

more  
than  
money



*Business Lending*

## **GENERAL TERMS**

Effective 16 October 2017

## 1. What to read

These Business Lending General Terms apply to all Facilities you have with us. They should be read with your Business Letter of Offer which lists the Facilities we are offering you. For each Facility the letter will include:

- Facility Details (such as the purpose, pricing, limits, expiry date and key financial terms); and
- Specific Conditions (these govern the use of that type of Facility, together with these Business Lending General Terms).

The Facility Details and Specific Conditions may make changes to how these Business Lending General Terms apply to a Facility.

## 2. How we will work with you

### Our promise to you

We will act reasonably and fairly towards you, taking into account your and our respective business interests. That includes whenever we are:

- considering any request you make; or
- deciding whether to give our consent or to exercise a right, discretion or remedy; or
- setting any conditions for doing any of those things.

It's worth noting that even if we don't make a decision or do something straight away, we may still do so later on. This includes where we delay or defer doing so, or we temporarily waive a requirement.

### Our commitment to good banking practices

Doing the right thing is important to us. That's why we follow a voluntary set of rules for banks on the best banking practice standards called the Code of Banking Practice. This Code applies to our relationship with you if you are an individual or a small business customer (as defined by that Code).

You can obtain from us, on request:

- information on our current rates and standard fees and charges relating to the Facilities;
- general descriptive information concerning our banking services (including about cheques, account opening procedures, bank cheques, our confidentiality obligations and complaint handling procedures) and concerning the importance of reading the terms and conditions for each banking service we provide to you and informing us promptly when you are in financial difficulty;
- general descriptive information about the identification requirements of the Anti-Money Laundering & Counter Terrorism Financing Act 2006 and the options available to you under the tax file number legislation; and
- a copy of the Code of Banking Practice.

To find out more about the Code, visit [nab.com.au](http://nab.com.au) and look up "Code of Banking Practice".

## 3. Getting started

Before you can use any Facility we will need the following (unless we've told you otherwise):

- a properly accepted Business Letter of Offer (it may be electronically signed);
- all Security specified in the Business Letter of Offer, satisfactory to us, with original title documents and anything else we need to register the Security and have it as first ranking security;

Interest at the applicable Default Interest Rate is charged to you on the last Business Day of each month and on the Final Repayment Date for each of your Facilities. Unless paid when charged, the interest will be debited to an account you have with us or added to the Facility Amount Owning. This could mean you have to pay interest on any unpaid interest charged to you.

## 8. Fees, taxes and costs

### Fees

You agree to pay us each fee, charge, premium or other amount specified in the Bank Documents. All amounts are non-refundable.

Unless otherwise stated, our fees are not charged on a pro-rata basis.

### Taxes and Costs

You agree to pay or reimburse us for all taxes and reasonable Costs incurred from time to time relating to:

- the Bank Documents, the Facilities you have with us and any transactions under them;
- title, security, insolvency and corporate searches concerning you, any other Security Provider and all Security assets;
- preparing, registering and maintaining any financing statement or financing change statement (each as defined in the PPS Law) in relation to a Security, or taking any other action that in our reasonable opinion is necessary;
- preserving and maintaining the assets and property the subject of the Security (such as by paying insurance, rates or taxes for the property, including any interest, penalties and fines);
- a variation, release or discharge of any Bank Document, or giving a consent or approval or waiving a requirement in connection with a Bank Document;
- us acting or relying in good faith on any notice or other communication from you (or genuinely believed by us to be from you) including any email and any attachment to any email;
- a Default or Adverse Event or us exercising or enforcing our rights (or reasonably considering or attempting to do so) under the Bank Documents;
- the costs, indemnification and remuneration of any External Administrator.

If you are a Medium Sized Business, then you also indemnify us (and our officers, employees, contractors and agents) and any External Administrator we appoint, and must pay to us on demand amounts equal to, any loss, damage or Costs arising as a result of or in connection with any of the above listed payments and reimbursements.

We need not have incurred an expense or made a payment before enforcing a payment, reimbursement obligation or indemnity. You don't have to pay, reimburse or indemnify us to the extent our fraud, negligence or misconduct (or of our officers, employees, contractors, agents or External Administrators we appoint) contributed to the relevant loss, damage or Costs being incurred.

### GST

Unless otherwise specified, all amounts referred to in the Bank Documents are exclusive of GST. If we are liable to pay GST or a similar tax on a supply (as defined in relevant GST legislation) made in connection with a Bank Document, you must pay us an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.



## 10. Things you will do

We are relying on your agreement to do, or to not do, certain things, as set out in the Bank Documents. This applies for as long as you have a Facility or otherwise owe us any money.

You will:

- keep your business and financial records in good order;
- not significantly change the nature of your business without our consent;
- maintain insurance for your business, assets and premises for a reasonable amount. You will take out more insurance if we ask you to; and
- let us know straight away if you become aware of a Default or Adverse Event or if you think one is reasonably likely to occur.

### Trustees

If you sign a Bank Document as a trustee you will:

- give us copies of all of the trust documents we ask for;
- when we ask, exercise your right to be indemnified out of the trust assets to satisfy any liabilities under the Bank Documents; and
- comply with the terms of the trust and ensure that your rights as trustee have priority over the beneficiaries' interests.

You agree not to do any of the following without our written consent:

- end the trust, or distribute trust assets;
- change the trust terms;
- change the trustee of the trust;
- allow a Security Interest to exist over any trust asset;
- (if the trust is a unit trust) issue units to any person who is not a unit holder on the date of your Business Letter of Offer.

### Partnerships

If you are a partner you must make sure that:

- each partner complies with its obligations as a partner of the partnership;
- the partnership's records are in good order;
- you obtain our written consent before:
  - any changes are made to the partners or the terms of the partnership;
  - the partnership is terminated, or its property distributed;
  - taking action which could make it harder for a partner to comply with a Bank Document; or
  - mixing partnership assets with other assets.

### Self-managed superannuation funds

If you are a trustee of a self-managed superannuation fund which is regulated by the superannuation laws, you will need to comply with those laws. These superannuation laws are the Superannuation Industry (Supervision) Act 1993 (Cth), regulations made under that Act, any other instruments made under the Act or regulations and any consolidations, amendments, re-enactments or replacements of them.

If you wish to use a Facility to buy an asset, you will need to sign and comply with the terms of a Superannuation Acquisition Financing Deed or Superannuation Financing Deed, in a form acceptable to us.

Our recourse to your fund will be limited in accordance with the terms of the deed. Please note that the terms of the deed prevail over any inconsistent term in another Bank Document.

## 11. Default

Defaults are events or circumstances (sometimes outside your control) which may impact upon your or a Security Provider's ability to meet your obligations under a Bank Document, or which are outside our credit policies.

There are three types of Default (Conduct Default, a Payment Failure and a Default that arises following an Adverse Event) and each has different consequences and timeframes before we become entitled to take enforcement action.

### Conduct Defaults and consequences

A Conduct Default occurs if:

- you or a Security Provider are Insolvent; or
- we believe on reasonable grounds that:
  - there has been fraud on your, or a Security Provider's part; or
  - if you are a Medium Sized Business, urgent action is necessary to protect or take control of any property or assets secured under a Security, including from seizure or sale.

If a Conduct Default occurs, you are in Default and we can immediately take any or all of the "Enforcement actions" listed below. We don't need to give you notice before taking any action after a Conduct Default occurs. We will give you appropriate notice after taking enforcement action.

### Payment Failures and consequences

A Payment Failure occurs if you or a Security Provider don't pay on time any amount due under a Bank Document.

If a Payment Failure occurs you are in Default, but we will give you a notice that a Payment Failure has occurred allowing at least 7 days (or a longer period required by law) to remedy the Payment Failure. If not remedied within that period we can immediately take any or all of the "Enforcement actions" listed below.

### Adverse Events and consequences

An Adverse Event occurs if any of the following occurs (whether or not within your control):

- *legal matters:*
  - you or any Security Provider breaches any law; or
  - you or any Security Provider that is an individual, no longer has legal capacity or becomes a person protected by the state; or
  - it becomes unlawful for you or any Security Provider or for us to perform our respective obligations under a Bank Document.
- *creditor enforcement:*
  - any Security Interest becomes capable of enforcement over your or a Security Provider's assets; or
  - a court order for payment is made, or a judgment is entered or signed, against you or any Security Provider and after 5 Business Days the order or judgement remains unsatisfied and able to be enforced.
- *misrepresentation:* you, a Security Provider or another person on your behalf gives us information which we reasonably believe to be materially incorrect or misleading (including by omission or by not complying with a promise in clause 9).
- *improper use of Facility:* a Facility (or any other product or service we provide you) is used for a purpose not disclosed to and approved by us.
- *Improper dealings with Security:* without our consent you or a Security Provider remove, sell or dispose of, or grant or permit the creation of, any interest (including a Security Interest) in any property or assets secured under a Security (or try to do so);



- by notice to you, make any Facility Amount Owing immediately due and payable without the need to give any further notice other than as required by law;
- by notice to you, cancel the Facilities with immediate effect;
- by notice to you, cancel or reduce all or any part of a Facility Limit (or if applicable, a component limit) with immediate effect;
- close out any treasury transactions you have with us (such as hedging, money market or currency transactions) and set-off any resulting amounts we owe you against any Facility Amount Owing;
- continue to charge interest at the applicable Default Interest Rate on any overdue amounts (including interest);
- at our discretion, apply amounts we receive in respect of any Facility Amount Owing to any part of the Facility Amount Owing which you are then obliged to pay. We may do so even if you ask or direct us otherwise, but we will act reasonably in the circumstances and in accordance with the law;
- sue you for any Facility Amount Owing; and
- enforce any Security.

#### **Appointment of consultants**

If we think that an Adverse Event or a Default exists or, based on what we know or suspect, is likely to exist in the future, and we ask you to, you will:

- pay our Costs to appoint a consultant; or
- appoint a consultant we nominate or approve on terms acceptable to us,

to investigate and report to us on your or a Security Provider's business and on compliance of any party with the Bank Documents.

You will help us and the consultant as soon as you are asked to. We can charge all related Costs to any of your accounts.

We will give you a copy of our instructions to the consultant and a copy of their final report in accordance with the industry guidelines published by the Australian Bankers Association Inc.

Investigated parties are not required to adopt any recommendation, but if they do we are not responsible for it.

#### **Dealing with accounts during a Default or if we can take enforcement action**

We may at any time, without notice to you while a Default exists, and otherwise with notice to you:

- open an account with us in your name which we may conduct; and
- debit an account held by you (or an account conducted by us in your name) with any amounts you owe us or which we are contingently or prospectively liable to pay in respect of a Facility.

We may at any time, without notice to you if we are entitled to take "Enforcement actions" listed above, and otherwise with notice to you:

- combine and amalgamate any two or more accounts held by you (or an account conducted by us in your name) with us;
- set off or transfer any credit balance on any such account towards satisfaction of any amounts due and owing by you to us (whether alone or with any other person); and
- convert currency using our exchange rate to enable a set-off.

## **12. Change in law**

If the law changes and we reasonably believe that it will be against the law for us to provide or continue to provide a Facility to you, we will:

- a full copy of the valuation report.

Please note that we and the valuer are not responsible or liable to you or any Security Provider for the contents of a valuation.

#### **Protecting our security position**

If we think that a PPS Law:

- applies or will apply to, or in connection with, a Bank Document; and
- does, or may adversely affect our security position, our rights or obligations in connection with a Bank Document,

we may ask you and you will help us immediately at any time, including:

- providing us with all information we request and taking all actions to help us perfect the Security;
- amending any Bank Document or executing any new Bank Document; and
- to continuously, or as and when we require you to, perfect any Security so it has priority and protection from loss, termination and diminution.

#### **Personal property security policies and steps**

You will promptly take all reasonable steps which are prudent for your business in connection with the PPS Law, such as registering any Security Interests you receive in the ordinary course of your business. Where appropriate or when we ask you to, you will identify, protect and achieve the highest priority reasonably available for your Security Interests.

#### **Change of details**

You must notify us in writing at least 14 days before:

- you or any Security Provider, trust or partnership changes its name;
- any ABN, ACN, ARBN or ARSN allocated to you or any Security Provider, trust or partnership changes, is cancelled or ceases to apply to it (or if it does not have an ABN, ARBN or ARSN, one is allocated, or otherwise starts to apply to it); or
- you or any Security Provider becomes trustee of a trust, or a partner of a partnership not stated in your Business Letter of Offer.

#### **PPS Law waiver**

You waive, to the extent permitted under the PPS Law, your right to receive any notices we are required to give under the PPS Law.

#### **PPS Law disclosure**

You agree not to disclose or authorise the disclosure to any person any information of the kind described in section 275(1) of the PPS Law or to waive your duty of confidence to us.

### **14. Changes we may make**

We may need to make changes to your Facilities from time to time. Some changes are automatic, some we can make without your consent and some require your agreement.

We promise to act reasonably when we make any changes and will give you at least 30 days' notice of any change (except for automatic changes – see below for details). If we reasonably consider a change will be materially adverse to you and the same change is not being made to similar facilities of our other small business customers, we will give you at least 90 days' prior written notice of the change.



## 16. Communications

### How we will communicate

Notices, statements, certificates and other communications from us can be:

- given to you personally;
- left at or posted to your address last nominated by you;
- sent by facsimile to your fax number last nominated by you;
- given to you by notifying you through an electronic service provided by us that information is available electronically;
- published in the press or at [nab.com.au](http://nab.com.au); or
- given to you electronically by:
  - short message service (SMS) to your mobile telephone number or email; or
  - notifying you by short message service (SMS), or by email, of information on our website.

We will use your last nominated mobile number or email address for that notice. You may change your nominated email address or mobile number, by giving us notice or calling us on 13 10 12. On request, we will provide you with paper copies of any notices or communications sent to you (seven years from the time the information is given). You must check your email and mobile phone regularly.

Your Specific Conditions also may specify how we will communicate some types of information to you.

If we send a document or communication to you by ordinary post, you are taken to have received it 5 days after it was posted.

A document or communication sent by facsimile is received by you at the time and date shown on the delivery receipt.

A document or communication sent by another form of electronic communication (such as SMS or electronic mail) is taken to be received when it enters your information system as recipient.

A document or communication published in the press or on the internet is taken to be received by you when it is first published.

### Communications from you

Written communications from you must be signed (including electronically) by you (or by a director or another person we have approved in the case of a company or another entity).

### Telephone recording

We may record some conversations with you. We will notify you before we do so or use the recording for any external purpose.

### Contacting us for further information

For further information call 13 10 12 or visit [nab.com.au](http://nab.com.au).

## 17. Rules for interpreting this document

### How this document is to be understood

We have tried to make the Bank Documents fair and reasonable. However, if any law applies to make part of a Bank Document inoperative then the intention is for it to be interpreted in a way which preserves as much of the Bank Document and its operative effect as the law allows.