts* from the total *book value* of all *accounts*. ScotPac will also determine the *accounts availability*.

- (c) The *accounts availability* specified in the *facility base certificate* will apply for the entire *certificate period*. However, whilst ScotPac is determining the total *book value* of all *accounts* each *working day* it may also determine the total *book value* of all *ineligible accounts*, the total *book value* of all *eligible accounts* and the *accounts availability* each *working day*.
 - (d) ScotPac will act reasonably when it makes the above determinations and will consider the details the *client* provides in the *aged receivables report* or in accordance with clause 15 and other information included in the *facility base pack* and any other information ScotPac has concerning the *accounts*.
- 8.2 If the asset based facility has an inventory asset component the following principles are applied to determine the *inventory availability*.
- (a) The total *book value* of all *inventory* (as at the *calculation time*) specified in the *inventory report* will be the *book value* of all *inventory* for the entire *certificate period*. However, if an *actual calculation event* occurs ScotPac may, by notice to the *client*, decide that ScotPac should determine the total *book value* of all *inventory* each *working day*. When ScotPac, acting reasonably, is satisfied that there is no continuing *actual calculation event* ScotPac will tell the *client* and the total *book value* of all *inventory* will once again be determined for *certificate periods* by reference to *inventory reports*.
 - (b) ScotPac will determine the total *inventory value* of all *eligible inventory*. Clause 30 explains how the *inventory value* is determined. ScotPac also determines the *supplier PMSI reserve* and the *inventory availability*.
 - (c) The *inventory availability* specified in the *facility base certificate* will apply for the entire *certificate period*. However, whilst ScotPac is determining the total *book value* of all *inventory* each *working day* it may also determine the total *inventory value* of all *eligible inventory*, the *supplier PMSI reserve* and the *inventory availability* each *working day*.
 - (d) ScotPac will act reasonably when it makes the above determinations and will consider the details the *client* provides in the *inventory report* or in accordance with clause 32.2 and other information included in the *facility base pack* and other information ScotPac has concerning the *inventory*.
- 8.3 If the asset based facility has a plant and equipment asset component, ScotPac will determine the total *equipment value* of all *designated equipment* and the *equipment availability*. Clause 36 explains how the *equipment value* is determined. In particular, the value will change when plant and equipment becomes *designated equipment* or ceases to be *designated equipment*. ScotPac will tell the *client* the amount which is the *equipment value* of all *designated equipment* and the *equipment availability*. ScotPac will tell the *client* when those amounts change. The amounts specified in the *facility base certificate* will be current as at the *calculation time* but may change.
- 8.4 If the asset based facility has a land asset component, ScotPac will determine the total *land value* of all *designated land*, the total *scaled land value*, the *priority lender amount* and the *land availability*. Clause 43 explains how the *land value* is determined. In particular, the value will change when land becomes *designated land* or ceases to be *designated land*. ScotPac will tell the *client* the amount which is the total *land value* of all *designated land*, the total *scaled land value*, the *priority lender amount* and the *land availability*. ScotPac will tell the *client* when those amounts change. The amounts specified in the *facility base certificate* will be current as at the *calculation time* but may change.
- 8.5 ScotPac will determine the *asset realisation reserve*, the *general reserve* and, if applicable, the *employee entitlement reserve* and the *supplier PMSI reserve*. It will act reasonably when it makes the determinations and will consider the details the *client* provides in the *facility base pack*. ScotPac will tell the *client* when it determines an amount or changes a determination. The amount specified in the *facility base certificate* will be current as at the *calculation time* but may change.
- 8.6 The *availability* and *funds in use* are specified in the *facility base certificate* for the *client's* information. They will be current as at the *calculation time* subject to any adjustments necessary so that they correctly reflect the position as at the *calculation time*. They are likely to change each day.

C. INTEREST, FEES AND CHARGES

9 Discount charge, interest, line fee and early termination fee

- 9.1 The *funds in use* will bear either a discount charge or interest. On any day, the *funds in use* is:
- (a) the total of all amounts which ScotPac has paid to the *client* and the *facility amount owing*,
less

- (b) the total of all *collections* which have been paid to the credit of the *nominated account* and all amounts which the *client* or the *guarantor* has paid to ScotPac to reduce the funding provided by ScotPac.

If that amount is a negative amount it will be zero.

- 9.2 A discount charge is payable by the *client* on the *funds in use* which is funding provided by ScotPac in connection with *eligible accounts*. The funding is an early payment of the *additional payment* which it is expected ScotPac will make in accordance with clause 17. The discount charge is calculated by multiplying the daily balance of the early payment by the daily equivalent of the *prevailing rate*. The charge is calculated and it accrues each day from the day ScotPac initiates payment of the early payment.
- 9.3 Interest is payable by the *client* on the *funds in use* which is not an early payment. The interest is calculated by multiplying the daily balance of the *funds in use* (excluding the early payment) by the daily equivalent of the *prevailing rate*. Interest is calculated and it accrues each day. In the case of an advance, the interest accrues from the day ScotPac initiates payment. In the case of an overdue amount, the interest accrues from the day it became overdue until it is paid at the rate determined in accordance with paragraph (a) of the definition of *prevailing rate*. That paragraph will also apply in other circumstances as specified in that definition. If the amount becomes covered by a court order, the *client's* payment obligation under this clause is a separate obligation although the *prevailing rate* will be replaced by the rate in the court order if it is higher. A *client's* obligation to pay on time is not affected by this clause.
- 9.4 On the last day of a *month* the discount charge and interest which accrued during that *month* is added to the *funds in use* and will then bear interest. Accordingly, the accrued discount charge and the accrued interest is not included in the *facility amount owing* until the last day of the *month*.
- 9.5 ScotPac is entitled to a line fee. If the *letter of offer* states that it is an annual line fee, the *client* will pay to ScotPac on the *commencement date* and each anniversary of the *commencement date* an amount equivalent to the *facility limit* multiplied by the line fee specified in the *letter of offer*. If the *letter of offer* states that it is a monthly line fee, the *client* will pay to ScotPac on the *commencement date* and on the first *working day* of each following *month* an amount equivalent to the *facility limit* multiplied by the line fee specified in the *letter of offer*.
- 9.6 ScotPac is entitled to an early termination fee if the *facility agreement* ends before the end of the period specified in the *letter of offer* as being the minimum period. The following paragraphs apply to the early termination fee.
- (a) ScotPac is entitled to the fee when the *facility agreement* ends. The *facility agreement* could end at the choice of the *client* (see, in particular, clause 67.1) or ScotPac (see, in particular, clause 67.2) but the fee is not payable if the *client* ends the *facility agreement* pursuant to clauses 62.4 or 65.1.
- (b) The fee is the total of the remaining interest payable (see clause 9.6(c)) and the remaining line fee payable (see clause 9.6(d)). The fee is a reasonable estimate of the loss ScotPac will suffer due to the *facility agreement* ending before the end of the minimum period. The *client* can request an example of the likely fee.
- (c) The remaining interest payable is the net present value of the interest or discount charge (determined using the *prevailing rate* on the date the *facility agreement* ends) which would have been payable if the *facility agreement* had continued and the minimum funding specified in the *letter of offer* had been drawn by the *client* during the period on and from the date the *facility agreement* ends to and including the date the minimum period ends. The net present value is determined by taking that interest or discount charge and discounting it using the *prevailing rate* (calculation basis) specified in the *letter of offer* fixed as at the date the *facility agreement* ends.
- (d) The remaining line fee payable is the line fee which would have been payable if the *facility agreement* had continued until the date which is the earlier of the date the minimum period ends and the date which is 24 *months* from the *commencement date*.

10 Facility fees and charges

- 10.1 ScotPac is entitled to a fee if a *customer* pays in any way except by: cheque; electronic funds transfer to the *nominated account*; or an EFTPOS or BPay transfer to the *nominated account*. ScotPac is also entitled to a fee if a *customer* pays by: cheque but that cheque is dishonoured; electronic funds transfer but the transfer is reversed; or direct debit, EFTPOS or BPay but it is dishonoured or reversed. ScotPac will tell the *client* the amount of those fees on request. ScotPac will not change, in a material way, the manner in which those fees are determined without approval from the *client*.
- 10.2 ScotPac is entitled to payment by the *client* of a field examination fee for each on-site examination under clause 79. If ScotPac employees undertake the examination the fee is the amount which ScotPac tells the *client* is the applicable fee. ScotPac will not change, in a material way, the manner in which the fee is determined without approval from the *client*. If ScotPac arranges for the valuer or an *entity* appointed under clause 88.4 to undertake the examination the fee is the amount ScotPac is required to pay.

- 10.3 This clause 10.3 applies if the asset based facility has an inventory asset component. ScotPac is entitled to payment by the *client* of all costs and expenses incurred in determining the *inventory value*, including in obtaining the valuation report mentioned in clause 30. Other amounts will be payable under clause 11.
- 10.4 This clause 10.4 applies if the asset based facility has a plant and equipment asset component. ScotPac is entitled to payment by the *client* of the costs incurred in determining the *equipment value*, including in obtaining the valuation report mentioned in clause 36, inspecting the *designated equipment* and obtaining or giving releases of *security interests* in *designated equipment*. Other amounts will be payable under clause 11.
- 10.5 This clause 10.5 applies if the asset based facility has a land asset component. ScotPac is entitled to payment by the *client* of the costs incurred in determining the *land value*, including in obtaining the valuation report mentioned in clause 43. However, if the *client* did not ask ScotPac to obtain the valuation report, the *client* is only required to pay the costs of the valuation report twice in any twelve *month* period, unless ScotPac believes on a reasonable basis that a *default event* is continuing or there is a *potential default event*. Amounts will be payable for such things as obtaining or giving discharges of mortgages over the *designated land* and agreeing to arrangements with another mortgagee or a tenant in respect of the *designated land*. Other amounts will be payable under clause 11 or the *land mortgage*.

11 Other fees and charges

- 11.1 An arrangement fee is payable by the *client*. It is specified in the *letter of offer*. ScotPac is entitled to it when the first payment of *availability* is made, if it has not already been paid.
- 11.2 If ScotPac provides funding under clause 24.1 or increases a percentage or limit in accordance with clause 65.4 it will be entitled to an excess arrangement fee. The excess arrangement fee will be agreed between ScotPac and the *client*. ScotPac is entitled to the excess arrangement fee each time the funding is provided or the increase occurs.
- 11.3 ScotPac is entitled to payment by the *client* for all reasonable costs, charges and expenses borne by ScotPac in relation to any *transaction document*, in executing it, delivering it, amending it, performing it, administering it and discharging any *security interest* which arises under it. Those costs, charges and expenses include:
- (a) charges for mail, telephone, courier bags, searches, credit checks and the use of the *information connection*; and charges which arise when the *client* tells ScotPac about *accounts*. ScotPac will tell the *client* the amount of those charges on request. ScotPac will not change, in a material way, the manner in which those charges are determined without approval from the *client*;
 - (b) *ADI* charges; electronic funds transfer (including EFTPOS and BPay) charges; fees for a payment being made by direct debit; and credit and debit card fees;
 - (c) registration fees; stamp duty; transaction duty; *GST* (including any *GST* arising on the transfer or re-transfer of a *transferred account*); and all other taxes, duties, impositions and penalties;
 - (d) outgoings (such as rates and taxes); insurance premiums; costs incurred in connection with the completion, maintenance, repair, preservation, protection, sale or other dealing with *inventory*, *designated equipment* or *designated land*;
 - (e) those incurred by ScotPac in relation to the things mentioned in clause 70; and
 - (f) those ScotPac bears in complying with the *PPSA* (for example, in responding to a request under sections 275 or 276, in dealing with a notice under section 120 or complying with a demand under section 178); by collecting *accounts* or having an *entity* collect *accounts*; for audits; or by retaining consultants to evaluate matters of material concern to ScotPac.

In the case of legal costs and expenses payable under clauses 11.3 or 11.4 and, if applicable, audit costs and expenses, ScotPac's entitlement is for the full amount of the cost or expense, including amounts for in-house lawyers and in-house auditors charged at their usual rates.

- 11.4 ScotPac is entitled to payment by the *client* for all costs (including taxes), charges and expenses, borne by ScotPac in relation to any *transaction party's* compliance with its *obligations* and warranties and in relation to enforcing any *transaction document*, considering the enforcement of it, attempting to enforce it and ending it. However, those costs, charges and expenses do not include those which were borne by ScotPac due to ScotPac's mistake, negligence, fraud or wilful misconduct (see clause 104.7).

12 GST

- 12.1 Where ScotPac is entitled to an amount for a supply made by ScotPac the amount is stated or calculated exclusive of *GST*. The entitlement can be under any *transaction document* or on any other basis. In addition to that amount,

the *transaction party* must pay to ScotPac any GST chargeable in respect of the supply so that ScotPac will receive and retain, after payment of any GST, the amount otherwise payable by the *transaction party* for the supply. Any GST payable under this clause is payable by a *transaction party* when it is required to make the payment in respect of which the GST is chargeable.

- 12.2 Where a *transaction party* is required to pay for, compensate for, reimburse or contribute to any loss, the amount required to be paid, compensated, reimbursed or contributed by the *transaction party* will be the sum of that amount (net of any input tax credits claimed by ScotPac in respect of that amount, unless that amount is a payment under clauses 11.3 or 11.4) and, if ScotPac's recovery from the *transaction party* is a taxable supply, any GST payable in respect of that supply.

D. DEBTOR ASSET COMPONENT

13 Introduction

The *client* has an asset based facility with a debtor asset component. The *client* will transfer *accounts* to ScotPac pursuant to clause 14 or will give a *security interest* in them to ScotPac pursuant to clause 25 and the *general security deed*.

14 Transfer of accounts

- 14.1 If there are existing *security interests* in favour of other *entities* (such as *suppliers*) *accounts* will generally be transferred to ScotPac in two stages under clause 14.2. This is done so ScotPac can use the *PPSA* to obtain an interest in *accounts* which has priority over a *security interest* which is a *PMSI*. If there are no existing *security interests* the *accounts* are generally transferred under clause 14.3.

- 14.2 Clause 14.2 applies if, on or before the *commencement date*, ScotPac has registered on the *PPSR* a financing statement that gives the *client's* details and describes the collateral as being "accounts" but excludes some or all of the *transferred accounts* which are subject to a *PMSI*. Clause 14.2 will also apply if ScotPac has given the *client* a notice in accordance with clause 101 to advise that it applies.

- (a) The *client* transfers to ScotPac all *accounts* (except *delayed transferred accounts*) which exist on the *commencement date*. Those *accounts* are transferred on the *commencement date*. There is no agreement to defer attachment to any later time.
- (b) The *client* transfers to ScotPac all *delayed transferred accounts* which exist at the *delayed transfer time*. Those *accounts* are transferred at the *delayed transfer time*. That is when attachment occurs.
- (c) The *client* transfers to ScotPac all *accounts* (except *delayed transferred accounts*) which are created after the *commencement date* and all *accounts* which are created after the *delayed transfer time*. Those *accounts* are transferred immediately after they are created. There is no agreement to defer attachment to any later time.
- (d) Whilst the *delayed transferred accounts* are not transferred until the *delayed transfer time* they are, in the meantime, subject to a *security interest* which arises under the *general security deed*.

- 14.3 Clause 14.3 applies if clause 14.2 does not apply.

- (a) The *client* transfers to ScotPac all *accounts* which exist on the *commencement date*. Those *accounts* are transferred on the *commencement date*. There is no agreement to defer attachment to any later time.
- (b) The *client* transfers to ScotPac all *accounts* which are created after the *commencement date*. Those *accounts* are transferred immediately after they are created. There is no agreement to defer attachment to any later time.

- 14.4 Each *related right* is transferred to ScotPac at the same time as the *account* to which it is related is transferred in accordance with clauses 14.2 or 14.3.

- 14.5 Each transfer under clauses 14.2, 14.3 and 14.4 is unconditional and is an absolute transfer of the entire interest in the *account* and the *related right*. However, ScotPac does not assume any obligation to the *customer*. No further act or instrument is required for the transfer to occur.

- 14.6 For the purposes of the *PPSA* the transfer of the *account* gives ScotPac a *security interest* in the *account*. For those purposes, the transfer of the *related right* may give ScotPac a *security interest* in the *related right*. For all other purposes, the effect of the transfer is that the *account* and the *related right* belong to ScotPac as the absolute owner.

14.7 To satisfy the requirement of section 12 of the Conveyancing Act 1919 (NSW) (or any other relevant equivalent provision), when the *client* tells ScotPac about a *transferred account* in accordance with clause 15.1 it, by virtue of that act, transfers to ScotPac that *transferred account*. That act will be considered to be an assignment under the hand of the assignor. By that act, the *client* also confirms that it has complied with the provisions of the *facility agreement* that relate to that *transferred account* and gives the warranties in clause 26 in connection with that *transferred account*. In particular, the *client* confirms that all *goods* and *services* relating to that *transferred account* have been delivered or performed. Nothing in this clause 14.7 limits any other provision of the *facility agreement*. In particular, a transfer will have occurred earlier in accordance with clause 14 even if the statutory requirement had not been satisfied.

15 Notification and verification of accounts

15.1 The *client* must tell ScotPac about each *account*. An *account* is notified to ScotPac when ScotPac is told about it. ScotPac will be told about an *account* when it first receives details about the *account* or when it first receives information which includes details about an *account*.

The details and information must be given to ScotPac in the way and with the frequency ScotPac, acting reasonably, specifies. If ScotPac and the *client* agree, the details can be provided by the *information connection* syncing with the *client's* accounting software. The details are then provided when they are received by ScotPac through the syncing process.

ScotPac can agree with the *client* that particular *accounts*, or *accounts* of a particular type, should not be notified to it. In addition, ScotPac can require that *ineligible accounts* (or those of a particular type specified by ScotPac) not be notified. However, at any time ScotPac can require that those agreed *accounts* or *ineligible accounts* be notified to it. If an *account* should not be notified the *client* must ensure that the *account* is excluded from the information which is provided or is identified in the way ScotPac requires. Even if an *account* does not have to be notified, or the *client* does not comply with its obligations to tell ScotPac about an *account*, the *account* is still transferred to ScotPac under clause 14.

15.2 The *client* must also give ScotPac any details about *accounts* which ScotPac, acting reasonably, specifies. Those details must be given in the way (such as by the *information connection*) and with the frequency ScotPac, acting reasonably, specifies.

15.3 When the *client* tells ScotPac about an *account*, it must also do the following.

- (a) Tell ScotPac if it cannot give any of the warranties in clause 26.1 in connection with the *account*. See clause 26.2 in relation to that notification and clause 26.3 in relation to the repetition of the warranties.
- (b) Tell ScotPac if it is aware of anything that could adversely affect the obligation of the *customer* to complete the purchase of the *goods* or *services*.
- (c) Give ScotPac any information the *client* has about the creditworthiness of the *customer*.

15.4 In addition to the information described above, the *client* must give to ScotPac any information and documents ScotPac, acting reasonably, asks for in relation to *accounts*, *customers*, *goods*, *services*, *credit notes* and *sale agreements* and the *client's* compliance with *sale agreements*. That includes information and documents about *accounts* that do not have to be notified. The information and documents must be given when, and in the manner and form, ScotPac, acting reasonably, requires.

15.5 If ScotPac requests, the *client* must give information about new *customers* using the *information connection* in an agreed format unless ScotPac acting reasonably has agreed to receive the information in another way. That information is the full legal name, any business or trading name, address, telephone number, e-mail address, business characteristics (such as ABN, ACN or ARSN) and any other information reasonably required by ScotPac. If the *client* knows that any of that uploaded information has changed, or is not complete and accurate, it must tell ScotPac within one week of the *client* having the knowledge.

15.6 ScotPac can verify: the *accounts*; the creditworthiness of *customers*; the details, information and documents which are provided; the *client's* compliance with *sale agreements*; and the *client's* compliance with the *transaction documents*. ScotPac may do this in its name or in the *client's* name. If the *client's* agency has not been cancelled (see clause 19) ScotPac will, if it decides to verify *accounts*, endeavour to do so in the *client's* name and the *client* authorises this. The *client* must provide any assistance ScotPac, acting reasonably, requires so that it can do the verification. The *client* must provide the assistance when and how ScotPac, acting reasonably, requires. Any verification activity is done for ScotPac's benefit and the *client* cannot rely on it. The *client's* obligations and warranties under the *transaction documents* are not affected by any verification activity which ScotPac may or may not undertake.

16 ScotPac will pay the purchase price

16.1 ScotPac will pay the *purchase price* to the *client* for each *transferred account*.

- 16.2 The *security interest* mentioned in clause 14.6 is given by the *client* in consideration of ScotPac's agreement to pay the *purchase price*. The *security interest* secures the payment of the *amount owing* and the performance of all *obligations* of any *transaction party* under any *transaction document* at any time. It is not a *PMSI*.
- 16.3 The *purchase price* for a *transferred account* is calculated by multiplying the *collections* ScotPac receives, in *cleared funds*, in payment of the *transferred account* by 1%. ScotPac will pay the *purchase price* to the *client* by paying the *availability* in accordance with clause 3.2. The *purchase price* is included in the *availability* due to clauses 4.1(b) and 48.1.

17 ScotPac will pay additional payments

- 17.1 In addition to the *purchase price* the *client* may be entitled to *additional payments*. An entitlement to receive an *additional payment* is separate from an entitlement to receive the *purchase price* and an entitlement to receive an *additional payment* is not consideration for the transfer of a *transferred account*. ScotPac covenants that it will, subject to the provisions of the *facility agreement*, pay to the *client* the *additional payments* to which the *client* is entitled.
- 17.2 An *additional payment* is an amount which is equivalent to the *collections* ScotPac receives, in *cleared funds*, in payment of a *transferred account* multiplied by 99%. ScotPac will pay the *additional payment* to the *client* by paying the *availability* in accordance with clause 3.2. The *additional payment* is included in the *availability* due to clauses 4.1(b) and 48.1.

18 Eligible accounts and ineligible accounts

- 18.1 ScotPac provides funding to the *client* in connection with *eligible accounts*. When the *eligible account* has been transferred to ScotPac the funding is an early payment of part of the *additional payment* which will be paid when the requirements in clause 17 are satisfied. When the *eligible account* has not been transferred an advance can be made under clause 24.2. ScotPac will pay the early payment to the *client*, or make the advance to the *client*, by paying the *availability* in accordance with clause 3.2. The amount which can be paid as an early payment or advance is included in the *accounts availability* and is included in the *availability* due to clauses 4.1(a) and 48.1. Since an early payment is a pre-payment of the *additional payment* it reduces the *additional payment* which will be paid. The reduction occurs due to clause 4.1(c).
- 18.2 An *account* will be an *ineligible account* in the following circumstances.
- (a) The *account* is neither a *transferred account* nor an *account* (such as a *delayed transferred account*) for which ScotPac has exercised its discretion under clause 24.2.
 - (b) ScotPac has told the *client* that it has concerns in relation to the *account* or the *customer* and that it considers that the *account* should be classified as being an *ineligible account* to protect its legitimate interests. ScotPac may, for example, have those concerns if the *account* or the creditworthiness of the *customer* has not been verified to ScotPac's satisfaction.
 - (c) The *account* has not been paid by the earlier of its due date and the *recourse date*; required supporting documents (for example proof of delivery of *goods* or performance of *services*) have not been provided; a warranty in clause 26.1 could not be truthfully made or truthfully repeated under clause 26.3; ScotPac has told the *client* that it is not satisfied with the disclosure made under clauses 26.2 or 26.3; the *invoice* was duplicated, is post-dated or is part paid; the date of the *invoice* is earlier than the date of the *invoice* for another *account* owed by the same *customer* which has been paid; legal action has been commenced in relation to the *account*; or the *goods* have been returned, are faulty or are damaged.
 - (d) The *customer* is *insolvent*.
 - (e) The total *book value* of all *accounts* owed by a *customer* (or a group of *customers* as determined by ScotPac) at any time exceeds a credit limit or exceeds a percentage of the total *book value* of all *eligible accounts* owed by all *customers*. The credit limit and percentage are those most recently notified to the *client* on the *client platform* or in another way. They can be changed at any time although they will only be decreased when this is reasonably necessary to protect ScotPac's legitimate interests. If the credit limit or percentage is exceeded ScotPac may determine that *accounts* are *ineligible accounts* to the extent necessary to ensure that the credit limit and percentage are not exceeded. Alternatively, ScotPac may, to protect its legitimate interests, determine that all *accounts* owed by that *customer* (or group of *customers*) should be *ineligible accounts*.
 - (f) An *entity* has a *PMSI* in an *account* and it takes any step to enforce the *security interest* which it has in new value by virtue of section 64(3) of the *PPSA*. In that case ScotPac may tell the *client* that *accounts* specified by ScotPac or all *accounts* will be *ineligible accounts*.

18.3 ScotPac may make enquiries to test and validate the categorisation of *accounts* as *eligible accounts* or *ineligible accounts*. The *client* must give ScotPac documents or other information ScotPac, acting reasonably, requests so that it can make those enquiries.

19 Client will be ScotPac's collecting agent

19.1 The *client* will be the undisclosed agent of ScotPac to: procure the collection of *transferred accounts* for the benefit of ScotPac; administer the debtors ledger; prepare and deliver statements to *customers*; and enforce *transferred accounts*. The appointment does not limit ScotPac's rights as the owner of the *transferred accounts*.

19.2 ScotPac, acting reasonably, will specify the terms of the agency and the *client* must comply with those terms. At any time, ScotPac may change the terms of the agency and may add further terms by giving notice to the *client* when this is necessary to protect ScotPac's legitimate interests. The *client* must deal with *customers* and perform its duties as ScotPac's agent in the way required by ScotPac, acting reasonably, and with the same standard of care the *client* would adopt if the *client* was the owner of the *transferred accounts*. The *client* must perform its duties free of charge to ScotPac and must not do anything which could result in ScotPac having a liability to any *entity*.

19.3 ScotPac may cancel the agency in relation to particular *transferred accounts* and the *customers* which owe them if: there has been a development in relation to the *transferred account* or the *customer* and ScotPac considers the cancellation necessary to protect ScotPac's legitimate interests; the *transferred account* is not paid by the *recourse date*; a *default event* is continuing; there is a *potential default event*; or the *customer* is *insolvent*. ScotPac may cancel the agency in relation to all *transferred accounts* and all *customers* if a *default event* is continuing or there is a *potential default event*. In the *facility agreement* references to the *client's* agency being cancelled means cancelled in relation to the relevant *transferred accounts*, the *transferred accounts* owed by the relevant *customers* or all *transferred accounts*. The agency continues in relation to the *transferred accounts* not affected by the cancellation.

20 Customer notification

20.1 If the *client's* agency is cancelled ScotPac can tell the relevant *customer* that the *transferred account* has been transferred. In particular, ScotPac can direct the *customer* to pay the *transferred account* to ScotPac. The *client* must give any notice of transfer ScotPac, acting reasonably, requires.

20.2 If an *invoice* is issued after the agency is cancelled the *invoice* must include a notice of transfer in a form specified by ScotPac. If the *customer* issues recipient created tax invoices those *invoices* do not have to include the notice but, after the agency has been cancelled, ScotPac may give or require that the *client* give another notice and ScotPac may require that a copy of the recipient created tax invoice be sent direct to ScotPac.

20.3 Irrespective of whether the *client's* agency has or has not been cancelled, any notice sent by the *client* to the *customer* concerning a present or future *account* or *sale agreement* (insofar as the *sale agreement* concerns an *account*) must be in a form approved by ScotPac. ScotPac may send notices to *customers* to facilitate the collection of the *accounts* or to advise *customers* the details of the *nominated account*. If the *client's* agency has not been cancelled those notices will generally be sent in the name of the *client* and the *client* authorises this.

21 Collecting transferred accounts

21.1 ScotPac will have the sole right to collect, discharge and enforce payment of *transferred accounts*. ScotPac may collect them in the way it considers appropriate. This means, in particular, it can: deliver statements to *customers* and communicate with *customers*; make arrangements with *customers* concerning payment of *transferred accounts*; settle any claims by or against *customers*, the *client* or ScotPac in relation to *transferred accounts*; start, continue, defend, settle or compromise legal proceedings (which can be in the *client's* name or ScotPac's name) in relation to *transferred accounts*; give allowances, discounts, credits and rebates in relation to *transferred accounts*; extend the time for payment of *transferred accounts*; and discharge or compromise *transferred accounts*.

21.2 Whilst the *client* is ScotPac's agent it will collect and enforce payment of *transferred accounts* on behalf of ScotPac. It does so as required by the *facility agreement* and the terms of the agency. The *client* may issue a monthly statement to a *customer* who owes a *transferred account* and it may issue a receipt to *customers* for the *collections* which it receives. The *client* must do so if ScotPac asks the *client* to. If the *client's* agency is cancelled the *client* must not collect or enforce payment of the relevant *transferred accounts* or perform other functions in relation to those *transferred accounts*, unless it has been directed to do so by ScotPac.

21.3 If ScotPac decides to do any of the things mentioned in clause 21.1 the *client* must promptly help ScotPac do them in any way ScotPac, acting reasonably, requires and must promptly give ScotPac any information and documents ScotPac requires so that it can do those things.

22 Client must not deal with accounts, except as ScotPac's agent

22.1 The *client* must not do any of the following.

- (a) Enter into any contract with the *customer* which could affect the amount or payment of an *account*, unless it has approval from ScotPac. This includes a contract to enable the *account* to be paid under a direct debit arrangement.
- (b) Allow an *account* to be paid by EFTPOS, BPay or a similar facility, unless it has approval from ScotPac. If approval is given, the *client* must only enter into any associated agreements if they have been approved by ScotPac and the associated directions on the *invoice* must be approved by ScotPac.
- (c) Create or attempt to create a *security interest* over an *account*; allow a *security interest* to arise or continue over an *account*; or transfer or otherwise deal with an *account* in any way or attempt to do so. This does not prohibit a *permitted interest*.
- (d) Adjust the *book value* of an *account* (including by issuing a *credit note* unless it has been approved in accordance with clause 22.2); compound, compromise, set-off or discharge an *account*; extend the time for payment of an *account* to a date which is later than the *recourse date*; or take legal proceedings to enforce payment of an *account*, except to the extent the *client* is authorised to do so as ScotPac's agent or it has approval from ScotPac. If any of those things do occur that does not affect the *client's* obligations under the *facility agreement*.

22.2 ScotPac may give approval for the *client* to issue a *credit note*. It can do so by authorising the issue of a specific *credit note* or by specifying the extent of the *client's* authority to issue *credit notes* as ScotPac's agent. ScotPac can change or revoke that authority. If there is an *actual calculation event*, the *client* must, before the *credit note* is issued, pay to ScotPac the amount (if any) by which the *availability* would become a negative amount when the total *book value* of all *eligible accounts* is reduced by the issue of the *credit note*. When the issue of the *credit note* is permitted and, if applicable, that payment is made, that part of the *transferred account* which will be extinguished by the issue of the *credit note* will be re-transferred to the *client* so that the *client* can issue the *credit note*. ScotPac will continue to own the balance of the *transferred account*. If the whole *transferred account* is to be extinguished, it will be re-transferred and any replacement *account* will be transferred to ScotPac in the usual way. Clause 64.2 will apply to any re-transfer. The *client* must deliver the *credit note* to the *customer*, unless the *client's* agency has been cancelled and ScotPac has told the *client* that it wishes to deliver it. The *client* must give ScotPac a copy of the *credit note* if ScotPac asks for it. If the *invoice* is a recipient created tax invoice the *client* must not agree to the issue of an adjustment note unless it would be allowed to issue a *credit note* and must give ScotPac a copy of the adjustment note issued by the *customer* if ScotPac asks for it. The *client* must meet all liabilities which arise from any *credit note*, including one approved or issued by ScotPac.

22.3 The *client* must not make arrangements for the return of *goods*, accept the return of *goods*, repossess *goods* or rescind a *sale agreement* without the approval of ScotPac. ScotPac can give approval by authorising a specific transaction or by specifying the extent of the *client's* authority to do those things. ScotPac can change or revoke that authority. If *goods* come into the possession of the *client*, the *guarantor* or an *associate* after they have been sold the *client* must tell ScotPac within three *working days* (unless ScotPac has told the *client* it does not have to) and deal with those *goods* as instructed by ScotPac. If the *client* has the right to rescind the *sale agreement* or repossess *goods* (whether under a *sale agreement* or at law) the *client* must exercise that right in the way ScotPac requires.

22.4 The *client* may ask ScotPac to take legal proceedings to recover a *transferred account* and ScotPac may agree to do so on any conditions ScotPac specifies. If ScotPac decides not to conduct those proceedings or specifies conditions the *client* does not like, the *client* may, so long as there is no continuing *default event*, ask ScotPac to sell the relevant *transferred account* back to the *client*. The *transferred account* will be automatically re-transferred to the *client* when ScotPac receives (in *cleared funds*) the amount (if any) by which the *availability* would become a negative amount when the total *book value* of all *eligible accounts* is reduced by the exclusion of that *transferred account*. For the purposes of determining that amount ScotPac, acting reasonably, may adjust the total *book value* of all *eligible accounts* specified in the most recent *facility base certificate* or, if an *actual calculation event* has occurred, adjust the total *book value* of all *eligible accounts* it determines each *working day*. Clause 64.2 applies to the re-transfer.

22.5 ScotPac may transfer any *transferred account* back to the *client* and discharge any *security interest*. This does not affect ScotPac's entitlement to an amount under clause 49.1 if the *availability* becomes a negative amount or ScotPac's entitlement to any other amount, even if ScotPac gives time to pay. Clause 64.2 applies to the re-transfer.

23 How collections must be dealt with

23.1 All *collections* in relation to *transferred accounts* belong to ScotPac. The *client* does not have any interest in them. All *collections* in relation to all other *accounts* are subject to a *security interest* arising under the *general security deed*.

- 23.2 If the *customer* pays an *account* by electronic funds transfer (including EFTPOS and BPay), the *client* must use all reasonable endeavours to ensure that the *customer* pays direct to the *nominated account*. As stated in clause 22.1(b), EFTPOS and BPay can only be used if ScotPac has given its approval.
- 23.3 This clause 23.3 applies if the *client's* agency has not been cancelled. By 4:00pm on the first *working day* after receipt, the *client* must pay *collections* into the *nominated account* and tell ScotPac when it has done so, unless they cannot be paid into the *nominated account* (for example, because the *collection* is a letter of credit). If the *collections* cannot be paid into the *nominated account* they must be given to ScotPac by 4:00pm on that first *working day*. The *client* will hold on trust for ScotPac all *collections* and keep them separate from other property until they are paid into the *nominated account* or given to ScotPac.
- 23.4 This clause 23.4 applies if the *client's* agency has been cancelled.
- (a) If the *customer* pays by cheque, the *client* must use reasonable endeavours to ensure that the cheque is payable to ScotPac and sent direct to ScotPac. If the *client* does receive the cheque it must deliver it to ScotPac by 4:00pm on the first *working day* after receipt. ScotPac will pay the cheque into the *nominated account*.
- (b) By 4:00pm on the first *working day* after receipt, the *client* must deposit all other *collections* (such as currency) into the *nominated account* and tell ScotPac when it has done so. If this is not possible the *collection* must be given to ScotPac by 4:00pm on that first *working day*.
- (c) Despite clause 23.4(a), ScotPac can tell the *client* that it must pay cheques into the *nominated account*. The *client* must then do that by 4:00pm on the first *working day* after receipt and tell ScotPac when it has done so.
- (d) The *client* will hold on trust for ScotPac all *collections* and keep them separate from other property until they are paid into the *nominated account* or given to ScotPac.
- 23.5 If the *collections* are paid or dealt with in any way which is contrary to the requirements of the *facility agreement* the *client* must pay an amount equivalent to the *collections* into the *nominated account*. Payment into the *nominated account* must be made by 4.00pm on the first *working day* after the *collections* were paid or dealt with. This is without prejudice to ScotPac's rights as a result of any breach of a *transaction document*.
- 23.6 The *nominated account* will be in ScotPac's name (that is ScotPac is the customer of the *ADI*) unless ScotPac decides that it can be in the *client's* name. If the *nominated account* is in ScotPac's name, the *client* has no interest in it. If the *nominated account* is in the *client's* name: the mandate agreed between the *client* and the *ADI* must be satisfactory to ScotPac; the mandate cannot be changed without ScotPac's approval; ScotPac's *authorised officers* must be the only authorised signatories; there cannot be a *security interest* in the *nominated account* unless it is a *permitted interest*; no *entity* can have a *security interest* in the *nominated account* which could have priority to ScotPac's *security interest* (in particular, the *ADI* must not have a *security interest* perfected by control); and the *ADI* must provide any acknowledgment ScotPac, acting reasonably, requires. In both cases ScotPac can direct the disposition of funds from the *nominated account* without further consent from the *client*.
- 23.7 The deposit of amounts into the *nominated account* does not result in ScotPac or any other *entity* coming under a present liability to pay any amount to any *entity*.

24 Over payments and advances

- 24.1 ScotPac may, at its discretion, provide funding to the *client* in excess of the *availability*. The *availability* will then be a negative *amount* but the *client* does not have to make the *availability* zero or a positive amount to the extent the *availability* is a negative amount due to that funding. ScotPac may agree to exercise that discretion subject to conditions which it tells the *client* about and the *client* must comply with those conditions if the funding is provided. The funding will be provided by increasing the early payment mentioned in clause 18.1 so long as the balance of the early payment does not exceed an amount which is equivalent to 99% of the total *book value* of all *eligible accounts*. If the funding did exceed that amount the excess will be an advance made by ScotPac to the *client*. If ScotPac provides funding under this clause it is entitled to the excess arrangement fee mentioned in clause 11.2 and the *prevailing rate* will for all purposes be determined in accordance with paragraph (a) of that definition. ScotPac can, at any time, tell the *client* that it must repay funding provided under this clause and the *client* must then repay the advance made under this clause and must repay the early payment which has been paid to the extent necessary to ensure that the *availability* is not a negative amount. Amounts which the *client* is required to pay under this clause must be paid within two *working days*. As an alternative to funding being provided under this clause the *early payment percentage* can be increased in accordance with clause 65.4.
- 24.2 Even if an *account* is not transferred ScotPac may, at its discretion, still provide funding by making an advance. In particular, ScotPac may, at its discretion, provide funding by making an advance in relation to a *delayed transferred account* until the *delayed transfer time*. ScotPac may agree to exercise the discretion subject to conditions which it tells the *client* about and the *client* must comply with those conditions if the funding is provided. The amount of the

advance will be the funding which the *client* would have been entitled to receive by the utilisation of the *accounts availability* if the *account* had been an *eligible account* which was a *transferred account*, or another amount determined by ScotPac. ScotPac will, under the *general security deed*, hold a *security interest* in the *account* which does not arise by an absolute transfer. When the *delayed transferred account* is transferred at the *delayed transfer time* (see clause 14.2(b)) the advance is considered to have been repaid to the extent there is *availability* and the *client* must repay any shortfall within two *working days*. ScotPac can, at any time, tell the *client* that it must repay an advance provided under this clause and the *client* must then repay the advance, even if it was made in connection with a *delayed transferred account* and the *delayed transfer time* has not occurred, within two *working days*. The advance must also be repaid on the first to occur of the *recourse date* for the *account* and the date the *customer* pays anything to satisfy or reduce the *account*.

- 24.3 When ScotPac makes an advance under clauses 24.1 or 24.2 the *facility agreement* will continue to apply with the advance being treated in the same way as funding provided by an early payment of an *additional payment*. In particular, the advance will bear interest determined in the same way as the discount charge is determined in clause 9.2 although the *prevailing rate* is determined in accordance with clause 24.1 when that clause applies. This is subject to any applicable conditions and any consequential changes ScotPac, acting reasonably, considers necessary.

25 What happens if an account is not transferred?

- 25.1 If, for any reason, an *account* is not transferred to ScotPac as required by clause 14.5, the *client* must do anything ScotPac, acting reasonably, requires to transfer it to ScotPac. Until those *accounts* are transferred to ScotPac the *client* will, to the extent this is possible, hold them on trust for ScotPac and any interest which the *client* has in them will be subject to a *security interest* under the *general security deed*. If, despite section 81 of the *PPSA*, the *account* is not transferred because a term in the *sale agreement* restricts or prohibits the transfer the *client* will hold the *collections* on trust for ScotPac and the *account* will be subject to a *security interest* under the *general security deed* which does not arise by an absolute transfer. As required by clauses 26.1(e) and 26.1(k), ScotPac must be told if the *account* will not be transferred as required by clause 14.5. This clause 25.1 only applies to a *delayed transferred account* after the *delayed transfer time*.
- 25.2 This clause 25.2 only applies if: the *client* is a company (as defined in the Corporations Act 2001); there is a *delayed transferred account*; and a legally effective financing statement has not been registered on the *PPSR* against “accounts” in connection with the *security interest* which would arise under clause 14.2 by the transfer of the *delayed transferred account* or, if it has been registered, the registration time is after the latest of the times specified in section 588FL(2)(b) of the Corporations Act 2001. In that case the *delayed transferred account* is not transferred to ScotPac under the *facility agreement* unless ScotPac gives the *client* a notice in accordance with clause 101 to advise that it is transferred. If the *delayed transferred account* is not transferred under the *facility agreement* ScotPac will continue, under the *general security deed*, to hold a *security interest* which does not arise by an absolute transfer. This clause 25.2 applies despite any other provision of the *facility agreement*.
- 25.3 From the *commencement date* the *delayed transferred accounts* are subject to a *security interest* which does not arise by an absolute transfer. That *security interest* arises under the *general security deed*. At the *delayed transfer time* the *delayed transferred accounts* will be transferred in accordance with clause 14.2(b), unless they cannot be transferred or they are not transferred due to clause 25.2. Clause 25.1 will apply if they are not transferred to ScotPac as required by clause 14.5. Until the *delayed transferred accounts* are transferred under clause 14.2(b) the *client* must not do anything in connection with the *delayed transferred accounts* which the *client* would not be entitled to do if the *delayed transferred account* had been a *transferred account* and must comply with both the *facility agreement* (to the extent it applies to *delayed transferred accounts*) and the *general security deed*.

26 Client’s warranties in relation to accounts

- 26.1 In relation to each *account*, the *client* warrants to ScotPac each of the following (unless the *client* tells ScotPac in accordance with clause 26.2 that it cannot give the warranty).
- (a) All information given to ScotPac in connection with the *account*, the *related rights*, the *customer*, the *invoice*, the *sale agreement* and the *goods* or *services* is correct in all material respects. This includes information received using the *information connection*. The *client* also warrants that it has not withheld any information from ScotPac which could reasonably be expected to affect the exercise of ScotPac’s discretion under clause 8.1 or its determination as to whether it has concerns for the purposes of clause 18.2.
 - (b) Any copy *invoice* given to ScotPac is the same as the *invoice* given to the *customer* or, if the *invoice* is a recipient created tax invoice, is the same as the *invoice* given by the *customer*.
 - (c) The *invoice* received by the *customer* (or given by the *customer* if it is a recipient created tax invoice) is the same as the last pro forma approved by ScotPac completed by the insertion of the details given to ScotPac. The *invoice* does not contain any other information, details or terms which could affect the *account*.
 - (d) The *client* has performed all *obligations* required for the enforcement of the *account*.

- (e) The *account* is an existing, legal, valid, binding, undisputed and enforceable payment obligation for its *book value* as evidenced by an *invoice*; is payable in full by the *customer* by no later than the *recourse date*; and is capable of being transferred by the *client* to ScotPac and by ScotPac to any assignee mentioned in clause 88.2. The *book value* notified to ScotPac in accordance with clause 15 is shown on the *invoice* as being the amount owing. If a deposit has been paid, the *invoice* and the details given to ScotPac show the required adjustment.
- (f) The *client* has made enquiries in relation to the creditworthiness of the *customer* and is satisfied that the *customer* is not *insolvent* and will pay the *account* by no later than the *recourse date*.
- (g) There are no contra accounts, set-offs, abatements, rebates, allowances, discounts, credits, defences, counterclaims or deductions asserted, allowable or enforceable in relation to the *account* or the *customer* and there is no dispute between the *client* and the *customer*. This does not include a set-off or credit which ScotPac has approved in accordance with clause 22.
- (h) If the *account* relates to *services* performed by a sub-contractor, ScotPac has been told that this is the case, the sub-contractor has been paid in full and the sub-contractor has no interest in, or claim to, the *account*, the *related rights*, the *collections* or the *goods* and has no rights against the *customer*.
- (i) The *account* does not arise from any form of progress claim, consignment sale or pay when paid sale.
- (j) The *account* arose in the ordinary course of the *client's* business described in the *letter of offer* and results from an actual, bona fide and arm's-length sale of *goods* or performance of *services*.
- (k) The *client* was the *sole owner* of the *account* and the *related rights* before they were transferred in accordance with clause 14.
- (l) ScotPac will, subject only to a *permitted interest*, obtain a valid and unencumbered title to the *account*, the *related rights* and the *collections* under the *facility agreement*. No other *entity* (including a *supplier*) has any interest (such as a *security interest*) in, or claim to, the *account*, the *related rights*, the *collections* or the *goods*, except for a *permitted interest* or the interest the *customer* has in the *goods* as purchaser. The *account* is not evidenced by a negotiable instrument.
- (m) The *goods* purchased by, or the *services* performed for, the *customer* are in accordance with the *sale agreement*, are the *goods* or *services* described in the *invoice* and they have been delivered to and accepted by the *customer* or have been fully performed. As far as the *client* is aware, the *customer* is satisfied with the *goods* or *services*.
- (n) The *client* has paid on time all fees, duties, taxes (including GST) and charges to enable the *goods* to be delivered to the *customer* or the *services* to be performed.
- (o) The *client* has complied with all laws relating to the *account*, the *related rights*, the *invoice*, the *sale agreement* or the *goods* or *services* and their delivery or performance. The *invoice* complies with all requirements for it to be a tax invoice.
- (p) The *client* has done nothing which could make ScotPac liable in respect of the *account*, the *related rights*, the *goods* or *services*, the *collections* or the *sale agreement*.
- (q) The *account* is payable in Australia, the currency of payment is Australian dollars and the *goods* were sold by the *client* and accepted by the *customer* in Australia or the *services* were performed by the *client* in Australia.
- (r) The governing law of the *sale agreement*, the *account* and the *related rights* is that of a state or territory of Australia and ScotPac will be able to enforce payment of the *account* against the *customer* through judicial process in that state or territory.
- (s) Neither the *sale agreement* nor the *account* is regulated by the National Credit Code.
- (t) The *client* has disclosed to ScotPac in full the terms of the *sale agreement*, its terms of trade for the sale of *goods* or performance of *services* and any other terms and conditions relating to the *account*. The *customer* has no right to cancel, waive, modify or substitute them without the *client's* approval.
- (u) The *invoice* is dated no earlier than the date the *goods* were accepted by the *customer* or performance of the *services* was completed, and no later than seven days after that date. In relation to *invoices* also see clauses 27.1(e), 27.2 and 57.1.
- (v) The *client* has disclosed to ScotPac any insurance policy relating to the *account* or any *goods* and any *security interest*, guarantee or indemnity granted or arising to better secure payment of the *account*.

- (w) The *customer* has an established place of business in Australia, is an Australian entity and is not an *associate*. If the *customer* is an individual, he or she purchased the *goods* or *services* wholly for business purposes.

26.2 If the *client* wishes to advise ScotPac that a warranty will not be correct in relation to a particular *account*, the *client* can only do so by providing a specific disclosure of the relevant details. The disclosure can be made in a *facility base pack* or by written disclosure (which in this instance includes e-mails). The provision of an *invoice* or details of the *account* is not enough. The disclosure must be provided before or when the *client* gives details of the *account* to ScotPac. Alternatively, the *client* can advise ScotPac that a warranty will not be correct in relation to all *accounts* of a particular type.

26.3 Each warranty in clause 26.1 is made by the *client*, subject to clause 26.2, when the *account* is notified to ScotPac and on each day the *account* is unpaid. The *client* must tell ScotPac if it could not, for any reason, truthfully repeat each of those warranties.

27 Client's obligations in relation to accounts

27.1 In relation to each *account*, the *client* agrees each of the following with ScotPac.

- (a) It will give ScotPac any information the *client* obtains in relation to: the validity of the *account*; any dispute or possible dispute about the *account*, the *related rights*, the *sale agreement*, or the *goods* or *services*; and anything else that might affect the collection of the *account*, or its value to ScotPac.
- (b) It will tell ScotPac if it is aware of anything that could adversely affect the obligation of the *customer* to complete the purchase of the *goods* or *services*.
- (c) It will not cancel, waive, modify or substitute the *sale agreement* or the terms mentioned in clause 26.1(t), attempt to do so or agree to them being cancelled, waived, modified or substituted and will not extend the time for payment or allow the time for payment to be extended. However, if the *client* is ScotPac's agent (see clause 19) in connection with an *account* it may, as ScotPac's agent, extend the time for payment if ScotPac has given its approval in accordance with clause 22.1(d).
- (d) It will promptly record the *account* in the debtors ledger unless the *client's* agency has been cancelled and the ledger is being administered by ScotPac. If the ledger is being administered by ScotPac it will give full particulars to ScotPac so ScotPac can record the *account*. Other information and documents must be provided in accordance with clause 15.
- (e) It will promptly prepare an accurate *invoice* (unless ScotPac has agreed that it can be a recipient created tax invoice) and deliver that *invoice* to the *customer* no later than seven days after the *goods* were accepted by the *customer* or the performance of the *services* was completed, unless the *client's* agency has been cancelled and ScotPac has told the *client* it wishes to deliver the *invoices*. If ScotPac is to deliver the *invoices* the *client* must give them to ScotPac no later than five days after that date.
- (f) It will perform all *obligations* imposed on the *client* in respect of the *account*, the *related rights*, the *invoice*, the *sale agreement* and the *goods* or *services* whether the *obligations* arise by agreement (including under the *sale agreement*) or under any law. In particular, it must perform any *obligations* that must be fulfilled for the *customer* to be liable to pay the *account* and any continuing *obligations* to a *customer*, including the payment of all carriage or shipping charges.
- (g) It will, if required by ScotPac, deliver to ScotPac a document or other record of a *related right*. Until they are delivered the *client* must keep them in good order and condition and ensure that they are properly and securely kept at the *premises*.
- (h) ScotPac may sign, endorse, present for payment or otherwise deal with any *trade document*, even if it is payable to the *client*.

27.2 Each *invoice* (using the general meaning of that word) concerning goods or services supplied by the *client* or work done by the *client* which is notified by the *information connection* or by details being given to ScotPac in another way must evidence an *account*, unless the *client* advises ScotPac otherwise when or before the relevant *invoice* is notified to ScotPac.

27.3 If ScotPac, acting reasonably, considers it appropriate to recover *collections* to which ScotPac is entitled, ScotPac may operate any *ADI account* in the *client's* name (whether alone or jointly) and withdraw money standing to the credit of the *ADI account*. ScotPac can give instructions to have any *ADI account* frozen until entitlements to money standing to the credit of the *ADI account* are determined.

27.4 The *client* will have no entitlement to any credit balance which may arise in a *customer's* account. ScotPac may pay a credit balance to a *customer*.

E. INVENTORY ASSET COMPONENT

28 Introduction

Clauses 29 to 32 apply if it is stated in the *letter of offer* that the *client* has an asset based facility with an inventory asset component. The *client* will, pursuant to the *general security deed*, give ScotPac a *security interest* in the *inventory*.

29 ScotPac will make advances

29.1 When ScotPac pays *availability* to the *client* it may make an advance to the *client*. As explained in clause 48.1, the *availability* paid to the *client* is one lump sum amount.

29.2 The *inventory availability* will be zero until each of the following has been satisfied.

- (a) The valuation report of *inventory* has been provided to ScotPac in accordance with clause 30 and ScotPac, acting reasonably, is satisfied with the report, including the fair market value, the orderly liquidation value and the forced liquidation value.
- (b) An on-site examination has been undertaken in accordance with clause 79.
- (c) ScotPac has the right to enter the places where *inventory* is located and exercise rights over the *inventory*. That right is confirmed in a way which satisfies the requirements in clause 31.1(e).
- (d) The *client* has executed the *general security deed*, ScotPac is satisfied that the *client* is bound by the *general security deed* and the *security interest* arising under the *general security deed* has been registered on the PPSR in the way and with the priority ScotPac, acting reasonably, requires.
- (e) There are no *security interests* in the *inventory* except *permitted interests*.
- (f) The *inventory* has been insured as required by clause 54.1.
- (g) The *client* has given ScotPac a completed *inventory schedule*. The *inventory schedule* will provide the information required by a form which is available from ScotPac. In particular, it will include details of all sites where *inventory* is located or could be located. The *client* can provide the relevant information to ScotPac, ScotPac will then complete the form and give it to the *client* and the *client* can then acknowledge the accuracy of the form by, for example, signing it.

29.3 ScotPac can waive any of the requirements in clause 29.2. ScotPac can give the waiver subject to any reasonable conditions ScotPac stipulates to the *client*.

30 Valuation of inventory

30.1 Valuations are used to determine the *inventory value* of all *eligible inventory* in accordance with the following principles.

- (a) The *inventory value* of all *eligible inventory* will be the orderly liquidation value, fair market value or forced liquidation value of the *eligible inventory*. Those valuation methods are explained in clause 103.9. It will be the orderly liquidation value unless the *letter of offer* specifies that fair market value or forced liquidation value applies. However, if a *valuation adjustment event* occurs ScotPac may, by notice to the *client*, change the valuation method so that it is orderly liquidation value, fair market value or forced liquidation value as specified in the notice.
- (b) ScotPac will obtain a valuation report on the *inventory* once during any six *month* rolling period as determined by ScotPac. ScotPac may also obtain the report if a *default event* is continuing, if there is a *potential default event* and when ScotPac considers it necessary to protect its legitimate interests. The *client* may ask ScotPac to obtain a valuation report at any time. ScotPac, acting reasonably, will select, appoint and instruct the valuer. The valuer will be asked to provide a fair market value, an orderly liquidation value and a forced liquidation value of the *eligible inventory*.
- (c) The *inventory value* of *eligible inventory* can be determined on any day.
- (d) If the *inventory value* of *eligible inventory* is to be determined for a day which is not more than thirty days after the date of a valuation report obtained by ScotPac the *inventory value* will be the applicable value specified in the report. For example, if the *inventory value* of all *eligible inventory* on that day is the orderly liquidation value it will be the orderly liquidation value specified in the report.

- (e) If the *inventory value* of *eligible inventory* is to be determined for a day which is more than thirty days after the date of a valuation report the *inventory value* will be determined as follows.
- If the orderly liquidation value method applies the *book value* of the *ineligible inventory* is deducted from the *book value* of all *inventory* to give the *book value* of *eligible inventory* and the resulting amount is multiplied by the OLV% to give the orderly liquidation value of the *eligible inventory*.
 - If the fair market value method applies the *book value* of the *ineligible inventory* is deducted from the *book value* of all *inventory* to give the fair market value of the *eligible inventory*.
 - If the forced liquidation value applies the *book value* of the *ineligible inventory* is deducted from the *book value* of all *inventory* to give the *book value* of *eligible inventory* and the resulting amount is multiplied by the FLV% to give the forced liquidation value of the *eligible inventory*.

The OLV% and the FLV% are determined as follows:

$$A = \frac{B}{C}$$

Where: A is the OLV% or the FLV%.

B is the orderly liquidation value of all *eligible inventory* in the last valuation report (when the orderly liquidation value is to be determined) or the forced liquidation value of all *eligible inventory* in the last valuation report (when the forced liquidation value is to be determined).

C is the fair market value of the *eligible inventory* in the last valuation report.

30.2 The valuation report will include: a projected orderly liquidation value scenario and comparison with any prior appraisal; detailed profiles of the *client's* reporting, costing, controls and *inventory* categorisation; a disposition strategy including an estimated period for the sale process; sale conditions; estimated discounting to stimulate buying and estimated expenses (such as occupancy expenses and operating expenses) of the sale process; *inventory* monitoring points and considerations in relation to *inventory* levels, gross margin, sales trends and market conditions; commodity pricing; changes in relation to the *client* and cost changes; an overview of the *client*; an overview of the valuer's field visit; and the methodologies, assumptions, certifications and limitations of the appraisal.

31 Client's warranties in relation to inventory

- 31.1 The *client* warrants to ScotPac each of the following (unless the *client* tells ScotPac in accordance with clause 31.2 that it cannot give the warranty).
- (a) All information given to ScotPac in connection with the *inventory*, the *supplier*, the *purchase agreement* and the *sale agreement* is correct in all material respects. This includes information received using the *information connection*. The *client* also warrants that it has not withheld any information from ScotPac which could reasonably be expected to affect a determination under clause 30 or a determination as to whether *inventory* is *ineligible inventory*.
 - (b) The *client* is the *sole owner* of the *inventory*.
 - (c) The *inventory* is not the subject of any *security interest*, other than a *permitted interest*.
 - (d) The *inventory* has not been deposited with any *entity* as security for the payment of money or performance of any *obligation* and is under the immediate and direct control of the *client*.
 - (e) The *inventory* is located on sites specified in the *inventory schedule*. The *client*, a *guarantor* or the *related landlord* must be the owner and sole occupier of the sites. Alternatively, if they are not the owner and sole occupier, the owner and any tenant or other occupier has given ScotPac an agreement in a form and content acceptable to ScotPac acting reasonably. If the sites are subject to a freehold mortgage, the freehold mortgagee has given ScotPac an agreement in a form and content acceptable to ScotPac acting reasonably. The agreements will give ScotPac the right to enter the sites and exercise rights over the *inventory*.
 - (f) The *client* purchased the *inventory* in the ordinary course of the *client's* business described in the *letter of offer*.
 - (g) The *client* has satisfied itself as to the merchantability, quality, sustainability, safety and fitness for purpose of the *inventory*.
 - (h) The *inventory* is in accordance with the *purchase agreement*.
 - (i) The *client* or the *supplier* has paid on time all fees, duties, taxes (including GST) and charges to enable the *inventory* to be delivered to the *client*.

- (j) The *client* has complied with all laws relating to the *inventory* and the *purchase agreement*, including the receipt of the *inventory*. As far as the *client* is aware, the *supplier* has complied with all laws relating to the *inventory* and the *purchase agreement*, including the delivery of the *inventory*.
 - (k) The *client* has done nothing which could make ScotPac liable in respect of the *inventory* or the *purchase agreement*.
 - (l) The *client* has done everything necessary or desirable for it to enter into and be bound by the *trade documents*, the *purchase agreement* and the *sale agreement* and for it to purchase the *inventory* and sell the *goods*.
- 31.2 If the *client* wishes to advise ScotPac that a warranty will not be correct the *client* can only do so by providing a specific disclosure of the relevant details. The disclosure can be made in the *facility base pack* or by written disclosure (which in this instance includes e-mails).
- 31.3 Each warranty in clause 31.1 is made by the *client*, subject to clause 31.2, every day until all liabilities have been satisfied. The *client* must tell ScotPac if it could not, for any reason, truthfully repeat each of those warranties.

32 Client's obligations in relation to inventory

- 32.1 The *client* must do each of the following.
- (a) Endorse the *trade documents* in favour of ScotPac in the way ScotPac, acting reasonably, requires.
 - (b) If required by ScotPac, deposit all *trade documents* with ScotPac or to the order of ScotPac. Until they are deposited the *client* will keep them in good order and condition and ensure that they are properly and securely kept at the *premises*.
 - (c) Note in its records the interest of ScotPac in the *inventory* and *trade documents*.
 - (d) Comply with any instructions ScotPac, acting reasonably, may give for the protection of ScotPac's interest in the *inventory* and *trade documents*.
 - (e) Comply with each *purchase agreement*. The *client* must not without ScotPac's consent terminate, repudiate, rescind, discharge (except by performance) or amend any *purchase agreement*.
 - (f) Promptly give ScotPac any information the *client* obtains in relation to any dispute or possible dispute about the *inventory* or the *purchase agreement* and anything else that might affect ScotPac's interest in the *inventory* or *trade documents* or their value to ScotPac.
 - (g) Promptly tell ScotPac if there has been any material deterioration of, damage to or destruction of the *inventory*.
 - (h) Perform all *obligations* imposed on the *client* in respect of the *inventory*, the *trade documents* and the *purchase agreement* whether the *obligations* arise by agreement (including under the *purchase agreement*) or under any law.
 - (i) Comply with all laws, licences, legal requirements, orders and notices in connection with the *inventory*.
 - (j) Insure the *inventory* as required by clause 54.
 - (k) Only sell, transfer, dispose of or otherwise deal with the *inventory* in the ordinary course of the *client's* business described in the *letter of offer*. In particular, the *client* will only sell the *inventory* in accordance with terms of trade which are in a form acceptable to ScotPac although this does not make ScotPac responsible in any way for the terms or *sale agreements*. Also see clause 57.1 for other requirements.
 - (l) Pay on time all charges, fees, duties and taxes relating to the *inventory* and the export or import of the *inventory* as well as all storage charges, freight and other amounts payable under any contract (such as a contract of carriage) to enable the *inventory* to be delivered to the *client* or the *goods* to be delivered to the *customer*.
 - (m) Pay all superannuation contributions (whether compulsory or voluntary, before or after tax) in relation to each of its employees promptly and in any case at least every *month*. Also see clause 55.1(f).
 - (n) Ensure that the *inventory* is located on sites which satisfy the requirements in clause 31.1(e).
 - (o) Tell ScotPac before any details in the *inventory schedule* change and provide an updated *inventory schedule* to ScotPac. If it is proposed that *inventory* be located on a new site that site must be advised in an updated *inventory schedule* and the requirements in clause 31.1(e) must be satisfied in relation to the new site before *inventory* is located on the new site.

- 32.2 On request from ScotPac the *client* must give ScotPac the following information. ScotPac will act reasonably when it makes the request and the requested information must be given when ScotPac, acting reasonably, specifies.
- (a) A copy of the *purchase agreement*.
 - (b) Details of how the *inventory* will be transported to or at the direction of the *client*, including in respect of the landing, storage and insurance arrangements.
 - (c) A copy of the *trade documents*.
 - (d) Periodic reports and other particulars concerning *inventory* and *trade documents* as ScotPac, acting reasonably, may require.
 - (e) Details of how the *inventory* will be sold or particulars of any sale, including a copy of the *sale agreement*.
 - (f) Details of any other dealings with the *inventory*.

The terms on which *inventory* is supplied to the *client* (including a copy of the *purchase agreement*) and the details of any *security interest* held by the *supplier* in *inventory* or the proceeds of *inventory* need to be disclosed in accordance with clause 56.1(h).

- 32.3 Any verification activity which ScotPac does (for example, by undertaking an on-site examination or reviewing any information which is given to it) is done for its benefit and the *client* cannot rely on it. The *client's obligations* and warranties under the *transaction documents* are not affected by any verification activity which ScotPac may or may not undertake.

F. PLANT AND EQUIPMENT ASSET COMPONENT

33 Introduction

Clauses 34 to 39 apply if it is stated in the *letter of offer* that the *client* has an asset based facility with a plant and equipment asset component. The *designated equipment* can be owned by the *client* (in which case the *client* gives a *security interest* over it to secure payment of the *amount owing* and the performance of each *transaction party's obligations* under any *transaction document*) or a *guarantor* (in which case the *guarantor* gives a *security interest* over it to secure payment of the *guaranteed money* and the performance of all *guaranteed obligations*). The owner, whether it is the *client* or a *guarantor*, is the *grantor*. The *security interest* is given pursuant to clause 37 and the *general security deed*.

34 Requirements for plant and equipment to be designated equipment

- 34.1 The *client* may, at any time, request that specified plant and equipment be included as *designated equipment*. The *client* makes that request by giving ScotPac a *designated equipment schedule*. The form of that schedule is available from ScotPac. The *client* must complete the schedule accurately and completely. Alternatively, the *client* can provide the relevant information to ScotPac, ScotPac will then complete the form and give it to the *client* and the *client* can then acknowledge the accuracy of the form by, for example, signing it. ScotPac can accept or decline the *client's* request at ScotPac's discretion. ScotPac accepts the request by telling the *client* that it is accepted.
- 34.2 Even if ScotPac accepts the request, the plant and equipment will only be *designated equipment* if each of the following is satisfied.
- (a) All conditions which the *client* has been told will apply have been satisfied. Those conditions include any conditions specified in the *letter of offer*.
 - (b) The *client* has given ScotPac the *designated equipment schedule* which specifies the required details of the plant and equipment or has acknowledged it.
 - (c) The valuation report for the *designated equipment* has been provided to ScotPac in accordance with clause 36 and ScotPac, acting reasonably, is satisfied with the report, including the fair market value, the orderly liquidation value and the forced liquidation value.
 - (d) ScotPac has received (and, acting reasonably, is satisfied with):
 - (i) either:
 - if the *grantor* is purchasing the *designated equipment*, the invoice for the *designated equipment* from the supplier of it. That supplier must be acceptable to ScotPac and it must supply the *designated equipment* to the *grantor*; or

- if the *grantor* owns the *designated equipment*, evidence that the *grantor* is the sole owner of the *designated equipment* free of any *security interest* other than a *permitted interest*;
 - (ii) all identification details for the *designated equipment* and the *grantor* which ScotPac reasonably requires;
 - (iii) evidence of the insurance which is required by clause 54 and any additional insurance which ScotPac has told the *client* will be required;
 - (iv) if the *designated equipment* is a serial numbered good, all necessary details (including the serial number), certificates and documents so that ScotPac can register a financing statement in relation to those goods using the serial number, if ScotPac decides to do so;
 - (v) all documents of title (if there are any) for the *designated equipment*, and
 - (vi) any other information or documents ScotPac, acting reasonably, requires.
- (e) ScotPac, acting reasonably, is satisfied with the *designated equipment* and the title to it. In particular, ScotPac must be satisfied that the *grantor* is the *sole owner* of the *designated equipment* or, if the *grantor* is purchasing the *designated equipment*, will be the *sole owner* of the *designated equipment* by no later than the time *availability* is paid to the *client* as permitted by the *equipment value* of the *designated equipment* being taken into account in the calculation of the *equipment availability*.
- (f) ScotPac, acting reasonably, is satisfied that it will have a first ranking *security interest* acceptable to ScotPac over the *designated equipment* by no later than the time the *grantor* is required to be the *sole owner* in accordance with paragraph (e).
- (g) The *grantor* is registered for GST or required to be registered for GST.
- (h) No *default event* is continuing and there is no *potential default event*.
- 34.3 ScotPac can waive any of the requirements in clause 34.2. ScotPac can give the waiver subject to any reasonable conditions ScotPac stipulates to the *client* or the *grantor*.

35 ScotPac will make advances

- 35.1 When ScotPac pays *availability* to the *client* it may make an advance to the *client*. As explained in clause 48.1, the *availability* paid to the *client* is one lump sum amount.
- 35.2 If the *grantor* is acquiring the *designated equipment* or an existing *security interest* over the *designated equipment* is to be discharged, the *client* agrees that ScotPac may disburse all or any part of the *availability* which would otherwise have been paid to the *client*. The amount disbursed can be paid to, or at the direction of, the vendor or the existing secured party.

36 Valuation of designated equipment

- 36.1 Valuations are used to determine the *equipment value* of all *designated equipment* in accordance with the following principles.
- (a) ScotPac will obtain a valuation report on plant and equipment when it becomes *designated equipment* and may do so when there is any change in the plant and equipment which is *designated equipment*. ScotPac may also obtain the report once during any twelve *month* rolling period as determined by ScotPac and may do so if a *default event* is continuing, if there is a *potential default event* and when ScotPac considers it necessary to protect its legitimate interests. The *client* may ask ScotPac to obtain a valuation report at any time. ScotPac, acting reasonably, will select, appoint and instruct the valuer.
- (b) The valuer will be asked to provide a fair market value, an orderly liquidation value and a forced liquidation value of the *designated equipment*. Those values are explained in clause 103.9.
- (c) The *equipment value* can be determined on any day. If the *equipment value* is to be determined using the fair market value, the determination is made using the fair market value of the *designated equipment* in the most recent valuation report obtained by ScotPac. If the *equipment value* is to be determined using the orderly liquidation value, the determination is made using the orderly liquidation value of the *designated equipment* in the most recent valuation report obtained by ScotPac. If the *equipment value* is to be determined using the forced liquidation value, the determination is made using the forced liquidation value of the *designated equipment* in the most recent valuation report obtained by ScotPac.
- (d) The *equipment value* will be determined using the orderly liquidation value unless the *letter of offer* specifies that fair market value or forced liquidation value applies. However, if a *valuation adjustment event* occurs

ScotPac may, by notice to the *client*, change the valuation method so that it is the method specified in the notice.

- 36.2 ScotPac, at its discretion, may decide that items comprising *designated equipment* should not be valued individually and that all items comprising *designated equipment* should be valued together to give one amount which will be used to determine the *equipment value* of the *designated equipment*.
- 36.3 The *client* may, at any time, request that specified plant and equipment cease to be *designated equipment*. ScotPac can accept or decline the *client's* request at ScotPac's discretion. ScotPac accepts the request by telling the *client* that it is accepted. Even if plant and equipment ceases to be *designated equipment* ScotPac does not have to discharge it from the *security interest* arising under the *general security deed* whilst there is an *amount owing*, unless the *general security deed* requires that ScotPac provide the discharge.

37 Security given to ScotPac

- 37.1 The *grantor* gives ScotPac a *security interest* in the *designated equipment*. The *security interest* also covers: any documents and electronic data which concern the *designated equipment* (such as *trade documents*, records concerning the maintenance, service and use of the *designated equipment*, records concerning compliance with any law, and the chattel paper described in clause 57.2); rights and interests which the *client* or the *grantor* may have in connection with the *designated equipment* (such as warranty claims against the supplier); the rights and interests of the *client* or the *grantor* in each insurance policy which relates in any way to the *designated equipment*; and the proceeds of the *designated equipment* and those things. If for any reason it is necessary to determine the nature of that *security interest* it is a fixed charge. The *security interest* is given to secure the obligations specified in clause 33. The *security interest* which ScotPac obtains will be a purchase money security interest to the extent this is possible under the *PPSA*.
- 37.2 If the *grantor* owns the *designated equipment* or has an interest in the *designated equipment* in its own right it gives the *security interest* as beneficial owner. If it does so as trustee of a trust it gives the *security interest* in the exercise of its powers as trustee.
- 37.3 In addition to the *security interest* in *designated equipment* and associated items ScotPac has other *security interests* as described in clauses 14.6 and 83.1, together with the *security interests* which arise under the *general security deed* and the *land mortgage*. In the case of the *designated equipment* the *grantor* must comply with both the *facility agreement* and the *general security deed*, even if they concern the same or similar subject matter. If that is not possible because the obligations are inconsistent, it must comply with the *facility agreement*. The *designated equipment* will never be a revolving asset as defined in the *general security deed* and any right which the *grantor* may have to deal in any way with collateral under the *general security deed* will not extend to the *designated equipment*.

38 Warranties in relation to designated equipment

- 38.1 The *grantor* and, if the *grantor* is not the *client*, the *grantor* and the *client* warrant to ScotPac each of the following (unless the *grantor* or the *client* tells ScotPac in accordance with clause 38.2 that the warranty cannot be given).
- (a) All information given to ScotPac in connection with the *designated equipment* is correct in all material respects. This includes information received using the *information connection*. The *grantor* and, when, applicable, the *client* also warrants that neither the *client* nor the *grantor* has withheld any information from ScotPac which could reasonably be expected to affect the exercise of ScotPac's discretion under clause 34.1.
 - (b) The *grantor* has disclosed to ScotPac everything known to the *grantor* which a person in the position of the *grantor* would be reasonably expected to know could be relevant in determining the orderly liquidation value, fair market value or forced liquidation value mentioned in clause 36.1.
 - (c) The *grantor* is the *sole owner* of the *designated equipment* or, if it does not already own the *designated equipment*, it will be the *sole owner* at the time mentioned in clause 34.2(e).
 - (d) The *designated equipment* is not the subject of any *security interest* (except a *permitted interest*) and has not been leased, let or hired.
 - (e) The *designated equipment* has not been deposited with any *entity* as security for the payment of money or performance of any *obligation* and is under the immediate and direct control of the *client* or the *grantor*.
 - (f) Unless the *designated equipment* is a motor vehicle or other similar item which is moved in the ordinary course of the *grantor's* business, the *designated equipment* is located on sites specified in the *designated equipment schedule* in which that *designated equipment* is specified. The *client*, a *guarantor* or the *related landlord* must be the owner and sole occupier of the sites. Alternatively, if they are not the owner and sole occupier, the owner and any tenant or other occupier has given ScotPac an agreement in a form and content acceptable to ScotPac acting reasonably. If the sites are subject to a freehold mortgage, the freehold

mortgagee has given ScotPac an agreement in a form and content acceptable to ScotPac acting reasonably. The agreements will give ScotPac the right to enter the sites and exercise rights over the *designated equipment*.

- (g) The *designated equipment* is located in Australia and will be used in an enterprise (as defined in the *GST Act*) carried on by the *grantor*.
- (h) The *grantor* and the *client* have satisfied themselves as to the merchantability, quality, suitability, safety and fitness for purpose of the *designated equipment*.
- (i) The *grantor* has complied with all laws relating to the *designated equipment*.
- (j) Neither the *client* nor the *grantor* has done anything which could make ScotPac liable in respect of the *designated equipment*.
- (k) Any serial number or other description disclosed to ScotPac which could be relevant for the purpose of identifying the *designated equipment* is accurate. This includes a vehicle identification number, registration number, chassis number and manufacturer's number. If requested by ScotPac, the *grantor* or the *client* must promptly give that information to ScotPac.

38.2 If the *grantor* or the *client* wishes to advise ScotPac that a warranty will not be correct it can only do so by providing a specific written disclosure of the relevant details. The disclosure is to be made in writing (which in this instance includes e-mails).

38.3 Each warranty in clause 38.1 is made, subject to clause 38.2, by the *grantor* and, if the *grantor* is not the *client*, the *grantor* and the *client*, when the *designated equipment schedule* is acknowledged or given to ScotPac and on each subsequent day until all liabilities have been satisfied. The *grantor* or the *client* must tell ScotPac if they could not, for any reason, truthfully repeat each of those warranties.

39 Obligations in relation to designated equipment

39.1 The *grantor* must do each of the following.

- (a) Keep the *designated equipment* in good repair and working condition. If the manufacturer or supplier of the *designated equipment* has instructed or recommended that the *designated equipment* be used, maintained or serviced in any way the *grantor* must use, maintain or service it in accordance with the instruction or recommendation.
- (b) Repair and maintain the *designated equipment* in any way ScotPac, acting reasonably, may require. However, the *grantor* does not have authority to pledge ScotPac's credit or allow a lien (other than a *permitted interest*) to arise.
- (c) Promptly record the *designated equipment* in its fixed asset register and note in its records the interest of ScotPac in the *designated equipment*.
- (d) Tell ScotPac immediately if the *designated equipment* is seized, stolen, lost, destroyed, defective or materially damaged or if there has been any material deterioration of the *designated equipment*.
- (e) Comply with all laws, licences, legal requirements, orders and notices in connection with the *designated equipment* and the operation or use of the *designated equipment*.
- (f) Insure the *designated equipment* as required by clause 54.
- (g) Pay on time all charges, duties, taxes and fines and all registration, licence and other fees payable in connection with the *designated equipment* or its operation or use and ensure that all rent, rates, taxes, charges and other impositions payable in connection with the sites mentioned in clause 38.1(f) are paid.
- (h) Ensure that the *designated equipment* is located at the sites which satisfy the requirements in clause 38.1(f) and are not moved from those sites except in the ordinary course of business or for the purposes of service or repair. The *designated equipment* must not be permanently moved from those sites or taken out of Australia without ScotPac's consent.
- (i) Allow ScotPac to inspect the *designated equipment* at all reasonable times, enter any sites where the *designated equipment* is located or is believed to be located and exercise its rights over the *designated equipment*.
- (j) Do anything ScotPac, acting reasonably, requires to provide more effective security over the *designated equipment* or for the payment of the *amount owing* or the *guaranteed money*. The *grantor* could, for example, be required to obtain consents, sign and produce documents and produce receipts.

- (k) Give ScotPac all documents which evidence title to the *designated equipment* and any other information or documents ScotPac, acting reasonably, may require concerning the *designated equipment*. This includes evidence of any required registration or licence and evidence that any shortfall between the price and the amount available for disbursement in accordance with clause 35.2 has been paid. Until they are given to ScotPac the *grantor* will keep them in good order and condition and ensure that they are properly and securely kept at the *premises*.

39.2 The *grantor* must not do any of the following without ScotPac's consent.

- (a) Use the *designated equipment* or allow the *designated equipment* to be used predominantly for personal, domestic or household purposes or in any way which breaches any law.
- (b) Sell the *designated equipment*, give a *security interest* (other than a *permitted interest*) in the *designated equipment* or allow a *security interest* (other than a *permitted interest*) to arise or continue in the *designated equipment*.
- (c) Lease, let or hire the *designated equipment* or give any *entity* any interest (other than a *permitted interest*) in the *designated equipment*. If the *designated equipment* is leased, let or hired: the terms of that arrangement must be approved by ScotPac; the *grantor* must ensure that the user complies with obligations equivalent to those in clause 39; and the *security interest* which is given by the third party to the *grantor* for the purposes of the *PPSA* must be registered by the *grantor* on the *PPSR* and be continuously perfected (including as a *PMSI* if applicable). ScotPac may specify how it is to be registered and the required priority of the *security interest*.
- (d) Deposit the *designated equipment* with any *entity* as security for the payment of money or performance of any *obligation*.
- (e) Dispose of the *designated equipment* in any other way or enter into an agreement to dispose of the *designated equipment* or to do any of the things mentioned above.
- (f) Permit the *designated equipment* to be attached to land or buildings in a way that could mean the *designated equipment* becomes a fixture.
- (g) Allow the *designated equipment* to become an accession to any *property*, except *property* which is also *designated equipment*.
- (h) Allow any material alterations to be made to the *designated equipment* or any identifying marks on the *designated equipment*.
- (i) Place, or allow to be placed, on the *designated equipment* any plates or marks that are inconsistent with the *grantor's* ownership of the *designated equipment* or ScotPac's *security interest* in it.
- (j) Allow anything to happen that means an *entity* (including a court) could lawfully seize or claim the *designated equipment*.
- (k) Anything that might reduce the value of the *designated equipment* or put at risk ScotPac's *security interest* in the *designated equipment*. In addition, the *grantor* must not allow anything to be done that might reduce the value of the *designated equipment* or put at risk ScotPac's *security interest* in the *designated equipment*. The reduction in value does not include a reduction due to fair wear and tear caused by the use of the *designated equipment* in the ordinary course of business.

39.3 If the *client* is not the *grantor*, the *client* must ensure that the *grantor* performs each of its *obligations*.

G. LAND ASSET COMPONENT

40 Introduction

Clauses 41 to 45 apply if it is stated in the *letter of offer* that the *client* has an asset based facility with a land asset component. The *designated land* can be owned by the *client* (in which case the *client* gives a *security interest* over it to secure payment of the *amount owing* and the performance of each *transaction party's obligations* under any *transaction document*) or a *guarantor* (in which case the *guarantor* gives a *security interest* over it to secure payment of the *guaranteed money* and the performance of all *guaranteed obligations*). The owner, whether it is the *client* or a *guarantor*, is the *mortgagor*. The *security interest* is given pursuant to the *land mortgage*, clause 83.1 and, if the *mortgagor* executes it, the *general security deed*.

41 Requirements for land to be designated land

- 41.1 The *client* may, at any time, request that specified land be included as *designated land*. The *client* makes that request by giving ScotPac a *designated land schedule*. The form of that schedule is available from ScotPac. The *client* must complete the schedule accurately and completely. Alternatively, the *client* can provide the relevant information to ScotPac, ScotPac will then complete the form and give it to the *client* and the *client* can then acknowledge the accuracy of the form by, for example, signing it. ScotPac can accept or decline the *client's* request at ScotPac's discretion. ScotPac accepts the request by telling the *client* that it is accepted.
- 41.2 Even if ScotPac accepts the request, the land will only be *designated land* if each of the following requirements have been satisfied.
- (a) All conditions which the *client* has been told will apply have been satisfied. Those conditions include any conditions specified in the *letter of offer*.
 - (b) The *client* has given ScotPac the *designated land schedule* which specifies the required details of the land or has acknowledged it.
 - (c) The sworn valuation of the *designated land* has been provided to ScotPac in accordance with clause 43 and ScotPac, acting reasonably, is satisfied with the report and the fair market value valuation.
 - (d) ScotPac has received (and, acting reasonably, is satisfied with):
 - (i) evidence of the insurance which satisfies the requirements in the *land mortgage* or, if the *land mortgage* does not specify the requirements, evidence of the insurance which is required by clause 54;
 - (ii) any evidence ScotPac requires to confirm that the *mortgagor* has complied with its obligations in the *facility agreement* or the *land mortgage* and to confirm the *mortgagor's* warranties in the *facility agreement* or the *land mortgage*; and
 - (iii) any other information or documents ScotPac, acting reasonably, requires.
 - (e) ScotPac, acting reasonably, is satisfied with the *designated land* and the title to it. In particular, ScotPac must be satisfied that the *mortgagor* is the *sole owner* and registered proprietor of the *designated land* or will be the *sole owner* and registered proprietor of the *designated land* by no later than the time *availability* is paid to the *client* as permitted by the *land value* of the *designated land* being taken into account in the calculation of the *land availability*.
 - (f) ScotPac, acting reasonably, is satisfied that it will have a *security interest* over the *designated land* and hold all documents of title for the *designated land* by no later than the time the *mortgagor* is required to be the *sole owner* in accordance with paragraph (e). That *security interest* must be a first ranking registered freehold mortgage (unless the *letter of offer* states that it can be a lesser interest) and there must not be any other *security interests* in the *designated land* except a *permitted interest*.
 - (g) No *default event* is continuing and there is no *potential default event*.
- 41.3 ScotPac can waive any of the requirements in clause 41.2. ScotPac can give the waiver subject to any reasonable conditions ScotPac stipulates to the *client* or the *mortgagor*.

42 ScotPac will make advances

- 42.1 When ScotPac pays *availability* to the *client* it may make an advance to the *client*. As explained in clause 48.1, the *availability* paid to the *client* is one lump sum amount.
- 42.2 If the *mortgagor* is acquiring the *designated land* or an existing *security interest* over the *designated land* is to be discharged, the *client* agrees that ScotPac may disburse all or any part of the *availability* which would otherwise have been paid to the *client*. The amount disbursed can be paid to, or at the direction of, the vendor or the existing mortgagee.

43 Valuation of designated land

- 43.1 Valuations are used to determine the *land value* of all *designated land* in accordance with the following principles.
- (a) The *land value* of *designated land* is the fair market value of the *designated land*.
 - (b) The fair market value of the *designated land* is the fair market value (see clause 103.9) as confirmed by a sworn valuation, addressed to ScotPac, from a valuer approved by ScotPac, acting reasonably, and which valuation is acceptable to ScotPac acting reasonably. The value is determined on the basis that the vendor sells on an "as-is, where-is" basis and the value is net of all sale expenses.

- (c) ScotPac will obtain a valuation when the *designated land* becomes *designated land* and may obtain a sworn valuation on any *designated land* at any time. The *client* may ask ScotPac to obtain a valuation report at any time. When the fair market value of the *designated land* is determined after the provision of those reports, the fair market value will be the fair market value as confirmed by the latest report which satisfies the above requirements.
- 43.2 The *client* may, at any time, request that specified land cease to be *designated land*. ScotPac can accept or decline the *client's* request at ScotPac's discretion. ScotPac accepts the request by telling the *client* that it is accepted. If ScotPac accepts the request and any conditions advised by ScotPac have been satisfied, the *land mortgage* is discharged in connection with the specified land. Even if the land ceases to be *designated land* ScotPac does not have to discharge it from the *security interest* arising under the *general security deed* whilst there is an *amount owing*, unless the *general security deed* requires that ScotPac provide the discharge.

44 Warranties in relation to designated land

- 44.1 The *mortgagor* and, if the *mortgagor* is not the *client*, the *mortgagor* and the *client* warrant to ScotPac each of the following (unless the *mortgagor* or the *client* tells ScotPac in accordance with clause 44.2 that the warranty cannot be given).
- (a) All information given to ScotPac in connection with the *designated land* is correct in all material respects. This includes information received using the *information connection*. The *mortgagor* and, when applicable, the *client* also warrants that neither the *client* nor the *mortgagor* has withheld any information from ScotPac which could reasonably be expected to affect the exercise of ScotPac's discretion under clause 41.1.
 - (b) The *mortgagor* is the *sole owner* of the *designated land* and is the registered proprietor of it or, if it does not already own the *designated land*, it will be the *sole owner* and registered proprietor at the time mentioned in clause 41.2(e).
 - (c) The *designated land* is not the subject of any *security interest* (except a *permitted interest*) and it has not been leased, is not the subject of a licence and is not the subject of any right or interest (such as an easement or covenant) except as permitted by the *land mortgage*.
 - (d) The *mortgagor* and the *client* have satisfied themselves as to the suitability of the *designated land*, the title to the *designated land*, all restrictions (such as covenants and easements) affecting the *designated land* and the zoning and other restrictions on the use of the *designated land*.
 - (e) The *client* or the *mortgagor* has disclosed to ScotPac anything known to them which might affect the market value of the *designated land* and ScotPac's *security interest* over the *designated land*.
 - (f) The warranties the *mortgagor* gives in the *land mortgage* are correct in all material respects.
 - (g) The *mortgagor's obligations* under the *land mortgage* have been complied with in all material respects.
 - (h) The *mortgagor* has complied with all laws relating to the *designated land*.
 - (i) Neither the *client* nor the *mortgagor* has done anything which could make ScotPac liable in respect of the *designated land*.
 - (j) All constructions or other improvements on the *designated land* have been completed in accordance with all laws (including planning and building regulations) and the use and occupation of the *designated land* complies with all laws (including those regulations).
- 44.2 If the *mortgagor* or the *client* wishes to advise ScotPac that a warranty will not be correct it can only do so by providing a specific written disclosure of the relevant details. The disclosure is to be made in writing (which in this instance includes e-mails).
- 44.3 Each warranty in clause 44.1 is made, subject to clause 44.2, by the *mortgagor* and, if the *mortgagor* is not the *client*, the *mortgagor* and the *client*, when a *designated land schedule* is acknowledged or given to ScotPac and on each subsequent day until all liabilities have been satisfied. The *mortgagor* or the *client* must tell ScotPac if they could not, for any reason, truthfully repeat each of those warranties.

45 Obligations in relation to designated land

- 45.1 The *mortgagor* must comply with its *obligations* in the *land mortgage*.
- 45.2 The *mortgagor* must duly and punctually pay and discharge all rates, levies and taxes (including all sewerage and water rates and levies), duties, charges, assessments, impositions and outgoings of any type (whether legislative, municipal, contractual or otherwise) which may at any time be rated, taxed, charged, chargeable, assessed or imposed upon or in respect of the *designated land*. The *mortgagor* must also duly and punctually pay and discharge

all charges (including electrical, water, gas and telephone charges) relating to any service used or consumed on or in relation to the *designated land*. On request, the *mortgagor* must give ScotPac particulars of the liabilities described in this clause and evidence of the payments made to satisfy those liabilities.

- 45.3 The *mortgagor* must promptly tell ScotPac if there has been any material deterioration of, damage to, defect in or destruction of the *designated land*, including any improvements on it.
- 45.4 The *mortgagor* must sign any document and do everything necessary in accordance with a notice given by ScotPac, acting reasonably, to protect the *designated land* or fix any deterioration, damage, defect or destruction in or to it, including any improvements on it.
- 45.5 The *mortgagor* must give ScotPac all documents which evidence title to the *designated land* and allow ScotPac to inspect and take copies of any records or documents which relate to *designated land*.
- 45.6 The *mortgagor* must comply with all laws, legal requirements, orders and notices in connection with the *designated land* and the use of the *designated land*. The *mortgagor* must ensure that any lessee or other occupier of the *designated land* complies with those laws, legal requirements, orders and notices.
- 45.7 If the *client* is not the *mortgagor*, the *client* must ensure that the *mortgagor* complies with each of its *obligations*.

H. RECORDS AND PAYMENTS

46 Records ScotPac keeps

- 46.1 ScotPac will maintain records of the financial arrangements between ScotPac and the *client* (including the *availability*) and will provide reports to the *client* concerning: the *accounts*; the *funds in use*; fees, charges, interest and expenses; the payments which ScotPac makes; the payments which the *client* makes; and the payments *customers* make to ScotPac. ScotPac, acting reasonably, will determine the format of the reports and how they will be provided.
- 46.2 In the records ScotPac maintains (including the details available on the *client platform*) ScotPac: does not distinguish between the *purchase price* and the *additional payment*; does not separate the *availability* into amounts available for a *purchase price*, an *additional payment*, an early payment of an *additional payment* and an *advance*; and does not separate a payment of *availability* to distinguish between payment of a *purchase price*, an *additional payment*, an early payment of an *additional payment* and an *advance*. However, if the amounts do need to be separately identified for any reason ScotPac, acting reasonably, will identify them. The categorisation of the payments by ScotPac is explained in clause 48.1.
- 46.3 In the records ScotPac maintains it: does not show the discount charge and interest separately; and it does not separately identify the *funds in use* which bore a discount charge from the *funds in use* which bore interest. In particular, the discount charge and interest will not be separated on the *client platform*. However, if the amounts do need to be separately identified for any reason ScotPac will identify them. ScotPac will do so on the basis that the *availability* paid to the *client* comes from the *accounts availability* before the other components of the *availability* and by making any adjustments ScotPac, acting reasonably, considers appropriate.
- 46.4 As soon as possible after the start of each *month*, ScotPac will make available to the *client* a statement of the financial position as between ScotPac and the *client* at the end of the previous *month*. It can be made available by the *client* being given access, such as via the *client platform*, to the statement. The statement can be provided in the form of several reports.

47 Client platform

- 47.1 ScotPac may give the *client* access to the *client platform*. The information which is available through the *client platform* and the functions which can be conducted using it will depend on the capability of the system and will be determined by ScotPac from time to time. In particular, the information and functions can be different from that outlined or demonstrated at any time. For example, the *client* may be given access to: see the *availability*; see the *funds in use*; obtain information about *availability* which has been paid or which could be paid; obtain information about *accounts* and *customers*; receive notifications from ScotPac (such as the credit limit and percentage mentioned in clause 18.2); and do the things mentioned in clause 47.2. ScotPac may decide that the *client* can use the *client platform* to request payments. The *client* must access the *client platform* at least once each *working day* to see whether the *availability* is a negative amount (also see clause 49.1) or whether a notice or demand has been posted on the *client platform* (see clause 101.2).
- 47.2 ScotPac may allow the *client* to agree to things (such as further terms and conditions), provide acknowledgements and give warranties by using the *client platform*. The *client* will then do so by the *client* (or someone on its behalf) clicking "I agree" (or something similar) or by signifying its acceptance in some other way. An agreement which is

made using the *client platform* (including an agreement to use the *information connection*) will be considered to have been made “in writing” by a “document” which is “signed” by the *client*.

- 47.3 ScotPac can suspend or restrict the *client's* use of the *client platform* at any time without giving the *client* prior notice. If ScotPac does that it will tell the *client* the alternative arrangements which will apply and ScotPac will use reasonable endeavours to ensure that it continues to deliver the services contemplated by the *facility agreement*. It is the *client's* responsibility to obtain and maintain any equipment necessary to use the *client platform*.
- 47.4 ScotPac may allow access to the *client platform* to any person supplying the identifier (login) given to the *client* and the confidential character sequence (password) given to the *client* or entered on ScotPac's system. The *client* will determine who should have access to the *client platform*. ScotPac will initially give the login and password to a person who appears to be an appropriate person to receive it and he or she can then arrange for people to be given access to the *client platform*. He or she must ensure that the password provided by ScotPac is changed the first time it is used.
- 47.5 The *client* must ensure that the login and password are not misused; they are not disclosed to an unauthorised person; any record of the login is kept separate from any record of the password; and any record of the login and password is kept secure. The *client* must tell ScotPac as soon as possible after the *client* becomes aware of the loss, theft or misuse of the password or after the *client* suspects it has become known to an unauthorised person.
- 47.6 The *client* is responsible for and is bound by everything a person does using the *client platform* when the person obtained access to the *client platform* using the password provided by ScotPac or the password as it is changed at any time. ScotPac will assume that each person who obtains access to the *client platform* in that way has been authorised by the *client* to use the *client platform* and is not required to take any steps to verify this.

48 Payments by ScotPac

- 48.1 At any time the only amount which ScotPac is required to pay to the *client* is the *availability*. ScotPac's obligation to pay that amount is subject to the provisions of the *facility agreement*. ScotPac may agree to pay a further amount in accordance with clause 24. When ScotPac makes a payment the payment will be attributable to all or any one or more of a *purchase price*, an *additional payment*, an early payment of an *additional payment* and an advance. An advance can be provided to the *client* when an *account* is not transferred (see clause 24.2), when an excess is advanced (see clause 24.1) and when the asset based facility has at least one of an inventory asset component, a plant and equipment asset component and a land asset component. Since the *client* is only entitled to one amount (the *availability*) ScotPac does not have to separate the *availability* into amounts available for a *purchase price*, an *additional payment*, an early payment and an advance and does not have to separate an amount which can be advanced into its components. Similarly, when ScotPac pays *availability* it does not have to identify the amounts which were paid by dividing them into those categories. Sometimes ScotPac may consolidate the *availability* with further amounts which ScotPac has agreed to pay in accordance with clause 24.
- 48.2 The *client* requests a payment of *availability* by using the *client platform*. ScotPac, at its discretion, may allow the *client* to make a request in another way. All other requests and instructions must be provided in the way ScotPac, acting reasonably, requires. In particular, ScotPac may allow the *client*, an authorised signatory under clause 62.2, the *client's authorised officer*, or an officer or employee of an *associate*, to make a request (such as request a payment) and give instructions by e-mail, fax or telephone. The *client* is responsible for and is bound by the request or instruction, and ScotPac can rely on it, if it purports to be sent or made by the *client* or any of those persons. ScotPac does not have to verify the authority of the person who made the request or gave the instruction unless the request or instruction is deficient on its face and ScotPac would be negligent if it did not verify the authority.
- 48.3 If the *client* is entitled to a payment of the *availability* ScotPac can make the payment by electronic funds transfer to an *ADI account* nominated by the *client* and approved by ScotPac. When ScotPac makes a payment, it can use the BSB and account number (or equivalent information) which it has been given and is not required to validate that information. An incorrect BSB or account number will result in money being paid to the wrong account and may result in the loss of the *client's* funds.
- 48.4 Payments by ScotPac will be made on a *working day*. ScotPac, acting reasonably, can require that further information be given to it before making payments.
- 48.5 The *client* can ask ScotPac to pay amounts due to be paid to the *client* by making payment to a third party nominated by the *client*. ScotPac may agree or decline to do so. If it agrees, ScotPac may impose conditions such as those appropriate to ensure compliance with anti-money laundering and counter-terrorism laws. The *client* cannot make a payment to ScotPac so that ScotPac can make a payment to a third party.
- 48.6 If ScotPac believes that money may be owing to a *supplier* or an *entity* which has a *security interest* in *property* in which the *client* or ScotPac has an interest ScotPac can make a payment to the *supplier* or other *entity*. If ScotPac believes that the *client* owes money to any *entity* ScotPac can pay all or any part of that amount. ScotPac can make those payments if ScotPac considers this appropriate to protect its legitimate interests, but it does not have to

substantiate the obligation and it can make the payment despite any request which the *client* may make. ScotPac is entitled to payment of the relevant amount from the *client* within two *working days* of it being requested.

49 Client must pay negative availability

- 49.1 If, at any time and for any reason, the *availability* is a negative amount the *client* must, within two *working days*, ensure that it becomes zero or a positive amount. However, this does not apply to the extent the *availability* is a negative amount due to funding being provided in accordance with clause 24.1 or the *early payment percentage*, the *inventory advance rate*, the *P&E advance rate* or the *land advance rate* being increased in accordance with clause 65.4. That two *working day* period will start when the *availability* is shown on the *client platform* as being a negative amount or the *client* has been told by a notice served in accordance with clause 101 that it is a negative amount.
- 49.2 It is expected that the *availability* will become zero or a positive amount as *collections* are paid into the *nominated account* (see clause 4.1(b)). The *availability* could also become zero or a positive amount by an increase in the *book value of eligible accounts*, an increase in the *inventory value of eligible inventory*, an increase in the *equipment value of designated equipment*, an increase in the *land value of designated land* or by the *client* making a payment to ScotPac. A combination of those things can apply but the *client* must ensure that the *availability* is zero or a positive amount by the end of the two *working day* period. The *client* may need to make a payment to ScotPac to ensure that the *availability* is zero or a positive amount by the end of the two *working day* period. ScotPac, acting reasonably, will determine which *obligations* of the *client* are reduced by the payment.
- 49.3 ScotPac is not required to make payments to the *client* whilst the *availability* is a negative amount. Whilst the *availability* is a negative amount the *prevailing rate* will always be determined in accordance with paragraph (a) of that definition. That paragraph will also apply in other circumstances as specified in that definition.

50 ScotPac may withhold payments and apply set-off

- 50.1 ScotPac may withhold any payment which it would otherwise be required to make if: the details in the last *facility base pack* are not correct in all material respects; a *default event* is continuing or there is a *review event* or *potential default event*, the *client*, the *grantor* or the *mortgagor* has given, or should have given, notice under clauses 32.1(g), 39.1(d) or 45.3; ScotPac has given notice under clause 67; money is due and payable to any sub-contractor; money is due and payable by the *client*, any *guarantor* or an *entity* which is *related* to the *client* to ScotPac (or an *entity* which is *related* to ScotPac); or ScotPac (acting reasonably) considers that it might be required to repay a corresponding payment (such as a payment by a *customer*). Unless a *default event* is continuing, the amount which is withheld will be an amount ScotPac determines is appropriate to protect its legitimate interests. For example, the amount withheld because the *client* owes money to a sub-contractor cannot exceed the amount which is owed. The withheld payment does not become due and payable until ScotPac is satisfied that none of those matters apply or ScotPac agrees to release it. When an amount is withheld due to the notice given, or which should have been given, under clauses 32.1(g), 39.1(d) or 45.3 ScotPac will recalculate the *availability* having regard to the reduction in the asset value and the withheld amount becomes due and payable if the *availability*, after the recalculation, is zero or a positive amount. ScotPac, acting reasonably, may agree to release it subject to the satisfaction of conditions, such as a reduction in the *facility limit* being agreed.
- 50.2 ScotPac is entitled to set-off any money that ScotPac (or an *entity* which is *related* to ScotPac) owes to the *client* or any *guarantor* (such as amounts the *facility agreement* states ScotPac will pay or states the *client* is entitled to) against any *obligations* that the *client*, any *guarantor* or any *entity* which is *related* to the *client* owes to ScotPac (or an *entity* which is *related* to ScotPac). If the *availability* is a negative amount those *obligations* include the amount which needs to be paid so that the *availability* becomes zero even if the two *working day* period specified in clause 49.2 has not expired. Those *obligations* also include money owed (whether actually, contingently or prospectively) under any agreement or *obligation* or on any account. If the extent of the *obligation* or the amount which is owed cannot be immediately ascertained, ScotPac is entitled to make a reasonable estimate. If ScotPac makes an estimate it will promptly make any required adjustments when the extent of the *obligation* or the amount which is owed can be ascertained. ScotPac may also combine any accounts recording transactions between the *client* and ScotPac. ScotPac's rights under this clause continue even if the *client* or *guarantor* is *insolvent* and despite anything else which may happen. ScotPac may exercise its rights under this clause without giving notice to any *entity* but it will, as soon as possible following a request from the *client*, give the *client* details of any exercise of its rights.
- 50.3 The *client* or a *guarantor* may well be a customer of an *entity* which is another client of ScotPac and that *entity* may sell to ScotPac debts owed by the *client* or *guarantor*. In that case ScotPac may use clause 50.2 to set-off the amount ScotPac owes under the *facility agreement* against the amount the *client* or *guarantor* owes and the amount owed by the *client* or *guarantor* will be secured by each document creating a *security interest* granted by any *transaction party* in favour of ScotPac. ScotPac may, at its discretion, decide not to exercise all or any of its rights under this clause 50.3.

51 Requirements for client payments

- 51.1 ScotPac does not have to make a demand of any type for ScotPac to be entitled to an amount for the purposes of clauses 4.1(c) or 9.1(a). In addition to the payments which the *client* must make under the *facility agreement* the *client* may make payments to ScotPac to reduce the *funds in use* which reduces the discount charge or interest which accrues in accordance with clause 9. ScotPac, acting reasonably, will determine which *obligations* of the *client* are reduced by the payment and will credit the *client's* account on the day of receipt or on the next *working day* if it was not received before ScotPac's normal banking time on a *working day*. However, if it is not in *cleared funds* ScotPac may treat it as having been received when it is in *cleared funds*.
- 51.2 The *client* must pay money payable to ScotPac in *cleared funds*. Except as required by law, it must do so without any set-off, abatement, counterclaim, withholding or deduction. Apart from those requirements, the *client's* rights against ScotPac are not affected. If the law does require a withholding or deduction (such as a withholding for tax) the *client* must pay an additional amount to ensure that ScotPac receives and retains a net amount equal to what it would have received and retained if no withholding or deduction had been required. Unless otherwise agreed, the *client* must make each payment in Australian dollars and all costs, fees, charges, expenses and interest payable by the *client* to ScotPac are payable in Australian dollars. The *client* must pay ScotPac by transferring the money to an *ADI account* ScotPac specifies. If ScotPac and the *client* have agreed that the *client* will pay amounts it owes by a direct debit arrangement the *client* must not change the arrangement without ScotPac's approval.
- 51.3 The *client* must pay money to ScotPac immediately it is due. If the *facility agreement* does not specify when it is due, it is payable within two *working days* of a demand being made by ScotPac. However, if a *default event* is continuing or the *facility agreement* has come to an end payment may have to be made earlier in accordance with clauses 69.5 or 71.1(d). ScotPac, acting reasonably, may allocate any payment ScotPac receives against any *obligations* the *client* may have to ScotPac or an *entity* which is *related* to ScotPac.
- 51.4 Despite any other provision, an amount will be considered to have been paid to the credit of the *nominated account* or paid to ScotPac when ScotPac credits it to the *client's* account or, at ScotPac's choice, when it has been paid in *cleared funds*. If ScotPac can determine that it is a payment for an *account* ScotPac will generally credit the *client's* account on the day of receipt by ScotPac or on the next *working day* if it was not received before ScotPac's normal banking time on a *working day*. However, if it was received by electronic funds transfer (including EFTPOS and BPay), a direct debit arrangement or the use of a credit or debit card ScotPac may treat it as having been received on the following *working day*. When an amount is considered to have been paid is important for such things as when value is given to *collections*, the determination of the *funds in use* and the determination of the *availability*.

52 Miscellaneous payments

- 52.1 If ScotPac believes on a reasonable basis that it is liable or may become liable to hand over any amount that the *client*, a *customer*, a *guarantor* or any other *entity* has paid to ScotPac in connection with a *transaction document*, the *client* must pay that amount to ScotPac. ScotPac may treat the original payment as if it had not been paid. If ScotPac believes on a reasonable basis that it is liable or may become liable to pay an amount to a *supplier*, the *client* must pay that amount to ScotPac. If ScotPac pays an amount based on a document (including a negotiable instrument or other instrument) which is subsequently dishonoured, the *client* must pay ScotPac that amount (together with all reasonable associated costs, including legal costs, which ScotPac incurs).
- 52.2 If the *client* has been introduced to ScotPac by a third party (such as a broker), ScotPac may pay an introduction fee, brokerage or commission to the third party. If ScotPac introduces a third party (such as someone who could provide another commercial finance facility) to the *client* that third party may pay an introduction fee, brokerage or commission to ScotPac. In each case ScotPac will, as soon as possible following a request from the *client*, provide the *client* with details of the introduction fee, brokerage or commission. When the third party introduces the *client* to ScotPac it acts as the *client's* agent. ScotPac is not responsible for its selection or the assessment it undertakes. When ScotPac introduces the third party to the *client* it is not acting as agent for any *entity*. If ScotPac receives information from an *entity* or an *entity* assists in the processing of an application, ScotPac may pay a commission to that *entity*. The *client* consents to the arrangements referred to in, or described in, this clause 52.2.

53 Client's record keeping and reporting obligations

- 53.1 The *client* must keep proper and accurate books and records in accordance with the law and generally accepted accounting principles.
- 53.2 The *client* must, at its expense, allow ScotPac to inspect and take copies of any records, including books, accounts, ledgers, correspondence and any other documents. This includes items which are *related rights* and any records and documents that relate to an *account*, a *customer*, *goods*, *services*, *inventory*, *designated equipment*, *designated land* or taxes (including *GST*). ScotPac is entitled to take possession of the relevant records and documents or use computer systems to obtain the copies. ScotPac is entitled to take permanent possession of records and documents relating exclusively to *transferred accounts*. If any relevant records or documents are not in the *client's* possession or under its control, the *client* must do everything that is necessary to enable ScotPac to inspect and copy them and,

where appropriate, take possession of them. The records and documents must be properly and securely kept at the *premises*. The records on a computer must be accessible by using computer equipment located at the *premises*.

- 53.3 The *client* must give ScotPac a copy of its accounting records, including its statement of financial position (balance sheet), its statement of financial performance (trading and profit and loss accounts), its aged creditors ledger and any other records ScotPac requires, and any related information ScotPac asks for, promptly on request. The *client* must give all of them in the manner and form, and with the detail, ScotPac, acting reasonably, requires. The *client* must also give ScotPac a copy of its final annual accounts within 120 days of the end of its financial year. If the asset based facility has an inventory asset component or the *letter of offer* states that it is required, the annual accounting records must be audited by an auditor acceptable to ScotPac acting reasonably.
- 53.4 The *client* must give ScotPac a copy of the *client's* financial package within sixty days of the end of its financial year. That package must include financing projections (certified by the *client* as reviewed and adopted by the *client's* board) for the next financial year, twelve *month* financial performance (trading and profit and loss accounts), statement of financial position (balance sheet), cash flow projections, discretionary and non-discretionary capital expenditure and asset disposal budgets, together with a brief commentary (including assumptions) relating to those projections.
- 53.5 The *client* must give ScotPac, within five *working days* after ScotPac asks for it, a statement setting out all its outstanding *obligations* as at a date ScotPac specifies.
- 53.6 The information to be given under clauses 53.3, 53.4 and 53.5 must each be certified as being accurate and complete by the *client* or, if the *client* is a *corporation*, by a director or the company secretary. If that information is provided electronically the *client* must comply with ScotPac's reasonable requirements so that it is compatible with the *client platform, information connection* and ScotPac's other systems.
- 53.7 If ScotPac asks the *client* to do so, the *client* must cause each *guarantor* that is a *corporation* and each *entity* which is *related* to the *client* to promptly give ScotPac a copy of its accounting records, including its statement of financial position (balance sheet), its statement of financial performance (trading and profit and loss accounts), its aged creditors ledger and any other records ScotPac requires, and any related information ScotPac asks for. A *guarantor* which is a *corporation* agrees that it will give those things to ScotPac, if ScotPac has made the request.
- 53.8 The *client* must provide any evidence ScotPac may reasonably request to confirm that each *transaction party* is complying with each of its *obligations* under each *transaction document*.

I. OTHER WARRANTIES AND OBLIGATIONS

54 Insurance obligations

- 54.1 The *client* must maintain insurance over the *inventory*. The *grantor* must maintain insurance over the *designated equipment*. If required by ScotPac, the *client* must maintain insurance over the *goods*, until risk passes in them to the *customer*. ScotPac and the *client* may agree, in the *letter of offer* or in another way, that other insurance will be maintained. The required insurance must be maintained in accordance with the following paragraphs. In addition to satisfying those requirements the *client* and any *guarantor* which is a party to the *general security deed* must satisfy any requirements in the *general security deed*. If the *land mortgage* does not specify the requirements for insurance in connection with the *designated land*, the *mortgagor* must maintain insurance over the *designated land* in accordance with the following requirements. In clause 54 the relevant *client, grantor* or *mortgagor* is called the "insured".
- (a) The insurance must satisfy any reasonable requirements which ScotPac has specified. If ScotPac has not specified requirements the insurance must be for the full insurable value against fire, accident, theft and other risks as is customary for property of a like nature.
- (b) The insurer must be approved by ScotPac and the terms of the policy must be approved by ScotPac. ScotPac will act reasonably when it decides if it will give the approval.
- (c) The insured must ensure that the policy notes ScotPac's interest as mortgagee. Alternatively, ScotPac may require that it be designated as the loss payee, that the policy be transferred to it or that the policy be in the joint names of ScotPac and the insured for their respective interests. The insured must do so in the manner and form ScotPac, acting reasonably, requires. The insured must not nominate any other *entity* as the loss payee, transfer the policy to any other *entity* or allow a *security interest* (other than a *permitted interest*) to arise in the policy or its proceeds without the approval of ScotPac.
- (d) The insured must give ScotPac evidence of the insurance when ScotPac asks for it. The evidence must be satisfactory to ScotPac, acting reasonably. If required by ScotPac the insured must give ScotPac the

insurance policy and certificates of insurance. The insured must also give ScotPac any other information or documents concerning the insurance ScotPac, acting reasonably, asks for.

- (e) The insured must pay the insurance premium before the due date. When requested by ScotPac the insured must promptly produce receipts for premiums paid and other usual evidence of the insurance to ScotPac.
- (f) The insured must comply with the requirements of the insurer to prevent the invalidation of the insurance or prejudice to the risk and must ensure that the cover is not reduced or cancelled. The insured must tell ScotPac immediately if any of those things occurs or is likely to occur.
- (g) The insured must not do anything, or fail to do anything, which could prejudice the policy or ScotPac's interest in it.

54.2 The *client* must disclose to ScotPac any insurance policy relating to any *account* or any *goods* (also see clause 26.1(v)). As stated in clause 54.1, the *client* may be required to maintain insurance over *goods* and it may be agreed that it will maintain insurance over *accounts*. The *client* must give ScotPac any information ScotPac requires concerning those insurance policies and must not do anything, or fail to do anything, which could prejudice those policies or ScotPac's interest in them. If ScotPac requires the *client* to do so, the *client* must nominate ScotPac as the loss payee under those policies or transfer them to ScotPac. The *client* must do so in the manner and form ScotPac, acting reasonably, requires. The *client* must not nominate any other *entity* as the loss payee, transfer the policies to any other *entity* or allow a *security interest* (other than a *permitted interest*) to arise in the policies or their proceeds without the approval of ScotPac.

54.3 The insured must tell ScotPac promptly if something happens which means that a claim could be made under the insurance policy. The insured must make all claims it is entitled to make. If there is a continuing *default event* ScotPac may, by notice to the insured, make the claim or take over making a claim and can make, pursue or settle the claim and exercise rights under the policy in the way ScotPac, acting reasonably, chooses. If the insured knows that a claim has been refused (in whole or in part) the insured must promptly tell ScotPac.

54.4 The insured must immediately tell ScotPac if it receives proceeds of an insurance claim. The insured will hold those proceeds on trust for ScotPac and pay them as follows.

- (a) If the proceeds relate to *designated equipment* and a *default event* is not continuing, the insured can, subject to the rights of the insurer, decide whether the proceeds should be used to replace or repair the *designated equipment* or reduce the *facility amount owing*. If the proceeds will be used to replace or repair the *designated equipment* the insured must pay any shortfall between the cost of the replacement or repair and the proceeds and ScotPac can, subject to the rights of the insurer, require that the insured arrange the replacement or the repair. The insured must then arrange the replacement or repair promptly, in accordance with any directions ScotPac, acting reasonably, may give.
- (b) In all other cases the proceeds must be used to reduce the *facility amount owing*.

54.5 ScotPac's obligation to pay or apply the proceeds of insurance only arises when it receives the money. When *designated equipment* is to be repaired or replaced ScotPac's obligation can be satisfied by crediting the insured's or the repairer's *ADI account*. ScotPac has no further liability to the insured in relation to the money.

55 Client's general warranties

55.1 The *client* warrants to ScotPac each of the following.

- (a) It has disclosed to ScotPac all of its existing *financial indebtedness*; all *security interests* in *property* in which it has an interest; and all *guarantees* given by it. It is not in breach of any material obligation in connection with *financial indebtedness*, *security interests* or *guarantees*.
- (b) All information and documents given to ScotPac and all statements made to ScotPac in connection with an application for a facility or in connection with the *facility agreement* are correct in all material respects. This includes information received using the *information connection*. It also includes information and documents given and statements made by a third party (such as a broker) who introduced the *client* to ScotPac. The financial information which is given must give an accurate and up to date view of the financial position of each relevant *entity*.
- (c) It has not withheld any information from ScotPac which could reasonably be expected to affect the exercise of ScotPac's discretion under clauses 18.2, 24, 34.1 or 41.1.
- (d) It is not *insolvent* and does not have a creditors account (except one ScotPac has approved) which is more than ninety days overdue.
- (e) It has paid on time all taxes (including GST) payable by the *client* (except a liability approved by ScotPac), has disclosed to ScotPac all current and proposed arrangements for the payment of taxes and has lodged all

tax returns (including Business Activity Statements) on time. If required by ScotPac the *client* must provide a copy of those returns and evidence of payment of the tax to ScotPac. The *client* must comply with those arrangements and not change them without obtaining ScotPac's consent.

- (f) It has paid on time all superannuation contributions (whether compulsory or voluntary, before or after tax) in relation to each of its employees – if the asset based facility has an inventory asset component payment must be made at least monthly (see clause 32.1(m)). If required by ScotPac the *client* must provide to ScotPac evidence of payment.
- (g) It enters into the *facility agreement* wholly for business or investment purposes. Those investment purposes do not include investment in marketable securities and, when the *client* is an individual or strata corporation, do not include the purchase, renovation or improvement of residential property or the refinancing of credit which has been provided for any of those purposes. If the *client* is an individual, he or she also warrants that the acquisition of what is supplied under the *facility agreement* is not wholly or predominantly an acquisition for personal, domestic or household use or consumption.
- (h) The *facility agreement* does not violate or contravene Part 2E (related party transactions) or Part 2J (transactions affecting share capital) of the Corporations Act 2001.
- (i) No *default event* is continuing and there is no *potential default event*.
- (j) It has an established place of business in Australia and is an Australian entity.
- (k) It has all licences, consents and permits which are required to: conduct its business; enter into any *transaction document, sale agreement or purchase agreement*; perform its obligations under any *transaction document, sale agreement or purchase agreement*; and sell *goods* or perform *services*. It has complied with all laws when it does those things.
- (l) Its name and business characteristics (such as ABN, ACN or ARSN) as disclosed to ScotPac are correct and it does not have any other names or business characteristics which could be relevant for the purpose of identifying the *client*. If the *client* is an individual the *client* also warrants that his or her full name and date of birth as disclosed to ScotPac is correct.

55.2 Each warranty in clause 55.1 is made by the *client* every day until all liabilities have been satisfied. The *client* must tell ScotPac if it could not, for any reason, truthfully repeat each of those warranties.

55.3 Any valuation report obtained by ScotPac is for ScotPac's use only. If ScotPac gives the *client*, the *grantor* or the *mortgagor* a copy they cannot rely on it. Similarly, any verification activity which ScotPac does (for example, by inspecting the *designated land*, inspecting the *designated equipment*, undertaking an on-site examination or reviewing any information which is given to it) is done for its benefit and the *client*, the *grantor* and the *mortgagor* cannot rely on it. The *client's*, the *grantor's* and the *mortgagor's obligations* and warranties under the *transaction documents* are not affected by any activity which ScotPac may or may not undertake.

56 Client's general obligations

56.1 The *client* agrees each of the following with ScotPac.

- (a) It will not incur any *financial indebtedness* (unless it is *permitted financial indebtedness*) or permit *financial indebtedness* (other than *permitted financial indebtedness*) to remain owing by it. It will not give or permit to continue a *guarantee*, unless ScotPac has given its consent. On request from ScotPac it will tell ScotPac the amount and terms of any *financial indebtedness* it has incurred or any *guarantee* it has given.
- (b) It will not give any *security interests* or allow any *security interests* (including one in favour of a *supplier*) over any *property* in which it has an interest to arise or continue, unless the *security interest* is a *permitted interest*. On request from ScotPac it will tell ScotPac the terms of any *security interest* it has given or which is in *property* in which it has an interest. A disclosure of a *security interest* does not affect the *client's obligations*.
- (c) It will not provide *financial indebtedness* (for example by making a loan) to any *entity*, without obtaining ScotPac's approval. On request from ScotPac it will tell ScotPac the terms of any *financial indebtedness* it provides.
- (d) It will not, without ScotPac's consent, sell *goods* on approval, with any right of return, or on consignment.
- (e) If the *client* has a *PMSI* in *goods* (for example, by retaining title to the *goods*) the *client* will exercise any rights over the *goods* and their proceeds in accordance with ScotPac's instructions. If the *client* receives a notice under section 64 of the *PPSA* the *client* will immediately give a copy of it to ScotPac.
- (f) If required by ScotPac it will send a notice (in a form and content required by ScotPac) to each *supplier* specifying how payments made by the *client* are to be appropriated. ScotPac will only require that the notice

be given if it is necessary to protect its legitimate interests. The *client* will tell ScotPac about any response it receives.

- (g) It will not give a *supplier* details of any *account* or *customer* without approval from ScotPac.
- (h) On request from ScotPac it will disclose to ScotPac the terms on which *inventory*, *goods*, materials which may become *inventory* or *goods* or materials which may be incorporated into *inventory* or *goods*, are supplied to the *client*. Even if that request is not made, the *client* must disclose the terms if the *supplier* has any interest in any *inventory* or any *account*. It will obtain any waiver or variation in relation to those terms ScotPac, acting reasonably, requires. For example, ScotPac may require that any *security interest* held by the *supplier* only be a *PMSI*.
- (i) When it purchases *inventory*, *goods*, materials which may become *inventory* or *goods* or materials which may be incorporated into *inventory* or *goods*, it will ensure that the *supplier* sells the *inventory*, *goods* or materials in the ordinary course of the *supplier's* business of selling property of that type. The *client* warrants to ScotPac that when it makes purchases of that type it will not have actual knowledge that the sale by the *supplier* constitutes a breach of a security agreement that provides for a *security interest* given by the *supplier*.
- (j) It will do everything which is required to safeguard its systems. In particular, it will do everything which a prudent *entity*, conducting a similar business, would do to ensure that its systems are not hacked and that e-mails and faxes mentioned in clause 48.2, or which purport to be of that type, are sent by authorised persons.
- (k) It will comply with all laws and legal requirements which apply to it or any *account*. It will also maintain and comply with all authorisations and approvals necessary for the *client* to perform any of its *obligations* under the *facility agreement*, any *purchase agreement* and any *sale agreement*. This includes the clearance and release of *inventory* from customs.

57 Client's invoices and client's or grantor's chattel paper

- 57.1 Each *invoice*, each *sale agreement* and the *client's* terms of trade for the sale of *goods* or the provision of *services* must be in a form and content which is acceptable to ScotPac although that does not make ScotPac responsible in any way for the *invoices*, *sale agreements* and terms. When *goods* are sold the *client* must, if required by ScotPac, include a term so it retains title to the *goods* and has the advantage of a *PMSI*. That *PMSI* must be perfected by registration if required by ScotPac and it must have priority over all other *security interests*. The term should state that if a notice is served on the *client* pursuant to section 64 of the *PPSA* all of the secured money becomes payable within five business days; state that payments will be applied to *obligations* not secured by the *PMSI* before they are applied to *obligations* secured by the *PMSI*; and otherwise be acceptable to ScotPac. The *client* must implement, maintain and comply with procedures (which ScotPac requires or, in the absence of that requirement, which are prudent for an *entity* conducting a similar business) and use its best endeavours to ensure that the *customer* complies with those procedures so that those *goods* and their proceeds can be identified. When ScotPac determines whether those things are acceptable or decides to require those things it will act reasonably.
- 57.2 If at any time the *client* or the *grantor* has an interest in chattel paper (such as *invoices* which evidence a sale of *goods* on retention of title terms or writing that evidences a lease or hiring of *designated equipment*) the *client* and the *grantor*: must ensure that a potential purchaser cannot acquire the chattel paper; must not give possession of the chattel paper (including as contemplated by section 24(5) of the *PPSA*) or grant a *security interest* over it to any *entity* except ScotPac; must include a notice on it (in a form and content required by ScotPac) which gives notice of ScotPac's interest in it; and must, if requested by ScotPac, give possession to ScotPac in the way ScotPac requires. Until it is given to ScotPac, it is held on ScotPac's behalf. Chattel paper which is in hard copy must be properly and securely kept at the *premises* until it is given to ScotPac. Chattel paper which is evidenced by an electronic record must be recorded on the system in a way which is acceptable to ScotPac and until ScotPac tells the *client* or the *grantor* how this is to be done they must ensure that there is not a single authoritative copy of the electronic record which is unique, identifiable and unalterable. ScotPac may require that possession be given to ScotPac in a way which satisfies the *PPSA*.

58 Changes in names, ownership and particulars

- 58.1 The *client* must inform ScotPac and keep ScotPac informed of each of the following.
 - (a) The name of the *client*; the name of any trust of which the *client* is the trustee; the name of any partnership in which the *client* is a partner; the business characteristics (such as an ABN, ACN or ARSN) of the *client*, trust or partnership; the *client's* business or trading name; the *client's* registered address; and the *client's* principal place of business.
 - (b) The *client's* telephone number, fax number, e-mail address and website.
 - (c) The name, registered address and principal place of business of each *entity* which is *related* to the *client* and any *entity* in which the *client* or, if the *client* is a *corporation*, any of its directors or shareholders, has a direct

or indirect interest, except through a shareholding of less than 5% of the issued shares of a *corporation* listed on a stock exchange.

- (d) The ownership or control of the *client*, the shareholding in the *client* and the shareholding by the *client* in any *entity*, except a shareholding of less than 5% in a *corporation* listed on a stock exchange. Control includes the capacity to influence or determine the outcome of decisions about financial and operating policies.
- (e) The names of *associated companies*.
- (f) The nature of the *client's* business; its auditor and external accountants; and, if the *client* is a *corporation*, its directors and their Director Identification Number, company secretary and public officer; and, if the *client* is a partnership, the identity of the partners.
- (g) Each *guarantor's* name, address, telephone number, fax number, e-mail address and business characteristics (such as its ABN, ACN or ARSN). In addition, the *client* must inform ScotPac and keep ScotPac informed of the name of any trust of which a *guarantor* is the trustee.
- (h) The serial number or other description described in clause 38.1(k).

58.2 The *client* must obtain approval from ScotPac at least ten *working days* before any of the things mentioned in clause 58.1(a) change. If a *guarantor* has given a *security interest* to ScotPac it must obtain approval from ScotPac at least ten *working days* before its name, the name of any trust of which it is the trustee or its business characteristics change. A change to business characteristics includes there being new characteristics, such as an ABN applying for a trust. For all other changes, the *client* must inform ScotPac about the change before it happens when this is possible and, when this is not possible, as soon as practicable after a *transaction party* is aware the change has occurred.

58.3 If the *client* is a *corporation*, the *client* must cause any new shareholder, *entity* which is *related* to the *client* or director to sign any guarantee and indemnity and any security agreement ScotPac, acting reasonably, requires for the performance of the *transaction documents*. The guarantee and indemnity and the security agreement will be equivalent to the *transaction documents*. If the *client* is a partnership, the *client* must cause any new partner and all partners of any successor partnership to sign a document that ScotPac requires to bind those partners to the *transaction documents*. A retiring partner is not released from a *transaction document* unless ScotPac agrees although the continuing partners can continue to operate the asset based facility if ScotPac agrees. If a partnership is mentioned in the *letter of offer* the partners are liable personally and as partners of the partnership.

59 ScotPac must be told about things

59.1 On request from ScotPac, the *client* and the *guarantor* must tell ScotPac about each of their *ADI accounts* and those of an *entity* which is *related* to the *client*. On request from ScotPac, the *client* and the *guarantors* must give ScotPac current copy statements for their and that *entity's* *ADI accounts*. If required by ScotPac the *client* must give to ScotPac a signed letter, in a form and content approved by ScotPac, for each of the *client's* *ADI accounts*, asking the *ADI* to pay to ScotPac any money it receives for that *ADI account* direct from a *customer*.

59.2 The *client* must promptly tell ScotPac if any of the following occurs.

- (a) An *entity* becomes an *associate*.
- (b) An *associate* has a liability to the *client*.
- (c) Something has happened which could have a material adverse impact on its financial condition or its ability to perform any of its *obligations* or its ability to give any of its warranties, or if a *default event*, a *review event* (other than paragraph (b) of that definition) or *potential default event* occurs.
- (d) Any legal action is taken or threatened against a *transaction party* which could affect its ability to perform its *obligations* under a *transaction document* or if the *client* knows of any legal action being taken against a *customer* which could affect its ability to pay any *account*.
- (e) A notice (such as a notice concerning an application, proceeding or appointment mentioned in the definition of *insolvent*) is served on the *client* which it would be reasonable to expect could affect the *client's* ability to perform its obligations under the *facility agreement*.
- (f) The *client* purchases goods or services from a *customer*, a *customer* does work for the *client*, the *client* has a liability to a *customer*, or a *customer* operates from the *premises* or any other sites from which the *client* or the *guarantor* conducts its business.
- (g) The *client* receives a copy of a notice (including a garnishee notice) which has been given by any *entity* (including the Australian Taxation Office, a court or government department or authority) to a *customer* in

relation to any *accounts* owed by the *customer* or the *client* finds out that a *customer* has received a notice of that type. The *client* must give ScotPac a copy of the notice if ScotPac asks the *client* to.

- (h) A *supplier* asks the *client* for details of any *account* or *customer*.
- (i) Any *entity* (including a *supplier*) does anything to enforce a *security interest* in *property* in which a *transaction party* has an interest or in a *transferred account*. This includes the service of a notice under section 120 of the *PPSA* on a *customer*.
- (j) There is any contamination of, or emanating from, the *client's* or *grantor's property*, the *premises*, the *designated land* or any other site from which the *client* or the *guarantor* conducts its business; or any penalty or clean up notice is issued under any environmental law in connection with any of those *properties, premises* or sites.

59.3 Where the *facility agreement* requires that something be determined in accordance with information provided in the *facility base pack* or other information to be provided by the *client* and the *client* has either failed to provide the information or has not provided the information or made a calculation or determination as required by the *facility agreement*, ScotPac, acting reasonably, may make any required calculation or determination.

59.4 The *client* must provide information in accordance with clauses 15.1 and 15.2 by using the *information connection*, unless ScotPac acting reasonably has agreed to receive it in another way. When the *client* or any *guarantor* is required to provide other information to ScotPac (including bank data described in clause 59.1 and accounting and financial information described in clause 53) it must be provided by using the *information connection*, unless ScotPac acting reasonably has agreed to receive it in another way. Information can be manually uploaded to the *information connection* or information can be received by ScotPac by the *information connection* syncing with the *client's* or the *guarantor's* accounting software.

59.5 If information is to be received through the syncing process, the *client* or the *guarantor* must use its best endeavours to ensure the connection between the *client's* or the *guarantor's* accounting software and the *information connection* is always live. If the *client* or any *guarantor* is required to release information through the syncing process, so that ScotPac receives it, the *client* or the *guarantor* must release it. When the information is to be provided in accordance with clauses 15.1 and 15.2, ScotPac must receive the information at the frequency required by ScotPac acting reasonably (which will be at least weekly) and also on request by ScotPac. When other information is to be provided, ScotPac must receive it when it is required to be provided and also on request by ScotPac.

60 Appointment of attorneys

60.1 For valuable consideration and by way of security each *transaction party* irrevocably appoints ScotPac and each of its *authorised officers*, jointly and severally, as the *transaction party's* attorneys.

60.2 The attorneys may: sign any documents and do anything necessary or desirable to give effect to the *transaction documents* or the transactions contemplated by any of them; do anything which the *transaction party* should have done but has failed to do; sign any documents and do anything necessary or desirable to transfer an *account* to ScotPac; do anything necessary or desirable for ScotPac to stand in the *client's* place in respect of all *accounts*; resolve disputes with a *customer* and complete *sale agreements*; obtain a refund of *GST*; make a claim under and enforce insurance policies relating to *accounts* or *goods*; stop the delivery of *goods* which are in transit; do anything in relation to *collections*; issue *invoices*; complete, endorse and deal with any notes, acceptances, drafts, money orders, negotiable instruments, other instruments and other evidence of payment of any *account* and to deposit or collect them; endorse any *trade documents*; transfer chattel paper; and give any directions to *customers*. The attorneys may register the power of attorney on any public register.

60.3 If the asset based facility has an inventory asset component, the attorneys may also: appoint any other *entity* as its correspondent or nominee in connection with that facility; land and store *inventory*, arrange for its shipment and inspect it; notify ScotPac's interest in the *trade documents* and the *inventory*; and endorse the name of the *client* on any remittance and sign and endorse the name of the *client* on any invoice or *trade document*; and make a claim under and enforce insurance policies relating to the *inventory*.

60.4 If the asset based facility has a plant and equipment asset component, the attorneys may also: make a claim under and enforce insurance policies relating to the *designated equipment*; do anything that is required for the *grantor* to be the sole owner of the *designated equipment*; endorse any *trade documents* which relate to the *designated equipment*; and complete any documents, correct any manifest errors in any documents and do anything that is required for ScotPac to hold the contemplated *security interest* over the *designated equipment*. Whilst a *default event* is continuing the attorneys may also do anything necessary or desirable so that the things described in clause 70.2 can be done. In particular, the attorney can do anything (such as sign any document) to transfer the *designated equipment* to an *entity* that purchases it when ScotPac sells it under clause 70.2(b).

60.5 If the asset based facility has a land asset component, the attorneys may also: make a claim under and enforce insurance policies relating to the *designated land*; do anything that is required for the *mortgagor* to be the *sole owner*

and registered proprietor of the *designated land*; and complete any documents, correct any manifest errors in any documents and do anything that is required for ScotPac to hold a first ranking registered freehold mortgage (or another interest as specified in the *letter of offer*) in the *designated land*.

- 60.6 Whilst a *default event* is continuing the attorneys may also: perfect a security; make an arrangement or compromise; effect a legal assignment; take, continue or defend legal proceedings (in the *client's* name or otherwise); amend, enforce, rescind or end any *sale agreement*; resolve disputes with *suppliers* and complete any *purchase agreement*; amend, enforce, rescind or end any *purchase agreement*; discharge a debt owed to the *client* or which the *client* owes; open, redirect and deal with all mail addressed to the *client*; access any post office box of the *client* or within the *client's* control; give directions to any *ADI* to freeze any *ADI account* or to pay any *collection* to ScotPac; deal with or operate any *ADI account*; do anything the *related lender* could do in connection with the *subordinated debt*; and consent to the variation of any agreement or document. If a *materiality assessment default event* is continuing and a *default event* described in clause 69.2 is not continuing, the further requirements in clause 69.3 must be satisfied before an attorney relies on the *materiality assessment default event* to do any of the things referred to in this clause 60.6 as a *transaction party's* attorney.

61 Exercise of powers by attorneys

- 61.1 In addition to and separate from the appointment under clause 60.1, each *transaction party* irrevocably appoints ScotPac and each of its *authorised officers* as the *transaction party's* agent. As the *transaction party's* agent they may do any of the things mentioned in clauses 60.2, 60.3, 60.4 or 60.5 and, whilst a *default event* is continuing, clause 60.6. In clauses 61.2 and 61.3 references to "attorney" means both the attorney appointed under clause 60.1 and the agent appointed under this clause 61.1 and references to "power of attorney" means both the power of attorney granted in clause 60.1 and the agency appointment in this clause 61.1.
- 61.2 The attorney, acting reasonably but otherwise at the attorney's discretion, will determine if and how a power should be exercised although it cannot be exercised in a way which would cause a *transaction document* to be breached or cause a *transaction party* to breach any law. The attorney may act despite any conflict of interest or duty. The attorney may delegate any of the attorney's powers (including this power to delegate) and may revoke a delegation. The attorney can exercise any powers, authorities, duties or functions as a trustee if the *transaction party* is a trustee and may do so even if it benefits ScotPac.
- 61.3 Anything done by the attorney under the above powers will be binding on the *transaction party* as if the *transaction party* had done it. The *transaction party* must, at its own cost, assist and cooperate fully with the attorney. Despite the *facility agreement* ending the power of attorney continues until all actions taken under it have been completed and all liabilities have been satisfied. Any *entity* dealing with an attorney or a person purporting to be an attorney may rely on the execution of any document by that person as conclusive evidence that the power of attorney has come into effect and not been revoked or suspended and that the right or power being exercised or purported to be exercised is properly exercised and the circumstances have arisen to authorise the exercise of that right or power.

62 Performing agreements and compliance with procedures

- 62.1 If a *transaction party* does not perform any of its *obligations* under a *transaction document*, ScotPac may remedy the default, in whole or in part. The *client* must pay to ScotPac on demand any amount which ScotPac, acting reasonably, sees fit to pay in relation to the default.
- 62.2 If ScotPac asks the *client* to, the *client* must give ScotPac specimen signatures of the people who are authorised to sign documents and give instructions on its behalf. The *client* must inform ScotPac immediately of any change in the authorised people and give ScotPac specimen signatures of any people newly authorised. ScotPac is entitled to assume that any document purportedly signed by any of those people has in fact been signed by the relevant person unless the document is deficient on its face and ScotPac would be negligent if it did not verify the signing.
- 62.3 Each *transaction party* must cooperate fully with ScotPac to give effect to the *transaction documents*. In particular, the *transaction party* must execute and deliver any documents and do all things required by ScotPac to give effect to the *transaction documents* and the transactions contemplated by any of them, perfect ScotPac's *security interest* and defeat the *security interest* or other interests (other than a *permitted interest*) of a third party.
- 62.4 Each *transaction party* must comply with any procedures or rules that ScotPac may set at any time for the performance of the *transaction documents* or the use of the *client platform*. After they are set ScotPac can change them at any time. The procedures and rules will be provided, and any changes to them will be advised, to the *client* in a way ScotPac considers appropriate, such as by being made available on the *client platform*. If a change is material and adversely affects the services which the *client* receives the *client* is entitled, within ten *working days* of it being advised of the change or ScotPac releasing it on the *client platform*, to give notice that it is ending the *facility agreement*. If the *client* gives that notice the revised procedures or rules will not apply to it and the *facility agreement* will end at the end of the minimum notice period specified in the *letter of offer* or on an earlier date specified by the *client*. Nothing ScotPac does under clause 65 will be considered a change to a procedure or rule for the purposes of this clause.

63 Indemnities given to ScotPac

- 63.1 The *client* must indemnify ScotPac against every *loss* and tax of any kind that ScotPac may suffer or incur: in respect of any *transaction document* or something done in relation to any *transaction document* (including something done by ScotPac at the *client's* request); in relation to any failure by the *client* to perform any of its *obligations* under any *transaction document*; in relation to any *account*; because a *customer* makes a claim for which ScotPac may be liable; because a *customer* fails to pay any *account* by the *recourse date*; because ScotPac hands over a payment which ScotPac has received from a *transaction party*, a *customer* or any other *entity*; because a payment which should have been made by a direct debit, EFTPOS, BPay or similar arrangement is not made, is reversed or ScotPac is required to repay, or considers it appropriate to repay, what it received; in connection with the transfer of an *account* to ScotPac; in connection with disputes with *customers* or *suppliers*; by virtue of the *client* being ScotPac's agent; in relation to the *inventory*, the *designated equipment* or the *designated land*, or the use of those items; in connection with the removal of *inventory* or *designated equipment* from any site, including making good damage caused to the site; in connection with an enquiry or investigation which is conducted or in responding to a subpoena or similar order; in connection with the *nominated account* (including any indemnity ScotPac may give to the *ADI*); by doing something the *client* or the *guarantor* should have done; or as a result of the breach, inaccuracy or non-observance of a *transaction party's obligations* or warranties under a *transaction document*. Tax includes stamp duty and GST, such as any stamp duty or GST payable because any *account* is transferred or any *designated equipment* is sold, but does not include tax on ScotPac's overall income.
- 63.2 The *client* must also indemnify ScotPac against every *loss* of any kind that ScotPac may suffer or incur: in relation to proceedings begun or continued by ScotPac, or to which ScotPac is a party, which are connected with a *transaction document* or the recovery of *accounts*; in relation to any agreement made by the *client* (such as the contract mentioned in clause 22.1(a)) including one made as ScotPac's agent; which arises from the misuse of the *client's* login or password which give access to the *client platform* or the *information connection*; which arises from ScotPac acting in reliance upon information received by it (including by the use of the *information connection*) or a request or instruction including one mentioned in clause 48.2 or one provided by the *client platform*; in relation to a *default event*; in relation to an indemnity ScotPac gives to a *receiver* or other controller, an administrator or liquidator; because financial accommodation provided under the *facility agreement* is repaid, discharged or made payable other than in accordance with the *facility agreement*; because a stay (including one imposed by the Corporations Act 2001) prevents ScotPac from enforcing a *transaction document* (in whole or in part); or in relation to ScotPac exercising, attempting to exercise or not exercising any right, power or remedy including under the *PPSA* or any other law or under a *transaction document*.
- 63.3 The *client* is not required to indemnify ScotPac under clauses 63.1 or 63.2 against any *loss* which was caused or incurred by ScotPac's mistake, negligence, fraud or wilful misconduct (see clause 104.7). See clause 90.3 in relation to the correction of a calculation error.
- 63.4 An indemnity in the *facility agreement* is irrevocable. It is a continuing obligation which is separate and independent from all other *obligations* and survives the ending of the *facility agreement*. It is also unconditional, except for any conditions specified in the *facility agreement*. ScotPac can enforce an indemnity before an expense is incurred or payment made when it is reasonable to do so. An indemnity can be enforced on multiple occasions.

64 ScotPac is released from some liabilities

- 64.1 ScotPac will not be liable for any *loss* suffered or incurred by a *transaction party* or a *customer* as a direct or indirect result of: anything which ScotPac does or fails to do; any delay by ScotPac in giving effect to an instruction; the *client's* use of the *client platform* or the *information connection*; any unauthorised use of the *client platform* or the *information connection*; the *client platform* or the *information connection* not being available; any defect in the operation of the *client platform* or the *information connection*; any defect in any information provided by ScotPac to the *client* or a *customer*; any act, delay or failure to act by ScotPac or any other *entity* in respect of *trade documents*, *inventory* or *goods*; the condition, quantity or value of *inventory* or *goods*; any defect in the *designated equipment* or the *designated land* or title to it; or any waiver of, exercise of, attempted exercise of, failure to exercise or delay in exercising a right, power or remedy. This does not include a *loss* which is caused by ScotPac's mistake, negligence, fraud or wilful misconduct (see clause 104.7) or a *loss* which was caused by ScotPac failing to do something which it is expressly required to do by the *facility agreement*. When the release does not apply because the *loss* is caused by any of those events or circumstances ScotPac is still not liable for consequential or economic loss.
- 64.2 If a *transferred account* is transferred back to the *client* ScotPac does so on an "as-is where-is basis". All warranties and guarantees in relation to any *transferred account* which is re-transferred or the services (including the *client platform* and the *information connection*) provided, or required to be provided, by ScotPac are excluded to the maximum extent permitted by law. However, those warranties and guarantees are not excluded where they are breached due to ScotPac's mistake, negligence, fraud or wilful misconduct (see clause 104.7). ScotPac's liability for a breach of a warranty or guarantee that has not been excluded due to the preceding sentence or for breach of an implied warranty or guarantee that by law cannot be excluded is limited (at ScotPac's option) to the supplying of the service again or the payment of the cost of having the service supplied again when the law permits that limitation.

- 64.3 Each *transaction party* releases ScotPac from all claims of any kind which any of them may now have or, but for this clause 64.3, may at any time in the future have against ScotPac which arise out of or in connection with a *transaction document*, the *accounts*, the *goods*, the *inventory*, the *designated equipment*, the *designated land* or the services which ScotPac provides or is required to provide. This release does not apply to a claim where and to the extent: the claim is for a *loss* for which ScotPac is liable in accordance with clause 64.1; or the claim is for the breach of a warranty or guarantee to the extent it has not been excluded or limited in accordance with clause 64.2.
- 64.4 ScotPac does not provide a credit reference service. ScotPac may set a credit limit for a *customer* or a group of *customers*. As outlined in clause 18.2, the credit limit is one factor in determining whether an *account* is an *ineligible account*. The *transaction parties* must not rely, for any purpose, on those credit limits or any assessment ScotPac makes of a *customer*. The *transaction parties* must not disclose the credit limits or assessments to any *entity* (including the *customer*).

J. CHANGING AND ENDING FACILITY AGREEMENT

65 ScotPac can change the facility agreement

- 65.1 ScotPac can change the *facility agreement* at any time and in any way by giving the *client* at least twenty *working days*' notice of the change. The change will take effect at the end of the notice period. Within ten *working days* of the notice being given to it the *client* can give ScotPac notice that it is ending the *facility agreement*. If the *client* gives that notice, the *facility agreement* will not be changed but will end at the end of the minimum notice period specified in the *letter of offer* (or, if it is longer, three *months*) from the day the *client* gave notice or on an earlier date specified by the *client*.
- 65.2 ScotPac can change the *facility agreement* if it considers, on a reasonable basis, the change necessary: to rectify errors, omissions or ambiguities; to reflect changes to the *client platform* or the capabilities and routines of ScotPac's other systems; to comply with legal, fiscal or regulatory requirements; or to address any corporate reorganisation within the group of companies of which ScotPac is part. ScotPac changes the *facility agreement* by giving notice to the *client*. The notice can be given at any time and will take effect when it is given or at any later time ScotPac specifies. The reference to a change to comply with legal requirements includes a change which would have been appropriate if any *transaction party* were a small business irrespective of whether it is a small business. In this clause 65.2 a small business is a small business as defined in section 12BC(2) of the Australian Securities and Investments Commission Act 2001, a business described in section 12BF(4)(b) of that Act or a small business as defined in section 761G(12) of the Corporations Act 2001.
- 65.3 ScotPac can change the *facility agreement* if, acting reasonably and to the extent necessary to protect its legitimate interests, it considers the change necessary to achieve the rate of return which it expected to receive when it agreed to provide the asset based facility. The *client* can request details regarding that rate of return at any time. In particular, ScotPac can change the prevailing rate (calculations basis) specified in the *letter of offer* so that it reflects ScotPac's funding costs and it can change the prevailing rate (margin) and any fee specified in the *letter of offer* if the circumstances of the *client* or the *customers* change. For example, the prevailing rate (margin) and those fees could be increased if: the financial condition of the *client* has deteriorated (this could be shown by such things as tax arrears); there has been a material deterioration in the debtors ledger (see clause 104.5); or if changes concerning the *client*, the *customers*, the *accounts* or the *inventory* result in ScotPac devoting additional resources to the administration of the asset based facility. That rate and those fees will continue to be reasonable having regard to ScotPac's costs, the work it does and the risks it bears. ScotPac changes the *facility agreement* by giving notice to the *client* or by changing particulars on the *client platform*. The notice can be given, or the particulars changed, at any time and will take effect when the notice is given or the particulars changed, or at any later time ScotPac specifies.
- 65.4 ScotPac can increase the *early payment percentage* generally or in relation to any *eligible account* or any part of any *eligible account*. It can also increase the *inventory advance rate*, the *P&E advance rate*, the *land advance rate* or the *facility limit*. ScotPac may decide that the increase will apply for a limited period or only whilst conditions advised by ScotPac are satisfied. In that case the percentage or limit will be decreased at the end of the stipulated period or when the stipulated conditions are not satisfied. The percentage or limit can be increased and decreased on any number of occasions. Each time ScotPac increases a percentage or limit it is entitled to the excess arrangement fee mentioned in clause 11.2. In addition to the excess arrangement fee, the discount charge and interest will be levied in the usual way (see clause 9) so the *prevailing rate* will be determined in accordance with paragraph (a) of that definition if the *availability* is a negative amount.
- 65.5 ScotPac can decrease all or any one or more of the *early payment percentage*, the *inventory advance rate*, the *P&E advance rate* and the *land advance rate*. ScotPac may only do so: in accordance with clauses 65.1, 69.1 and 69.5(c); if the *client* or the *guarantor* increases its *financial indebtedness* (other than *permitted financial indebtedness*) or gives a new *guarantee*; or if there has been a material deterioration in the debtors ledger (see clause 104.5). Except when clauses 69.1 or 69.5(c) apply, ScotPac may only do so to the extent it is necessary to

protect its legitimate interests and it changes the *facility agreement* by giving notice to the *client*. When ScotPac, acting reasonably, is satisfied that the *financial indebtedness* and commitment under *guarantees* has reduced to the former level or the deterioration in the debtors ledger has been cured it will, so long as a *default event* is not continuing and there is no *potential default event*, reinstate the applicable percentage or percentages to what it was, or they were, before the decrease.

65.6 ScotPac can decrease the *early payment percentage* if:

- (a) there is an increase in dilutions of *accounts* by 7% or more since the *commencement date*;
- (b) there is an increase in the total *book value* of all *accounts* outstanding for more than 90 days by 7% or more since the *commencement date*; or
- (c) during any period reasonably determined by ScotPac the *collections* which have not been allocated to an *account* exceed 5% of all *collections* paid during that period.

ScotPac may only do so to the extent it is necessary to protect its legitimate interests and it changes the *facility agreement* by giving notice to the *client*. When ScotPac, acting reasonably, is satisfied that the circumstances in paragraphs (a), (b) or (c) have ceased to apply it will, so long as a *default event* is not continuing and there is no *potential default event*, reinstate the *early payment percentage* to what it was before the decrease.

66 Changes by agreement and the effect of changes

66.1 ScotPac and the *client* can, by agreement between them, change the *facility agreement* at any time and in any way. In particular, they can agree that the *client* will have an additional asset component to the asset based facility or a new facility by adding or changing an addendum to the *letter of offer*. The agreement can be made in any way, including, if possible, by using the *client platform* (see clause 47.2) or by a document which is entered into by using electronic signatures (see clause 93.4). The *client* may ask ScotPac to agree to a change but ScotPac is not required to agree to it.

66.2 All changes to the *facility agreement* will be binding on each *transaction party*. A change under clause 65 does not require the agreement of any *transaction party*. A change under clause 66.1 only requires the agreement of the *client* and ScotPac. However, clause 66.1 will not be used to change clauses 73 to 76 without the approval of each *guarantor*; clause 66.1 will not be used to change clauses 77 and 78 without the approval of the *related lender*; and clause 66.1 will not be used to change clauses 80 and 81 without the approval of the *related landlord*.

66.3 Except as specified above, ScotPac is not required to give notice of a change. The changes binding on a *transaction party* could be significant, the liability of some or all of the *transaction parties* could be increased, the changes could result in some or all of the provisions being changed, and further facilities could be added.

66.4 The *client* must keep each *guarantor* informed of the changes and replacements referred to in clause 74.1(l). Each *guarantor* agrees that it will obtain all information concerning the asset based facility (including changes to the *facility agreement*) from the *client* not ScotPac. ScotPac will, however, give *transaction documents* (including any document which changes a *transaction document*) direct to a *guarantor* which requests it (also see clause 95.1).

67 Ending the facility agreement

67.1 The *facility agreement* continues until it ends in accordance with the *facility agreement*. After the end of the period specified in the *letter of offer* as being the minimum period ScotPac can end the *facility agreement* by giving the *client* one *month's* notice. At any time (so long as a *default event* is not continuing) the *client* can end the *facility agreement* by giving ScotPac the period of notice specified in the *letter of offer* as being the minimum notice period. A notice given by the *client* cannot be revoked without ScotPac's approval. A *transaction party* has no right to end the *facility agreement*, except in the case of the *client*, as permitted by this clause 67.1 or by clauses 62.4 or 65.1.

67.2 However, whilst a *default event* is continuing, ScotPac may end the *facility agreement* either:

- (a) immediately and without prior notice (when clause 69.3 does not apply) or by giving notice to the *client* after the further requirements in clause 69.3 are satisfied (when clause 69.3 does apply); or
- (b) at the end of any period ScotPac specifies in a notice to the *client*. If clause 69.3 applies that period will be no less than the notice period ScotPac is required to give under clause 69.3.

ScotPac will promptly tell the *client* if it ends the *facility agreement* under this clause 67.2.

67.3 If a notice is given under clauses 62.4, 65.1, 67.1 or 87.3 to end the *facility agreement*, ScotPac is entitled during the notice period to end the *facility agreement* immediately if a *default event* is continuing so long as, if clause 69.3 applies, the further requirements in clause 69.3 are satisfied. If ScotPac has given the *client* notice under clause 67.2(b), ScotPac is entitled to end the *facility agreement* immediately on a further notice being given to the *client*.

However if clause 69.3 applies, the notice period required by that clause must have expired before that further notice can be given to the *client*.

68 Default events

68.1 The *default events* are listed or referred to in clause 68.2. Some *default events* are *materiality assessment default events*. The *facility agreement* specifies things ScotPac can do or the *transaction party* must do if there is a *default event*. However, if the *default event* is a *materiality assessment default event* the further requirements in clause 69.3 may need to be satisfied first. Once a *default event* occurs, it continues as outlined in clause 68.4.

68.2 Each of the following is a *default event*. The *default event* described in paragraph (q) of clause 68.2 (where the event or circumstance is defined to be a “materiality assessment default event” in the *transaction document*) and the *default events* described in paragraphs (b), (c), (d), (e), (f), (g), (r), (t), (u) and (v) of clause 68.2 are each a type of *default event* which is also called a materiality assessment default event. What can happen when a *default event* occurs, including one which is a *materiality assessment default event*, is explained in clause 69.

- (a) A *transaction party* has failed to make a payment under any *transaction document*. It is only a *default event* if:
 - (i) the *client* has failed to make a payment required by clause 49.1, by the time specified in that clause, to ensure that the *availability* is zero or a positive amount;
 - (ii) a *transaction document* requires that a payment be made by a *transaction party* within a specified period after notice is given and the *transaction party* has not made the required payment within the specified period; or
 - (iii) any *transaction party* has failed to pay on time any money due under any *transaction document*, ScotPac has given that *transaction party* notice of the failure and the money has not been paid within two *working days* of the notice being given.
- (b) A *transaction party* has failed to comply with any other *obligation* under any *transaction document*. It is only a *default event* if:
 - (i) the failure is a failure to perform a material *obligation* and it cannot be remedied;
 - (ii) the failure can be remedied but it has not been remedied within ten *working days* after the failure happens; or
 - (iii) the failure creates a risk that *accounts* will not be transferred in accordance with clause 14.
- (c) A warranty by a *transaction party* under any *transaction document* is not true or is misleading when made or repeated. It is only a *default event* if the event or circumstance that led to the warranty being untrue or misleading:
 - (i) is material and cannot be remedied;
 - (ii) can be remedied so that the warranty will be true and not misleading but the event or circumstance is not remedied within ten *working days* of the warranty being made or repeated; or
 - (iii) creates a risk that *accounts* will not be transferred in accordance with clause 14.
- (d) A *transaction document* (or any material part of it) is, becomes or is claimed by any *entity* (except ScotPac) to be, void, invalid or unenforceable. This does not apply if it becomes void, invalid or unenforceable solely due to something that ScotPac does.
- (e) The nature of the business conducted by the *client* changes, without the consent of ScotPac, from that described in the *letter of offer*; the volume of that business reduces and the reduction could affect ScotPac’s legitimate interests; the *client* ceases to conduct that business; or there is a material deterioration in the debtors ledger (see clause 104.5).
- (f) The *client* or any *guarantor*, if it is a *corporation*, ceases to be under the same ownership or control as at the date of the *letter of offer*, ceases to have the same shareholding as at that date or the shareholding is or becomes the subject of a *security interest*, in each case without the consent of ScotPac. Control includes the capacity to influence or determine the outcome of decisions about financial and operating policies. If a director dies, is of unsound mind or becomes incapable of managing his or her own affairs that will not be a change of control if he or she is, within ten *working days*, replaced by a person acceptable to ScotPac acting reasonably.

- (g) Any payment by ScotPac to the *client*, the *grantor* or the *mortgagor* is not used as required by the *facility agreement* or, if the required use is not specified in the *facility agreement*, is not used in the ordinary course of the *client's* business described in the *letter of offer*.
- (h) The *client* deals with an *account* in a way which is not permitted by clauses 19 to 22 or deals with an *account* which is not a *transferred account* in a way which breaches the *general security deed*. This does not include an inadvertent dealing which is reversed, if ScotPac (acting reasonably) is satisfied that the dealing will not be repeated. In this paragraph a *transferred account* does not include its collections.
- (i) The *client* deals with the *collections* of an *account* in any way which it is not authorised to do by clause 23 or deals with the *collections* of an *account* which is not a *transferred account* in a way which breaches the *general security deed*; it deposits the *collections* into any *ADI account* other than the *nominated account*; or it instructs a *customer* to pay an *account* in any way other than by a deposit into the *nominated account*. If *collections* are deposited into an *ADI account* which is not the *nominated account* due to an administrative oversight this is not a *default event* if the breach is remedied by 4.00pm on the first *working day* after the deposit was made by an amount equivalent to the deposit being deposited into the *nominated account*.
- (j) The amount specified in an *aged receivables report* as being the total *book value* of all *accounts* is materially more than the actual *book value*; or the amount specified in an *inventory report* as being the total *book value* of all *inventory* is materially more than the actual *book value*.
- (k) The *client* has failed to provide the debtors ledger (or equivalent details) to ScotPac as required by clauses 15.1 and 59.4, ScotPac has given the *client* notice of that failure and the *client* has not provided or uploaded the debtors ledger (or equivalent details) within five *working days* of the notice being given.
- (l) The *client* or the *guarantor* fails to ensure that the *inventory*, the *designated equipment* and the *designated land* is insured as required by the *facility agreement*, the *general security deed* or the *land mortgage*.
- (m) The *client* or the *guarantor* does not comply with a reasonable request made by ScotPac to protect or preserve the *inventory*, the *designated equipment* or the *designated land* or ScotPac's *security interest* in the *inventory*, the *designated equipment* or the *designated land*.
- (n) There is a material destruction of the *inventory*, the *designated equipment* or the *designated land*. Material destruction includes the property being seized, stolen, lost, destroyed, defective or materially damaged or there being material deterioration. It will only be a *default event* if either the property is not insured as required by clause 54 or the likely proceeds of the insurance policy plus the residual value of the property is less than 95% of the fair market value of the property as confirmed by the most recent valuation referred to in clauses 30, 36 or 43.
- (o) A *transaction party* materially misrepresents to ScotPac the value of *accounts*, *inventory*, *designated equipment* or *designated land*.
- (p) A *transaction party* refuses to comply with a reasonable request given by ScotPac in order to protect or preserve *property* which is subject to a *security interest* granted pursuant to a *transaction document*.
- (q) Any event or circumstance referred to in any *transaction document* between any *transaction party* and ScotPac or any *entity* which is *related* to ScotPac as a default event (or equivalent terminology, such as event of default) occurs.
- (r) Any event or circumstance referred to in any document (other than a *transaction document*) between any *transaction party* and ScotPac or any *entity* which is related to ScotPac as a default event (or equivalent terminology, such as event of default) occurs.
- (s) A *transaction party* is or becomes *insolvent*. However, for the purposes of this paragraph a *transaction party* will not be *insolvent* under paragraph (a)(i) of that definition if the application or proceeding is capable of being set aside and it is set aside within five *working days* of it being made or initiated and will not be *insolvent* under paragraph (b)(iv) of that definition if the relevant person is, within ten *working days*, replaced by a person acceptable to ScotPac acting reasonably.
- (t) The *client* or the *guarantor* or, if it is a *corporation*, any director or beneficial owner of the *client* or *guarantor*, is charged with a serious criminal offence. A serious criminal offence means an offence which, if it results in a conviction, could affect the ability of the *client* or *guarantor* to conduct its business. It also means: serious fraud as defined in section 9 of the Corporations Act 2001; an offence punishable by imprisonment for a period of at least three *months*; and an offence which, if it results in a conviction, would result in their automatic disqualification under section 206B of the Corporations Act 2001.
- (u) A *transaction party* (or, if it is a *corporation*, any *authorised officer* or representative) assaults or threatens to assault an employee of ScotPac or an *entity* which is *related* to ScotPac or is threatening or abusive to any of those employees where the behaviour could have an impact on their right to work in a safe environment.

This does not apply if ScotPac, acting reasonably, is satisfied that all necessary steps have been taken to ensure that the person who has done any of those things will have no further contact with those employees. ScotPac does not tolerate threatening or abusive behaviour. See clause 100.4 which outlines how a complaint should be made.

- (v) Any event or series of events, whether related or not, occurs (including a change in the business, *property* or financial condition of the *client* or a *guarantor* or the value of the *property* of the *client* or a *guarantor*) which has, or is reasonably likely to have, a material adverse effect on the ability of the *client* or any *guarantor* to perform its *obligations* under any *transaction document*, the effectiveness or priority of any *security interest* arising under any *transaction document* or the validity or enforceability of the whole or any material part of any *transaction document*.

68.3 An event or circumstance listed or referred to in clause 68.2 is a *default event* irrespective of whether it is within the control of any *transaction party* and irrespective of whether notice of the event or circumstance has been given to ScotPac under a *transaction document*.

68.4 If a *default event* has occurred it is continuing (even if the event or circumstance which gave rise to the *default event* has ceased to apply) until ScotPac has told the *client* that it has been remedied to ScotPac's satisfaction or it has been waived by ScotPac and, in either case, the *client* has established to ScotPac's satisfaction that it is unlikely that the event or circumstance will be repeated. ScotPac will act reasonably when it makes a determination for the purposes of this clause 68.4 .

69 Consequences of a review event, potential default event or default event

69.1 If a *review event* or *potential default event* occurs ScotPac may decrease the *early payment percentage*, the *inventory advance rate*, the *P&E advance rate* and the *land advance rate* (or any of them) (including to zero). The decrease will continue to apply until ScotPac, acting reasonably, considers that there has ceased to be a *review event* or *potential default event* or ScotPac has decided not to apply it. If the *early payment percentage*, the *inventory advance rate*, the *P&E advance rate* or the *land advance rate* is decreased under this clause 69.1, the *client* does not have to make a payment under clause 49.1 to the extent the payment would have been required due to the decrease.

69.2 If a *default event* occurs under paragraph 68.2(q) of clause 68.2 (where the event or circumstance is not defined to be a "materiality assessment default event" in the *transaction document*) or a *default event* occurs under paragraphs 68.2(a), 68.2(h), 68.2(i), 68.2(j), 68.2(k), 68.2(l), 68.2(m), 68.2(n), 68.2(o), 68.2(p) or 68.2(s) of clause 68.2, ScotPac may do all or any one or more of the things described in clause 69.5.

69.3 If a *materiality assessment default event* occurs and a *default event* described in clause 69.2 is not continuing further requirements must be satisfied before ScotPac:

- (a) can end the *facility agreement* pursuant to clauses 67.2, 67.3 or 69.5; give notice pursuant to clause 69.5(e) or give notice under section 120 of the *PPSA* pursuant to clause 69.5(f); exercise the powers in clause 70; or exercise powers conferred by the *general security deed* or the *land mortgage* which are stated to be able to be exercised if a *default event* is continuing; or
- (b) can require that the *client* make a payment under clause 49 to the extent the payment would be required due to a decrease in a percentage or rate in accordance with clause 69.5(c) or a change in the categorisation of *accounts* or *inventory* in accordance with clause 69.5(d). The obligation which the *client* has to make a payment under clause 49 is not limited if the payment was required for any other reason.

The further requirements are:

- there must be a *material risk*; and
- if the *materiality assessment default event* can be remedied, ScotPac must have given the *client* a notice requiring that the *client* remedy (or that the *client* procure that the other relevant *transaction party* remedy) the *materiality assessment default event* within a specified period (see clause 69.4) and the *client* must have failed to do so.

69.4 The specified period will be ten *working days* from the day the notice is treated as having been received by the *client*. However, ScotPac can give the *client* a reduced period, or no period at all, to remedy (or procure that the *transaction party* remedies) the *materiality assessment default event* if:

- (a) ScotPac needs to immediately enforce a *security interest* arising under a *transaction document* to protect its legitimate interests;
- (b) it is reasonable for ScotPac to do so to manage an immediate and material risk relating to the *client's* circumstances or arising from the *materiality assessment default event*; or

- (c) ScotPac has already given the *client* a notice to remedy another *materiality assessment default event* and that *materiality assessment default event* has not been remedied within the remedy period specified in that notice.
- 69.5 At any time whilst a *default event* is continuing ScotPac may do all or any one or more of the following. However, unless there is a continuing *default event* of the type described in clause 69.2, ScotPac will need to satisfy further requirements under clause 69.3 before it may do so if required by clause 69.3.
- (a) End the *facility agreement* in accordance with clauses 67.2 or 67.3.
- (b) End the *client's* use of the *client platform*.
- (c) Decrease the *early payment percentage*, the *inventory advance rate*, the *P&E advance rate* and the *land advance rate* (or any of them) (including to zero).
- (d) Categorise all *accounts* or *accounts* specified by ScotPac as being *ineligible accounts* and determine that all *inventory* or *inventory* specified by ScotPac is *ineligible inventory*.
- (e) Give notice to the *client* requiring that the *client* immediately pay to ScotPac the whole of the *amount owing*. The *amount owing* must be paid by the day which is the earlier of the day ScotPac is entitled to it under a *transaction document* and the day ScotPac makes the demand for payment. Notices can be given on multiple occasions.
- (f) Serve a notice under section 120 of the *PPSA* or any other notice on the *customers*. This does not limit ScotPac's right to serve a notice under clause 20 or under section 80 of the *PPSA*.
- 69.6 Clauses 69.1, 69.5 and 70 do not limit any of the *client's* or *grantor's obligations* under the *general security deed* or any other *transaction document*. Clauses 69.1, 69.5 and 70 do not prejudice or limit any of ScotPac's other rights, powers or remedies, including those under the *general security deed* or any other *transaction document*. Also see clause 94.4.

70 Additional consequences – inventory and designated equipment default

- 70.1 This clause 70.1 applies if the asset based facility has an inventory asset component. At any time whilst a *default event* is continuing ScotPac may do all or any one or more of the following. However, unless there is a continuing *default event* of the type described in clause 69.2, ScotPac will need to satisfy further requirements under clause 69.3 before it may do so: take possession of any *inventory*; exercise any right, power or remedy in relation to any *inventory*; for those purposes enter any property (including the *premises* and any site mentioned in clause 32.1(e)); cause *inventory* to be landed, stored, transported, insured, sold or otherwise disposed of or dealt with on any terms and for any consideration; and negotiate or otherwise dispose of or deal with *trade documents*. ScotPac is not liable for any *loss* suffered by the *client* as a consequence of that action, so long as the *loss* is not caused by ScotPac's mistake, negligence, fraud or wilful misconduct (see clause 104.7). The *client* must do anything, including endorse, assign, sign, execute and delivery any transfers, deeds or documents (or arrange for them to be done) that ScotPac requires in order to perfect ScotPac's title to (or *security interest* in) the *inventory* or otherwise give effect to any proposed landing, storage, insurance, sale or other disposal or dealing.
- 70.2 This clause 70.2 applies if the asset based facility has a plant and equipment asset component. At any time whilst a *default event* is continuing ScotPac can do all or any one or more of the following. However, unless there is a continuing *default event* of the type described in clause 69.2, ScotPac will need to satisfy further requirements under clause 69.3 before it may do so.
- (a) Take possession of any *designated equipment* and exercise any right, power or remedy in relation to any *designated equipment*. For those purposes, ScotPac may enter any property (including the *premises* and any site mentioned in clause 38.1(f)) and it may do so as the *grantor's* agent or in any other capacity. If required by ScotPac the *grantor* must at its own cost do everything necessary to deliver the *designated equipment* to a place required by ScotPac acting reasonably.
- (b) Sell any *designated equipment* by any means and apply the sale proceeds towards payment of the *amount owing*. The *designated equipment* can be sold in association with any other property.
- (c) Do anything and exercise any right which the *grantor* could do or exercise in relation to the *designated equipment*. ScotPac can do those things in its name or in the *grantor's* name.
- (d) Appoint any *entity* to be the *receiver* of any *designated equipment*. If two or more *entities* are appointed, they will be appointed jointly and severally and may exercise their powers jointly and severally, unless ScotPac specifies that they are only to act jointly or severally. The *receiver* will be the agent of the *grantor* unless the law prevents this. The *receiver* will (in addition to the powers conferred by law or the *general security deed*) have the power to:

- (i) take possession of any *designated equipment*;
 - (ii) sell or agree to sell any *designated equipment* by any means. The *receiver* may do so even if it has not taken possession of the *designated equipment* and may sell the *designated equipment* in association with any other *property*;
 - (iii) do anything which the *grantor* should have done and anything which the *receiver* thinks should be done, including anything the *receiver* thinks is in ScotPac's interest; and
 - (iv) delegate any of the *receiver's* powers if the *receiver* has approval from ScotPac to do so.
- (e) Anything the law allows ScotPac to do.

71 What happens when the facility agreement ends?

71.1 When the *facility agreement* ends (including under clauses 62.4, 65.1, 67, 69.5(a) and 87.3) the following will apply.

- (a) The *facility limit* will be zero.
- (b) All *accounts* will be *ineligible accounts*.
- (c) All *inventory* will be *ineligible inventory*.
- (d) The *client* must immediately pay to ScotPac the *amount owing*. This is not limited to the amount owing pursuant to clause 49 by virtue of clauses 69.5(c), 69.5(d), 71.1(a), 71.1(b) or 71.1(c). The *amount owing* will be immediately due and payable without any demand being required, any notice being given or any period passing. In particular, the amount is immediately payable even though it might otherwise have been payable after a notice is given and a stipulated period has expired. Also see clause 51.3. Interest is payable under clause 9.3 until payment is made and further amounts may be payable, such as under clauses 11 or 63.
- (e) ScotPac will give the *client* a statement of the *amount owing* if it decides to or if the *client* requests it. The statement may, if ScotPac chooses, take into account any set-off or withholding rights ScotPac has so only a net cash amount is payable. ScotPac can up-date the statement on multiple occasions.
- (f) Any amount owed by the *guarantor*, the *related lender* and the *related landlord* must be paid on the day which is the earlier of the day ScotPac is entitled to it under a *transaction document* and the day ScotPac makes a demand for payment. Also see clause 76.1(g).
- (g) The transfer of *accounts* continues despite the *facility agreement* ending until all liabilities have been satisfied (see clause 103.4). Those *accounts* will be *ineligible accounts*.
- (h) ScotPac can rely on, and the *transaction parties* must continue to comply with, the *facility agreement* despite the *facility agreement* ending, until all liabilities have been satisfied.
- (i) Clauses 73 to 76, clause 97, each indemnity in the *facility agreement* and each warranty in the *facility agreement* will continue until all liabilities have been satisfied. A liability under them is not confined to obligations or breaches arising or discovered before the *facility agreement* ended. This paragraph does not limit clause 71.1(h).
- (j) If the asset based facility has a plant and equipment asset component, the *grantor* must give ScotPac a written notice stating that if the *designated equipment* was supplied to a third party by the *grantor* that supply will not be a taxable supply. The notice must state fully and correctly why the supply would not be a taxable supply. If that notice is not provided ScotPac can assume that the supply would be a taxable supply. Terms used in this paragraph have the same meaning as in the *GST Act*.

71.2 The rights which ScotPac has to *accounts* pursuant to the *facility agreement* take effect from the *commencement date* or the *delayed transfer time* and continue until all liabilities have been satisfied. ScotPac gives value for the continued transfer of *accounts* in accordance with clause 71.1(g) by paying the *purchase price* in accordance with clause 16 (subject to any set-off or withholding rights ScotPac has in relation to debts or liabilities owed to ScotPac which arise after the transfer of the *account*). Separately from the payment of the *purchase price*, ScotPac's covenant to pay the *additional payment* continues (subject to any set-off or withholding rights ScotPac has). Clause 71.1(g) applies even if the *client* is *insolvent*.

72 Compensation for default and rights when facility agreement ends

72.1 ScotPac will incur substantial overhead costs, including employment, rental, equipment and finance facility costs, to carry out its obligations. The *client* agrees that if the *facility agreement* ends following a *default event* ScotPac is entitled to a compensatory administration charge. The *client* also agrees that if the *facility agreement* ends under clause 87.3 and the *facility amount owing* is not paid in full to ScotPac by no later than the day the notice under that

clause expires, ScotPac is entitled to a compensatory administration charge. In each case the charge is equivalent to ten per cent of the *facility limit*. The *client* agrees that the amount payable under this clause 72.1 is a genuine pre-estimate of liquidated damages and that its obligation under this clause 72.1 is in the nature of a debt due for a liquidated sum.

- 72.2 If the *facility agreement* ends before the end of the period specified in the *letter of offer* as being the minimum period an early termination fee may be payable pursuant to clause 9.6. If the *facility agreement* ends following a *default event* the early termination fee will be in addition to the compensation payable pursuant to clause 72.1.
- 72.3 If a *default event* occurs and as a consequence any of ScotPac's employees or agents devote additional time to the administration of the *facility agreement* ScotPac will determine, in good faith, the amount which is required to compensate ScotPac for that additional administration. If that amount is greater than the amount payable under clause 72.1 the *client* must pay the difference to ScotPac immediately on demand. ScotPac can make the determination and the demand on a number of occasions.
- 72.4 An amount payable under clauses 9.6, 72.1, 72.2 or 72.3 is in addition to other amounts which may be payable under the *transaction documents*. In particular, it is additional to amounts payable under clause 11 or due to paragraph (a) in the definition of *prevailing rate* applying.
- 72.5 When ScotPac is satisfied that all liabilities have been satisfied, ScotPac will discharge the *security interests* it holds that arise under a *transaction document* and sell any remaining *transferred accounts* to the *client* for \$10. ScotPac will, at the *client's* expense, re-transfer those *transferred accounts* to the *client* and appropriately amend any financing statement which ScotPac has registered in relation to the *transaction documents* and the *security interests* they create. Clause 64.2 applies to the re-transfer. The indemnity in clause 63 continues after the re-transfer and it continues to be supported by the *guarantor's obligations* under clauses 73 to 76. The \$10 must be paid by the *client* within ten *working days* of ScotPac requesting it.
- 72.6 If rights, powers and remedies are available to ScotPac under Chapter 4 of the *PPSA* those rights, powers and remedies do not derogate from the rights, powers and remedies available to ScotPac under a *transaction document*, any other document or any other law. ScotPac can enforce or exercise its rights, powers and remedies, irrespective of whether they arise under a *transaction document* or by law, when it decides to do so and in any order or at the same time. If ScotPac has more than one *security interest* it can exercise rights, powers and remedies under them in any order or at the same time. This is subject to any express provisions of the *transaction documents* and any mandatory laws.

K. GUARANTEE

73 Guarantee and indemnity

- 73.1 Each *guarantor*, unconditionally and irrevocably:
- (a) guarantees the due and punctual payment to ScotPac of the *guaranteed money*;
 - (b) guarantees the observance and performance of the *guaranteed obligations*; and
 - (c) indemnifies ScotPac, as a separate obligation, for each *loss* of any kind which ScotPac suffers or incurs at any time, directly or indirectly, as a consequence of: a breach of any *transaction document*; any *transaction document* (or any part of it) or any of the *guaranteed obligations* not being enforceable or a stay (including one imposed by the Corporations Act 2001) preventing them being enforced (in whole or in part); the *guaranteed money* not being recoverable; ScotPac entering into any *transaction document*, performing obligations under it or exercising or attempting to exercise any right, power or remedy under it; a payment received by ScotPac from any *entity* being or being claimed to be void or voidable; or any *guarantor* not being obliged to pay ScotPac an amount under clause 73.1(a). However, the *guarantor* is not required to indemnify ScotPac against a *loss* which was caused or incurred by ScotPac's mistake, negligence, fraud or wilful misconduct (see clause 104.7).
- 73.2 The *obligations* in clause 73.1 are principal obligations which continue until all liabilities have been satisfied. They continue despite any notice which any *guarantor* may give, any payment or discharge (in whole or in part) of any of the *guaranteed money* or *guaranteed obligations* or the *facility agreement* ending (in whole or in part). Clause 63.4 applies to the indemnities which the *guarantor* provides.

74 Guarantor's obligations are continuing

- 74.1 Each *guarantor's obligations* continue in full force and effect even if any of the following applies.

- (a) The *client* has no *obligations* to ScotPac at any time or any *transaction party's obligations* are unenforceable (in whole or in part).
- (b) ScotPac enforces, does not enforce or agrees not to enforce any *transaction document* or a *security interest* which arises under any *transaction document* (either strictly or at all) or waives or limits its rights against any *transaction party* in any way.
- (c) A stay (including one imposed by the Corporations Act 2001) prevents ScotPac from enforcing any *transaction document* (in whole or in part).
- (d) Any *transaction party* is discharged or released (by ScotPac, operation of law or in any other way) from its *obligations* (in whole or in part).
- (e) ScotPac gives credit, time or any indulgence or concession to any *transaction party* or any other *entity*.
- (f) ScotPac does not require any *entity* to enter into or agree to be bound, or any *entity* is not bound, by any *transaction document*.
- (g) ScotPac owes an amount or has any obligation to the *client* or any *guarantor*.
- (h) Any *transaction party*, any *customer* or any other *entity* is or becomes *insolvent* or there is a change in the shareholders, directors, partners or status of any of them. For example, if any of them becomes a trustee or ceases to be a trustee for any reason. In particular, a *guarantor's obligations* continue in full force and effect if it was a director of the *client* or held shares in the *client* and it ceases for any reason to be a director or shareholder.
- (i) ScotPac compounds with, compromises with or makes an arrangement with any *transaction party*, any *customer* or any other *entity*; or any *transaction party*, any *customer* or any other *entity* has any rights against ScotPac.
- (j) ScotPac does not obtain title to any *account*; any *security interest* is not perfected or registered, is incorrectly registered or is not enforceable (in whole or in part); any *property* which is subject to any *security interest* is dealt with in any way; or ScotPac does not enforce any *security interest* (either strictly or at all), discharges or loses the benefit of any *security interest*, or does not obtain any *security interest* or a *security interest* with any particular value or priority.
- (k) Any *transaction document* is assigned, novated or extended.
- (l) Any *transaction document* is changed (in whole or in part) or replaced in any way which is permitted by any *transaction document* or is agreed to by the contracting parties. This includes a change or replacement which could increase the liability of a *guarantor* in any way (such as an increase in the *early payment percentage*, the *inventory advance rate*, the *P&E advance rate*, the *land advance rate* and the *facility limit* and the provision of an additional asset component to the asset based facility or the provision of a new facility). It also includes a change made in accordance with clauses 65 or 66, even if a *guarantor* did not know about it or the change was made without the consent of the *guarantor*, so long as the consent is given when it is required by clause 66.2.
- (m) The *guarantor* is not aware of the *client* making a request in accordance with clauses 34.1 or 41.1 or is not aware of any *facility base certificate*, information in any *facility base pack* or other information given to ScotPac. The *guarantor's* obligations continue in full force and effect even if there is an error in, or omission from, any of those items.
- (n) The *availability* is or becomes a negative amount for any reason; or an overpayment is made by ScotPac to the *client*, in each case with or without the consent of the *guarantor*.
- (o) ScotPac enforces, does not enforce or is not able to enforce payment of any *transferred account*; adjusts any *transferred account* in any way; releases any *customer* from any obligation (in whole or in part); or gives time, any indulgence or any concession to any *customer*.
- (p) ScotPac does something or fails to do something which could, under the law relating to guarantees or indemnities, have affected the *guarantor's* liability or anything else happens that, apart from this clause, could result in the *obligations* of the *guarantor* ending or being affected.

74.2 ScotPac's rights under clause 73 are in addition to and separate from any other rights which ScotPac may have at law or under any *transaction document* or any other document.

75 Guarantor's warranties

75.1 Each *guarantor* warrants to ScotPac each of the following.

- (a) It is an Australian entity (unless the *guarantor* told ScotPac it is not before the date of the *letter of offer*).
- (b) It has disclosed to ScotPac all of its existing *financial indebtedness*, all *security interests* (except *permitted interests*) in *property* in which it has an interest and all *guarantees* given by it. It is not in breach of any material *obligation* in connection with *financial indebtedness*, *security interests* or *guarantees*.
- (c) The warranties given by the *client* in any *transaction document* are true in all material respects.
- (d) It has not taken a *security interest* from the *client* in connection with any *transaction document* and agrees not to do so unless ScotPac consents. Despite this, if at any time the *guarantor* does hold a *security interest* of that type it will hold it on trust for ScotPac.
- (e) It is aware of the financial position of each of the other *transaction parties*.
- (f) It is not *insolvent*.

75.2 Each warranty in clause 75.1 is made by the *guarantor* every day until all liabilities have been satisfied. The *guarantor* must tell ScotPac if it could not, for any reason, truthfully repeat each of those warranties.

76 Guarantor's obligations

76.1 Each *guarantor* agrees each of the following with ScotPac.

- (a) It will tell ScotPac before it gives a new *guarantee* or incurs any further *financial indebtedness*. On request from ScotPac it will tell ScotPac the amount and terms of any *financial indebtedness* it has incurred or any *guarantee* it has given.
- (b) It will not provide *financial indebtedness* (for example by making a loan) to any *entity*, without obtaining ScotPac's approval. On request from ScotPac it will tell ScotPac the terms of any *financial indebtedness* it provides.
- (c) It will not give any *security interests* or allow any *security interests* over any *property* in which it has an interest to arise or continue, unless the *security interest* is a *permitted interest*. On request from ScotPac it will tell ScotPac the terms of any *security interest* it has given or which is in *property* in which it has an interest. A disclosure of a *security interest* does not affect the *guarantor's obligations*.
- (d) It will tell ScotPac as soon as it becomes aware of the occurrence of a *default event*.
- (e) It will at its cost do anything which ScotPac, acting reasonably, requires to help collect the *transferred accounts*. It will not do, or allow to be done, anything in relation to *accounts* if the *client* is not allowed to do it under a *transaction document* or it has been told by ScotPac not to do it.
- (f) If the *guarantor* gives a *security interest* to ScotPac under the *general security deed*, clause 57.2 will apply to it as if it was referred to instead of the *client*, the reference to *goods* means all goods as defined in the *PPSA* and the reference to *accounts* means all accounts as defined in the *PPSA*.
- (g) It will pay any money which is due and payable to ScotPac under the *facility agreement*. ScotPac will always give the *guarantor* at least two *working days'* notice of the amount which must be paid. If a notice has to be given to the *client* before money is due and payable by the *client*, ScotPac can give notice to the *guarantor* at the same time that the notice is given to the *client*, or at any later time. Accordingly, ScotPac does not have to wait until the notice given to the *client* has expired before notice is given to the *guarantor*. Notices can be given on multiple occasions, each notice being for a different amount. It is sufficient if the notice specifies how an amount is determined, rather than specify a specific amount. The *guarantor* must pay in *cleared funds* without any set-off, abatement, counterclaim, withholding or deduction. Apart from those requirements, the *guarantor's* rights against ScotPac are not affected.
- (h) ScotPac is not required to exercise any right, power or remedy ScotPac may have against any *entity* (including another *transaction party*) under any document before ScotPac exercises its rights against the *guarantor*.
- (i) It will not exercise any right as surety in competition with ScotPac. A *guarantor* will not be entitled to claim the benefit of any *security interest* held by ScotPac at any time unless all liabilities have been satisfied.
- (j) It will pay interest on any amount it owes. The interest is calculated by multiplying the daily balance of the *guaranteed money* which the *guarantor* should have paid by the daily equivalent of the *prevailing rate*. Interest is calculated and it accrues each day. If the amount owed is covered by a court order, the *guarantor's* payment obligation under this clause is a separate obligation although the *prevailing rate* will be replaced by the rate in the court order if it is higher. The accrued interest must be paid within two *working days* of a demand being made for it. However, the *guarantor* is not required to pay interest on an amount included in

the *guaranteed money* which is bearing interest and that interest is itself *guaranteed money*. The *guarantor's* obligation to pay on time is not affected by this clause.

- 76.2 A *guarantor* must exercise any right of subrogation or contribution; exercise or enforce a right or claim against another *transaction party*; and exercise any right of set-off or counterclaim against another *transaction party* or a *customer* as directed by ScotPac. This includes a right to prove for, or claim, or exercise any vote or other rights in respect of, indebtedness owed to the *guarantor* by a *transaction party* that is *insolvent*. The rights and claims (including a right of proof) will be held on trust for ScotPac, all amounts arising out of them must be paid to ScotPac and those amounts will be held on trust for ScotPac until they are paid to ScotPac. Until all liabilities have been satisfied the *guarantor* must not exercise or enforce any of the rights or claims unless ScotPac has given its approval and it must do so in accordance with any instructions ScotPac gives. Each *guarantor* irrevocably and unconditionally appoints, by way of security, ScotPac and each of its *authorised officers* as its attorney to exercise or enforce the rights and claims.
- 76.3 ScotPac may, in a *guarantor's* name, claim from any *entity* any money which is owed or payable to the *guarantor*, including a dividend or distribution of any kind, and do anything to collect it. ScotPac may retain the amount collected and any amount recovered from a *guarantor* in a suspense account and at ScotPac's discretion appropriate it until all liabilities have been satisfied. Each *guarantor* waives any right it may have to determine the appropriation of any money paid to ScotPac.
- 76.4 ScotPac does not have to provide information to a *guarantor* concerning the financial position, creditworthiness or honesty of another *transaction party*. The *guarantor* should ensure that it obtains all information which it requires from the *client* or another *guarantor*. ScotPac will, however, provide copies of *transaction documents* in accordance with clause 95.1.

L. RELATED PARTY LOANS

77 Subordination of related lender's loan

- 77.1 The payment of the *subordinated debt* by the *subordinated borrower* is subordinated to the payment of the *senior debt*.
- 77.2 Until all liabilities have been satisfied the following rules apply unless ScotPac agrees otherwise.
- (a) The *related lender* must not receive or accept any payment of the *subordinated debt* or assign the *subordinated debt*.
 - (b) The *subordinated borrower* must not make any payment to the *related lender* which the *related lender* is not entitled to receive.
 - (c) The *related lender* must not exercise any right of set-off, abatement, counterclaim or similar right in respect of the *subordinated debt*.
 - (d) The *related lender* must not accelerate any of the *subordinated debt* or otherwise declare any of it to be payable. The *related lender* must not enforce in any way any of the *subordinated debt* and, in particular, must not commence any action or proceeding to recover the *subordinated debt*.
 - (e) If the *related lender* receives or recovers any payment in satisfaction (in whole or part) of the *subordinated debt* which it has agreed not to accept, it must hold it on trust for ScotPac and promptly hand that payment to ScotPac, to be applied towards reduction of the *senior debt*.
 - (f) The *related lender* must not: create or attempt to create a *security interest* over the *subordinated debt*; permit a *security interest* to arise or continue over the *subordinated debt*; transfer or otherwise deal with the *subordinated debt* in any way or attempt to do so; or receive any *guarantee*, *security interest* or other assurance against loss in respect of the *subordinated debt*. This does not prohibit a *permitted interest*.
 - (g) If ScotPac does not receive a payment because the *related lender* has the benefit of set-off (including under section 553C of the Corporations Act 2001) the *related lender* must pay to ScotPac the amount which would have been paid had set-off not applied.

78 Related lender's warranties and obligations

- 78.1 The *related lender* warrants to ScotPac each of the following.
- (a) The details given to ScotPac about the *subordinated debt* are true and correct in all material respects. The *related lender* must not change the terms of the *subordinated debt* without ScotPac's approval.

- (b) No other *entity* has any interest (other than a *permitted interest*) in, or claim to, the *subordinated debt*. The *related lender* must ensure that no other *entity* obtains an interest or claim of that type.
- (c) The principal amount of the *subordinated debt* on the *commencement date* is at least the amount specified in the *letter of offer* or, if an amount is not specified, an amount which the *related lender* advised before the *commencement date*.
- 78.2 If the *related lender* is entitled to lodge a claim, proof of debt or other instrument of similar character at any time to enforce any obligation of the *subordinated borrower* in respect of the *subordinated debt*, it must not do so without ScotPac's approval and it must do so (at the *related lender's* cost) at ScotPac's request. It must pay to ScotPac, in the form received, all money, dividends and other assets received or recovered in reduction of the *subordinated debt* which will then be applied towards reduction of the *senior debt*.
- 78.3 The *related lender's* obligations continue in full force and effect even if anything described in clause 74.1 applies. In applying that clause references to "*guarantor*" will be a reference to the *related lender* and the law mentioned in clause 74.1(p) will be any law. If the obligations in the *facility agreement* are inconsistent with any other document or other terms and conditions of the *subordinated debt*, the *facility agreement* will prevail.
- 78.4 Clauses 77 and 78 do not affect any *guarantee* or *security interest* given to ScotPac at any time. They do not create a liability on the *related lender* to perform the obligations of the *client*.

M. ON-SITE EXAMINATIONS AND ACCESS TO PREMISES

79 On-site examinations

- 79.1 ScotPac may undertake on-site examinations (also known as field audits). The following applies in relation to the examinations.
- (a) An examination will be undertaken before the *commencement date*. It will then be undertaken twice during any rolling twelve *month* period and ScotPac will give the *client* at least ten *working days'* prior notice. However, if there is a *review event* ScotPac may undertake the examination quarterly or more frequently if ScotPac considers it necessary to protect its legitimate interests. If a *default event* is continuing, ScotPac may undertake the examination at any time and prior notice does not have to be given.
- (b) The *client* must do everything ScotPac, acting reasonably, requires so that the examination can be conducted. This includes by giving access to records, premises (including the sites mentioned in clauses 31.1(e) or 38.1(f) and the *premises*), *inventory*, *designated equipment*, *designated land*, *authorised officers* of a *transaction party* and employees, contractors and representatives of a *transaction party*.
- (c) The examination is conducted to:
- confirm the amounts listed in clause 6.1;
 - confirm the warranties which any *transaction party* gives or repeats under any *transaction document*;
 - validate the *facility base pack* and other information provided to ScotPac;
 - consider current market conditions;
 - if the asset based facility includes an inventory asset component, value the *inventory*; test and validate *inventory* values; and test and validate the categorisation of *inventory* as *eligible inventory* or *ineligible inventory*;
 - if the asset based facility includes a plant and equipment asset component, value the *designated equipment*; test and validate the valuations of the *designated equipment*; and verify the ownership of the *designated equipment*; and
 - consider other matters as ScotPac may reasonably require.
- 79.2 ScotPac will determine whether the examination is performed by its employees, the valuer or an *entity* appointed under clause 88.4. An examination can be conducted by an audio visual link and the *client* must do everything ScotPac reasonably requires so that full disclosure is made.
- 79.3 Clause 79 does not limit any other provision of any *transaction document* which gives ScotPac the right to enter or inspect any *property*. In particular see clauses 39.1(i), 45.5, 53.2, 80 and 81; relevant provisions in the *general security deed*; and, if the asset based facility has a land asset component, relevant provisions in the *land mortgage*.

80 ScotPac may enter premises

- 80.1 ScotPac may enter land and buildings owned or occupied by the *client*, the *guarantor* or the *related landlord*, their places of business and their registered offices. ScotPac may also enter land and buildings where any records or documents referred to in clause 53 may be located or where any *property* (including *inventory*, *trade documents* and *designated equipment*) in which ScotPac has an interest (such as a *security interest*) may be located and any land or buildings in which ScotPac has a *security interest*. If there is no continuing *default event* the entry will be at a reasonable hour.
- 80.2 ScotPac may do so to: find out if the *transaction parties* are complying with the *transaction documents*; carry out ScotPac's rights, powers or remedies; inspect or copy those records or documents; inspect that *property*; or audit or investigate the *client's* financial and business affairs. If there is a continuing *default event* and the asset based facility has an inventory asset component, ScotPac may also do so for the purpose of taking possession of the *trade documents* and *inventory*. If there is a continuing *default event* and the asset based facility has a plant and equipment asset component, ScotPac may also do so for the purpose of taking possession of the *designated equipment*. If the *client*, the *guarantor* or the *related landlord* has an interest (such as a *security interest*) in the records, documents, *trade documents*, *inventory* or *designated equipment* it waives that interest so that ScotPac can exercise its rights, powers and remedies. ScotPac does not become a mortgagee in possession.
- 80.3 If the *client*, the *guarantor* or the *related landlord* is not the owner and sole occupier of the place where those records or documents are located, or where that *property* is located, they must ensure that ScotPac has the right to enter that place. If ScotPac asks for it, the right must be confirmed in the way ScotPac, acting reasonably, requires. Also see clauses 31.1(e), 38.1(f), 70.1 and 70.2.

81 Related landlord's obligations

- 81.1 In addition to its obligations in clause 80, the *related landlord* agrees each of the following with ScotPac.
- (a) It will allow ScotPac to enter the *premises* to enforce the *transaction documents* or a *security interest* and will do all things which it is able to do to ensure ScotPac can enter the *premises*. If there is no continuing *default event* the entry will be at a reasonable hour.
- (b) It will allow ScotPac to remove any assets owned by ScotPac or over which ScotPac holds a *security interest* even if it is a fixture. So long as ScotPac acts in a reasonable way ScotPac will not be required to repair or reinstate the *premises* and is not liable for repair or reinstatement costs. It will also allow ScotPac to take possession of the *premises* and deal with any leasehold or other interests in the *premises* under the authority given by the *general security deed* or any *security interest*.
- (c) If the *related landlord* owns the *premises*, it must ensure that the *client* has the right to use and occupy the *premises* until all liabilities have been satisfied.
- (d) If the *related landlord* does not own the *premises*:
- it must comply with the terms of the lease or other agreement between it and the owner. If required by ScotPac, acting reasonably, it must exercise each option it may have to renew the lease or other agreement. On request by ScotPac the *related landlord* must provide to ScotPac evidence of that compliance and any other information ScotPac may reasonably require regarding the *premises*;
 - it must ensure that the *client* has, with the approval of the owner, the right to use and occupy the *premises* until a date approved by ScotPac or all liabilities have been satisfied;
 - it unconditionally charges its interests in the *premises* to ScotPac to secure the *related landlord's obligations* under the *transaction documents*; and
 - it must ensure that the owner permits ScotPac to access the *premises* at a reasonable hour and subject to reasonable notice to enforce the *transaction documents*, the *general security deed* or any *security interest*.
- (e) If the *client* does not have the right to use and occupy the *premises* or the *client* vacates the *premises*, the *related landlord* must notify ScotPac and allow ScotPac to do the above things for fourteen days from the day the *related landlord* gives notice.
- (f) It must do all other things reasonably requested by ScotPac to allow ScotPac to give effect to its rights, powers and remedies under the *transaction documents*, the *general security deed* or any *security interest* in relation to the *premises*.
- 81.2 The *client* and the *related landlord* must not do, or fail to do, anything which could threaten the *client's* right to occupy the *premises*.

- 81.3 ScotPac may correct any default by the *client* or the *related landlord* in relation to the occupation of the *premises*. The *client* and the *related landlord* will indemnify ScotPac for any *loss* ScotPac suffers in doing so. However, neither the *client* nor the *related landlord* is required to indemnify ScotPac for a *loss* which was caused by ScotPac's mistake, negligence, fraud or wilful misconduct (see clause 104.7). Clause 63.4 applies to this indemnity.
- 81.4 In clauses 80 and 81 "ScotPac" includes ScotPac's *authorised officers* and a *receiver* appointed by ScotPac. Clauses 80 and 81 do not affect any *guarantee* or *security interest* given to ScotPac at any time. They do not create a liability on the *related landlord* to perform the obligations of the *client*.

N. TRANSACTION PARTY OBLIGATIONS

82 Transaction party's general warranties and obligations

- 82.1 Each *transaction party* warrants to ScotPac each of the following.
- (a) It has the power, legal capacity and authority to enter into each *transaction document* to which it is a party and perform its *obligations* under them.
 - (b) It has done everything necessary or desirable for it to enter into and be bound by those *transaction documents* and to perform those *obligations*.
 - (c) If it is a *corporation*, it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation with indefinite corporate existence, is capable of suing and being sued and has the power and authority to own its assets and to carry on its business as presently conducted.
 - (d) Its execution of the *transaction documents* and the performance of *obligations* under them will not breach any agreement binding on it or any other *entity* or breach any law.
 - (e) Its *obligations* under each *transaction document* are valid, binding and enforceable.
 - (f) Its business and affairs are being conducted in accordance with all applicable laws.
 - (g) It has disclosed to ScotPac everything known to it which it is reasonable to expect might have influenced ScotPac's decision to issue the *letter of offer* or enter into any *transaction document*.
 - (h) It does not act as the trustee of any trust (whether under a trust deed, deed of settlement or other instrument, or a trust arising by law or implication), except a trust specified in the *letter of offer*, a trust arising under the *facility agreement* or a trust arising under the will of a deceased person who is not a *transaction party*.
 - (i) It is not resident for tax purposes in the United States of America and no payments under a *transaction document* will be made from sources within the US for US federal income tax purposes.
- 82.2 Each warranty in clause 82.1 is made by each *transaction party* every day until all liabilities have been satisfied. A *transaction party* must tell ScotPac if it could not, for any reason, truthfully repeat each of those warranties.
- 82.3 A *transaction party* must not do anything, allow anything to be done or fail to do something which could cause a warranty which it gives to be untrue or which could mean that it could not truthfully repeat a warranty. There are warranties in clauses 7, 26.1, 31.1, 38.1, 44.1, 55.1, 75.1, 78.1, 82.1, 83.2 84.6, 85.1 and 87.1. There are also warranties in other *transaction documents*.
- 82.4 A *transaction party* must maintain its corporate existence if it is not an individual.
- 82.5 A *transaction party* must not move or relocate to a place outside Australia except, in the case of an individual, temporarily. If it is a *corporation*, it must not change the place of its incorporation.
- 82.6 A *transaction party* which is a shareholder in another *transaction party* consents to that other *transaction party* executing each *transaction document* to which it is a party.

83 General security obligations

- 83.1 As security for the *amount owing*, the *guaranteed money* and each *transaction party's obligations* under the *transaction documents*, the *client* and each *guarantor* unconditionally charge in favour of ScotPac all freehold, leasehold or other interests in land (including all interests in fixtures but excluding crops) which the *client* or the *guarantor* may have on the *commencement date* or may acquire or otherwise obtain before all liabilities have been satisfied. That charge will be a fixed charge. The *client* and the *guarantor* give that charge as beneficial owner and, if they are or become a trustee, in exercise of their powers as trustee of each trust (including a trust specified in the *letter of offer*) of which they are or become the trustee. If required by ScotPac, the *client* or *guarantor* must sign a

mortgage and other documents (each in a form and content required by ScotPac acting reasonably) and do anything required by ScotPac, acting reasonably, to more satisfactorily secure the charges given by it.

- 83.2 Each *transaction party* other than the *client* warrants to ScotPac that it does not have a *security interest* or any other interest in any *account* and does not have the power to transfer rights in any *account*. Despite this, any *security interest*, other interest or power which that *transaction party* would have in an *account* is extinguished when the relevant *account* becomes a *transferred account* and must not subsequently arise.
- 83.3 If any transaction (including a payment made to ScotPac) is void or voidable by any law (such as a law relating to liquidation or insolvency) ScotPac is immediately entitled, as against each *transaction party*, to the rights to which it was entitled in connection with the *transaction documents* immediately before the transaction. A *transaction party* must do anything ScotPac, acting reasonably, requires (including signing any document) to restore to ScotPac any *security interest* or other right held by ScotPac immediately before the transaction occurred. The *transaction party's* obligations under this clause are continuing obligations, independent of all other obligations, and continue until all liabilities have been satisfied.
- 83.4 Each *transaction document* is a continuing security despite any payment or anything else. No *transaction document*, or the *security interests* which arise under them, will merge with any other document or *security interest* and a *transaction document*, or the *security interest* which arises under it, does not merge with a court judgment or order or any right, power or remedy ScotPac may have.

84 Trust obligations

- 84.1 If a *transaction party* is the trustee of a trust, it is bound by the *transaction documents* to which it is a party both in its own right and as the trustee of each trust (including any trust specified in the *letter of offer*) of which it is the trustee. A *transaction party* is also bound as the trustee of each trust it may become the trustee of. These requirements are not affected by an Australian Business Number or a trust being, or not being, specified in a *transaction document*. However, a *transaction party* is not bound in relation to a trust if the *letter of offer* states that the trust is excluded or if the trust arises under the will of a deceased person who is not a *transaction party*. A *transaction party* is also not bound in relation to a trust which is a fund as defined in the Superannuation Industry (Supervision) Act 1993 so long as the fund was disclosed to ScotPac before the date of the *letter of offer* and, if the *transaction party* is a company (as defined in the Corporations Act 2001) which gives a *security interest* in favour of ScotPac, ScotPac will still hold a *security interest* over substantially the whole of the property of the *transaction party*.
- 84.2 If the *client* is entitled to a *transferred account* in its own right, it transfers the *transferred account* as beneficial owner. If it is entitled to a *transferred account* as trustee of a trust it transfers the *transferred account* in the exercise of its powers as trustee.
- 84.3 The trustee must not release or otherwise prejudice its rights of indemnity and must not do, or allow to be done, or omit to do, anything that may prejudicially affect ScotPac's recourse against the assets of the trust. The trustee must exercise its rights of indemnity for the purposes of performing its *obligations* under the *transaction documents* and if ScotPac, acting reasonably, gives instructions as to what should be done it must comply with those instructions.
- 84.4 The trustee must: do everything which it is able to do to ensure that no action of the type mentioned in clause 85.1(g) is taken; comply with the documents mentioned in clause 85.1(h) and ensure that they are not changed or revoked without ScotPac's approval; comply with the obligations mentioned in clause 85.1(e); ensure that the things mentioned in clause 85.1(j) do not happen; do everything which it is able to do to ensure that the assets of the trust are not resettled or vested; ensure that the capital of the trust is not transferred or distributed without ScotPac's approval; and ensure that the income of the trust is not segregated, assigned or distributed if doing so could affect the trustee's ability to perform its *obligations* under a *transaction document* or if a *default event* is continuing or there is a *potential default event*.
- 84.5 The trustee must cause any successor trustee or *entities* who become a joint trustee to sign a document ScotPac requires to bind those persons to the *transaction documents*. A retiring trustee is not released from a *transaction document* unless ScotPac agrees.
- 84.6 If a *transaction party* is a unitholder in a trust; may exercise powers in relation to a trust (for example as an appointor); or is a director of the trustee, that *transaction party* must exercise its powers and discretions to ensure that the trustee complies with its *obligations*. A *transaction party* which is a beneficiary under a trust of which another *transaction party* is the trustee consents to that trustee executing each *transaction document* to which it is a party and agrees to clause 85.1(f). A *transaction party* who is a director of the trustee warrants that, so far as the director is aware, the trustee can truthfully give the warranties in clause 85 and the director must do everything which he or she is able to do to ensure that the trustee complies with its obligations in clause 84.

85 Trust warranties

- 85.1 If a *transaction party* is or becomes the trustee of a trust, it warrants to ScotPac each of the following.
- (a) Its arrangements with ScotPac are for the benefit of the trust and the beneficiaries of the trust and will be binding on those beneficiaries.
 - (b) It has been duly appointed as trustee and is the sole trustee of the trust.
 - (c) The trust is duly constituted and validly existing under the law of an Australian state or territory.
 - (d) It has authority to enter into the *transaction documents* to which it is expressed to be a party and it enters into those documents in the proper performance of its duties as trustee. If it becomes the trustee of a trust it will be bound by the *transaction documents* as the trustee.
 - (e) All action has been taken which is necessary or desirable for it to enter into and be bound by the *transaction documents* to which it is expressed to be a party and to perform its *obligations* under them.
 - (f) It has the right to be fully indemnified out of the trust assets for all *obligations* incurred under the *transaction documents* ahead of any beneficiaries' claims. ScotPac will be subrogated to its rights of indemnity, exoneration and recoupment out of the trust assets.
 - (g) No action has been taken or proposed to end the trust.
 - (h) A certified copy of the trust deed and other documents relating to the establishment of the trust or the powers of the trustee have been given to ScotPac, and those documents are accurate and disclose all the terms of the trust.
 - (i) It has complied with all of its *obligations* under the trust deed or those other documents, or which are imposed by law.
 - (j) It has not delegated any of its powers as trustee or exercised any power of appointment.
 - (k) If it is the *client* or a *guarantor*, it has disclosed to ScotPac all *security interests* over any of the trust assets. It must not allow any further *security interests* to arise or continue, except as permitted by clauses 56.1(b) or 76.1(c).
- 85.2 Each warranty in clause 85.1 is made by the trustee each day until all liabilities have been satisfied. The trustee must tell ScotPac if it could not, for any reason, truthfully repeat each of those warranties.

86 Extended obligations

- 86.1 If a *transaction document* imposes an *obligation* on a *transaction party* not to do something, it must do everything it is able to do to make sure no other *entity* (including another *transaction party*) does it either.
- 86.2 If a *transaction document* imposes an *obligation* on a *transaction party* to do something, it must make sure that all *entities* (including another *transaction party*) do anything that is necessary for it to do that thing.
- 86.3 A *transaction party* must do anything ScotPac, acting reasonably, requests:
- (a) to ensure that each *transaction document* and each *security interest*, right, power and remedy under any *transaction document* is fully effective, enforceable and perfected with the contemplated priority and effect;
 - (b) to more satisfactorily secure (in a manner consistent with any *transaction document*) to ScotPac the *property* the subject of a *security interest* under any *transaction document*; and
 - (c) to assist ScotPac in the exercise of any right, power or remedy in any *transaction document*.

This may include the obtaining of consents, getting documents completed and signed, supplying information, delivering documents and evidence of title, executing blank transfers and giving possession or control of any *property* the subject of a *security interest* under any *transaction document*.

87 Anti-money laundering and counter-terrorism laws

- 87.1 Each *transaction party* warrants to ScotPac that it is not aware, and has no reason to suspect, that any financial accommodation provided under a *transaction document*, or the performance of any transaction contemplated by a *transaction document*, will violate any financial or other sanctions or will be applied or related to any money laundering, terrorism financing or similar activity illegal under any applicable laws or otherwise prohibited under any international convention or agreement. The *transaction party* must tell ScotPac if it could not, for any reason, truthfully repeat that warranty.

- 87.2 Each *transaction party* must give ScotPac all additional information and assistance ScotPac requires so that it can comply with those sanctions, laws, conventions and agreements. In particular, they must provide all documents, information and assistance ScotPac may require to carry out “know your customer” or similar checks.
- 87.3 ScotPac may delay or refuse to make a payment or delay or prevent the occurrence of any other transaction if ScotPac is concerned that it could breach any of those sanctions, laws, conventions or agreements. If ScotPac has reason to believe that the performance of any transaction contemplated by any *transaction document* could breach any of those sanctions, laws, conventions or agreements it can end the *facility agreement* by giving notice to the *client*. The *facility agreement* will then end one *month* after the notice is given or on an earlier date specified by the *client*. The *amount owing* must be paid – see clause 71.1. ScotPac will not incur a liability if it ends the *facility agreement* or does any of the things mentioned in this clause 87.3.

O. MISCELLANEOUS

88 Assignment and agency

- 88.1 A *transaction party's* rights under the *transaction documents* are personal to it and may not be transferred or assigned without ScotPac's consent.
- 88.2 ScotPac is entitled, without further approval, to assign, novate, transfer or otherwise deal with the *transaction documents*, any interests arising under them and any of its rights or obligations under them in any way ScotPac considers appropriate but an assignment, novation, transfer or dealing may not materially prejudice a *transaction party's* rights under the *transaction documents*. In the case of a novation the new party assumes ScotPac's obligations and ScotPac is released from its obligations. At ScotPac's request a *transaction party* must sign and deliver to ScotPac, or any other *entity* ScotPac specifies, any document ScotPac reasonably requires for this purpose.
- 88.3 If ScotPac does something mentioned in clause 88.2 a *transaction party* may not claim against the assignee or other *entity* any right of set-off, abatement, counterclaim or other rights the *transaction party* has against ScotPac before ScotPac did that thing. This does not affect the *transaction party's* rights against ScotPac.
- 88.4 ScotPac is entitled to appoint an *entity* (including an *entity* which is *related* to ScotPac) to act on its behalf, to do anything ScotPac is entitled to do or to represent ScotPac in relation to anything ScotPac is entitled to do (or which a *transaction party* is obliged to do) under a *transaction document*. ScotPac will determine the terms of the appointment. For example, an *entity* appointed by ScotPac to provide services may provide the *client platform* or may receive details about *accounts* or *inventory*. In that case references, including in clauses 15.1 and 26.1(a), to details being given to ScotPac includes the details being given to that *entity* and reference to the *client platform* provided by ScotPac includes one provided by that *entity*. Another example is that if the *client* is ScotPac's agent under clause 19 and the agency is cancelled ScotPac can appoint an *entity* to do anything which the *client* had been required to do. If a *default event* has occurred, or the appointment is made because the *client's* agency was cancelled, ScotPac is entitled to be reimbursed by the *client* for all costs, charges and expenses incurred in engaging that *entity*.

89 Waivers, consents and approvals

- 89.1 If ScotPac waives a breach by a *transaction party* of a term of a *transaction document*, releases a *transaction party* from an *obligation* under a *transaction document* or does not apply any of its entitlements, that does not amount to a waiver of any other breach by the *transaction party* or a release of any other *transaction party* from any *obligation*; nor does it imply that ScotPac consents to any breach by any other *transaction party* or that ScotPac has agreed to give up any of its entitlements. For example, if paragraph (a) in the definition of *prevailing rate* applies but ScotPac has applied paragraph (b), ScotPac does not give up its right to apply paragraph (a) until it has agreed to give up its right to apply paragraph (a). Any agreement can be subject to conditions, such as a limitation on the duration of the agreement.
- 89.2 No delay or failure by ScotPac in exercising any right, power or remedy will operate as a waiver of that or any other right, power or remedy. The right, power or remedy can arise under any *transaction document* or any law.
- 89.3 To the extent the law permits, each *transaction party* waives any right it may have to receive any notice (including a notice given before a right, power or remedy is exercised) from ScotPac or a *receiver* under any law (including the *PPSA*), and also waives any time period that must otherwise lapse under any law (including the *PPSA*) before ScotPac or a *receiver* can exercise a right, power or remedy. If the law which requires a period of notice or lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is longer). ScotPac is not prohibited from giving a notice under the *PPSA* or any other law.

- 89.4 Where a *transaction document* requires that ScotPac consent to something, approve of something or agree to something, ScotPac's prior written consent, approval or agreement is required. The consent, approval or agreement must be signed by ScotPac or by one of ScotPac's *authorised officers*. ScotPac will act reasonably when it decides to give or withhold its consent, approval or agreement and ScotPac, acting reasonably, can give the consent, approval or agreement on any conditions. The *transaction parties* must comply with those conditions.
- 89.5 If ScotPac is satisfied in relation to something (such as the satisfaction of a condition precedent), consents to something or approves something, that does not provide any confirmation which a *transaction party* can rely on as to the appropriateness of that thing for the *transaction party's* purposes. Also see clauses 15.6, 32.3 and 55.3.
- 89.6 Where a *transaction document* requires that something be told to ScotPac or that something be disclosed or notified to ScotPac it must be told, disclosed or notified in writing, unless another method is stipulated in the *facility agreement*.

90 Evidence and calculations by ScotPac

- 90.1 A certificate can be signed by ScotPac or one of ScotPac's *authorised officers* in relation to: the *availability*, the *accounts availability*, the *inventory availability*, the *equipment availability*, the *land availability*, the *funds in use* and the other amounts mentioned in clauses 4 or 6.1; the *amount owing*; the *facility amount owing*; the *guaranteed money*; an amount owing by a *transaction party*; the amount secured by any *security interest* held by ScotPac; the *guaranteed obligations*; or anything arising out of a *transaction document* or the opinion of ScotPac in respect of anything relating to a *transaction document*. It is evidence of the amount, thing or opinion at a particular date. If the certificate concerns an amount ScotPac will, on request from a *transaction party*, give to the *transaction party*, in the format ScotPac considers appropriate, reasonable details as to how the amount was determined. A *transaction party* must not object to the admissibility of the certificate in any legal proceedings.
- 90.2 A decision by a court or arbitrator (however described) in any action between a *transaction party* or ScotPac, on the one hand, and any *customer*, on the other hand, in relation to any matters concerning the validity or enforceability of any *account* or its amount or balance, is conclusive evidence of those matters, unless the decision is quashed or altered on appeal before ScotPac has relied on it.
- 90.3 If ScotPac makes an error in any calculation or makes a payment in error it can correct the error. ScotPac will tell the *client* about the error and the payments which need to be made to rectify it promptly after ScotPac identifies the error. ScotPac and the *transaction parties* must make any required payment to ensure that the correct payment is made. The rights and obligations of ScotPac and the *transaction parties* will be the same as those which would have applied if the error had not been made. For example, if an amount referred to in clause 9 was miscalculated, the discount charge or interest must be paid on the correct amount. Similarly, if ScotPac does something, such as re-transfer *transferred accounts* or release a *security interest*, in the belief that all liabilities of the *client* had been satisfied (see clause 103.4) but liabilities had in fact not been satisfied, ScotPac and the *transaction parties* must do everything that is required to put them in the position they would have been in if the re-transfer or release had not occurred.

91 Joint and several liability

- 91.1 If the *client*, the *guarantor*, the *related lender* or the *related landlord* comprise more than one *entity* each *entity* comprising the party is bound by the *facility agreement* jointly and severally. A reference to the party includes all *entities* as specified in the *letter of offer* or which become a party and also any one or more of them.
- 91.2 Similarly, an *obligation* or warranty on the part of the *transaction party*, the *grantor* or the *mortgagor* in the *facility agreement* binds each *entity* comprising the *transaction party*, the *grantor* or the *mortgagor* jointly and severally and a reference to *transaction party*, *grantor* or *mortgagor* includes all of the relevant *entities* and also any one or more of them.

92 Authority to fill in blanks and counterparts

- 92.1 Each *transaction party* irrevocably authorises ScotPac, one of ScotPac's *authorised officers* or someone else authorised to act on ScotPac's behalf to date, fill in any blanks and correct any manifest errors in any *transaction document* at any time. This will be done so that the *transaction documents* properly record the agreement between the parties.
- 92.2 The *commencement date* is specified in the *letter of offer*. It will be completed by ScotPac, one of ScotPac's *authorised officers* or someone else authorised to act on ScotPac's behalf. By executing the *letter of offer* each *transaction party* authorises that completion even though the *facility agreement* will not come into force until the *commencement date*. When ScotPac, acting reasonably, is satisfied that it is in order for the *facility agreement* to come into force it will complete the *letter of offer* to specify that date as the *commencement date*, unless ScotPac and the *client* have agreed that another date should be used. If the date is completed by any other person, ScotPac or one of those authorised persons can change it. Whilst the *facility agreement* will come into force on the

commencement date other requirements, as outlined in clause 2.2, may need to be satisfied before payments are made to the *client*.

- 92.3 Any document (including the *letter of offer* and any other *transaction document*) which may be entered into between ScotPac, on the one hand, and all or any one or more of the *transaction parties*, on the other hand, or which is granted in favour of ScotPac, can be executed in any number of counterparts, each executed by one or more parties or by one or more representatives of a party. The signatures of the representatives of a party can be on different counterparts. All counterparts taken together will constitute the one instrument.

93 Signing of transaction documents

- 93.1 If an *entity* was intended to be a party to a *transaction document* (for example, it is named as a *client*, *guarantor*, *related lender* or *related landlord*) but it does not become bound (for example, because it does not execute the *transaction document* for any reason, or it fails to do so properly) that does not affect the liability of each other *entity* which is bound as a *transaction party*. However, this may mean that a condition precedent is not satisfied (see clause 2.2) and each *entity* which is bound must cause those other *entities* to sign a document that ScotPac, acting reasonably, requires so that they are bound. That signing must occur within ten *working days* of ScotPac requiring it.
- 93.2 If an *entity* is a party to a *transaction document* in two or more capacities its execution will bind it in each of those capacities. For example, if an *entity* is both a *guarantor* and a *subordinated borrower* its execution will bind it in each of those capacities even if it is referred to as just being a guarantor where it executes. Similarly, if an *entity* is a party to the *facility agreement* and another *transaction document* it can agree to both the *facility agreement* and the other *transaction document* by signing the *letter of offer* (or agreeing to it in another way) and it will then be bound by both the *facility agreement* and the other *transaction document* even though it did not separately sign the other *transaction document*.
- 93.3 If the required formalities have been satisfied in any relevant jurisdiction for a *transaction document* to be a deed in that jurisdiction (for example section 127(3) of the Corporations Act 2001 applies or the parties sign, seal and deliver the *transaction document* in a way which satisfies those formalities) the *transaction document* will be a deed in that jurisdiction. If those formalities have been satisfied in relation to some (but not all) of the parties, the *transaction document* will take effect as a deed poll given by those parties and will take effect as an agreement binding on the other parties. If a *transaction document* was intended to be a deed but the required formalities for it to be a deed are not satisfied in any relevant jurisdiction that document will take effect as an agreement in that jurisdiction. Each *transaction party* (other than the *client*) enters into each *transaction document* to which it is a party (if it is an agreement or is to take effect as an agreement) in consideration of, amongst other things, ScotPac agreeing to pay \$10 to that *transaction party*. ScotPac will pay the *transaction party* within ten *working days* of the *transaction party* requesting it. If a *transaction document* (such as the *general security deed*) was intended to be a deed poll in favour of ScotPac but it takes effect as an agreement by virtue of this clause ScotPac's agreement to the document will, if it is not executed by ScotPac, be shown by the document being provided by ScotPac to the other party for execution by the other party. If a statute or other law would give ScotPac rights, powers, remedies or other benefits (such as representations) if a *transaction document* were a deed but that does not occur because the *transaction document* is not a deed, the *transaction parties* agree that ScotPac will still have those rights, powers, remedies and benefits. This does not affect any rights, powers, remedies or benefits set out in the *transaction document*.
- 93.4 Any document (including the *letter of offer*) can be entered into by using electronic signatures or by the parties showing their agreement in another electronic way. An electronic signature is a digital signature or a visual representation of an individual's handwritten signature or mark which is placed on a physical or electronic form of the document by electronic or mechanical means. For example, ScotPac could issue the *letter of offer* in an electronic format and some or all of the *transaction parties* could sign it using a digital signature or otherwise show their agreement in an electronic form. The resulting agreement will be considered to be made "in writing" by a "document" which is "signed" by the relevant *entities*. If the *transaction party* is a *corporation* both it and the person who provides evidence of the signing warrants to ScotPac that the signing satisfies section 127(1) of the Corporations Act 2001 unless ScotPac is told that that section is not satisfied before the *commencement date*.

94 Severability and recording the agreement

- 94.1 If any part of a *transaction document* is or becomes void, invalid or unenforceable in any jurisdiction, it is to be treated as not being included in the *transaction document* in that jurisdiction. It will continue to be included in all other jurisdictions. If any part is or becomes void, invalid or unenforceable in any jurisdiction only in relation to some, but not all, *transaction parties* it will still apply in that jurisdiction in relation to all other *transaction parties*. In this clause 94.1 "part" means the smallest part of the document which needs to be excluded in the relevant jurisdiction for the balance of the document to bind the relevant parties in that jurisdiction.
- 94.2 A provision of a *transaction document* which is void under sections 301 or 302 of the Bankruptcy Act 1966 in relation to an individual will still apply in relation to all other *entities*. ScotPac's rights under a *transaction document* cannot be enforced if and to the extent enforcement would contravene sections 415D, 434J, 451E, 454N or 454P of the

Corporations Act 2001 (those provisions concern a stay on enforcing rights) as qualified by the relevant regulations. This clause 94.2 applies despite any other provision of a *transaction document*.

- 94.3 Before issuing the *letter of offer* ScotPac may have given the *client* an outline of the terms and conditions on which an asset based facility could be provided. The outline might be in an “approval letter”, “terms sheet” or something similar. The document containing the outline is not a *transaction document*. The *facility agreement* and other *transaction documents* replace the outline, except a provision which entitles ScotPac to serve a notice under section 64 of the *PPSA*, to the extent they cover a term in the outline. Important terms and conditions may have changed since the outline was provided. Accordingly, it is important that the *client* and each *guarantor* be satisfied with all *transaction documents* before they agree to them as a term in an earlier outline may have changed.
- 94.4 A *transaction party's obligations* under the *facility agreement* are in addition to, and not in substitution for, other *obligations* (including those under other *transaction documents*, other documents, *security interests* and orders). Similarly, a *transaction party's other obligations* are in addition to, and not in substitution for, *obligations* under the *facility agreement*.

95 Receipt of documents and legal and financial advice

- 95.1 By agreeing to the *facility agreement* each *transaction party* confirms that it received a copy of each *transaction document* to which it is a party and each other *transaction document* which could affect its liability. It also confirms that it had the opportunity to read them before the *transaction party* agreed to the *facility agreement*. Each *transaction party* must ensure that the *transaction documents* meet its requirements and objectives. ScotPac can provide the *transaction documents* to the *client* (or an *authorised officer* or other representative of the *client*) for distribution to the *transaction parties* and the *transaction parties* (or their *authorised officers* or other representatives) will need to obtain them so that they can provide that confirmation. ScotPac will, however, give *transaction documents* direct to any *transaction party* which requests them. Instead of providing the documents, ScotPac can provide a link which can be used to obtain the documents. If a *transaction document* was provided electronically, the *transaction party* confirms that it agreed to it being provided that way and that it (or its *authorised officer* or other representative) was able to access and read it.
- 95.2 Each *transaction party* acknowledges that it has had the opportunity to obtain independent legal, financial, accounting and taxation advice about its rights and *obligations* under the *transaction documents* and about the limitation on ScotPac's liability in clause 64. They also acknowledge that ScotPac recommended that the advice be obtained. ScotPac will rely on those acknowledgments when it enters into the *transaction documents*.
- 95.3 ScotPac does not provide personal advice of the type referred to in section 766B of the Corporations Act 2001 and does not provide legal, taxation or accounting advice. Each *transaction party* acknowledges that it has not received advice of that type from ScotPac.
- 95.4 Each *transaction party* agrees that ScotPac can provide one set of executed *transaction documents* to the *client* (or an *authorised officer* or other representative of the *client*). ScotPac can do so by providing hard or electronic copies of the *transaction documents*. If a *transaction party* requires its own copy, it will obtain it from the *client* or it can ask ScotPac for a copy.

96 Privacy

- 96.1 By entering into the *facility agreement*, each *transaction party* agrees that their personal information will be collected, used and disclosed in accordance with ScotPac's privacy policy which can be viewed on, or downloaded from <https://www.scotpac.com.au/privacy-policy/> (“ScotPac's Privacy Policy”). Each *transaction party* acknowledges that it has read and understood ScotPac's Privacy Policy at the time of entering into the *facility agreement*. If ScotPac changes ScotPac's Privacy Policy, it will put a notice on the *client platform* or take reasonable steps to tell the *client* in another way. The *client* must keep each other *transaction party* that is an individual and all *authorised officers* of any *transaction party* informed of the changes to ScotPac's Privacy Policy.
- 96.2 Each *transaction party* acknowledges and agrees that ScotPac may send personal information of the *transaction party* overseas including to its service providers and related *entities*, most likely to the overseas countries listed in ScotPac's Privacy Policy, for the purposes set out in ScotPac's Privacy Policy. Each *transaction party* consents to the disclosure of personal information to an *entity* not in Australia, meaning ScotPac will not be required to take reasonable steps to ensure that the overseas *entity* does not breach the Australian Privacy Principles in relation to the *transaction party's* personal information and if the overseas *entity* mishandles the *transaction party's* personal information, the *transaction party* will not be able to seek redress under the Australian Privacy Act 1988 against ScotPac.
- 96.3 The *client* must collect, store, use and disclose personal information concerning *customers* and other *entities* as required by the Privacy Act 1988. It must also: ensure that each individual who becomes a *transaction party* or is or becomes a director or shareholder of a *transaction party* which is a *corporation* is aware of ScotPac's Privacy Policy and agrees to the collection, use and disclosure of personal information as outlined in ScotPac's Privacy Policy; obtain any necessary approval so that the *client* can provide personal information to ScotPac as required by

the *facility agreement* and ScotPac can collect, store, use and disclose that personal information as contemplated by the *facility agreement* and ScotPac's Privacy Policy, including obtaining the *customer's* consent for ScotPac to communicate directly with the *customer* (if that *customer's* personal information must be disclosed to ScotPac to allow ScotPac to collect, enforce or verify an *account*); take reasonable steps to ensure that a *customer* who is an individual and any individual who has supported the obligations of a *customer* is aware of the matters mentioned in Australian Privacy Principle 5 in relation to personal information provided or to be provided to ScotPac; and obtain any necessary approval from a *customer* who is an individual so that ScotPac can search the *PPSR* to see if the *customer* has given any *security interests*.

96.4 This clause 96 continues until all liabilities have been satisfied.

97 Confidentiality

97.1 The *client* and ScotPac agree that neither of them will disclose to an interested person (as defined in section 275(9) of the *PPSA*), or any *entity* at the request of one of those interested persons, any information of the kind described in section 275(1) of the *PPSA*. However, ScotPac may make that disclosure if section 275(7) of the *PPSA* applies. The *client* must not request or authorise the disclosure of any information of the kind described in section 275(1) of the *PPSA* or waive any duty of confidence that would otherwise permit non-disclosure under section 275 of the *PPSA*. If a *guarantor* is a debtor as defined in the *PPSA* this clause 97.1 also applies to the *guarantor* as if it were referred to instead of the *client*.

97.2 The *transaction parties* must not, without ScotPac's approval, give a copy of the *facility agreement* to any *entity*, except an *entity* which will become a *transaction party*, a *transaction party's* professional advisers (for the purpose of obtaining advice about it) or an *entity* to which it is required by any law to give it. Before they give it to any *entity* the intended recipient must agree with ScotPac that it will not give it to any *entity* without ScotPac's approval. In the case of the *client* this clause 97.2 only applies when the disclosure is not governed by clause 97.1.

97.3 The *client* and each *guarantor* appoint ScotPac and each of its *authorised officers* as their agent and authorised representative for the purpose of requesting information pursuant to section 275 of the *PPSA* from an *entity* which is a secured party holding a *security interest* in *property* in which the *client* or the *guarantor* has an interest.

98 Disclosure of information

98.1 So long as ScotPac does not breach clause 97.1, ScotPac may disclose any *transaction document* and any information which ScotPac has obtained or obtains about a *transaction party* or which a *transaction party* provides or has provided to it if any of the following is satisfied.

- (a) The *transaction party* consents to the disclosure. A *transaction party* may not unreasonably withhold or delay its consent.
- (b) The disclosure is required by a stock exchange or is allowed or required by any law.
- (c) The disclosure is to ScotPac's *authorised officers*, employees, agents, auditors, accountants, lawyers or advisers, or to an *entity* that provides services to or for ScotPac.
- (d) The disclosure is to any *entity* which is *related* to ScotPac.
- (e) The disclosure is to an *entity* which provides facilities, insurance or credit enhancement to ScotPac or a *transaction party*, or if the disclosure is to a credit reporting body so long as the disclosure to that body will not breach any law.
- (f) The information is generally and publicly available.
- (g) The disclosure is to a *transaction party*, to an *entity* to which a *transaction party* has given a *security interest* or *guarantee* or to an *entity* which may give a *guarantee*.
- (h) The disclosure is to the *transaction party's* auditors, accountants or *ADI* and they have requested information about dealings with ScotPac.
- (i) The disclosure is to a third party who may be interested in providing a commercial finance facility to the *client*.
- (j) ScotPac considers the disclosure appropriate in connection with the registration and maintenance of any financing statement or financing change statement.
- (k) ScotPac considers the disclosure appropriate in connection with ScotPac exercising rights, powers or remedies or assigning, novating or otherwise dealing with the *transaction documents*, any interests arising under them or any of its rights or *obligations*. This includes in connection with the enforcement of any *transaction document*, any *security interest* or any *guarantee*.

- (l) ScotPac considers the disclosure appropriate in connection with the enforcement, operation or administration of a *transaction document*. This includes to any *customer* when ScotPac considers the disclosure appropriate to assist in the collection of an *account* or to a *supplier* when ScotPac considers the disclosure appropriate in addressing amounts which could be owed to the *supplier*. It also includes to an *entity* (such as an *entity* appointed under clause 88.4) which provides services to ScotPac or when the disclosure is required so that ScotPac can make a payment as contemplated by the *facility agreement*.
- 98.2 Clauses 96.2 and 98.1 do not limit any other consent which a *transaction party* has provided or may provide. The consent can be provided in any way, including by an online finance application. A permitted disclosure can be made to an *entity* which is located overseas.
- 98.3 The *client* and each *guarantor* irrevocably authorise ScotPac to obtain:
- (a) from any *entity* which provides the *information connection*, information to be provided using the *information connection*;
 - (b) from its *ADI*, any information which ScotPac may require concerning its *ADI accounts*;
 - (c) from an *entity* which provides insurance or credit enhancement to it, any information which ScotPac may require concerning the insurance or credit enhancement;
 - (d) from its accountants and auditors, any information ScotPac may require concerning its financial and business affairs; and
 - (e) from the *PPSR*, if the *client* or *guarantor* is an individual, disclosure of any registration in which the individual is registered as a grantor or a secured party. Other searches may be permitted by section 172 of the *PPSA*. Consent is not required when the *client* or *guarantor* is not an individual.

99 PPSA and other laws

- 99.1 The *client* and any *guarantor* which is a *grantor* authorise ScotPac to register and maintain all financing statements, financing change statements and other documents and to do all things which ScotPac, acting reasonably, considers appropriate to: perfect and maintain ScotPac's *security interest* and to ensure it has priority over all other *security interests* (except *permitted interests* which ScotPac has agreed can have priority); to protect and preserve the *accounts*, *inventory* (if the asset based facility has an inventory asset component) and *designated equipment* (if the asset based facility has a plant and equipment asset component); and to exercise any right, power or remedy in connection with ScotPac's *security interest*, which includes to realise ScotPac's *security interest*. ScotPac may determine the number of financing statements which are registered, when they are registered and the collateral class against which the registration is made. For example, the *security interest* arising under the *facility agreement* by the transfer of accounts (as defined in the *PPSA*) and their proceeds can be registered against "accounts" (being intangible property) and the *security interest* arising under the *facility agreement* in *property* (such as some *related rights*) which is not an account (as defined in the *PPSA*) can be registered against "all present and after-acquired property". The *security interest* arising (otherwise than by an absolute transfer) under the *general security deed in property* (including the *delayed transferred accounts* until they are transferred in accordance with clauses 14.2 and 25.2 and any *accounts* which are in fact not the subject of an absolute transfer) can be registered against "accounts" (to the extent it is an account as defined in the *PPSA*) and/or against "all present and after-acquired property". The *client* and those *guarantors* must give ScotPac all information necessary for ScotPac to register and maintain those statements.
- 99.2 If sections 95, 118, 121(4), 123, 125, 130, 132(3)(d), 132(4), 135, 137, 142 and 143 of the *PPSA* would, apart from this clause 99.2, apply to the *facility agreement* or the *security interest* it creates, those sections will not apply to the maximum extent that it is possible to contract out of them under section 115 of the *PPSA*. If section 116(2) of the *PPSA* applies section 132 of the *PPSA* will not apply to the maximum extent that it is possible to exclude it under section 115(7) of the *PPSA*.
- 99.3 The *client* and any *guarantor* which is a *grantor* must not: refuse any permission sought by ScotPac under section 94 of the *PPSA*; object to, or seek redress for, any damage or inconvenience caused by ScotPac removing an accession; make an application under section 97 of the *PPSA*; complain of any damage, cost or inconvenience caused by ScotPac taking apparent possession of *property* under section 126 of the *PPSA*, if that section applies; or object to ScotPac's proposal to purchase *property* under section 129(2)(b) of the *PPSA*, if that section applies. The *client* and those *guarantors* waive their right to receive a notice from ScotPac under section 135 of the *PPSA*, if that section applies.
- 99.4 As permitted by section 157(3) of the *PPSA*, each *transaction party* waives its right to receive a verification statement or notice in relation to registration events. In clause 89.3 each *transaction party* also waives the right to receive any other notice from ScotPac to the extent this is possible.

- 99.5 Nothing in the *facility agreement* should be construed as an agreement by ScotPac to subordinate its *security interest* in *accounts, inventory or designated equipment* to any other *security interest* (including a *permitted interest*) or as a consent to any other *security interest*, apart from *permitted interests*, attaching to *accounts, inventory or designated equipment*.
- 99.6 For the purposes of item 1 of the table in section 153 of the *PPSA* ScotPac nominates the *client* and gives the *client* authority to act on behalf of ScotPac in connection with a registration on the *PPSR* of any *security interest* in favour of the *client* which is evidenced or created by a *sale agreement* or chattel paper or otherwise secures payment of an *account*; is perfected by registration under the *PPSA*; and is transferred to ScotPac. That *security interest* includes a *PMSI* irrespective of whether ScotPac has, in accordance with clause 57.1, required that the *client* have the advantage of a *PMSI*. This nomination and authorisation ceases when the registration is transferred to ScotPac. The registration must be transferred to ScotPac on request.
- 99.7 A *transaction party* must not register or maintain a financing statement on the *PPSR* under which ScotPac is the grantor of a *security interest*.
- 99.8 If ScotPac exercises a right, power or remedy, that exercise is not an exercise of a right, power or remedy under the *PPSA* unless ScotPac states otherwise at the time of exercise. However, this clause 99.8 does not apply to a right, power or remedy which can only be exercised under the *PPSA*.

100 Governing law, courts and complaints

- 100.1 The law of the state or territory specified in the *letter of offer* as being the governing law governs the *facility agreement* (including the *security interests* created by it and the contractual obligations between the parties under it) to the extent this is permitted under the *PPSA*. To the extent this is not permitted the law of the Commonwealth of Australia as it applies in that state or territory will be applied to the extent that is permitted under the *PPSA* and to the extent this is not permitted the governing law will be determined in accordance with the requirements of the *PPSA*.
- 100.2 Each *transaction party* submits to the non-exclusive jurisdiction of the courts having jurisdiction in the state or territory specified in the *letter of offer* as being the governing law.
- 100.3 To the extent permitted by law, the *facility agreement* prevails to the extent it is inconsistent with any law. The rights, powers and remedies in the *facility agreement* are in addition to those provided by law or any other document. However, anything ScotPac does under the *facility agreement* is subject to any law unless that law has been lawfully excluded or modified by a provision of the *facility agreement*.
- 100.4 ScotPac has an internal dispute resolution system that covers complaints made by the *client*. ScotPac will respond to the *client's* concerns promptly and fairly. Information regarding the complaint handling process is available from ScotPac.

101 Notices and service

- 101.1 A notice or demand from ScotPac to a *transaction party* must be in writing (which includes electronic communication) and be signed (directly or with a facsimile signature) or issued by ScotPac, one of its *authorised officers* or someone else authorised to act on its behalf. It may be served by: giving it to the *transaction party* or one of its *authorised officers*; sending it to the *transaction party* by e-mail or fax; posting it (by airmail when the parties are in different countries) in a pre-paid envelope to the *transaction party*; delivering it to the *transaction party*; or posting it on the *client platform*.
- 101.2 A notice or demand sent by e-mail to a *transaction party's* e-mail address (or an e-mail address of an *authorised officer* or an e-mail address which ScotPac has been asked to use) last known to ScotPac is, if it was sent before 4.00pm on a *working day*, to be treated as having been received by the *transaction party* when sent unless ScotPac has received a message indicating that it has not been received. A notice or demand sent by fax to a *transaction party's* last known number is, if it was sent before 4.00pm on a *working day*, to be treated as having been received by the *transaction party* when ScotPac receives an error free transmission report. If it was sent by e-mail or fax after that time it is to be treated as having been received at the commencement of business on the next *working day*. A notice or demand sent by post to, or which is delivered to, a *transaction party's* address specified in the *letter of offer* or another *transaction document*, its registered office or its business or residential address last known to ScotPac is to be treated as having been received by the *transaction party* on the fourth *working day* after it was posted or when it was delivered. A notice or demand served by posting on the *client platform* is to be treated as having been received by the *client* on the second *working day* after posting even if neither the *client* nor any of its *authorised officers* or other representatives have accessed the *client platform* during that time. References to time in this clause 101.2 means the time where ScotPac's *operations office* is located.
- 101.3 Anything in connection with legal process (such as court documents) can be served in any of the ways mentioned in clause 101.1 if the law permits this. Nothing in clause 101 affects ScotPac's right to serve in any other way permitted by law.

- 101.4 Service is effective even if a *transaction party* or one of its partners is dead, incompetent, absent from the jurisdiction, *insolvent* or wound up. Service is effective despite anything else that might otherwise prevent it being effective. If the *client* comprises two or more *entities* a notice or demand can be given to each of them by being served on all or any one or more of them.
- 101.5 A notice from a *transaction party* to ScotPac must be in writing and be signed by the *transaction party* or by one of its *authorised officers*. It must be delivered to ScotPac at its *operations office* unless it is in connection with a registration on the *PPSR*, in which case it must be sent to the address for service specified in the registration.

102 Special provisions and operating conditions

Any special provisions or operating conditions in the *letter of offer* prevail over anything else in the *facility agreement* which is inconsistent with them, to the extent of the inconsistency. If it is possible to comply with both this document and the special provisions or the operating conditions the *transaction party* must do so, even if they concern the same or similar subject matter.

P. INTERPRETATION AND DEFINITIONS

103 General interpretation rules

- 103.1 The contents and headings are for ease of reference only and do not affect the interpretation of the *facility agreement*. The overview which has been included before the contents is only a summary of some features of the *facility agreement*. Terms and conditions in the *facility agreement* apply to those outlined features.
- 103.2 Words implying the singular include the plural and vice versa. Words implying any one gender also include the other genders. A reference to any thing (including any right) includes the whole and each part of it, but the performance of part of an *obligation* does not constitute performance of the *obligation*.
- 103.3 A reference to law includes a statute, regulation, statutory instrument, rule of common law or equity and any official directive. A reference to a statute includes a regulation or statutory instrument issued under it. A reference to a statute, a provision of it or a definition in it includes a modification, re-enactment or substitution.
- 103.4 A reference to all liabilities being satisfied (or similar words) means ScotPac has told the *client* that: it considers that all of the *client's obligations* to ScotPac and each *entity* which is *related* to ScotPac have been satisfied; there is no *amount owing*; there is no risk of ScotPac or any of those *related entities* having to hand over any payments a *transaction party*, a *customer* or any other *entity* has paid to ScotPac or any of those *related entities*; ScotPac does not have any contingent liability in connection with a *transaction document*, such as a contingent liability arising from the possession or sale of the *inventory*, *designated equipment* or *designated land*; and the *facility agreement* has come to an end. ScotPac will act reasonably when it makes that determination.
- 103.5 Any trust created under the *facility agreement* ends (unless determined earlier) on the date that is eighty years less one day from the *commencement date*.
- 103.6 A reference to a *transaction party* includes that party's legal personal representatives, successors in title, permitted transferees and permitted assigns. It also includes any controller, liquidator and administrator (as those words are defined in section 9 of the Corporations Act 2001) and trustee in bankruptcy appointed in relation to a *transaction party* or its *property*.
- 103.7 A reference to a document (such as any *transaction document*) includes it as amended, novated, supplemented or replaced from time to time, except to the extent the amendment, novation, supplement or replacement was prohibited by a *transaction document*. A reference to the enforcement of a *transaction document* includes the enforcement of a *security interest* which arises under it.
- 103.8 If the *client* is required to give something to ScotPac, ScotPac can accept it in electronic form. If ScotPac accepts a confirmation or similar thing (including details regarding *accounts* or *inventory* or a confirmation of the transfer of *accounts*) electronically it will be considered to have been provided in writing, by a document which is signed by the *client*. Similarly, when the act mentioned in clause 14.7 occurs the *client* will be considered to have agreed to the things mentioned in that clause in writing, by a document which is signed by the *client*.
- 103.9 The *facility agreement* refers to three values.
- Fair market value – the value an asset would sell for on the open market under circumstances where the buyer and seller are well informed about the asset and are acting in their own best interests. It is expected that the fair market value of *inventory* will generally be very similar to the *book value*.
 - Orderly liquidation value – the value it would be reasonable to expect would be derived from a liquidation sale, given a reasonable period to find a purchaser, but where the seller is compelled to sell on an “as-is,

where is” basis. It is that value net of all sale expenses and also net of liquidation expenses (excluding the liquidator’s fee).

- Forced liquidation value – the value it would be reasonable to expect would be derived from a liquidation sale, given a sale which is properly advertised and concluded by public auction with the seller being compelled to sell, with a sense of immediacy, on an “as is, where is” basis on a specific date. It is that value net of all sale expenses and also net of liquidation expenses (excluding the liquidator’s fee).

104 Meaning of particular words

- 104.1 A reference to “\$”, “\$A” or “Australian dollars” means the lawful currency of Australia.
- 104.2 A reference to something being “correct in all material respects” includes it being true, accurate and complete in all material respects and not being misleading by omission or otherwise in any material respect. A reference to “document” includes anything on which there is writing and a record of information which is in electronic form.
- 104.3 The words “including” and “includes” when used to introduce an item do not limit the meaning of the words to which the item relates to items of a similar kind. Similarly, when the words “for example”, “such as” and “in particular” are used to introduce an illustration that illustration does not limit the meaning of the provision to which the illustration relates. An illustration can extend the operation of the provision.
- 104.4 Where it is stated that something can or should be done to protect ScotPac’s “legitimate interests” it can be done if it is reasonably necessary to protect ScotPac’s legitimate interests.
- 104.5 There has been a “material deterioration in the debtors ledger” if, over any period determined by ScotPac on a reasonable basis, there has been a material deterioration in the performance of the debtors ledger which ScotPac considers could adversely affect ScotPac’s legitimate interests. For example, there would be a material deterioration in the debtors ledger if there was a material deterioration in the debt turn.
- 104.6 A reference to “ScotPac” includes any person who is authorised to act on ScotPac’s behalf, its successors in title, transferees and assigns and, where ScotPac is part of a GST group pursuant to section 48-5 of the *GST Act*, includes the representative member of that group.
- 104.7 A reference to “ScotPac’s mistake, negligence, fraud or wilful misconduct” includes the mistake, negligence, fraud or wilful misconduct of an *entity* which is *related* to ScotPac; that of an *entity* mentioned in clause 88.4; that of ScotPac’s agent (other than the *client*), contractor (including any *entity* which provides the *information connection*), officer or employee; and that of a *receiver*, in each case where appointed by, or acting on behalf of, ScotPac.
- 104.8 A reference to “shareholder” includes a member, such as a member as defined in section 9 of the Corporations Act 2001. This could, for example, apply if the relevant *entity* is a company limited by guarantee.
- 104.9 A reference to “warranty” or “warranties” includes representations. Accordingly, where it is stated that ScotPac gives no warranties that means ScotPac gives no warranties or representations and where it is stated that a *transaction party* warrants something that means the *transaction party* both warrants and represents that thing.

105 Definitions

In the *facility agreement* words in italics have the following meanings, except to the extent the context requires that they not be given that meaning.

Account means an existing or future right to receive payment for *goods* sold or *services* performed by the *client* under any name or style, including interest, charges, costs, taxes, duties and all other amounts recoverable from the *customer* whether under a *sale agreement* or otherwise. It includes an account as defined in section 10 of the *PPSA*. It also includes all legal and other remedies for the recovery of any of those amounts and any rights the *client* or ScotPac may have against the *customer* for restitutory relief.

Accounts availability means the amount determined in accordance with clause 4.2.

Actual calculation event means:

- (a) a *default event* is continuing or there is a *review event* or a *potential default event*,
- (b) the *client* has failed to deliver the *facility base pack* to ScotPac in accordance with clause 5.1. There will cease to be an *actual calculation event* for this reason on the first *working day* of the *month* following the provision of a *facility base pack* in accordance with clause 5.1;
- (c) there is a material deterioration in the *transferred accounts* (taken together) as shown by such things as a material deterioration in the debt turn, the *customer* spread or the credit standing of the *customers*; or

- (d) there is a material deterioration in the *inventory* (taken together) as shown by such things as the *inventory* being obsolete or damaged or being less likely to be able to be sold in the ordinary course of business.

Additional payment is a payment which ScotPac makes under clause 17. It is payable subject to the terms of the *facility agreement*. The *transferred account* is transferred to ScotPac in consideration of ScotPac's agreement to pay the *purchase price* not the *additional payment*.

ADI and ADI account have the same meaning as in the *PPSA*. A bank operating in Australia will be an *ADI* and most accounts with a bank will be an *ADI account*.

Aged receivables report is a report of *accounts* in a form and providing the details ScotPac, acting reasonably, requires to be provided by the *client* to ScotPac as part of the *facility base pack* in accordance with clause 5.2(a).

Amount owing, at any time and without double counting, means:

- (a) all money owed or expressed to be owed (whether actually, contingently or prospectively) by the *client* (whether alone or with any other *entity*) to ScotPac or an *entity* which is *related* to ScotPac pursuant to a *transaction document* or any other document or on any other basis;
- (b) all money remaining unpaid by the *client* in any capacity (whether alone or with any other *entity*) to ScotPac or an *entity* which is *related* to ScotPac pursuant to a *transaction document* or any other document or on any other basis;
- (c) claims for damages (liquidated or unliquidated) by ScotPac or an *entity* which is *related* to ScotPac pursuant to a *transaction document* or any other document or on any other basis; and
- (d) all money which is secured money as defined in the *general security deed* or any *land mortgage*.

Asset realisation reserve, at any time, is the total of the following amounts.

- (a) An amount which is the total of all liabilities which the *client* or ScotPac may have in connection with any *account* (such as any risk ScotPac may have to repay any *collection*) and, without double counting, the total of amounts which ScotPac sets to reflect concerns ScotPac may have in relation to *eligible accounts* (such as anything which could affect an *eligible account* being paid by its *recourse date*). The inclusion of an amount in the *asset realisation reserve* might result in ScotPac deciding that an *account* can be categorised as an *eligible account* rather than an *ineligible account*.
- (b) If the asset based facility has an inventory asset component, an amount which would be the amount by which the total value of *eligible inventory* could be reduced if the *client* became *insolvent*.

ScotPac can change the reserve at any time. When it sets or changes the reserve ScotPac will act reasonably and to the extent necessary to protect its legitimate interests. It will have regard to the information the *client* discloses.

Associate includes an *associated company*, and any partner, director, shareholder or employee of the *client* or any of its *associated companies*. It also includes any relative (as defined in the Corporations Act 2001) of the *client* or any of those persons, a nominee or trustee for the *client* or any of those persons, the manager or trustee of any trust that is *related* to the *client*, and the trustee of a discretionary trust of which the *client* or any of the other persons referred to in this definition is a beneficiary.

Associated company means a *corporation* which is a *subsidiary* of the *client*, of which the *client* is a *subsidiary*, to which the *client* is *related*, which has control of the *client*, which is controlled by the *client* or which is controlled by an *entity* which also controls the *client*. Control and controlled include both direct and indirect control. Control includes the capacity to influence or determine the outcome of decisions about financial and operating policies. A *corporation* is also an *associated company* if it holds, directly or indirectly, voting shares that are more than 5% of the *client's* issued share capital; or if the *client* holds, directly or indirectly, voting shares that are more than 5% of its issued share capital. A *corporation* is also an *associated company* if any of those conditions applied at any time during the previous financial year.

Authorised officers:

- (a) in relation to ScotPac, means each of ScotPac's directors and company secretaries; each person who is employed by ScotPac or an *entity* which is *related* to ScotPac whose title includes "director", "manager", "assistant manager", "company secretary" or "accountant"; each person authorised to act under a power of attorney given by ScotPac; each lawyer who acts for ScotPac, including its in-house lawyers; and each person ScotPac has decided is an authorised officer; and
- (b) in relation to a *transaction party*, means each of its directors and company secretaries; each person who is employed by the *transaction party* or an *entity* which is *related* to the *transaction party* whose title includes "director", "manager", "assistant manager", "company secretary" or "accountant"; each person who claims to be one of those employees; and each person authorised under clause 62.2.

Availability means the amount which the *client* can, subject to the *facility agreement*, ask ScotPac to pay. It is determined in accordance with clause 4.1. Clause 46.2 explains how the *availability* will be recorded.

Book value:

- (a) in relation to an *account*, at any time, means the gross amount charged to the *customer* (including GST and any other tax or charge); and
- (b) in relation to *inventory*, at any time, means the value of the *inventory*. It is determined and recorded as outlined in clause 7.2(b).

Calculation time, in relation to a *facility base pack*, *facility base certificate* or *compliance certificate*, means close of business on the last day of the *month* preceding the *month* in which the *facility base pack*, *facility base certificate* or *compliance certificate* is delivered.

Certificate period, in relation to a *facility base certificate*, means the period from the 15th day of the *month* in which the certificate is issued to the 14th day of the following *month* (both inclusive).

Cleared funds means immediately available funds which ScotPac can deal with as the absolute owner free of any *security interest* or claim and which ScotPac, acting reasonably, is satisfied will not have to be repaid. For example, if the funds are paid by cheque, the cheque has been paid into the *nominated account* and all cheque clearance processes have been completed.

Client means the *entity* named in the *letter of offer* as the client and each *entity* that agrees at any time to be a *client*.

Client platform means the internet based facility provided by ScotPac to which the *client* is given access.

Collections, in relation to an *account*, means all proceeds of the *account* and all currency, negotiable instruments, other instruments, letters of credit, electronic fund transfers and any other proceeds, remittances or instruments of payment in any form which are a payment of the *account*. It includes all proceeds of chattel paper which evidences the *account*.

Commencement date means the date specified in the *letter of offer*. It is that date even if ScotPac provides its first payment under the *facility agreement* on a later date. As stated in clause 92.2 it will be completed by ScotPac. If the date is not completed, it will be the date ScotPac records on the *client platform* as the start date of the asset based facility provided under the *facility agreement* and if there are two or more of those start dates it is the earliest of them.

Compliance certificate means the certificate to be provided by the *client* to ScotPac as part of the *facility base pack* in accordance with clause 5.2(f).

Corporation means a corporation as defined in the Corporations Act 2001.

Credit note means an adjustment note and any other document or undertaking which reduces the amount payable by the *customer*.

Customer means the *entity* who is liable, or who should be liable, to pay an *account*.

Default event means any event or circumstance listed or referred to in clause 68.2.

Delayed transferred account – an *account* is a *delayed transferred account* if clause 14.2 applies, it is the proceeds of inventory (as defined in the *PPSA*) and an *entity* has a perfected *PMSI* in it which perfected *PMSI* was either perfected before the *first registration time* or has a registration time which is earlier than the *first registration time*.

Delayed transfer time, in relation to a *delayed transferred account*, means the registration time applicable to the registration of ScotPac's *security interest* created by the *facility agreement* (as distinct from the *security interest* arising (otherwise than by an absolute transfer) under the *general security deed*) in that *delayed transferred account*. There will only be a *delayed transfer time* if clause 14.2 applies. If there is a *delayed transfer time* it will be at least fifteen business days after ScotPac served a notice under section 64(1)(b) of the *PPSA* in relation to that *delayed transferred account*, unless ScotPac decides it should be another time.

Designated equipment means specified plant and equipment for which the *client* makes a request in accordance with clause 34.1, ScotPac accepts the request and the requirements in clause 34.2 are satisfied. Where the context requires it means the specified plant and equipment which is the subject of a request. It includes the following.

- (a) Any property (even if it is not an accession) that is installed in, or affixed to, the specified plant and equipment.
- (b) Any plant and equipment or other property the *client* or the *grantor* acquires in replacement or substitution for the specified plant and equipment.

- (c) Any property the *client* or the *grantor* acquires as additional parts for the specified plant and equipment. This includes spare parts which could be used to replace components of the specified plant and equipment or other property.
- (d) Any interest in the specified plant and equipment or in any of the other things described above.

In clauses 37, 39.1(h), 39.1(i), 39.1(j), 39.1(k), 39.2, 53.2, 54, 70.2 and 99.1 each reference to *designated equipment* includes everything that is the subject of a *security interest* under 37.1.

Designated equipment schedule means a schedule mentioned in clause 34.1.

Designated land means the specified land for which the *client* makes a request in accordance with clause 41.1, ScotPac accepts the request and the requirements in clause 41.2 are satisfied. Where the context requires it means the specified land which is the subject of a request.

Designated land schedule means a schedule mentioned in clause 41.1.

Early payment percentage means the early payment percentage specified in the *letter of offer*, as changed in accordance with a provision of the *facility agreement*. In particular, see clauses 65.4, 65.5, 65.6, 69.1 and 69.5(c).

Eligible account means an *account* which is not an *ineligible account*.

Eligible inventory means *inventory* which is not *ineligible inventory*.

Employee entitlement reserve is an amount which ScotPac considers reflects the entitlements as defined in section 596AA(2) of the Corporations Act in relation to the *client*. When ScotPac determines that amount it will act reasonably and will consider the *client's* monthly management accounts and other information available to ScotPac. If ScotPac makes a change it will promptly tell the *client*.

Entity includes an individual, firm, partnership, joint venture, society, unincorporated body, trust (in each case irrespective of whether it has separate legal personality), a *corporation* and any other legal entity under any law.

Equipment availability means the amount determined in accordance with clause 4.4.

Equipment value means the value of *designated equipment* determined in accordance with clauses 8.3 and 36.

Facility agreement means this document as amended and supplemented by the *letter of offer*. It can also mean the agreement between ScotPac, the *client*, any *guarantor*, any *related lender* and any *related landlord* the terms of which are found in this document as amended and supplemented by the *letter of offer*. It means those documents as they may be changed, including a change which is made in accordance with clauses 65 or 66. If there is any inconsistency between this document and the *letter of offer*, the *letter of offer* will prevail to the extent of the inconsistency.

Facility amount owing means an *amount owing* which is money owed, expressed to be owed or remaining unpaid by the *client* to ScotPac pursuant to the *facility agreement*.

Facility base certificate means a certificate mentioned in clause 6.1 in the form ScotPac, acting reasonably, provides to the *client*.

Facility base pack means the information and reports specified in clause 5.2 to be delivered by the *client* to ScotPac in accordance with clause 5.1.

Facility limit means the facility limit specified in the *letter of offer*, as changed in accordance with a provision of the *facility agreement*. In particular, see clauses 65.4 and 71.1(a).

Financial indebtedness means any *obligation* or accommodation in respect of money borrowed or raised, or any other financial accommodation of any kind. The *obligation* or accommodation may be present or future.

First registration time is the registration time applicable to the registration of ScotPac's *security interest* created by the *facility agreement* in *transferred accounts* which are not *delayed transferred accounts*. If clause 14.3 applies there are no *delayed transferred accounts* so the *first registration time* would be the registration time of ScotPac's *security interest* created by the *facility agreement* in all *transferred accounts*.

Funds in use means the amount determined in accordance with clause 9.1.

General reserve, at any time, is an amount agreed between ScotPac and the *client*. For example, if ScotPac agrees to procure the issue of a bank guarantee, a reserve could be set as security for ScotPac's contingent liability in connection with the bank guarantee. ScotPac can change the reserve at any time. When it changes the reserve ScotPac will act reasonably and to the extent necessary to protect its legitimate interests. It will have regard to the information the *client* discloses.

General security deed means all and any one or more of the documents (other than the *facility agreement*) pursuant to which any *client* and/or any *guarantor* at any time gives a *security interest* in favour of ScotPac.

Goods, in relation to an *account*, means the property (including rights and produce) sold, or which should have been sold, by the *client* to the *customer*, the sale of which gave rise to, or should have given rise to, the *account*.

Grantor means each *entity* that grants a *security interest* pursuant to the *general security deed*. In connection with any plant and equipment which is *designated equipment* the *grantor* will be either the *client* or a *guarantor*.

GST means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the *GST Act* and any other goods or services tax, value added tax or similar tax and any related penalties and interest.

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

Guarantee means a guarantee, indemnity, *guarantee* and indemnity (including the one in clause 73), letter of credit, legally binding letter of comfort or suretyship, or any other similar obligation (including an irrevocable offer) of any kind at all, whatever its nature or title. The *entity* providing the *guarantee* must be liable for the *financial indebtedness* of another although the *guarantee* can also extend to other *obligations*.

Guaranteed money, at any time in relation to a *guarantor* and without double counting, means:

- (a) all money owed or expressed to be owed (whether actually, contingently or prospectively) by any *transaction party* (other than that *guarantor*), whether alone or with any other *entity*, to ScotPac or an *entity* which is *related* to ScotPac pursuant to a *transaction document* or any other document or on any other basis;
- (b) all money remaining unpaid by any *transaction party* (other than that *guarantor*) in any capacity, whether alone or with any other *entity*, to ScotPac or an *entity* which is *related* to ScotPac pursuant to a *transaction document* or any other document or on any other basis;
- (c) claims for damages (liquidated or unliquidated) by ScotPac or an *entity* which is *related* to ScotPac pursuant to a *transaction document* or any other document or on any other basis; and
- (d) all money which is secured money as defined in the *general security deed* executed by the *guarantor* or any *land mortgage* executed by the *guarantor*.

Guaranteed obligations, in relation to a *guarantor*, means any *obligations* of a *transaction party* (other than that *guarantor*) to ScotPac or an *entity* which is *related* to ScotPac at any time under a *transaction document* or any other document or on any other basis, other than the obligation to pay the *guaranteed money*.

Guarantor means the *entity* named in the *letter of offer* as the guarantor and each *entity* that at any time gives or agrees to give a *guarantee* in favour of ScotPac or any *entity* which is *related* to ScotPac.

Ineligible account – an *account* (or the relevant part of it) is an *ineligible account* if any of the circumstances specified in clause 18.2 apply.

Ineligible inventory means *inventory*:

- (a) which is subject to a *security interest*, other than a *permitted interest*;
- (b) which is not located on a site specified in the *inventory schedule*;
- (c) which is not located on a site where an agreement in a form and content acceptable to ScotPac has been provided to ScotPac by the owner and sole occupier (if it is not the *client*, a *guarantor* or the *related landlord*) and any freehold mortgagee;
- (d) which is located on a site where the aggregate value of the *inventory* on that site is less than A\$100,000;
- (e) which is not covered by insurance that satisfies the requirements in clause 54;
- (f) which is obsolete. This includes *inventory* which is not readily saleable in its current form, shop worn or unfit for further processing, or is not of good and merchantable quality free from defect. It also includes *inventory* which ScotPac has told the *client* is, in ScotPac's reasonable credit judgement, obsolete;
- (g) which is damaged;
- (h) which does not meet all standards imposed by any government authority, including relating to its production, acquisition or importation;
- (i) which is held by the *client* on consignment or placed by the *client* on consignment;

- (j) which is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement or right or requires the consent of any person for completion, manufacture or sale;
- (k) which ScotPac has told the *client* is unacceptable to ScotPac in its reasonable credit judgement;
- (l) which does not consist of raw materials or finished goods;
- (m) which is work in progress, perishable goods, grain or other crops, livestock or stock in transit;
- (n) which is manufactured to the unique specifications of the *client's* customer, unless it can be sold to a broader market;
- (o) which carries the branding of the *client's* customer;
- (p) which is packaging, unless it is saleable in its current form;
- (q) which is held for rental or lease by or on behalf of the *client*; or
- (r) which in any way fails to meet or violates any warranty or requirement in the *facility agreement*.

Information connection means the service by which information is received by ScotPac from the *client* or a *guarantor* either directly or via a service provider. The information which can be received using the *information connection* is described in clauses 15.1, 15.2, 59.4 and 59.5. Clause 59.4 includes requirements for establishing and using the *information connection*. The *information connection* can be provided using the *client platform*.

Insolvent, in relation to an *entity*, means:

- (a) any of the following has occurred or occurs in relation to that *entity* if it is a *corporation*:
 - (i) an application is made, proceedings are initiated or a meeting (whether of shareholders, creditors or directors) is called with a view to winding up the *entity* or placing it or any part of its undertakings under administration;
 - (ii) a *receiver*, liquidator, provisional liquidator, controller or administrator is appointed to the *entity* or any of its assets or it is a Chapter 5 body corporate as defined in section 9 of the Corporations Act 2001;
 - (iii) a compromise or arrangement of the kind referred to in Part 5.1 of the Corporations Act 2001 is proposed;
 - (iv) the *entity* is or becomes deregistered, or an application is made or an action is initiated with a view to cancelling its registration or appointing an inspector or other officer to investigate any of its affairs pursuant to any law;
 - (v) the *entity* is, admits, or may be deemed or presumed within the meaning of any applicable law to be, insolvent or unable to pay its debts;
 - (vi) the *entity* has stopped or suspended payment of its debts; or
 - (vii) circumstances exist which would enable a court upon application to order the *entity's* winding up pursuant to section 461 of the Corporations Act 2001;
- (b) any of the following has occurred or occurs in relation to that *entity* if the *entity* is an individual:
 - (i) he or she is an insolvent under administration as defined in section 9 of the Corporations Act 2001, or a *receiver* is appointed to any of his or her assets;
 - (ii) he or she is, or may be deemed or presumed within the meaning of any applicable law to be, insolvent or unable to pay his or her debts;
 - (iii) he or she has stopped or suspended payment of his or her debts; or
 - (iv) he or she dies, is of unsound mind or becomes incapable of managing his or her own affairs; and
- (c) the occurrence of any event analogous to or having a similar effect to any of the events described in paragraphs (a) or (b) under the laws of any relevant jurisdiction.

Inventory means raw materials and finished goods (personal property) to which the *client* has rights, or the power to transfer rights, in that personal property to ScotPac, irrespective of whether that personal property is used by, or is in the possession of, the *client* or the *client* has title to that personal property. An item is not *inventory* whilst it is being manufactured, processed or assembled. When an item is sold to give rise to an *account* that item ceases to be *inventory* and becomes a *good*.

Inventory advance rate means the percentage specified in the *letter of offer*, as changed in accordance with a provision of the *facility agreement*. In particular, see clauses 65.4, 65.5, 69.1 and 69.5(c).

Inventory availability means the amount determined in accordance with clauses 4.3 and 29.2.

Inventory report is a report of *inventory* in a form and providing the details ScotPac, acting reasonably, requires. It is provided by the *client* to ScotPac as part of the *facility base pack* in accordance with clause 5.2(d).

Inventory schedule means a schedule mentioned in clause 29.2(g) as updated in accordance with clause 32.1(o).

Inventory value means the value of *inventory* determined in accordance with clauses 8.2 and 30.

Invoice, in relation to an *account*, means the sale invoice from the *client* to the *customer* which evidences that *account*. It should specify the *goods* sold or *services* performed for which the *customer* is obliged to pay and the terms of payment. Alternatively, it means the recipient created tax invoice which evidences the *account*. It also means any other information which ScotPac and the *client* agree (including by a course of conduct) should be treated as an invoice. It may be in hard copy or electronic form.

Land advance rate means the percentage specified in the *letter of offer* as the land advance rate, as changed in accordance with a provision of the *facility agreement*. In particular, see clauses 65.4, 65.5, 69.1 and 69.5(c).

Land availability means the amount determined in accordance with clause 4.5.

Land mortgage means all and any one or more of the freehold mortgages granted by any *mortgagor* in favour of ScotPac at any time over any *designated land*.

Land value means the value of *designated land* determined in accordance with clauses 8.4 and 43.

Letter of offer means the letter or similar document ScotPac, or someone with the approval of ScotPac, sends to the *client* containing an offer to provide an asset based facility to the *client*. It may also offer to provide other facilities. The *letter of offer* refers to this document. The *letter of offer* may change this document.

Loss includes any liability, expense, loss (including consequential and economic loss), damage, cost or charge.

Materiality assessment default event means any event or circumstance described as a materiality assessment default event in clause 68.2.

Material risk, in relation to a *materiality assessment default event*, means all or any one or more of the following.

- (a) The event or circumstance which resulted in the *materiality assessment default event* is by its nature material.
- (b) ScotPac reasonably considers that the event or circumstance which resulted in the *materiality assessment default event* has had, or is likely to have, a material impact on:
 - (i) a *transaction party's* ability to meet its financial obligations to ScotPac or on ScotPac's ability to recover any *amount owing* from the *client* or any *guaranteed money* from any *guarantor*;
 - (ii) the transfer of *accounts* in accordance with clause 14; or
 - (iii) ScotPac's credit or security risks, or on ScotPac's ability to assess those risks. This includes a material impact on ScotPac's ability to enforce its rights against *property* which is subject to a *security interest* arising under a *transaction document* or a material impact on the value of any *property* which is subject to a *security interest* arising under a *transaction document*.
- (c) ScotPac reasonably considers that the event or circumstance which resulted in the *materiality assessment default event* has had, or is likely to have, a material impact on ScotPac's legal or reputational risk where:
 - (i) ScotPac believes on reasonable grounds that a *transaction party* has not complied with a material law or any material requirement of a statutory authority;
 - (ii) it has become unlawful for ScotPac or a *transaction party* to continue with the asset based facility or any asset component of it; or
 - (iii) a *transaction party* has given ScotPac information or makes a warranty which is materially incorrect or misleading (including by omission).

Month means calendar month.

Mortgagor means each *entity* that grants a *security interest* pursuant to a *land mortgage*. In connection with any land which is *designated land* the *mortgagor* will be either the *client* or a *guarantor*.

Nominated account means an *ADI account* specified by ScotPac. It will, at the choice of ScotPac, be in ScotPac's name or in the *client's* name. ScotPac may specify a replacement *ADI account*.

Obligations includes actual, contingent and prospective obligations, including warranties.

Operations office means ScotPac's operations office specified in the *letter of offer* or any substitute address which ScotPac specifies.

P&E advance rate means the percentage specified in the *letter of offer* as the P&E advance rate, as changed in accordance with a provision of the *facility agreement*. In particular, see clauses 65.4, 65.5, 69.1 and 69.5(c).

Permitted financial indebtedness means:

- (a) any *financial indebtedness* owed by the *client* to ScotPac or an *entity* which is *related* to ScotPac;
- (b) the *subordinated debt*, so long as the principal amount does not exceed the subordinated debt amount specified in the *letter of offer*; and
- (c) any other *financial indebtedness* incurred with the consent of ScotPac.

Permitted interest means:

- (a) a *security interest*, transfer or dealing which ScotPac has approved; a *security interest* in favour of ScotPac or an *entity* which is *related* to ScotPac; and a charge or lien arising in favour of a government department or agency by operation of statute (other than the *PPSA*) or a lien arising in the ordinary course of business in favour of a mechanic or similar person, unless there is a default in payment of money secured by that charge or lien;
- (b) in the case of the *client*, a *security interest* in favour of a *supplier* so long as it is a perfected *PMSI* in inventory (as defined in the *PPSA*) and accounts (as defined in the *PPSA*) and other proceeds of the inventory, it has been disclosed to ScotPac and the obligation it secures is discharged when due. To the extent it is in inventory the *PMSI* must be perfected by registration on the *PPSR* and the inventory must not be *designated equipment*. To the extent it is in accounts or other proceeds it must be:
 - (i) subordinated to ScotPac's *security interest* to ScotPac's satisfaction;
 - (ii) in a *delayed transferred account* and the *delayed transfer time* must not have occurred; or
 - (iii) in the new value mentioned in section 64(1) of the *PPSA*; and
- (c) in the case of a *guarantor*, a *security interest* which is a perfected *PMSI* which arose in the ordinary course of the *guarantor's* ordinary business, so long as the collateral is not *designated equipment* and the obligation which it secures is discharged when due.

PMSI means a purchase money security interest as defined in section 14 of the *PPSA*.

Potential default event means anything which, with the passing of time or the giving of notice, could become a *default event*.

PPSA means Personal Property Securities Act 2009.

PPSR means the Personal Property Securities Register established under the *PPSA*.

Premises means the *client's* business premises described in the *letter of offer* or substitute premises approved by ScotPac. In clause 81 it also means land and buildings owned or occupied by the *related landlord*.

Prevailing rate, on any day, means an annual percentage (calculated on the basis of a 365 day year) which is determined as follows.

- (a) It will be the annual percentage which is equal to the sum of the prevailing rate (calculation basis) specified in the *letter of offer* which applies on that day, the prevailing rate (margin) specified in the *letter of offer* and 4%. Any discount charge or interest payable by a *transaction party* will be determined in that way.
- (b) However, if ScotPac is satisfied that on that day all money due to be paid by a *transaction party* under a *transaction document* has been paid, a *default event* is not continuing and the *availability* is zero or a positive amount ScotPac will apply another rate. The *prevailing rate* will be the rate which it decides is equal to the sum of the prevailing rate (calculation basis) specified in the *letter of offer* which applies on that day and the prevailing rate (margin) specified in the *letter of offer* and ScotPac will accept the discount charge or interest determined in that way in full satisfaction of the discount charge or interest determined in accordance with paragraph (a).

- (c) If the *prevailing rate* cannot be determined using the prevailing rate (calculation basis) specified in the *letter of offer* it will be determined by ScotPac in good faith using the rate it considers would most nearly approximate the prevailing rate (calculation basis).
- (d) If the prevailing rate (calculation basis) is a negative percentage it will be considered to be zero.

Priority lender amount, at any time, means the principal amount owing to an *entity* holding a *security interest* in the *designated land* which has priority over ScotPac's *security interest*. That principal amount will be the principal amount specified in a priority deed between ScotPac and the other *entity* to which the other *entity* has priority. If a principal amount owing to the other *entity* is not specified in a priority deed the *priority lender amount* will be the principal amount to which the other *entity* has priority. If there are two or more *entities* holding a *security interest* of that type the *priority lender amount* is the total of those principal amounts.

Property means all present and after-acquired property, including land, fixtures, rights, entitlements, authorities, personal property (as defined in section 10 of the *PPSA*), *PPSA* retention of title property (as defined in section 51F of the Corporations Act 2001) and rights and interests conferred by the *PPSA*.

Purchase agreement means an agreement, in any form and whether express, implied, oral or written, entered into by the *client* for the purchase of *inventory*.

Purchase price means the price (ie new value) payable by ScotPac for a *transferred account* calculated in accordance with clause 16. It is payable subject to the terms of the *facility agreement*.

Receiver means receiver, manager and receiver and manager.

Recourse date, in relation to an *account*, means the day which is the number of days specified in the *letter of offer* as being the period for calculation of the recourse date (or a longer period ScotPac specifies) from the end of the *month* in which the *account* arose. If, in relation to a particular *account*, ScotPac gives approval for the time for payment to be extended (see clause 22.1(d)) the *recourse date* for that *account* is the deferred date.

Related, in relation to an *entity*, means a related body corporate within the meaning of section 50 of the Corporations Act 2001, but on the basis that "subsidiary" has the meaning given below and "body corporate" includes any *entity*.

Related landlord means the *entity* named in the *letter of offer* as the related landlord and each *entity* that agrees at any time to be a *related landlord*.

Related lender means the *entity* named in the *letter of offer* as the related lender and each *entity* that agrees at any time to be a *related lender*.

Related rights, in relation to an *account*, means:

- (a) all of the *client's* rights under a *sale agreement* (without any obligation on ScotPac to complete the *sale agreement*). Those rights include the *client's* rights under a *PMSI*, including the new value and the proceeds mentioned in section 64(3) of the *PPSA*;
- (b) the benefit of all insurances, securities (including all *security interests*), guarantees and indemnities given to or held by the *client*;
- (c) all of the *client's* rights to claim, prove and vote in the winding up or bankruptcy of the *customer*;
- (d) all negotiable instruments, other instruments, performance bonds, letters of credit and other undertakings held by or available to the *client*;
- (e) all of the *client's* rights to and interest in any chattel paper, ledgers, books, statements, records, computer or electronic data, materials or documents recording or evidencing the *account*, the terms of the *sale agreement* or performance of the *sale agreement*;
- (f) all of the *client's* rights to and interest in any evidence of the delivery and acceptance of *goods* or performance of *services*;
- (g) any right to stop the delivery of *goods* which are in transit; and
- (h) any *goods* returned or rejected by the *customer* or repossessed by the *client* and the *client's* right to retain ownership of the *goods*. Those *goods* include those in which ScotPac has a deemed goods security interest under section 38 of the *PPSA*.

It includes all documents, agreements and electronic records which evidence or record any of the above. However, in clause 14.4 *related right* does not include an interest in specific goods or accessions to specific goods which interest would have been an element of chattel paper and accordingly an interest in those goods or accessions is not transferred to ScotPac.

Review event means any of the following events or circumstances.

- (a) If the asset based facility has an inventory asset component, the inventory turn in relation to any twelve *month* period is less than three. "Inventory turn" is the result obtained by dividing the average gross inventory balance in that twelve *month* period by the cost of goods sold during that period, rounded up to the nearest two decimal places.
- (b) ScotPac, acting reasonably, has concerns that the information provided under clause 15 may be incorrect in any material respect or that there has been a material deterioration in the *accounts* (taken together) (as shown by such things as the debt turn, *customer* spread and the credit standing of the *customers*) from that which applied on the *commencement date*.
- (c) An *entity* has a *PMSI* in a *transferred account* and it has taken any step to enforce the *security interest* which it has in new value by virtue of section 64(3) of the *PPSA*.
- (d) The *client* or the *guarantor* or, if it is a *corporation*, any director or beneficial owner of the *client* or *guarantor*, is being investigated in respect of a serious criminal offence (using the meaning in clause 68.2(t)).
- (e) Any *director* of the *client* or the *guarantor* is being investigated in respect of an offence which, if convicted, would result in their automatic disqualification under section 206B of the Corporations Act 2001 or any director of the *client* or the *guarantor* is given a notice by the Australian Securities and Investments Commission under sections 206F or 206GAA of the Corporations Act 2001 requiring them to demonstrate why they should not be disqualified.

Sale agreement means an agreement, in any form and whether express, implied, oral or written, entered into by the *client* for the sale of *goods* or performance of *services*.

Scaled land value is the scaled land value of *designated land* as determined in accordance with clause 4.5.

Security interest includes any kind of oral or written mortgage, pledge, lien, charge, encumbrance, hypothecation, security interest (including as defined in section 12 of the *PPSA*), preferential interest or any other arrangement having substantially the same economic effect; any entitlement under a trust or other right of, or arrangement with, a creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset; and an interest (other than a security interest as defined in section 12 of the *PPSA*) held by any *entity* which could at any time, in any circumstance and to any extent, have priority over a *security interest* held by ScotPac.

Senior debt means the *obligations* of the *subordinated borrower* to ScotPac under a *transaction document*.

Services, in relation to an *account*, means the services performed, work done or right granted, or which should have been performed, done or granted, by the *client* for the *customer*, which gave rise to, or should have given rise to, the *account*. It includes the leasing or hiring of *property* by the *client* to the *customer*.

Sole owner means sole beneficial owner or sole owner as trustee of a trust specified in the *letter of offer*.

Subordinated borrower means the *entity* named in the *letter of offer* as the subordinated borrower and each *entity* that at any time agrees to be a *subordinated borrower*.

Subordinated debt means all money owing (whether actually, contingently or prospectively) by the *subordinated borrower* to the *related lender* from time to time, including any accrued interest. It includes any principal amount which is specified in the *letter of offer* as being the subordinated debt amount.

Subsidiary, in relation to an *entity*, means a subsidiary within the meaning of section 46 of the Corporations Act 2001. However, an *entity* is also a *subsidiary* of an *entity* if it is controlled directly or indirectly by that *entity* and for this purpose control includes the capacity to influence or determine the outcome of decisions about financial and operating policies of the *entity*. In addition, a trust may be a *subsidiary* (in which case, a unit or other beneficial interest or being a member of the class of potential beneficiaries is to be regarded as a share) and an *entity* may be a *subsidiary* of a trust if it would have been a *subsidiary* if that trust were a *corporation*.

Supplier means an *entity* which supplies *inventory*, *goods*, materials which may become *inventory* or *goods*, or materials which may be incorporated into *inventory* or *goods* to the *client*.

Supplier PMSI reserve, at any time, is the total amount owed to *suppliers* which have supplied *inventory* or a lesser amount as determined by ScotPac.

Trade documents means all drafts, bills, negotiable instruments, documents of title, transportation documents, insurance policies and other insurance documents, documents relating to *inventory* or *goods*, airway bills, bills of lading, freight bills, other shipping documents, certificates of origin, certificates issued by any customs authority, certificates of currency of marine cargo or other insurance, assessment or consignment notices, export bills, storage receipts, warehouse receipts and irrevocable letters of credit. It includes a document which is in an electronic form.

Transaction document, at any time, means all and any one or more of the following entered into at that time.

- (a) The *facility agreement*.
- (b) Any document creating a *security interest* in favour of ScotPac or any *entity* which is *related* to ScotPac in connection with *obligations* of all or any one or more of the *client* and the *guarantor* under the *facility agreement*, even if it also creates a *security interest* in connection with other *obligations*.
- (c) Any document creating a *guarantee* in favour of ScotPac or any *entity* which is *related* to ScotPac in connection with *obligations* of all or any one or more of the *client* and the *guarantor* under the *facility agreement*, even if it also creates a *guarantee* in connection with other *obligations*.
- (d) Any document to which ScotPac or any *entity* which is *related* to ScotPac is a party which establishes the ranking of *security interests* referred to in paragraph (b).
- (e) Any confirmation provided by an owner, occupier or freehold mortgagee which, amongst other things, gives ScotPac the right to enter the *premises*, a site mentioned in clauses 31.1(e) or 38.1(f), or any other property.
- (f) Any other document, letter or instrument entered into between a *transaction party* (with or without other *entities*) and ScotPac or any *entity* which is *related* to ScotPac or granted by a *transaction party* (with or without other *entities*) in favour of ScotPac or any *entity* which is *related* to ScotPac.
- (g) Any document which ScotPac and the *client* agree is a *transaction document*.

Transaction party, at any time, means all and any one or more of the following at that time.

- (a) The *client*.
- (b) The *guarantor*.
- (c) The *related lender*.
- (d) The *related landlord*.
- (e) An *entity* which has given, or should have given or gives, a *security interest* in favour of ScotPac or any *entity* which is *related* to ScotPac in connection with *obligations* of all or any one or more of the *client* and the *guarantor* under the *facility agreement*, even if it also creates a *security interest* in connection with other *obligations*.
- (f) An *entity* which has entered, or should have entered or enters, into a document creating a *guarantee* in favour of ScotPac or any *entity* which is *related* to ScotPac in connection with *obligations* of all or any one or more of the *client* and the *guarantor* under the *facility agreement*, even if it also creates a *guarantee* in connection with other *obligations*.

Transferred account means an *account* which is transferred to ScotPac in accordance with clauses 14.2 or 14.3. It also includes all *collections* and *related rights* pertaining to the *account*.

Valuation adjustment event means any of the following events or circumstances.

- (a) A *review event*, a *potential default event* or a *default event* occurs.
- (b) If the asset based facility has an inventory asset component, there is a material deterioration in the condition, quality or saleability of the *inventory*.
- (c) If the asset based facility has a plant and equipment asset component, there is a material deterioration in the condition, quality or saleability of the *designated equipment*.

Working day means a day, other than a Saturday, Sunday or public holiday, ScotPac's *operations office* is open for business. A *working day* is not necessarily the same as a business day for the purposes of the *PPSA* – see clause 106. A reference to “day” means any day.

106 Important PPSA words

In the *facility agreement* the following terms have the meaning in the specified section of the *PPSA*, except to the extent the context requires that they not be given that meaning.

Attaches – section 19. **Attachment** occurs when a *security interest* attaches to collateral.

Accession – section 10.

Australian entity – section 10.

Business day – section 10.

Chattel paper – section 10.

Collateral – section 10.

Currency – section 10.

Financing change statement – section 10.

Financing statement – section 10.

Negotiable instrument – section 10.

New value – section 10.

Perfectured – sections 21 and 22.

Proceeds – section 31.

Registration time – section 10.

Verification statement – section 155.

107 Different versions of this document

ScotPac may issue revised versions of this document. The version which applies to the *transaction parties* is specified in the *letter of offer*, although this may change in accordance with clauses 65 or 66.1.

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