

Date: November 2016

Hire Purchase Agreement

Terms and Conditions - General

About each hire purchase agreement

A *hire purchase agreement* comes into existence in relation to *goods* on the terms of these Terms and Conditions - General and the *goods schedule* applicable to those *goods* when you have signed the *goods schedule* and it has been accepted by us. Each *hire purchase agreement* is a separate agreement between you and us.

The Terms and Conditions - General and each *goods schedule* should be read together.

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HIRE PURCHASE AGREEMENT TERMS AND CONDITIONS - GENERAL

Part A - The goods

Ownership and interest

- 1.1 The *goods* always remain our property during the term of the *hire purchase agreement*. You only have a right to use them during that term. You may purchase the *goods* in accordance with the terms of the *hire purchase agreement*.
- 1.2 You must ensure that any replacement part or add-on (including anything installed in, or affixed to, the *goods* for the purposes of the PPSA) becomes our property.
- 1.3 You must protect our interest in the *goods*, including making clear to others that we own them.
- 1.4 You must not place, or allow to be placed, on the *goods* any plates or marks that are inconsistent with our ownership. If we ask, you must allow us to put plates on them that state that we own them and that we prohibit any dealing in them (and provide us with access to the *goods* to enable us to do so).
- 1.5 Despite our ownership in the *goods*, you bear the entire risk of loss arising in connection with the possession, use, storage, maintenance, seizure and repair of the *goods*. (This includes loss arising because of theft, destruction or damage and loss arising out of claims of injury.)
- 1.6 You must not part with possession of the *goods* without our consent.
- 1.7 You must not create another *security interest* over the *goods* or any *security interest* over the *hire purchase agreement* or allow one to arise (including a lien for repairs or storage) without our consent.
- 1.8 We may enter into the *hire purchase agreement* as principal or agent. We may also transfer the *goods* or our interest in the *hire purchase agreement*, or give another person an interest in or form of security over either of them, without getting your consent. You agree that we may disclose any information or documents we reasonably consider necessary to help us exercise this right.

- 1.9 You may ask us to hire additional *goods* to you. If we agree to do so, the *goods schedule* for the additional *goods* and these Terms and Conditions – General will constitute a further hiring of *goods* between you and us (unless we say otherwise). If we grant you a further hiring of *goods* under this clause:
- (a) we will not give you a further copy of these Terms and Conditions – General unless you ask for a copy; and
 - (b) the *goods schedule* may refer to information contained in a prior hiring of *goods* if this information has not changed.

Delivery and installation

- 2.1 You are responsible for:
- (a) obtaining the *goods*; and
 - (b) having them delivered and installed; and
 - (c) having them put in good working order.
- 2.2 We will be taken to have delivered the *goods* to you and you will be taken to have accepted them when you obtain them under 2.1(a).
- 2.3 You must not attach the *goods* to any property without our consent. If they are attached to land, they do not become fixtures and we can still remove them in accordance with the *hire purchase agreement*.

Re-location

- 3.1 Except when *goods* are a motor vehicle you must not change the place where the *goods* are used or ordinarily kept without our prior written consent which will not be unreasonably withheld.
- 3.2 If the *goods* are a motor vehicle you must not change the place where the *goods* are housed without our prior written consent which will not be unreasonably withheld.

Use

- 4.1 You must use the *goods* predominantly in your business operations and for the purpose for which they are designed.
- 4.2 You must ensure that the *goods* are used in accordance with the supplier's and manufacturer's instructions and recommendations, in compliance with all laws that apply to the *goods* or their use (including by maintaining registration of *goods* where appropriate and complying with occupational health and safety legislation including when that legislation places an obligation on us), and only by suitably qualified operators.
- 4.3 We cannot interfere with your use of the *goods* unless the *hire purchase agreement* allows us to do so.

Maintenance

- 5.1 You must take proper care of the *goods* and keep them in good working order and in good repair (fair wear and tear excepted).
- 5.2 You must ensure that the *goods* are serviced and maintained in accordance with the supplier's specifications and our or any insurer's reasonable requirements. You must do all things necessary to maintain the supplier's and manufacturer's warranties.
- 5.3 You must not say or imply that we will pay for any work done to the *goods*.
- 5.4 You must keep all maintenance records and all other records relating to the inspection, commissioning or alteration of the *goods* and make these records available to us upon request. You acknowledge receiving all relevant maintenance records and other records for the *goods* from us. You must produce a copy of your maintenance records for the *goods* whenever we request it.
- 5.5 You must maintain all log books or other records customarily maintained for such *goods*.

Access

- 6.1 After we give you reasonable notice (except where we reasonably consider you are in default or the goods are at risk) you must allow us or our representative, at reasonable times, to enter the place where the *goods* are, to:
- (a) inspect the *goods*; or
 - (b) check whether the terms of the *hire purchase agreement* are being complied with; or
 - (c) exercise any of our rights under the *hire purchase agreement*.
- 6.2 We must give you prior notice of entry unless we reasonably believe that this could materially impair our rights in relation to the *goods*.
- 6.3 You must tell us in writing if any third party makes a claim in connection with the *goods* which is inconsistent with your or our rights and interest in the *goods*.

Loss or damage

- 7.1 You must tell us if any of the *goods* are:
- (a) stolen; or
 - (b) lost; or
 - (c) seized; or
 - (d) destroyed; or
 - (e) damaged or impaired to such an extent that you or the insurer decides that repair is impractical or uneconomic.
- 7.2 If any of these events happen, and you and we agree to the affected *goods* being replaced (which agreement must be in writing) the replacement goods will then be the subject of this *hire purchase agreement*.
- 7.3 We are entitled to receive all amounts which are payable to you by any insurer or other person because any of the things in clause 7.1 happens.

- 7.4 If within 30 days after the event in clause 7.1 happens, you and we have not agreed to a replacement, then on the next payment date after the 30-day period, you must pay us in addition to any *rent instalment* or other amounts due on that date:
- (a) the *termination value* of the affected goods on that date; less
 - (b) any money we have received from an insurer or other person because the event in clause 7.1 happened.

Without limiting any other clause of this *hire purchase agreement* you must also pay on its due date any *rent instalment* or other amount that falls due during the 30-day period. If, before the next payment date after the event in clause 7.1 happens, you and we have agreed not to replace the affected goods, then on that payment date, you must pay in addition to any *rent instalment* or other amount due on that date, the amount referred to in (a) less the amount referred to in (b).

- 7.5 This *hire purchase agreement* terminates in relation to the affected goods when you make payment under clause 7.4. We will then notify you of the revised *rent instalments* which are payable on the goods not affected calculated on the basis of the value we attributed to the affected goods at the start of this hire purchase agreement.
- 7.6 If we receive money from the insurer or any other person after you have paid us the amount due under clause 7.4, we will refund to you, up to the amount you paid us, the amount we receive less all money then payable by you under the *hire purchase agreement*.

PART B - RENT, COSTS AND OTHER AMOUNTS

Rent

- 8.1 You must pay the *rent instalments* on the payment dates, to our address stated in the *goods schedule*. If we notify you of a different address, you must pay them to that address. Once paid, these amounts are not refundable for any reason.
- 8.2 If your *rent instalments* are due on the 29th, 30th or 31st of a month, and a particular month does not have that date, you must pay your *rent instalment* on the last day of that month.

Duties, taxes, fees and charges

- 9.1 When we ask, you must pay us our costs in connection with and all stamp and other duties, fees, taxes and charges payable in connection with:
 - (a) our purchase of the *goods*; and
 - (b) any *hire purchase agreement* and any guarantee of it including any changed or new fee or charge notified to you in writing or advertised in a national newspaper no later than the day the fee or charge takes effect; and
 - (c) any payment, receipt or other transaction arising out of our purchase of the *goods* or the *hire purchase agreement*, including any increase in the stamp and financial institutions duty stated in the *goods schedule*.
- 9.2 Any fee stated in the *goods schedule* is not refundable for any reason.
- 9.3 In clauses 9.4 to 9.7, the expressions "consideration", "GST", "input tax credit", "recipient", "supplier", "supply" and "tax invoice" have the same meaning given by the *GST law*.
- 9.4 Unless expressly stated otherwise in the *hire purchase agreement*, all amounts and payments are exclusive of GST.

- 9.5 If GST is payable on any supply made under the *hire purchase agreement* by a party ("Supplier") to another party ("Recipient") the Recipient must, subject to clause 9.6, pay to the Supplier in addition to and at the same time as the consideration is payable or to be provided for the supply, an additional amount calculated by multiplying the value of that consideration by the prevailing GST rate.
- 9.6 The Supplier must issue a valid tax invoice to the Recipient before any payment for a supply made by the Supplier under the *hire purchase agreement* is due.
- 9.7 Any reference to a cost or expense in the *hire purchase agreement* excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party is entitled to an input tax credit.

No deductions from payments

10. You must not withhold any payment under the *hire purchase agreement*, or make a deduction from it for any reason including, because:
- (a) the goods are damaged, do not operate efficiently or at all, do not conform to specifications or are not in your possession; or
 - (b) you claim to have a set-off, counterclaim, or other right against us or any other person.

Overdue payments

- 11.1 You must pay interest calculated on daily balances on any amount which you do not pay on time for the period it is unpaid.
- 11.2 The rate of interest applying to each daily balance is the *implicit rate* plus 3% per annum.
- 11.3 Each month (or at any other time we choose) we may add to the amount you owe us any interest payable under 11.1 which is overdue (this is known as "capitalising" or "compounding" the interest). You will then be liable for interest under 11.1 on the total amount.

- 11.4 You must pay all interest payable under 11.1 or 11.3 when we specify.
- 11.5 Your obligation to pay an amount on the date it becomes due is not affected by 11.1 to 11.4.
- 11.6 If any amount you must pay under the *hire purchase agreement* becomes merged in a court order, you must pay interest on that amount as a separate obligation. The interest is payable from the date we first ask you for the amount until that amount is paid. This obligation is not affected by the court order. The rate is the rate in 11.2 or the rate in the court order, whichever is higher.
- 11.7 Clauses 11.1 to 11.6 apply equally to the *guarantor*. In relation to any amount owed to us by the *guarantor*, each reference to “you” in these clauses is taken to be a reference to the *guarantor*.

Indemnities

- 12.1 You indemnify us against any liability or loss arising from and any reasonable costs (including on account of funds borrowed, contracted for or used to fund any amount payable by us in connection with our purchase of the *goods* or the *hire purchase agreement* and legal fees and expenses other than those caused by our negligence, fraud or wilful misconduct) reasonably incurred in connection with:
- (a) our exercising a right under the *hire purchase agreement*; or
 - (b) our doing anything you or the *guarantor* should have done under the *hire purchase agreement*; or
 - (c) you or the *guarantor* not doing what you or the *guarantor* should have done under the *hire purchase agreement*; or
 - (d) our having to seize or store the *goods*; or
 - (e) our owning the *goods* (including registering or notifying any person of our interest as owner); or

- (f) a person being injured or killed or property being damaged directly or indirectly by the goods or their use; or
- (g) a claim for patent, trademark or copyright infringement, for strict liability, or for any other reason being made against us in connection with the goods or their operation; or
- (h) Break costs are an amount representing our reasonable estimate of our loss arising as a result of a termination referred to in this paragraph (h).

This loss can occur when the implicit rate is a fixed rate and usually arises because of changes in market interest rates.

Our break costs are our calculation of the sum (if positive) of the difference between:

- (i) the present value of each rent instalment that we would have been entitled to receive under the hire purchase agreement, over the remainder of the term, at the implicit rate, if no early termination had occurred; and
- (ii) the present value of each rent instalment, that we would have been entitled to receive under the hire purchase agreement, over the remainder of the term, as in paragraph (a), but substituting an interest rate or discount rate (as appropriate) determined by reference to the wholesale market rate(s) prevailing at the time of the early termination.

The wholesale market rate(s) used to calculate the present value of a rent instalment and the interest rate or discount rate (as appropriate) to be applied under (b) are determined by us in good faith adopting commercially reasonable procedures. This may include considering:

- (i) any market information we consider relevant from either internal or external sources (for example, market rates (which need not be mid-market rates), margins and yield curves);

- (ii) if the information required to determine wholesale market rates is not available for the date of the break event, information for a date following the break event as would be commercially reasonable to consider; and
 - (iii) without double counting, when it is reasonable to do so, any interest rate or discount rate used in connection with terminating, liquidating or re-establishing any transaction we maintained in connection with the hire purchase agreement .
- (i) any claim made against us by any party in relation to the *hire purchase agreement* or the *goods*. If we ask, you agree to assume responsibility for the defence of any proceedings relating to any such matters; or
 - (j) any proceedings or prosecutions commenced against us or any fine or penalty imposed on us under occupational health and safety legislation in relation to the *goods* or their use.

12.2 Each indemnity in the *hire purchase agreement* is a continuing obligation, separate and independent from your other obligations (including your obligation under 26.3(c)). It continues after the *hire purchase agreement* ends or is terminated. It is not necessary for us to incur expense or make a payment before we enforce a right of indemnity.

Commission to brokers

13. You agree to our paying out of money paid or payable by you under the *hire purchase agreement* commission, fees or other remuneration to any broker, agent, dealer or other person who introduces you to us or us to you. We may give any broker, agent, dealer or other person monetary and non-monetary rewards based on the volume and value of introductions they give us and in calculating the volume and value of introductions we will take the *hire purchase agreement* into account.

PART C - INSURANCE

14.1 You must insure at all times against:

- (a) loss or damage to the *goods* caused by fire, theft or accident for no less than the then *termination value* of the *goods* (or such other amount as agreed by us); and
- (b) public liability for bodily injury or damage to property arising in connection with the *goods* for no less than \$10 million or any other amount notified by us; and
- (c) any other risk as we may reasonably direct to protect, directly or indirectly, our interest in the *goods*.

14.2 The insurances must:

- (a) be with an insurer registered with the Australian Prudential Regulatory Authority or an insurer reasonably approved by us and on terms that are satisfactory to us; and
- (b) note our interest as owner of the *goods*.

14.3 You must not:

- (a) do anything, or fail to do anything, which would allow the insurer to refuse or reduce a claim; or
- (b) vary, cancel or materially alter the insurances without our consent; or
- (c) enforce, conduct, settle or compromise any claim without our consent.

14.4 You must produce evidence of the insurance policies and payment of premiums whenever we ask for them.

PART D - YOUR OTHER DUTIES AND OBLIGATIONS

15. Whenever we ask, you must promptly give us any information we reasonably ask for about:

- (a) your financial position; or
- (b) the *goods* or insurances relating to them.

16. Anything which you must do under the *hire purchase agreement* must be done at your cost.

17. You must ensure that:
- (a) neither you nor any *guarantor* becomes *insolvent*; and
 - (b) you, the *guarantor* or another person who provides a security in connection with the *hire purchase agreement* is not in default under that security; and
 - (c) the *guarantor* is not in default under the guarantee; and
 - (d) you pay on time any amount due under the *hire purchase agreement* or other agreement you have with us; and
 - (e) you, the *guarantor* or another person gives us correct and not misleading information in connection with any *hire purchase agreement*, any guarantee of a *hire purchase agreement* or a security; given in connection with a *hire purchase agreement*; and
 - (f) your financial position does not deteriorate so that in our opinion your ability to meet your obligations under the *hire purchase agreement* or other agreement with us is materially adversely affected.
18. If you lose the *goods* or they are stolen, seized or destroyed, you must comply with our reasonable directions in relation to remedial action.

PART E - PERSONAL PROPERTY SECURITIES ACT

PPSA further steps

- 19 You agree to do anything (such as obtaining consents, signing and producing documents, and getting documents completed and signed) which we reasonably ask and consider necessary for the purposes of:
- (a) providing more effective security over the *goods*, or any other personal property over which we have a *security interest* for payment of money owing to us in connection with the *hire purchase agreement*;
 - (b) ensuring that a *security interest* created under the *hire purchase agreement* is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
 - (c) enabling us to apply for any registration, or give any notification, in connection with a *security interest* created under the *hire purchase agreement* so that the *security interest* has the priority we require;
 - (d) enabling us to exercise our rights in connection with the *goods*;
 - (e) binding you and any other person intended to be bound under the *hire purchase agreement*;
 - (g) showing whether you are complying with the *hire purchase agreement*.

PPSA undertaking

- 20 If:
- (a) you hold any *security interest* for the purposes of the *PPSA* and if your failure to perfect such *security interest* would materially adversely affect your business or our *security interest* over the *goods*; or
 - (b) a *security interest* in your favour arises over the *goods* (whether or not as a result of a breach by you under the *hire purchase agreement*),

you agree to implement, maintain and comply in all material respects with, procedures for the perfection of those *security interests*. These procedures must include procedures designed to ensure that you take all reasonable steps under the *PPSA* to continuously perfect any such *security interest* including all steps reasonably necessary:

- (c) for you to obtain, the highest ranking priority possible in respect of the *security interest* (such as perfecting a purchase money security interest or perfecting a *security interest* by control); and
- (d) to reduce as far as possible the risk of a third party acquiring an interest free of our *security interest* (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).

If we ask, you agree to arrange at your expense an audit of the *PPSA* procedures. We may ask you to do this if we reasonably suspect that you are not complying with this clause.

Security interest in chattel paper

21. If a *security interest* in connection with the goods in the form of chattel paper (as defined in the *PPSA*) is held by you or arises in your favour (whether or not as a result of a breach by you under the *hire purchase agreement*), you grant a security interest in the chattel paper to us for the purpose of securing payment of any money you owe us in connection with the *hire purchase agreement*. The *security interest* created by this clause is a charge and you may not transfer, dispose of or otherwise deal with the chattel paper or allow another *security interest* to exist over it. You must deposit with us all original documents of title comprising the chattel paper and any other documents we request relating to the chattel paper.

Registration

22. We may, at the your expense, apply for any registration, or give any notification, in connection with a *security interest* created under the *hire purchase agreement*.

Notification of name change

23. You must notify us in writing of any change in your name at least 14 days before you propose to change your name.

Exclusion of certain PPSA provisions

24. You agree that:

- (a) we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the *PPSA*, or any other provision of the *PPSA* notified to you by us after the date of the *hire purchase agreement*, to the extent the law permits them to be excluded;
- (b) we may not exercise rights under section 143 of the *PPSA* to the extent the law permits them to be excluded; and
- (c) we need not give any notice required under the *PPSA* (including a notice of a verification statement) unless the requirement to give the notice cannot be excluded.

PART F - WHAT HAPPENS AT THE END OF THE HIRE PURCHASE AGREEMENT OR IF YOU WANT TO PURCHASE THE GOODS?

25.1 On the date specified in the *goods schedule* as the end of the term, you must return the *goods* to us unless you purchase them under 25.4.

25.2 If you do not want to purchase the *goods*, you must on the date specified in the *goods schedule* as the end of the term:

- (a) return the *goods* to us in good working order, and in good repair (fair wear and tear excepted) to a place we nominate; and
- (b) give us any certificates of registration, insurance certificates, log books, instruction and service manuals and other documents relating to them, and a signed transfer of all certificates of registration in favour of us or a person we nominate; and
- (c) pay us the final payment for the *goods*; and
- (d) pay us any other amount payable under the *hire purchase agreement*.

25.3 If you do not return the *goods* or you do not want to purchase the *goods*:

- (a) you must continue paying *rent instalments* as if the date specified as the end of term had not occurred and the *hire purchase agreement* had not ended; and
- (b) if you return the *goods* before the *rent instalment* is due you must still pay us the whole *rent instalment* for that month and we will not be obliged to refund to you any part of that *rent instalment*; and
- (c) either of us can give notice to the other at any time to return them. Once either of us gives that notice, you must return the *goods* to us on the next payment date and at that time comply with 25.2. The final payment does not reduce because you decide to keep the *goods* under this 25.3.

25.4 You may terminate the *hire purchase agreement* and purchase the *goods* from us at any time by:

- (a) at least 10 business days before you want to purchase the *goods*, telling us in writing that you intend to purchase the *goods*; and
- (b) paying to us:
 - (i) all *rent instalments* which are still to fall due and the final payment; and
 - (ii) all other money owing by you to us under the *hire purchase agreement*; and
 - (iii) any amount we determine is payable to us under 12.1(h) as a result of you terminating the *hire purchase agreement*.

25.5 When you pay us the amounts in 25.4(b) and if you have done everything you should have done under the *hire purchase agreement*, title to the *goods* will pass to you on an "as is - where is" basis and without any representation or warranty from us as to title, condition or any other matter.

PART G - WHAT HAPPENS IF YOU REPUDIATE THE *HIRE PURCHASE AGREEMENT*?

26.1 The fundamental provisions of the *hire purchase agreement* are that you must:

- (a) pay all money due on time and as required by the *hire purchase agreement*; and
- (b) comply with 1.3, 1.6, 1.7, 2.3, 5, 14 and 17.

26.2 You will repudiate the *hire purchase agreement* and we may terminate it by notice to you if:

- (a) you do not comply with the fundamental provisions of the *hire purchase agreement* except that for the purposes of this clause you will have complied with the requirement to pay all money due on time and as required by the *hire purchase agreement* if it has been paid within 2 *business days* of the due date; or
- (b) your conduct indicates, in our reasonable opinion, that you no longer intend to be bound by the *hire purchase agreement*; or
- (c) we reasonably believe you, the *guarantor* or another person has acted fraudulently in connection with the *hire purchase agreement*, any guarantee of the *hire purchase agreement* or a security given in connection with any *hire purchase agreement*; or
- (d) you have repudiated any other hire purchase with us.

26.3 If we give you this notice of termination, you must immediately:

- (a) return the *goods* to us in good working order, and in good repair (fair wear and tear excepted) to a place we nominate; and
- (b) give us any certificates of registration, insurance certificates, log books, instructions and service manuals and other documents relating to them, and a signed transfer of all certificates of registration in favour of us or a person we nominate; and

- (c) pay us the *termination value* for all the *goods* calculated as at the day we give you notice, as liquidated damages for our loss of bargain. The *termination value* does not include additional amounts you may owe us under 12.1(c) because you did not comply with the *hire purchase agreement* or 12.1(h) because we terminated the *hire purchase agreement*. You remain liable for those amounts in addition to the *termination value*; and
- (d) pay us all amounts owing under the *hire purchase agreement* including:
 - (i) all arrears of *rent instalments*;
 - (ii) *any rent instalment*; and
 - (iii) repossession costs, due on the day we give you this notice and other payments due up to and on that day.

26.4 We may take possession of the *goods* without terminating the *hire purchase agreement* on your repudiation of it. For one month following the day on which we take possession of the *goods*, your obligations under the *hire purchase agreement* (including the obligation to pay all money due on time and as required by the *hire purchase agreement*) will continue as if the *goods* remained in your possession and we will not be taken for the purposes of the *hire purchase agreement* to have accepted your repudiation of the *hire purchase agreement* (although we reserve the right to do so). At the end of the one month period, we must either redeliver the *goods* to you or terminate the *hire purchase agreement*. We will only be obliged to redeliver the *goods* to you if you have paid all repossession costs, storage charges and other costs incurred by us in exercising our rights under this clause and the *goods* have not been sold by us. If you have not paid these costs at the end of the one month period, we may terminate the *hire purchase agreement*. We may terminate the *hire purchase agreement* by notice to you at any time after taking possession of the *goods* under this clause.

26.5 If you repudiate the *hire purchase agreement*, you or the *guarantor* must provide us on our request with security over all your or the *guarantor's* assets and undertaking in a form and substance satisfactory to us.

PART H - WHAT HAPPENS WHEN THE GOODS ARE RETURNED?

General

27.1 As soon as practicable after any *goods* are returned to us (other than for a temporary return pursuant to 26.4) we must either:

- (a) offer them for sale in good faith at a public auction or by tender or private treaty and we need not include any warranty on the condition or suitability of the *goods* or our title to them; or
- (b) attempt to re-hire them in good faith.

27.2 We must pay you the proceeds we receive from selling or re-hiring any of the *goods*, up to their:

- (a) final payment (if the *goods* are returned under 25); or
- (b) *termination value* (if the *goods* are returned under 26.3 or if we terminate the *hire purchase agreement* under 26.4), less:
 - (i) all costs and expenses we reasonably incur in selling or re-hiring; and
 - (ii) amounts you owe under the *hire purchase agreement* or any agreement you have with us.

Where the *goods* are subject to the Goods Act 1958 (Victoria) and are repossessed by us (other than as a result of a voluntary return of the *goods* by you), 27.2 does not apply. Also, 27.2 is subject to 27.5 to 27.12.

Special provisions - Victoria

27.3 Where the goods are subject to the Goods Act 1958 (Victoria) and are repossessed by us (other than as a result of voluntary return of the goods by you) then we must pay you:

- (a) if we sell or dispose of the goods, an amount equal to the proceeds of the goods; or
- (b) if we do not sell or dispose of the goods or if we fail to sell or dispose of the goods as soon as reasonably practicable after taking possession (or such other time as we and you agree), an amount equal to the value of the goods at the time we took possession of the goods, less any amounts which we are entitled to deduct from those proceeds under 27.4

27.4 If 27.3 applies, we are entitled to deduct from the proceeds of the sale, or the best price reasonably obtainable by us for the goods as reasonably determined by us at that time, the following amounts:

- (a) all amounts owed by you under this agreement as at the date of repossession, including the amounts described in 12.1(a) and 12.1(h); and
- (b) all costs and expenses we reasonably incur in taking possession of the goods; and
- (c) all costs and expenses we reasonably incur for storage, repair or maintenance of the goods; and
- (d) all costs and expenses we reasonably incur for selling or disposing of the goods, whether or not we have subsequently sold or disposed of the goods.

Special provisions - Queensland

27.5 27.6 to 27.12 apply in respect of a hire purchase agreement where:

- (a) you are resident in Queensland when the hire purchase agreement is entered into or the goods are located in Queensland at the time we seek to take possession of them under the hire purchase agreement; and
- (b) you are a natural person and your sole or principal business is a farming business for the purposes of the Credit (Rural Finance) Act 1996 (Queensland); and

- (c) you have defaulted under the *hire purchase agreement*; and
- (d) we have exercised, or purported to exercise, a right to *take possession of goods* that are farm equipment.

27.6 Within 30 days after we *take possession of the goods*, we must give you a notice stating:

- (a) the best price estimate for the *goods*; and
- (b) our estimate of our enforcement expenses; and
- (c) our estimate of any expenses we must reasonably incur to return the *goods* to you.

27.7 Within 21 days after we give you notice under 27.6, you may give us written notice requiring us to:

- (a) sell the *goods* to a person nominated by you at a price not less than the best price estimate for the *goods* stated in the notice under 27.6; or
- (b) return the *goods* to you under 27.8.

27.8 We must return the *goods* to you if, within 14 days after we receive notice under 27.7(b), you:

- (a) pay us the amount owing under the *hire purchase agreement* for the period ending on the day you pay the amount; and
- (b) pay us:
 - (i) our enforcement expenses; and
 - (ii) any expense we reasonably incur to return the *goods* to you; and
- (c) remedy any other breach of the *hire purchase agreement* or, if you cannot remedy the breach, pay to us any expense we must reasonably incur to remedy the breach.

27.9 If we return the *goods* to you and you have not remedied the breach of the *hire purchase agreement* we may again *take possession of the goods* if:

- (a) when the *goods* are returned to you, we give you written notice stating the breach and how you may remedy it and requiring you to remedy the breach within 14 days; and
- (b) you do not remedy the breach within 14 days.

27.10 If:

- (a) the *goods* are returned under 27.8; or
- (b) 27.9 applies and you remedy the breach mentioned within 14 days, then the *hire purchase agreement* operates as if a breach had not occurred and we had not taken possession of the *goods*.

27.11 Whether or not you give us notice under 27.7, you may recover from us an amount equal to the total of the "repossession value" of the *goods* and the "actual payments" made under the *hire purchase agreement*, less the "net amount payable" under the *hire purchase agreement* (each, when used in this 27.11, as defined in the *Credit (Rural Finance) Act 1996* (Queensland)) if:

- (a) we do not return the *goods* to you; and
- (b) the repossession value is:
 - (i) at least equal to the net amount payable; or
 - (ii) less than the net amount payable but the total of the repossession value and the actual payment is more than the net amount payable.

27.12 Where 27.5 to 27.11 apply and there is an inconsistency with any other provision of the *hire purchase agreement*, then 27.5 to 27.11 prevail.

Special provisions - Western Australia

27.13 If the *Hire-Purchase Act 1959* (WA) applies, we will comply with it and despite anything in this document:

- (a) we will give you notice (if required) in accordance with sections 13(1) and 25 of the *Hire-Purchase Act 1959* (WA); and
- (b) if we repossess the *goods*, we will apply a definition of "termination value" which is consistent with the requirements of section 15 of the *Hire-Purchase Act 1959* (WA) and we will:

- (c) pay you any amounts you are entitled to under section 15 of the *Hire-Purchase Act 1959* (WA); and
- (d) not recover any amounts we are not entitled to recover under section 15 of the *Hire-Purchase Act 1959* (WA).

Note: “repossess” in this clause does not include you returning the goods voluntarily to us.

PART I - WHAT YOU ACKNOWLEDGE IN ENTERING THE *HIRE PURCHASE AGREEMENT*

About the *hire purchase agreement*

28. You acknowledge that:

- (a) you have not relied on our skill or judgement in deciding to enter into the *hire purchase agreement*; and
- (b) unless you have told us otherwise, you do not enter into the *hire purchase agreement* as trustee of any trust or settlement; and
- (c) the interest component of any payments under the *hire purchase agreement* are deductible by you for the purpose of the *Income Tax Assessment Act 1936* (Cwlth); and
- (d) you are not a strata corporation within the meaning of any consumer credit legislation; and
- (e) you have no connection with the supplier of the goods unless previously disclosed to us; and
- (f) the *hire purchase agreement* may not be terminated by you except with our consent; and
- (g) we have not made any representation or statements as to the accounting, legal or taxation treatment of any *hire purchase agreement* and you have obtained your own accounting, legal and taxation advice; and

- (h) we are not liable to you:
 - (i) for any loss you suffer as a result of the Commissioner of Taxation denying or rejecting that payments under the *hire purchase agreement* are deductible as specified in (c) above; and
 - (ii) for any taxes, charges or imposts imposed on you as a result of your entering into the *hire purchase agreement*; and
 - (iii) if an authorised signatory signs the *hire purchase agreement* on your behalf, that signatory has been properly and duly authorised by you to sign the *hire purchase agreement* on your behalf.

About the goods

29. You acknowledge that:

- (a) subject to 30.1(a) you alone are responsible for examining the goods before accepting them and for satisfying yourself about them, including:
 - (i) their compliance with their description; and
 - (ii) their condition, suitability and fitness for your purposes; and
 - (iii) the validity of any manufacturer's, dealer's, or supplier's warranties or guarantees, and entitlements to patents; and
- (b) if an intermediary or consultant has been engaged in connection with the *hire purchase agreement*, that intermediary or consultant is not our agent and is not authorised to make any representation on our behalf; and
- (c) you are responsible for obtaining and maintaining at all times all licences or registrations required by law in connection with the goods or their use; and
- (d) you have satisfied yourself that the goods and their supply and use do not constitute a breach of any patent, copyright or other intellectual property; and

- (e) we are not the manufacturer of the *goods* nor a dealer in property of that kind; and
- (f) unless stated otherwise in the *goods schedule*, the *goods* are new; and
- (g) you have sole control of and responsibility for the safe operation and use of the *goods* during the term of the *hire purchase agreement*; and
- (h) you have been supplied with the *goods* by a third party.

About legal warranties and limitations

30.1 You acknowledge that:

- (a) we have not made any representation, warranty or undertaking about the condition or the quality of the *goods*, their suitability or fitness for purpose or their safety except those implied by legislation including the *Competition and Consumer Act 2010* (Cwth) (to the extent it applies and cannot be excluded); and
- (b) to the full extent permitted by law, we are not liable for any injury to any person or loss or damage to property arising from the possession, operation or use of the *goods* (including any injury, loss or damage arising from our negligence); and
- (c) whether or not the relevant provisions of the *Competition and Consumer Act 2010* (Cwth) or any law to a similar effect applies, our liability for anything in relation to the *goods*, their use, or their installation, including damage or economic loss to anyone, is limited as much as it can be. Whatever happens, our liability is limited in our discretion to either:
 - (i) replacing the *goods* with the same or equivalent *goods*, or paying the cost of such replacement; or
 - (ii) repairing the *goods* or paying for their repair.

However, if the supplier of the *goods* has given us warranties for the *goods* then, to the full extent permitted by law, you may make any claim on the supplier which we could have made.

Reliance

30.2 Your acknowledgments contained in the *hire purchase agreement* take effect as representations and warranties. You enter into the *hire purchase agreement* on the basis of the representations and warranties and agree that the representations do not merge on the execution of the *hire purchase agreement*.

PART J - GUARANTEE AND INDEMNITY

Extent of guarantor's obligations

31.1 By signing the *hire purchase agreement*, the *guarantor* could become liable to pay us:

- (i) under the guarantee in 32; and
- (ii) under the indemnity in 33; and
- (iii) costs and other expenses under 34; and
- (iv) interest under 35.

31.2 The *guarantor* is liable for all the *guarantor's* obligations under the *hire purchase agreement* both separately and jointly with any one or more other persons named in the *hire purchase agreement* as "*guarantor*".

What the guarantor undertakes in giving the guarantee and indemnity in the hire purchase agreement Guarantee

32.1 The *guarantor* guarantees that the hirer will pay us all amounts payable under the *hire purchase agreement* when they are due. This guarantee continues until all these amounts have been paid in full or the *guarantor* ends it under 37.

32.2 If we ask, the *guarantor* must pay us any amount which the hirer does not pay us when it is due under the *hire purchase agreement*. We need not ask the hirer first to pay us.

Indemnity

33.1 The *guarantor* indemnifies us against, and the *guarantor* must therefore pay us for, loss or costs we suffer or incur if:

- (a) the hirer does not, is not obliged to, or is unable to, pay us in accordance with the *hire purchase agreement*; or

- (b) the *guarantor* is not obliged to pay us an amount under 32; or
- (c) we are obliged, or we agree, to pay an amount to a trustee in bankruptcy or liquidator in connection with a payment by the *guarantor* or the hirer. (For example, we may have to, or may agree to, pay interest on the amount.)

33.2 The indemnity in 33.1 is a continuing obligation, separate and independent from the *guarantor's* other obligations under the *hire purchase agreement*. It continues after those other obligations end, unless the *guarantor* ends it under 37.

Additional amounts the *guarantor* must pay

Our costs and other expenses

34. The *guarantor* must pay us for:
- (a) our costs in arranging, administering (including enforcing or taking any other action in connection with our rights) and terminating the guarantee and indemnity contained in the *hire purchase agreement*; and
 - (b) all stamp and other duties, fees, taxes and charges payable in connection with the *hire purchase agreement* and the guarantee and indemnity contained in the *hire purchase agreement* and any transaction (such as a payment or receipt) under it, and any interest, penalties, fines and expenses in connection with them.

Interest

35. The *guarantor* must pay interest calculated on daily balances on any amount the *guarantor* owes under 32 or 33 from the date we ask the *guarantor* for the amount until the *guarantor* pays it. This interest is to be calculated and is payable in accordance with 11.

The *guarantor's* own costs and other expenses

36. The *guarantor* must pay for anything which the *guarantor* must do under the *hire purchase agreement*.

The guarantor may end this guarantee and indemnity

37. The *guarantor* may end its liability under the guarantee and indemnity contained in the *hire purchase agreement* at any time if the *guarantor* pays us all amounts payable under the *hire purchase agreement* at that time including any amount which we reasonably determine to be the future or contingent liability of the hirer.

The *guarantor's* liability in respect of other *hire purchase agreements* is not affected by this clause.

Changes to rights

Reinstatement of rights

38. Under law, a trustee in bankruptcy or liquidator may ask us to refund a payment we have received in connection with the *hire purchase agreement* or the guarantee and indemnity contained in the *hire purchase agreement*. To the extent we are obliged to, or we agree to, make a refund, we may treat the original payment as if it had not been made. We are then entitled to our rights against the *guarantor* under the guarantee and indemnity contained in the *hire purchase agreement* as if the payment had never been made.

Our rights are protected

- 39.1 Rights given to us under the guarantee and indemnity contained in the *hire purchase agreement* and the *guarantor's* liabilities under it are not affected by any act or omission by us or by anything else that might otherwise affect them under law relating to guarantees and indemnities, including:
- (a) the fact that we vary or replace the *hire purchase agreement*, such as by extending the term; or
 - (b) the fact that we release the hirer or give them a concession, such as more time to pay; or
 - (c) the fact that the hirer opens another account with us; or
 - (d) the fact that we release, lose the benefit of or do not obtain any security; or
 - (e) the fact that we do not register any security which could be registered; or

- (f) the fact that we release any other person who guarantees the hirer's obligations under the *hire purchase agreement*; or
- (g) the fact that the obligations of any person who guarantees the hirer's obligations under the *hire purchase agreement* may not be enforceable; or
- (h) the fact that any person who was intended to guarantee the hirer's obligations under the *hire purchase agreement* does not do so or does not do so effectively; or
- (i) the death, mental or physical disability or insolvency of any person including the *guarantor* or the hirer.

39.2 The guarantee and indemnity contained in the *hire purchase agreement* does not merge with or adversely affect:

- (a) any other guarantee or indemnity, or mortgage, charge or other security, or right or remedy to which we are entitled at any time; or
- (b) a judgement or order which we obtain against the *guarantor* in respect of an amount payable under the guarantee and indemnity contained in the *hire purchase agreement*.

We can still exercise our rights under the guarantee and indemnity contained in the *hire purchase agreement* as well as under the judgement, order, other guarantee or security.

The *guarantor's* rights are suspended

40. As long as an amount payable under the *hire purchase agreement* remains unpaid, the *guarantor* may not, without our consent:

- (a) reduce the *guarantor's* liability under the guarantee and indemnity contained in the *hire purchase agreement* by claiming that the *guarantor* or the hirer or any other person has a right of set-off or counterclaim against us; or

- (b) exercise any legal rights to claim to be entitled to the benefit of another guarantee or mortgage, charge or other security given in connection with an amount payable under the *hire purchase agreement* or an amount payable under the guarantee and indemnity contained in the *hire purchase agreement* (for example, the *guarantor* may not try to enforce any mortgage we have taken to ensure repayment of amounts payable under the *hire purchase agreement*); or
- (c) claim an amount from the hirer or another *guarantor* of the hirer's obligations under a right of indemnity; or
- (d) claim an amount in the insolvency of the hirer or another *guarantor* of the hirer's obligations under the *hire purchase agreement* (including a person who has signed the *hire purchase agreement* with the *guarantor*).

What the *guarantor* acknowledges and declares

41.1 The *guarantor* acknowledges that the *guarantor* is responsible for making itself aware of the financial position of the hirer and any other person who guarantees the hirer's obligations under the *hire purchase agreement*.

41.2 The *guarantor* declares that it does not enter into the *hire purchase agreement* as a trustee, unless the *guarantor* has told us otherwise in writing.

General

When must the *guarantor* pay?

42. The *guarantor* must pay any amount payable to us under the *hire purchase agreement* on the date we specify.

The *guarantor* must take further steps

43. The *guarantor* must promptly do anything we ask (such as obtaining consents, signing and producing documents and getting documents completed and signed) to bind itself under the *hire purchase agreement*.

How we may exercise our rights

44. We may claim against the *guarantor* under the *hire purchase agreement* before we enforce any of our rights:

- (a) against the hirer or any other person; or
- (b) under another document such as a guarantee or mortgage, charge or other security.

(For example, we may ask the *guarantor* to pay us first without our having made the hirer bankrupt.)

How we may use money paid by the guarantor

- 45.1 We may use any money paid by the *guarantor* under the *hire purchase agreement* towards paying any part we choose of the amounts the *guarantor* owes us under the *hire purchase agreement*.
- 45.2 We may place in a suspense account any payments we receive from the *guarantor* for as long as we think prudent.

PART K - OTHER REQUIREMENTS

Our right to act

- 46.1 We may do anything which should have been done by you or the *guarantor* under the *hire purchase agreement* but which we consider you or the *guarantor* have not done properly.
- 46.2 If you do not return the *goods* when you are required to under the *hire purchase agreement*, we may enter the place where the *goods* are and take possession of the *goods* without prior notice to you.

How we may exercise our rights

- 47.1 We may exercise a right, remedy or power or give or refuse our consent in any way we consider appropriate including by imposing conditions.
- 47.2 If we do not exercise a right, remedy or power at any time, we can still exercise it later.
- 47.3 We are not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, remedy or power, except where it is caused by our fraud, gross negligence or wilful misconduct.

- 47.4 Our rights, remedies and powers under the *hire purchase agreement* are in addition to any other rights, remedies and powers provided by law independently of it.
- 47.5 Any termination under Part F does not affect any other right or remedy we have for amounts due to us which remain unpaid.
- 47.6 Our rights and remedies may be exercised by any of our directors, any of our employees whose job title includes the word “manager” or any other person we authorise.

How we may use money we receive

48. We acting reasonably, may use any money received under the *hire purchase agreement* towards meeting any part we choose of the amounts you owe us.

Confidentiality

49. Subject to clause 1.8, each party agrees not to disclose information provided by any other party that is not publicly available or the existence of, or contents of, the *hire purchase agreement* except:
- (a) to any person in connection with an exercise of rights or a dealing with rights or obligations under the *hire purchase agreement*;
 - (b) to each parties’ officers, employees, legal and other advisers and auditors;
 - (c) to any party to the hire purchase agreement or any related entity of any party to the hire purchase agreement, provided the recipient agrees to act consistently with this clause;
 - (d) with the consent of the party whose information is being disclosed;
 - (e) any disclosure the disclosing party reasonably believes is required by any law or stock exchange (except this paragraph does not permit us to disclose any information of the kind referred to in section 275(1) of the *PPSA* unless section 275(7) of the *PPSA* applies).

Our certificates

50.1 We may give you or the *guarantor* a certificate regarding any matter concerning the *hire purchase agreement* including:

- (a) the *implicit rate*; or
- (b) any amount payable by you to us; or
- (c) any amount payable by the *guarantor* to us.

50.2 The certificate is sufficient evidence of the accuracy of its content, unless it is proved to be false.

Setting off money owed to you

51. We may set off any money we owe you against any money you owe us under the *hire purchase agreement*, any other agreement or otherwise. We may set off any money we owe the *guarantor* against money the *guarantor* owes to us under the *hire purchase agreement*, any other agreement or otherwise. This clause does not limit other rights we have under the *hire purchase agreement*.

Notices and other communications

52.1 Notices, certificates, consents and other communications in connection with the *hire purchase agreement* must be in writing.

52.2 They must be:

- (a) left at the address last notified; or
- (b) sent by prepaid post to the address last notified; or
- (c) sent by facsimile to the facsimile number last notified.

52.3 If they are sent by post, they are taken to be received on the third day after posting.

52.4 If they are sent by facsimile, they are taken to be received on production of a transmission report by the transmitting machine which indicates that the whole facsimile was sent.

52.5 They take effect from the time they are received unless another time is specified in them.

Variation

53. A term of the *hire purchase agreement*, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

Business days

54. If a date for payment of money under the *hire purchase agreement* is not a business day, the money must be paid on the preceding business day.

Applicable law

- 55.1 The *hire purchase agreement* is governed by the law of the place where we sign it.
- 55.2 You and the *guarantor* submit to the non-exclusive jurisdiction of the courts of that place and courts of appeal from them.
- 55.3 We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you or the *guarantor*, as the case may be, by delivering it to your or the *guarantor's*, as the case may be, address in the *goods schedule* (or any changed address notified to us) or by leaving it there. This does not prevent any other method of service.

The *hire purchase agreement* and the law

56. Any present or future law that varies the *guarantor's* obligations under the *hire purchase agreement* is excluded to the extent allowed by law if it affects our rights or remedies adversely.

Our right to investigate

57. If we believe, acting reasonably, in good faith that you are or may be in breach of the *hire purchase agreement*, we may appoint a person to investigate whether this belief is accurate. You must cooperate with and comply with all reasonable requests made by this person. If in fact you are in breach of the *hire purchase agreement* at any time during the investigation (being a material breach, as reasonably determined by us) you must pay all of our reasonable costs associated with the investigation.

Trustee provisions

58. You acknowledge that if you enter into the *hire purchase agreement* as trustee of any trust or settlement, the *hire purchase agreement* is for the benefit of the trust, you have authority to enter into the *hire purchase agreement* and you have the right to be fully indemnified out of trust assets for obligations incurred under the *hire purchase agreement*.

Authority to complete and amend

59. You and the *guarantor* authorise us to:

- (a) fill in any blanks in the *hire purchase agreement* and any document signed by us which is connected with the *hire purchase agreement* (such as Corporations Act forms, financing statements, financing change statements or transfers for the *goods*), *as long as we act in good faith when doing so*; and
- (b) make any amendment to any document described in (a) above, in order to accurately reflect or give effect to the terms of the *hire purchase agreement* which have been agreed between us.

Appropriate use of our services

60.1 You warrant that your use of the services we provide will not breach any law of Australia or any other country.

60.2 Where we consider it necessary for us to meet our regulatory and compliance obligations:

- (a) you must provide us with any information we reasonably request;
- (b) we will disclose information we hold to regulatory and law enforcement agencies, other financial institutions, third parties and members of the Westpac Group; and
- (c) we may delay, block or refuse to provide any of our services.

We will not be liable to you or any other person for any loss or damage of any kind that may be suffered as a result of us exercising our rights under this clause.

Acting fairly

61. We will act fairly and reasonably in accordance with our legitimate business interests in exercising our rights and discretions under this hire purchase agreement.

PART L - MEANING OF WORDS

business day means any day (other than a Saturday or a Sunday) we are open for business in the place we sign the *hire purchase agreement*.

costs includes charges and expenses; and costs, charges and expenses in connection with:

- (a) legal, accounting, valuation and other advisers and investigators; and
- (b) repossession, repair and inspection of the goods.

goods means, in respect of a particular *hire purchase agreement*, the goods described in the *goods schedule* applicable to that *hire purchase agreement*.

goods schedule means in respect of a *hire purchase agreement*, the *Goods Schedule* which is part of that *hire purchase agreement*.

GST law means has the same meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

guarantor means the person or persons named in the *goods schedule* as the *guarantor*, and if there is more than one, means each of them separately and every two or more of them jointly.

hire purchase agreement means a hire of goods on the terms of these Terms and Conditions - General and the *goods schedule* applicable to those goods.

implicit rate means the interest rate implicit in the *hire purchase agreement*, as reasonably determined by us.

including when introducing a list of items, does not limit the meaning of the words to those items or to items of a similar kind.

insolvent means insolvent or insolvent under administration (each as defined in the Corporations Act), in receivership, in receivership and management, in liquidation, in provisional liquidation, wound up, administration, subject to any arrangement, assignment or composition or protected from any creditors under any statute or dissolved (other than to carry out a reconstruction while solvent).

payable in relation to an amount means an amount which is currently payable or will or may be payable in the future.

person includes firm, partnership, committee, and incorporated and unincorporated bodies.

PPSA means the Personal Property Securities Act 2009 (Cwlth).

rent instalment includes related stamp and financial institutions duty for that rent instalment.

security interest includes any security interest under the *PPSA*, mortgage, pledge, lien, charge, hypothecation, trust arrangement, title retention arrangement or other security interest or encumbrance.

take possession means obtaining possession of the goods after demanding their redelivery.

termination value for any of the goods on a day, means the sum of:

- (a) the present value on that day of the final payment for those goods; and
- (b) the present values on that day of the *rent instalments* (other than related stamp and financial institutions duty) which are still to fall due and which are attributable to those goods.

The present value of an amount on a day is calculated by discounting that amount at the *implicit rate*.

we, us, our means St. George Bank – A Division of Westpac Banking Corporation ABN 33 007 457 141 Australian credit licence 233714 and its successors and assigns.

you or **hirer** means the person or persons named in the *goods schedule* as the hirer, and if there are more than one, means each of them separately and every two or more of them jointly. “You” includes your successors and assigns to whom we have consented under 1.7.

The singular includes the plural and vice versa.

A reference to:

- the *hire purchase agreement* means the hire purchase agreement you have with us with respect to the *goods*, unless it is clear from the context that other hire purchase agreements are being referred to; and
- a document includes any variation or replacement of it; and
- law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under laws made by parliament) and consolidations, amendments, re-enactments or replacements of any of them; and
- any thing includes the whole and each part of it, and
- the Corporations Act is a reference to the Corporations Act 2001 (Cwlth).

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St. George Bank - A
Division of Westpac
Banking Corporation ABN
33 007 457 141
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