

# Cat® Commercial Account Program

## Terms and Conditions

### 1 CONTENTS AND ACCEPTANCE OF AGREEMENT

- (a) This Agreement governs your Account. It also provides for your enrolment in the Rewards Program.
- (b) You agree to the terms of each Transaction Document by completing and signing an Application.
- (c) Our obligations do not start until we approve you for an Account.
- (d) When you or your Authorised Users use your Account, you authorise us to act on those instructions by, for example, paying a Vendor for Goods or Services you have purchased. We will debit your Account by the amount of that purchase, and you then owe us that amount, together with any Finance Charges and Account Fees and Charges that are payable under this Agreement.
- (e) The Program Website contains important information that forms part of this Agreement. You should visit the Program Website for more details about the Cat Commercial Account, including applicable fees and charges.

### 2 DEFINITIONS AND INTERPRETATION

#### 2.1 Definitions

In this Agreement:

**Account** means your credit account with us made under this Agreement.

**Amount Due** for a given Billing Cycle means the amount shown on your Statement as due and payable on your Account at that time.

**Account Balance** means, at any time, the total of all amounts outstanding on your Account, whether in the nature of principal, interest or fees and charges.

**Account Fees and Charges** has the meaning in clause 7 and are explained on the Program Website.

**Accountholder Portal** means the secure, virtual account established and accessed by the holder of an Account at [www.mycatfinancial.com](http://www.mycatfinancial.com) or any substitute or replacement site announced by us from time to time.

**Agreement** means:

- (a) this document;
- (b) the Annual Interest Rate and Credit Limit that appears in the Accountholder Portal and on the Program Website; and
- (c) the method of calculating Finance Charges and Account Fees and Charges explained on

the Program Website, as may be amended or replaced from time to time under this Agreement.

**Annual Interest Rate** means the interest rate per annum that applies to your Account, which is included in the Accountholder Portal, on the Program Website and appearing on your Statements.

**Application** means an online application for credit available on the Accountholder Portal and the Program Website, and includes the Business Purpose Declaration.

**Authorisation**, in respect of a Transaction, has the meaning in clause 5.4 and **Authorise** has a similar meaning.

**Authorised User** means an individual specifically authorised by you to transact on your Account in accordance with clause 9.2 and each of your Related Entities (if any).

**Billing Cycle** means a period covered by a Statement, which Statement will provide the number of days and date range for the relevant cycle.

**Business Day** means a day that banks are open for business in Melbourne (not being a Saturday, Sunday or public holiday in Melbourne).

**Business Purpose Declaration** means the declaration signed by you at the time of making an Application.

**Caterpillar** means Caterpillar Inc. and its affiliates and subsidiaries.

**Cat Commercial Account** means the open-ended, commercial, revolving line of credit explained in this Agreement.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Credit Eligibility Information** about an individual means information about the individual that was disclosed to us by a Credit Reporting Body under the *Privacy Act 1988* (Cth) and information about the individual that is derived from the information disclosed by a Credit Reporting Body to us.

**Credit Information** means Personal Information about an Individual that is identification information about the individual, the type of commercial credit (and the amount of credit) sought in an application, and any other Personal Information that meets the definition of "credit information" in the *Privacy Act 1988* (Cth).

**Credit Reporting Body** means a third party that operates a credit reporting business, including platforms operated by Ilion and Equifax.

**Credit Limit** means, at any time, the maximum

amount of credit available to the holder of an Account, including its Authorised Users.

**Customer** means the person named in the Application as the "CUSTOMER". If there is more than one, it means both of them together and each of them separately.

**Dealer** means a dealer in, or distributor of, Caterpillar machines, equipment, engines, attachments and accessories of a class, kind, specification or source of manufacture, duly appointed and authorised by the manufacturer or importer to perform and carry out that function within a designated place in the Jurisdiction.

**Direct Debit** means a debit processed through the Bulk Electronic Clearing System, or another equivalent system used for the purpose of direct debiting.

**Direct Debit Account** means the bank account nominated by you for the Direct Debit Request, as amended or replaced from time to time under the Direct Debit Service Agreement.

**Direct Debit Arrangement** means any payment given under the Direct Debit Request or under the Direct Debit Service Agreement.

**Direct Debit Request** means the Direct Debit Request contained on the Accountholder Portal or any replacement direct debit request provided by you to us.

**Direct Debit Service Agreement** means the Direct Debit agreement in clause 19.

**Event of Default** means each of the events listed in clause 13.1.

**Finance Charge** means a fee charged by us on your Account at the Annual Interest Rate under clause 7 and using the method of calculating Finance Charges on the Program Website.

**Goods** means certain qualifying Caterpillar goods sold by a Vendor and available for a Customer to rent or buy using its Account.

**Guarantee** means the guarantee and indemnity contained in clause 16.

**Guaranteed Money** means all amounts that at any time, for any reason or circumstance in connection with this Agreement or the Account, or any transaction, instrument (whether or not negotiable), document, event, act, omission, matter or thing whatsoever in connection with this Agreement or the Account, whether at law or otherwise, and whether or not of a type within the contemplation of the parties at the date of the Guarantee:

- (a) are payable, are owing but not currently payable, are contingently owing, or remain unpaid, by you to us;
- (b) we have advanced or paid on your behalf or at your express or implied request;
- (c) we are liable to pay by reason of any act or

omission on your part; or

- (d) are reasonably foreseeable as likely, after that time, to fall within any of the above paragraphs.

This definition applies:

- (a) irrespective of the capacity in which we, the Guarantor or you became entitled to, or liable in respect of, the amount concerned;
- (b) whether we, the Guarantor or you are liable as principal debtor, surety or otherwise; and
- (c) whether the Guarantor or you are liable alone, or together with another person.

**Guaranteed Obligations** means your obligations under or in connection with this Agreement and your Account.

**Guarantor** means the person nominated as such in the Application. If there is more than one Guarantor, it means both of them together and each of them separately.

**Insolvent or Insolvency** means:

- (a) a person is bankrupt, insolvent, an insolvent under administration, has a controller appointed, is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property, is subject to any arrangement, assignment, moratorium or composition, is protected from creditors under any statute or is dissolved (or something having a substantially similar effect to any of the preceding events happens under the law of any jurisdiction); or
- (b) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the events listed in paragraph (a) of this definition.

**Jurisdiction** means Australia.

**Material Impact** means an event that:

- (a) by its nature is material;
- (b) constitutes a breach of law by you or the Guarantor;
- (c) CFAL reasonably considers has, or is likely to have, a material impact on:
  - (i) the ability of you or the Guarantor to comply with your or its financial obligations under or in connection with this Agreement;
  - (ii) our credit, risk or security position; or
  - (iii) our ability to assess either of the things explained in sub-paragraphs (i) or (ii) above; or
- (d) we reasonably consider has given rise to, or is likely to give rise to, a material risk that we might not comply with law or a material risk to

our reputation.

**Minimum Payment** means the optional method you may choose to repay your Account explained on the Program Website.

**Personal Information** has the meaning given to the term “personal information” by the *Privacy Act 1988* (Cth).

**Potential Event of Default** means an event that would, with the lapse of time or giving of notice or both, become an Event of Default.

**Program Website** means the website hosted by us or Caterpillar in relation to the Cat Commercial Account at [cat.com/commercialaccountAU](http://cat.com/commercialaccountAU) or any substitute or replacement site announced by us from time to time.

**Promotional Offer** has the meaning given in clause 4.1(c).

**Purchase Transaction** has the meaning in clause 4.1.

**Related Entity**, of an entity, means another entity, which is related to the first within the meaning of section 50 of the Corporations Act or is in any economic entity (as defined in any approved accounting standard), which contains the first.

**Rental Transaction** has the meaning in clause 4.1.

**Repayment Date** means the due date for repayment of an Amount Due for a Billing Cycle, as stated on your Statement.

**Rewards Program** means the customer incentive program designed to reward a Rewards Member for establishing and/or using its Cat Commercial Account and governed by the Rewards Program Member Terms.

**Rewards Program Member Terms** means the terms and conditions governing the accumulation and use of rewards earned under the Rewards Program, published at [cat.com/commercialaccountAU](http://cat.com/commercialaccountAU), as amended or replaced from time to time.

**Rewards Member** means a member enrolled in the Rewards Program.

**Review Event** means the occurrence of any of the events identified in clause 14.

**Services** means certain qualifying services offered by a Vendor and available to a Customer using its Account.

**Statement** means a statement issued by us to you in connection with your Account.

**Statement Billing** means the method of billing explained in clause 6.

**Transaction** refers to a Purchase Transaction, Rental Transaction or Promotional Offer, depending on the context.

**Transaction Document** means:

- (a) this Agreement;

- (b) the Business Purpose Declaration;
- (c) the Direct Debit Service Agreement; and
- (d) any other document to which you and/or the Guarantor are a party and that we agree is a Transaction Document,

and includes any document made under or in connection with them.

**Vendor** means a participating Dealer (as a seller of Goods and Services) and any participating Caterpillar store or e-commerce platform that accepts the use of an Account from time to time, including Cat Rental Stores and [parts.cat.com](http://parts.cat.com).

## 2.2 Interpretation

In this Agreement:

- (a) reference to singular includes plural and vice versa;
- (b) a reference to dollars is to Australian Dollars (unless otherwise indicated);
- (c) a reference to time is to the time in Victoria;
- (d) mentioning anything after including does not limit what else might be included;
- (e) reference to a person includes a body corporate, partnership or joint venture;
- (f) a reference to “you” or “your” is a reference to the Customer;
- (g) a reference to “we”, “us” or “our” is a reference to Caterpillar Financial Australia Limited or CFAL;
- (h) a reference to a party includes its successors and assigns and its executors and administrators (as applicable); and
- (i) a notice or announcement under this Agreement may be given or made by us by posting the relevant notice or announcement, or making the relevant information available, on any one or more of the following:
  - (i) Accountholder Portal, including using the secure message centre within the Accountholder Portal;
  - (ii) Program Website; and/or
  - (iii) by post, email or other electronic means.

If we give notice or make an announcement in any one or more of those methods, you will be taken to have been duly notified by us in the same way as if we had emailed or posted that notice, announcement or information to you directly.

## 3 BEFORE WE APPROVE AN ACCOUNT

We do not need to give you or activate an Account for you unless each of the following conditions have been satisfied or we agree that they do not need to be:

- (a) submission of an Application and Business Purpose Declaration;

- (b) if we tell you that your Account requires a Guarantor, completion of the Guarantor approval process;
- (c) you and the Guarantor are not in default (however described) of the terms of any other agreement with us (or between us and any of your Related Entities) or the terms of any other financial arrangement in place with another financier;
- (d) the representations and warranties in clause 10.1 are correct and not misleading; and
- (e) satisfaction of any additional conditions we tell you about before your Account is activated.

## 4 TYPES OF TRANSACTIONS

### 4.1 Permitted transactions

You may use your Account for the following types of commercial transactions (each a **Transaction**):

- (a) **Purchase Transactions:** These are purchases of Goods and Services from a Vendor using your Account.
- (b) **Rental Transactions:** These are rentals of Goods or certain equipment from a Vendor using your Account.
- (c) **Promotional Offers:** These are special promotional offers made available to Customers from time to time using their Account to make qualifying purchases and that comply with certain terms and conditions of that offer (**Promotional Offer**). These terms and conditions will form part of this Agreement. Promotional Offers (and the additional terms and conditions that apply to them) will be announced on the Program Website or through email communications from us, Caterpillar or a Vendor, whenever they become available.

### 4.2 Transactions with Vendors

- (a) You agree to comply with ordinary point of sale conditions, or refund or return policy of a Vendor when you use your Account for Transactions from that Vendor, to the extent you are required by applicable laws.
- (b) Notwithstanding any other provision of this Agreement, but subject to applicable laws, you are not permitted to request a refund of a Transaction in cash or cash equivalent from a Vendor or to use your Account to obtain a cash advance on your Account from a Vendor.
- (c) All processed refunds of purchases made using an Account will be a reversal of the relevant Transaction and a corresponding credit on your Account, unless the relevant Vendor is required by law to provide you with a cash refund, in which case, you may receive a cash refund and we will appropriately reflect the cash refund against your Account.
- (d) If you arrange with a Vendor to charge your

Account under a recurring or scheduled payment arrangement, then you must promptly tell the Vendor when you want to discontinue that arrangement, otherwise you may not be able to end those recurring debits on your Account in a timely manner.

### 4.3 Using other benefits to pay Account

Unless we otherwise announce from time to time, no customer incentive benefits, including Cat Credits or other incentive program benefits that may be offered from time to time, can be used to pay down or reduce your Account Balance.

## 5 PERMISSIBLE USE

### 5.1 Business purpose

- (a) Each time you or an Authorised User uses your Account, you and each Authorised User agrees that the transaction is for the business purpose declared and signed by you in the Application. You agree to use your best endeavours to procure compliance by your Authorised Users with the Business Purpose Declaration you have signed in respect of your Account.
- (b) You must not use your Account to make a payment on any credit account or deferred payment arrangement with a Dealer or any other person.

### 5.2 Credit Limit

- (a) Following a credit assessment, your Account is given a Credit Limit that we set when we approve your Account, and this will appear on the Accountholder Portal and on your Statements. Your Credit Limit at any time is the maximum amount of credit available to you and your Authorised Users under your Account. You may check your Credit Limit at any time on the Accountholder Portal, your Statements or by contacting us.
- (b) Subject to clause 5.3, you cannot exceed your Credit Limit or allow your Authorised Users to do this.

### 5.3 Changes to your Credit Limit

- (a) If you or your Authorised Users use your Account in a transaction that, if completed, would exceed your available Credit Limit, we may, but are not required to, allow that transaction to be made on a case by case basis. If we authorise that transaction, you will be responsible for repaying the amount above your Credit Limit plus any applicable cost for exceeding your Credit Limit in connection with completion of that transaction. All applicable costs will appear on your Statement. If we approve a transaction under this clause, it does not mean we will approve a similar transaction in the future.

- (b) You may request a Credit Limit change at any time by contacting us or, if the function is available, use a digital request form on the Accountholder Portal. A request to increase your Credit Limit is subject to our usual credit review, and we reserve the right to partially or fully decline your request or approve it with or without conditions.
- (c) We may, acting reasonably, change your Credit Limit without you having requested it under clause 5.3(a), in the following circumstances:
  - (i) if the change is a decrease to or suspension of your Credit Limit:
    - (A) to manage risks, including credit risk, fraud, operational or regulatory risk in which case, we may but do not need to give you any notice first;
    - (B) if clause 13 (*Defaults*) or clause 14 (*Review Events*) applies, in which case, we may but do not need to give you any notice first; or
    - (C) to reflect changes to the features or functionality of an Account or the Cat Commercial Account offering, in which case, we will post the change in the Accountholder Portal on the date of the change (and your Statement immediately following the change will also show your new Credit Limit); or
  - (ii) if the change is an increase to your Credit limit:
    - (A) we reasonably believe you have financing needs from us beyond your Credit Limit that are suitable through your Account;
    - (B) we have conducted a credit review and reasonably consider that, based on that review, you can support the additional Credit Limit;
    - (C) under a Promotional Offer or to allow you to participate in a Promotional Offer that, without the change, you could not participate in; or
    - (D) to complete a transaction under clause 5.3(a).
- (d) Notwithstanding any other provision of this Agreement, we will not increase your Credit Limit where:
  - (i) any Event of Default is subsisting;
  - (ii) your Account has a history of late or missed payments (as evidenced by late payment fees on your Statements); or
  - (iii) we reasonably consider that an increased Credit Limit will cause you

hardship or loss, or will result in an Event of Default.

- (e) Whenever a new Credit Limit applies to your Account, you will be able to see your new Credit Limit in the Accountholder Portal after the date of the change and on Statements after the date of the change.
- (f) Before a Credit Limit has changed, you can tell us not to change it and, in that event, we will not apply the change to your Credit Limit.
- (g) If, after a Credit Limit has changed, you do not want the new Credit Limit, you can:
  - (i) use the process to change your Credit Limit under clause 5.3 **Error! Reference source not found.**;
  - (ii) use the issue resolution process provided for on the Program Website; or
  - (iii) close your Account without penalty, subject to the Account closure process in clause 12.5.
- (h) Once your Credit Limit has changed, you must comply with this Agreement as it applies to your new Credit Limit. You are bound by your new Credit Limit until another change is made under this clause 5.3. If your Credit Limit is reduced under this clause 5.3, you will have to pay any amount on your Account that is above your reduced Credit Limit before we will allow any further transacting on your Account, unless we allow it.

#### 5.4 Authorisation

- (a) For any Goods and/or Services you intend to buy using your Account (whether in whole or part), the Vendor may, before or after the Goods and/or Services are provided and/or performed, request that we Authorise the relevant transaction by placing a hold on your Account for an amount equal to the value of the proposed transaction or that part of the proposed transaction that will be paid for using your Account (if less than the entire transaction amount) (**Authorisation**).
- (b) If clause 5.4(a) applies:
  - (i) the Vendor must first get an Authorisation from us before we will place any hold, or process any charge, on your Account in relation to that transaction; and
  - (ii) provided we Authorise the transaction, you agree that we may place a hold on your Account for the relevant amount.
- (c) We will not Authorise any transaction amount to be held or charged against your Account that exceeds:
  - (i) the value of the transaction (or part of it) that will be paid for using your

Account; or

- (ii) your Credit Limit (unless, notwithstanding clause 5.3(a), you request that we allow you to exceed your Credit Limit in that transaction and we allow it in writing before the transaction completes).
- (d) An Authorisation granted by us lapses after 30 days from the date it is given, unless we grant an extension at your request or that of the relevant Vendor.
- (e) We may refuse to Authorise any transaction using your Account if an Event of Default occurs or is continuing. We are not liable for any loss or damage caused by us not Authorising a transaction, except to the extent such loss or damage is caused by our fraud, negligence or wilful default (or that of our employees, agents, officers or contractors).

## 5.5 Verification

A Vendor may not accept your Account if the person attempting to use the Account is not reasonably verified by the Vendor. Before use of your Account is accepted by a Vendor, you may be asked to reasonably identify yourself and any Authorised User.

## 5.6 Vendors

- (a) For the avoidance of doubt, a Vendor is not our employee, agent, officer or contractor for any purpose related to this Agreement.
- (b) No Vendor has our authority to represent that it can or will approve your Account or waive or modify any term of your Account or represent that your Account has, or you will be granted, any rights or benefits.

## 6 STATEMENT BILLING

Unless otherwise agreed by us:

- (a) we will use a statement billing process for your Account;
- (b) the Billing Cycle for your Account is monthly based on the number of days in each calendar month;
- (c) a Statement for each Billing Cycle will become available to you in your Accountholder Portal on or before the last day of each month. You may also see a summary of your Transactions on the Accountholder Portal at any time (although it may not always show the most up to date list of all transactions); and
- (d) each Statement will show an Amount Due and a Repayment Date for that Amount Due. Unless your Statement says otherwise, the Repayment Date for each Amount Due on a Statement is 5 days after the date of that Statement.

## 7 FINANCE CHARGES, ACCOUNT FEES AND CHARGES

- (a) Finance Charges and Account Fees and Charges apply to your Account in the manner and circumstances explained on the Program Website. You should visit the Program Website for full details about how and when Finance Charges, and Account Fees and Charges are applied, charged and payable on your Account.
- (b) Finance Charges and Account Fees and Charges may apply differently to different Transaction types. For example, there are different Account Fees and Charges that apply to payments on Purchase and Rental Transactions compared to payments on Promotional Offers.
- (c) You must pay all Finance Charges and Account Fees and Charges that are payable on your Account when they fall due for payment as included in the Amount Due on your Statement.
- (d) We may change our Finance Charges, Account Fees and Charges, and any other fees, rates or other charges (or change the structure, or manner of charging, such fees, rates or other charges) to reflect changes in the cost of operating the Cat Commercial Account program or your Account or to otherwise protect our legitimate interests. Such changes will appear on the Program Website.
- (e) We will use best efforts to provide you with notice before any change to the Annual Interest Rate, Finance Charges and Account Fees and Charges by announcement on the Program Website, however we may not give notice first if we reasonably consider the change urgent or it is not necessary for us to lawfully give you notice (and, in any event, we will do our best to ensure the change is available on the Program Website no later than the day the change takes effect).
- (f) If you do not wish to accept a change notified under this clause 7, you may close your Account without penalty, subject to the Account closure process under clause 12.5.
- (g) Fees, rates or other charges as amended will only apply to your Account after the date on which changes are expressed to take effect.
- (h) To the extent that any Finance Charge exceeds the amount permitted under this Agreement or applicable law, the amount of any excess interest charged to you shall be credited to you or, if your Account shall have been paid in full, refunded to you.

## 8 PAYMENTS

### 8.1 Promise to pay us

- (a) You promise to pay us for all amounts and Transactions on your Account when due. If a payment you make is invalid or misapplied, we will reverse any credit previously provided for such payment.
- (b) You must not make a repayment under this Agreement directly to any Vendor.

### 8.2 Forms of payment

- (a) You may only choose to make payments on your Account using one of the permitted methods on the Program Website.
- (b) All payments are due and payable in the lawful currency of the Jurisdiction and must be drawn from funds on deposit in an authorised deposit-taking institution in the Jurisdiction.
- (c) Cash payments will not be accepted. We are not required to accept any payment that we reasonably consider will require special handling.
- (d) You must not combine or bundle any payment on your Account with any other payment or amount due under another arrangement with us or any other Caterpillar entity. If this occurs, you authorise us and any other Caterpillar entity to forward such payment to the intended payment recipient.

## 9 CUSTOMER AND AUTHORISED USERS

### 9.1 Customer is liable

- (a) The Customer is liable for its Account, even if an Authorised User has transacted on that Account.
- (b) Related Entities in a corporate group may have their own Accounts and, in each case, a Related Entity will be a Customer of its Account.

### 9.2 Authorised Users

- (a) Each Account must have at least one Authorised User. You can contact us at any time to confirm the name(s) of the individual(s) that you wish to be your Authorised User(s). This includes where you wish to make a change to your nominated Authorised User(s).
- (b) Any individual you nominate as your Authorised User will be required to verify themselves and their relationship to you. We may ask that your Authorised User verify themselves and agree to be bound by the terms of the Transaction Documents (as an Authorised User) through the Accountholder Portal or another method we may reasonably request. You agree to do all things reasonably necessary to ensure that your Authorised Users agree to be bound by,

and comply with, the terms of the Transaction Documents as they apply to them.

- (c) You are liable for all transactions made by any Authorised User on your Account, even if you did not approve or give authorisation for a specific transaction (except to the extent such liability is caused by our fraud, gross negligence or wilful default (or that of any of our employees, contractors, officers or agents)).

### 9.3 Accounts and liability for Related Entities

- (a) In the case of a corporate group where only one entity has an Account, the Accountholder may apply for one or more of its Related Entities to be an Authorised User of its Account.
- (b) An Accountholder with Related Entities nominated as Authorised Users remains liable for all transactions conducted by those entities using the Account. If you do not wish to be liable for these transactions, then an Account must be established separately for each Related Entity.

### 9.4 Accounts are personal to Customer

- (a) Each Account is personal to the Customer and cannot be assigned, transferred or made available for use by, any other person (other than an Authorised User of that Account).
- (b) If one or more of your Related Entities hold Accounts, then we may determine, acting reasonably, that those Accounts will have an aggregate Credit Limit that applies across all Accounts held by those Related Entities.

## 10 YOUR WARRANTIES AND OBLIGATIONS

### 10.1 Representations and warranties

You and the Guarantor represent and warrant to us that (each in respect of yourself or itself only):

- (a) you have full power and authority to enter into and perform your obligations under the Transaction Documents and have taken all necessary and appropriate action to authorise the execution, delivery and performance of the Transaction Documents and obtained all consents and approvals required to enter into and perform your obligations under the Transaction Documents;
- (b) to the best of your knowledge, the Transaction Documents constitute valid obligations which are enforceable against you;
- (c) if a body corporate, you are duly incorporated under the laws of your place of incorporation, are validly existing in accordance with those laws and have the power and authority to carry on your business as now being conducted;

- (d) to the best of your knowledge having made due enquiries, your execution, delivery or performance of the Transaction Documents and the performance of any act contemplated in the Transaction Documents will not violate any law, regulation, determination, order or award of any court, public body or authority or conflict with or result in any breach of or require any consent or approval that has not been obtained under any agreement, trust deed or other undertaking or instrument to which it is a party or which binds you; and
- (e) neither you nor, to the best of your knowledge having made due enquiries, any of your Related Entities are in default under any other financing arrangement and, to the best of your knowledge having made due enquiries, no event has occurred or is continuing which, if unremedied, could, with the giving of notice, lapse of time or fulfilment of any condition, constitute a default under any such arrangement.

## 10.2 Undertakings

You and the Guarantor agree, while any amount owing on your Account remains unpaid:

- (a) to deliver to us within 14 days of our request, any information about you or the Guarantor that we reasonably request; and
- (b) to tell us about any significant decline in your or the Guarantor's business or financial condition and any Event of Default or Potential Event of Default occurring, giving full details of the event and any step taken or proposed to be taken to remedy it.

## 11 REWARDS PROGRAM ENROLLMENT

- (a) By entering into this Agreement and opening an Account, you agree that we may enrol you as a Rewards Member in the Rewards Program at the same time, unless you tell us that you do not wish to participate in the Rewards Program.
- (b) If you are a Rewards Member in the Rewards Program, you agree to comply with the Rewards Program Member Terms, which can be found at [cat.com/commercialaccountAU](https://cat.com/commercialaccountAU).
- (c) You consent to us using your personal information supplied in connection with your Account for the purpose of enrolling you in the Rewards Program.
- (d) We will assign your Authorised User(s) as the primary contact person(s) for the purpose of the Rewards Program, unless you tell us otherwise.
- (e) You can tell us at any time that you wish to be removed from the Rewards Program. You may lose benefits you have accrued if you decide to do so.

## 12 ADMINISTRATIVE MATTERS

### 12.1 Application of payments

Money received by us from you will be used to pay any amount owing on your Account in accordance with clause 12.2.

### 12.2 Order of payment

- (a) We may use money received under this Agreement towards any payment owing on your Account in any order we reasonably choose, including by paying Finance Charges or Account Fees and Charges before other amounts or repaying older debts first.
- (b) Unless an Event of Default is continuing, we will generally (but do not have to) apply payments first towards the Amount Due on your most recent Statement until your Account Balance is paid in full and, subject to that, we will endeavour to apply your payments first to transactions that have, or would incur if not paid on time, the highest fee or charge.

### 12.3 Remaining money

Any money left after your Account Balance, and any other amounts owing, are paid will be returned to you or any other person we reasonably believe is legally entitled to it. We do not incur any liability if we pay the money to another person we reasonably believe is legally entitled to it and we are not required to pay interest on the remaining money.

### 12.4 Right to fix and claim cost

- (a) We may do anything which you should have done under this Agreement but which you either have not done or, in our reasonable opinion, have not done properly.
- (b) Everything you and the Guarantor are required to do under this Agreement is at your expense. You and the Guarantor agree to pay or reimburse on demand any cost we reasonably incur in connection with doing anything you are required to do under this Agreement and have not done or, in our reasonable opinion, have not done properly.

### 12.5 Closing your Account

- (a) You may close your Account or suspend any further use of your Account at any time by giving us at least 30 days' notice in writing beforehand. Your Account will only be closed once you repay all amounts owing on your Account and no further transactions can be debited to your Account.
- (b) We may close your Account or suspend your privileges at any time:
  - (i) under an Event of Default;
  - (ii) if we reasonably consider that the continued use of your Account will have a Material Impact; or
  - (iii) in accordance with clause 18.13.

- (c) If your Account is closed by you or us under either paragraphs (a) or (b) above, you remain responsible for paying all Transactions, Finance Charges and any other fees and charges then owing or any made in the current Billing Cycle that has not yet been included in a Statement (unless any future charges or fees are allowed as a result of our negligence, fraud or wilful default (or that of any of our officers, employees, agents or contractors)).

## 12.6 Changes to your Account

- (a) Subject to any other term of this Agreement that provides us with a right to make changes in connection with this Agreement, we may change any term of this Agreement in the following circumstances:
- (i) to reflect changes that benefit you or Accountholders generally;
  - (ii) to reflect changes to the features or functionality of the Cat Commercial Account program, including changes to a Transaction Document;
  - (iii) to reflect changes to ensure the Cat Commercial Account work with, or the terms of this Agreement are consistent with, our business, communication, technological or operational systems or processes;
  - (iv) to manage or reduce risks, including non-compliance, credit risk, fraud, operational or regulatory risk;
  - (v) to reflect changes to systems, procedures or practices or to enhance security;
  - (vi) to change fees, rates or other charges, including the Annual Interest Rate and Account Fees and Charges (or to change the structure, or manner of charging, such fees, rates or other charges) to reflect changes in the cost of operating the Cat Commercial Account program or to otherwise protect our legitimate interests;
  - (vii) to correct errors, omissions, inconsistencies or ambiguities or changes that are administrative in nature; or
  - (viii) to reflect a change of law, or any decision, recommendation, regulatory guidance or standard of any court, tribunal, ombudsman service, regulator, or any other similar body; or
  - (ix) any other changes that are reasonably necessary to protect our legitimate business interests.
- (b) We will provide at least 30 days' notice first before a change to this Agreement, however we may give less notice if we reasonably

consider the change urgent and, in that event, we will do our best to give you as much notice as reasonably practicable.

- (c) If you do not wish to accept a change notified under this clause 12.6, you may close your Account without penalty, subject to the Account closure process under clause 12.5.
- (d) Unless we state otherwise, this Agreement as amended will apply to your Account Balance as at the date the changes are expressed to take effect and to new activity on your Account that occurs after the date on which the changes are expressed to take effect.

## 12.7 Resolving issues

You can raise any issue about your Account, including in relation to your Credit Limit, a transaction on your Account, Finance Charges or Account Fees and Charges, or about your Direct Debit Arrangement, by following the issue resolution process on the Program Website under the heading 'Fees and Charges'.

## 13 DEFAULTS

### 13.1 Events of Default

Each of the following is an Event of Default:

- (a) you or the Guarantor fail to pay an Amount Due on your Statement after its Repayment Date;
- (b) you or any of your Authorised Users exceeds your applicable Credit Limit, which has not been approved by us;
- (c) you or the Guarantor fail to comply with a term of the Transaction Documents and the non-compliance has a Material Impact;
- (d) information given to us by you or the Guarantor under or about the Transaction Documents is incorrect or misleading and that has a Material Impact;
- (e) any default or event of default (however described) occurs:
  - (i) under another agreement between (A) you or the Guarantor, or any subsidiary of yours or the Guarantor's, and (B) us, or any Related Entity of ours; or
  - (ii) in respect to any other indebtedness of you, or the Guarantor (from any person), and it has a Material Impact (it being agreed for the purpose of this clause 13.1(e) that a Material Impact will arise if the event of default (however described) results in us or the relevant financier declaring any indebtedness of you or the Guarantor due and payable before its specified maturity date or taking any enforcement action under any security granted by you or the Guarantor);
- (f) you or the Guarantor become Insolvent;
- (g) if you or the Guarantor are a natural person,

you and/or the Guarantor die or are convicted of an indictable offence or sentenced to a term of imprisonment or become incapable of managing your own affairs;

- (h) any execution or other process of any court or authority or any distress is issued against or levied upon any of your or the Guarantor's assets;
- (i) you or the Guarantor cease or threatens to cease carrying on your business or a substantial part of it or you or the Guarantor disposes of the whole or a substantial part of your business, undertaking or assets whether by one transaction or a series of transactions (whether related or not); and
- (j) you or the Guarantor breach clause 18.13 (*Sanctions / AML*) or any statement or representation made or repeated under clause 18.13 (*Sanctions / AML*) is false, inaccurate or incorrect or is misleading or deceptive in any respect when made or repeated.

### 13.2 Actions upon Event of Default

- (a) If an Event of Default occurs and is continuing, we may:
  - (i) block or suspend Transactions, close your Account or reduce or suspend your Credit Limit;
  - (ii) demand payment of part of, or the entire balance owing on, your Account as soon as reasonably practicable (including amounts on Transactions completed in the current Billing Cycle but not yet included on a Statement for that Billing Cycle);
  - (iii) declare by notice to you that our obligations under this Agreement are terminated;
  - (iv) in the case of you not paying an amount when due, report your default to any credit reporting bodies; and/or
  - (v) take court action to recover all amounts owing on your Account.
- (b) To the extent not prohibited by applicable law, if you are in default, you agree to pay our reasonable collection costs, legal fees (including allocated costs for solicitors who are employed by us), court costs, and all other expenses of enforcing our rights under this Agreement.
- (c) Before taking any court action under clause 13.2(a)(v), we will give you and/or the Guarantor an opportunity to remedy the Event of Default within a specified time frame (at least 5 Business Days, or any shorter period permitted by law) unless this is not necessary under the law. However, we need not give any such notice or wait until the end of any period

given in any such notice if:

- (i) we are of the reasonable opinion that it is necessary to manage an immediate risk; or
  - (ii) an Event of Default under clause 13.1(f) to (j) (inclusive), or a Review Event that we have elected to treat as an Event of Default under clause 14, is continuing.
- (d) If we do not demand immediate repayment of any amount owing on your Account when an Event of Default occurs, we have not waived our right to do so later.

### 13.3 Exercise of rights

If we have any rights against another person or under another document, we may exercise our rights in any order or manner we reasonably choose.

## 14 REVIEW EVENTS

Each of the following will constitute a Review Event:

- (a) in the case of a company or other corporate or legal structure (other than a sole proprietor):
  - (i) there is a change in the identity of any of the persons who are able to control the composition of the board of directors or other governing body of you or the Guarantor;
  - (ii) there is a change in more than half of the voting rights attaching to the capital of you or the Guarantor and/or there is a change in more than half of the issued capital of you or the Guarantor (excluding any part of the capital that carries no right to participate in the distribution of either profit or capital);
  - (iii) the acquisition by any means by a person of a relevant interest (as defined under the Corporations Act) in shares in you or the Guarantor that is sufficient to allow that person either alone or jointly with others to exercise control; or
  - (iv) a transaction is entered into or publicly announced (whether subject to conditions or not) that, if it completes, will give rise to any of the events explained in paragraphs (a) to (ii) above; and
- (b) in the case of an individual or sole proprietor:
  - (i) there is a change in the identity of any of the persons who are able to control your business or assets, or those of a Guarantor, or your Account; or
  - (ii) you no longer have, or there is a change to, your business identifier (ie, Australian Business Number) or that of a Guarantor.

Upon the occurrence of a Review Event, we may review our decision to provide the Account to you under this Agreement. If we reasonably believe that the Review Event would have a Material Impact, we may treat the Review Event as an Event of Default and take any actions under clause 13.2.

## 15 REINSTATEMENT OF RIGHTS

If a transaction or payment under this Agreement is void, voidable, unenforceable or refundable:

- (a) our rights are the same as if the payment or transaction was not made; and
- (b) you and the Guarantor agree to do anything (including signing any document) we reasonably ask to restore us to our former rights under this Agreement.

## 16 GUARANTEE AND INDEMNITY

### 16.1 This clause applies if a Guarantor is required for an Account

If we tell you that a Guarantor is required on your Account, the provisions of this clause 16 shall apply to the Guarantor upon them accepting this Agreement (in its capacity as Guarantor). Each Guarantor will be required by us to separately agree to this Agreement (as Guarantor) before your Account is activated.

### 16.2 Guarantee

In consideration for us entering into this Agreement, the Guarantor irrevocably and unconditionally guarantees to us that you will make punctual payment to us of the Guaranteed Money and comply with the Guaranteed Obligations. If you do not pay the Guaranteed Money on time or fulfil the Guaranteed Obligations, the Guarantor agrees to pay the Guaranteed Money on demand by us at any time and/or perform the Guaranteed Obligations.

### 16.3 Indemnity

The Guarantor indemnifies us against any liability or loss arising, and any costs we suffer or incur if:

- (a) you do not pay the Guaranteed Money or perform the Guaranteed Obligations;
- (b) an obligation you, or the Guarantor, would otherwise have, is found to be void, voidable or unenforceable;
- (c) for any reason the Guarantor is held not liable to pay us under clause 16.1 or the Guarantor defaults under the Guarantee; or
- (d) we are required to pay an amount to a trustee in bankruptcy or a liquidator in connection with a payment made by you or the Guarantor to us.

The Guarantor agrees to pay amounts due under this clause 16.3 on demand by us. The indemnity in this clause 16.3 does not apply to the extent we incur any liability, loss or costs as a result of our

own fraud, negligence or wilful misconduct or that of our agents, employees, contractors, administrators or receivers, or because the relevant term of this Agreement is void for unfairness or illegality under the laws of a state or territory of the Jurisdiction.

### 16.4 Continuing indemnity

Clause 16.3 is a continuing separate and independent obligation. It continues until all of the Guaranteed Money is paid and all Guaranteed Obligations are satisfied.

### 16.5 Our discretion to exercise rights

We may claim against the Guarantor under the Guarantee before we enforce any other rights or remedies against you or any other person. The Guarantor waives any right it may have of first requiring us to proceed against or enforce any other right, power, or remedy against you or any other person.

### 16.6 No set-off or deduction by Guarantor

The Guarantor agrees that it will make all payments in full and not exercise any right of set-off or deduction against us. If the Guarantor claims that we owe them any amount for any reason, the Guarantor may bring a claim for this amount against us but may not exercise any set-off or deduction.

### 16.7 Guarantor's obligations unaffected

We may do any of the following without the Guarantor's consent:

- (a) renewing, changing, replacing, or ending any arrangements (including your credit facilities) between us and you or any other Guarantor or person;
- (b) releasing or giving a concession (such as more time to pay) to you or another Guarantor;
- (c) releasing, losing the benefit of or assigning any securities, guarantees, negotiable or other instruments, judgements or rights from or against you or any other Guarantor or person held by us;
- (d) assenting to or becoming bound by any compromise or arrangement in respect of you or any other Guarantor or person; or
- (e) receiving a distribution from you or another Guarantor's trustee or liquidator,

provided that we will tell the Guarantor before amending or varying any agreement or arrangement with you or entering into any new agreement or arrangement with you, where doing so would materially increase the Guarantor's liability under this Guarantee.

### 16.8 Our rights protected

Your obligations under this Guarantee are not affected by the following events:

- (a) any person's death, mental or physical

disability or bankruptcy or liquidation, acquiescence or delay;

- (b) any change in the name, style, capacity or constitution relating to you or the Guarantor;
- (c) any change by retirement, addition, incorporation, reconstruction, amalgamation, acquisition or otherwise relating to you or the Guarantor;
- (d) any other agreement, arrangement or transaction between us and you or the Guarantor or any other person;
- (e) any loss, release, discharge, abandonment or transfer of any guarantee granted by you or the Guarantor or any person to us;
- (f) us not recovering all or any portion of the Guaranteed Money by realisation;
- (g) any acquiescence, delay, forbearance, act, omission or mistake on the part of us or any other person; or
- (h) the Guarantee ceasing to be binding as a continuing obligation on the Guarantor, or by any other act or matter.

#### 16.9 Guarantor's rights are suspended

The Guarantor must not, without our consent and until all of the Guaranteed Money is paid and the Guaranteed Obligations are satisfied:

- (a) share in or claim the benefit of any amount owing on the Account that is repaid;
- (b) take any steps to enforce any right or remedy against you or any other Guarantor in respect of any money paid by the Guarantor to us under the Guarantee;
- (c) exercise any right or remedy in competition with us;
- (d) directly or indirectly claim or receive the benefit of any distribution, dividend or payment out of your estate or Insolvency or out of the estate or Insolvency of any other Guarantor; or
- (e) exercise a right of proof after an event occurs relating to your Insolvency or the Insolvency of any other Guarantor in competition with us. The receipt by us of any dividend or other payment out of such estate or in such liquidation will not prejudice or affect our right to recover from the Guarantor the Guaranteed Money or the performance of the Guaranteed Obligations.

#### 16.10 Inconsistent law

To the extent permitted by law, the Guarantee prevails to the extent it is inconsistent with any law.

### 17 NOTICES

#### 17.1 Where notices to be delivered

- (a) Any communication by us in connection with the Transaction Documents may be sent by making the communication, or the

information contained in the communication, available on the Program Website and/or the Accountholder Portal.

- (b) Any communication in connection with the Transaction Documents by you or any of your Guarantors and Authorised Users must be in writing and signed by the sender (if an individual) or an authorised officer of the sender and delivered to the address or email address on the FAQ page of the Program Website or to any replacement of such notified by us.

#### 17.2 When notices taken to be received

Communications are taken to be received:

- (a) if by personal delivery, when delivered;
- (b) if posted, three days after posting (or seven days if posted to or from outside the Jurisdiction); and
- (c) if electronic (ie, email) or posted on the Program Website and/or the Accountholder Portal, when delivered or posted.

#### 17.3 Electronic communication

- (a) Any communication to be made between us and you and us and the Guarantor under or in connection with the Transaction Documents may be made by electronic mail or other electronic means. In our case, we may post communications on the Program Website and/or the Accountholder Portal as an effective electronic means of communication.
- (b) We may still send paper communications to you and the Guarantor, but communications provided by electronic means may not be provided as paper communications. You and the Guarantor must regularly check your electronic communications, including the Program Website and the Accountholder Portal.
- (c) Electronic communication made by you or the Guarantor to us must be addressed in the manner we specify.

### 18 MISCELLANEOUS

#### 18.1 Indemnity and release

You indemnify us against, and agree to repay us on demand for, any liability or loss and any costs of any nature (including without limitation claims based upon strict liability in tort, and claims for death, injury or damage) arising directly from:

- (a) any amount owing on the Account not being paid at the time it falls due under this Agreement for any reason except our default;
- (b) the Transaction Documents;
- (c) an Event of Default;
- (d) any person exercising or attempting to

exercise a right or remedy in connection with this Agreement after an Event of Default;

- (e) any indemnity we give to your controller or administrator; and
- (f) us acting under clause 12.4, except to the extent caused by the fraud, negligence or wilful misconduct of us or of our agents, employees, contractors, administrators or receivers.

You use, operate and possess any property at your own risk and, to the full extent permitted by law, you release and discharge us and our agents and employees from all claims and demands on us and from any loss or damage whatsoever and whenever caused to you or your agents or employees or any third parties whether by way of death of or injury to any person, accident or damage to any property, delay, financial loss or otherwise arising directly or indirectly from or incidental to a breakdown of or defect in any property or any accident to or involving any property or its use, operation, repair, maintenance or storage, except to the extent caused by the fraud, negligence or wilful misconduct of us or of our agents, employees, contractors, administrators or receivers.

#### 18.2 Authority to correct errors

Each of you and the Guarantor authorise us to make amendments to any parts of this Agreement or a document connected with it that are manifestly incorrect.

#### 18.3 Commission to brokers

You consent to us giving, or receiving from, any person who introduces you to us, or us to you, commissions, fees or other monetary or non-monetary rewards, whether or not out of money paid under the Transaction Documents. We may give any person monetary or non-monetary rewards based on the volume and value of introductions they give us.

#### 18.4 Assignment

We may at any time assign or otherwise deal with any or all of our rights under this Agreement. You must not assign any of your rights under this Agreement without first getting our written consent (which we will not unreasonably withhold).

#### 18.5 Set-off

You and the Guarantor irrevocably authorise us to apply money in or towards payment of amounts owed to us in the order that we reasonably determine and to apply any money that we owe to you in or towards payment of amounts which you owe us under the Transaction Documents or under any other agreement between you and us and/or the Guarantor and us. If you or the Guarantor claim that we owe you or them any amount for any reason, you or the Guarantor may bring a claim for this amount against us but may not exercise any

set-off, counterclaim or deduction.

#### 18.6 Discretion in exercising rights

We may exercise a right, power or remedy in any way we consider appropriate (including by imposing conditions). If we do not exercise a right, power or remedy fully or at a given time, we may still exercise that right or remedy later. We are not liable for any loss, liability or cost caused by the exercise of, or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this Agreement. Our rights under this Agreement are in addition to any other rights or remedies available to us under law. Our rights and remedies under this Agreement may be exercised even if this involves a conflict of interest or duty or we have a personal interest in their exercise.

Nothing in this clause 18.6 excludes us from any liability to the extent the liability is caused by the fraud, negligence or wilful misconduct of us or our agents, employees, contractors, administrators or receivers.

#### 18.7 No merger

This Agreement does not merge with or adversely affect and is not adversely affected by:

- (a) any right or remedy held by us; or
- (b) any judgment which we have or may obtain against you in connection with any amount owing on the Account.

We may still exercise our rights under this Agreement as well as under a judgement or the right or remedy.

#### 18.8 Supervening legislation

Any present or future legislation which operates to vary your obligations in connection with this Agreement with the result that our rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

#### 18.9 Disclosure

- (a) We may disclose information about you, the Guarantor or the Transaction Documents:
  - (i) to any person in connection with an exercise of rights under this Agreement or a transfer or other dealing with rights or obligations under this Agreement;
  - (ii) to our officers, employees, agent, contractors, legal and other advisors and auditors;
  - (iii) to any person in connection with an exercise of rights under this Agreement or a transfer or other dealing with rights or obligations under this Agreement;
  - (iv) for the purposes of the Transaction Documents (including disclosing information in connection with any query or claim);

- (v) to establish or alter a Direct Debit Arrangement;
  - (vi) in accordance with the terms of our privacy statement (provided in the Application and available on the Accountholder Portal); and
  - (vii) otherwise with your or the Guarantor's consent.
- (b) You and the Guarantor consent to us giving, from time to time any information in our possession about you, the Guarantor or the Transaction Documents to:
- (i) any of our related entities; or
  - (ii) you and the Guarantor.
- (c) The information may be given in electronic, paper or oral form. We are not liable to you or the Guarantor, and you and the Guarantor release us and our directors and employees from any liability for, the unauthorised accessing or release of any such information (except to the extent arising from our fraud, negligence or wilful misconduct, or that of our agents, employees, contractors, administrators or receivers).

#### 18.10 Severability and survival

If any part of any Transaction Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

Your and the Guarantor's obligations under this Agreement survive the expiration or termination of this Agreement to the extent required for their full observance and performance.

#### 18.11 Counterparts

Each Transaction Document may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of the Transaction Document.

#### 18.12 Governing Law

This Agreement is governed by the law of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of that place.

#### 18.13 Sanctions / AML

- (a) You and the Guarantor each represent and warrant to us that none of:
- (i) you or the Guarantor, or any of your or the Guarantor's directors, officers or employees, subsidiaries, or any guarantor of the Transaction Documents, or any beneficial owner of you or the Guarantor, or any person holding a controlling interest in you or the Guarantor (each a "**Relevant Person**");

- or
- (ii) to your or Guarantor's knowledge, having made reasonable enquiries, any agent of you or the Guarantor that will act in any capacity in connection with or benefit from the Transaction Documents,

is currently or at any time a Sanctioned Person.

- (b) No proceeds received under this Agreement or the Transaction Documents will be used by you or the Guarantor, or any other Relevant Person, or to your knowledge, having made reasonable enquiries, by any of your or the Guarantor's agents, in violation of, or which shall cause us or our affiliates to be in violation of any applicable laws, rules or regulations, including any relating to bribery or corruption, anti-money laundering, terrorism, economic or financial sanctions, or trade embargoes.
- (c) You and the Guarantor agree that we may delay, block or refuse to process any transaction under or in connection this Agreement or your Account without incurring any liability if we suspect that the transaction or the application of its proceeds will, or might in its reasonable opinion:
- (i) breach applicable laws, rules or regulations, including any relating to bribery or corruption, anti-money laundering, terrorism, economic or financial sanctions or trade embargoes;
  - (ii) allow the imposition of any penalty on us or our affiliates under any such laws, rules or regulations;
  - (iii) involves any Sanctioned Person or activity that is itself sanctioned or is connected, directly or indirectly, to any Sanctioned Person or activity that is sanctioned under economic and trade sanctions imposed by any country; or
  - (iv) directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful in any country.
- (d) You and the Guarantor must provide all information to us which we reasonably require in order to manage our money-laundering, terrorism financing or economic and trade sanctions risk or to comply with any laws or regulations in the Jurisdiction or any other country.
- (e) In this clause, "**Sanctioned Person**" means, at any time:
- (i) a person listed in any sanctions-related list of designated persons maintained by the Australian Department of Foreign Affairs and Trade, the US Department of the Treasury, the US Department of Commerce, the US Department of State,

or by the United Nations Security Council, the European Union, or any EU member state; or

- (ii) any person owned or controlled by such person or persons in aggregate.

## 19 DIRECT DEBIT SERVICE AGREEMENT

### 19.1 Our responsibilities

The initial terms of the Direct Debit Arrangement are found on the Direct Debit Request. Together with this clause 19, your Direct Debit Arrangement forms your Direct Debit Service Agreement with us. Amounts and frequency may be fixed or variable in accordance with the Transaction Documents. We will debit from the Direct Debit Account the Amount Due for each Billing Cycle under the Transaction Documents on the date(s) specified under the Transaction Documents.

### 19.2 Your responsibilities

- (a) You must ensure that:
  - (i) the details you provide to us in relation to your Direct Debit Account are correct by checking them against a recent Direct Debit Account statement;
  - (ii) the Direct Debit Account is able to accept Direct Debit, since direct debiting is not available on all accounts offered by financial institutions. Please contact your financial institution before you complete the Direct Debit Request if you have any queries; and
  - (iii) the Direct Debit Account contains clear funds sufficient to cover each debit under the Direct Debit Arrangement.
- (b) You indemnify us and agree to keep us indemnified on demand against all claims, demands, actions, suits and proceedings whatsoever that may be made on or taken against us or any of our employees arising out of or connected with:
  - (i) the debiting from the Direct Debit Account and the payment to us of any sum(s) of money the debiting of which was not at the time authorised by any other party claiming rights over the Direct Debit Account or the debiting of, which was caused by: (A) your error, negligence or misrepresentation in the Direct Debit Request; or (B) because you were not then legally entitled;
  - (ii) the failure to make any debit in accordance with the terms of any Direct Debit Request which was caused by your error, negligence or misrepresentation under the terms of a Direct Debit Request; and
  - (iii) any cost or expense we incur as consequence of any claim, demand,

action, suit or proceeding related to the above paragraphs,

except to the extent we incur any liability or loss as a result of our own fraud, negligence or wilful misconduct or that of our agents, employees, contractors, administrators or receivers.

### 19.3 Due Date of Drawing not a Business Day

If your Direct Debit Account is due to be debited on a day that is not a Business Day, funds will be debited from your Direct Debit Account on the preceding Business Day.

### 19.4 Dishonoured Drawing

- (a) If your financial institution dishonours any drawing, we may:
  - (i) Make an additional request of your financial institution;
  - (ii) attempt to make a manual drawing from the designated account;
  - (iii) contact you to determine when the funds will be available for the next drawing; or
  - (iv) request that you arrange for the payment to be made by another method, including by electronic funds transfer.
- (b) In all cases, you must immediately pay the amount due, and you also agree to reimburse us on demand for any reasonably incurred dishonour fees charged to us by our financial institution.

### 19.5 Changes to or cancellation of the Direct Debit Arrangement.

- (a) We may change the terms of the Direct Debit Arrangement by giving you written notice 30 days in advance of the change, where it is reasonably necessary for us to do so in order to reflect a change in the requirements of your or our financial institution or if the Direct Debit Arrangement can be replaced with another similar service.
- (b) You may change, defer or stop individual debits or cancel the Direct Debit Arrangement by giving us written notice five days in advance (including notification of replacement arrangements) or by contacting your financial institution.
- (c) You can also contact your own financial institution, which must act promptly on your instructions.
- (d) Any change, deferral or cancellation of a Direct Debit Arrangement does not discharge your obligation to make any payment owing by you to us.

### 19.6 Confidentiality

We will keep your information confidential, subject to our rights to disclose your information under this Agreement. We will make reasonable efforts to keep any such information that we have about you

secure and to ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information. We will pass on to your financial institution information that is necessary for the establishment of the Direct Debit Arrangement or to the extent required by law.

## 20 PRIVACY

### 20.1 How we collect and use your information

- (a) Unless otherwise expressly stated, this clause 20 applies to individuals and non-individuals.
- (b) You acknowledge and agree that we will collect and use information (including Personal Information) about you during the course of our relationship. This clause 20 explains how and when we may collect, use and disclose such Personal Information.
- (c) You understand, acknowledge and agree that it is important that the information (including Personal Information) we hold about you in connection with the Transaction Documents and your Account is up to date and accurate. You agree to inform us as soon as reasonably practicable once any of the information (including Personal Information) has changed.
- (d) You understand, acknowledge and agree that we may collect, use and disclose Personal Information about you for any of the following purposes:
  - (i) to assist in providing information about your Account or the Cat Commercial Account program;
  - (ii) to enable us to consider a request made to us for a product or service;
  - (iii) to inform you about other products or services that may be of interest to you;
  - (iv) to assist in arrangements with other organisations in respect of the promotion or provision of a product or service to you;
  - (v) to manage accounts and perform other administrative and operational tasks (including risk management, systems development and testing, credit scoring, staff training, collection of debts, and customer satisfaction research exercises);
  - (vi) to identify, prevent or investigate any fraud, unlawful activity or misconduct (or any suspected fraud, unlawful activity or misconduct);
  - (vii) to identify you and your Authorised Users; and
  - (viii) as required by relevant laws, regulations, codes of practice and external payment systems.
- (e) You understand, acknowledge and agree that
  - if you do not provide some or all of the information that has been requested by or on behalf of us, then we may be unable to provide to the Customer a product or service, or the Account.
- (f) You acknowledge and agree that we may be required by relevant laws to collect certain information (including Personal Information) from you.
- (g) You acknowledge and agree that we may provide or disclose Personal Information about you (or other confidential information about you, including the terms of this Agreement) to any of the following:
  - (i) any related entity of ours that may use the Personal Information to carry out our functions and activities, promote its own products and services, assess an application for one of its products or services, manage the product or service, perform administrative and operational tasks (including debt recovery), or comply with regulatory requirements and prudential standards;
  - (ii) any agent, contractor or service provider engaged by us to carry out or assist our functions and activities (including, but not limited to, any mailing house, debt collector, external legal services provider, tax accountant, and the like);
  - (iii) an organisation that assists us to identify, prevent or investigate fraud, unlawful activity or misconduct;
  - (iv) an organisation that assists us to verify your identity;
  - (v) regulatory bodies, government agencies, law enforcement bodies and courts;
  - (vi) other parties to which we are authorised or required by law to disclose Personal Information;
  - (vii) other credit providers;
  - (viii) insurers and reinsurers;
  - (ix) the Guarantor (and any person who has provided security for the Account);
  - (x) any person that introduces you to us, including a Dealer; and
  - (xi) those agents authorised by you to act on your behalf, your executor, administrator or trustee in bankruptcy, your legal representatives, your attorneys and anyone acting for you.
- (h) You consent to the disclosure of Personal Information held about you by us to any of these persons where we determine (in our discretion) that the need for such disclosure has arisen.

## 20.2 Credit Information and Credit Eligibility Information

- (a) You consent to us obtaining Credit Eligibility Information about you from a Credit Reporting Body and to use such Credit Eligibility Information to assess any application for the provision of credit, to manage the Account and for the purposes of debt collection. You agree that we may disclose such Credit Eligibility Information to credit reporting bodies.
- (b) Information concerning our collection, use and disclosure of Credit Eligibility Information and Credit Information, including the name and contact details of the credit reporting bodies to which we may disclose such information, and how you can request credit reporting bodies to not use such information in certain circumstances, is available as part of our policies on the collection, use and disclosure of Personal Information and Credit Information, which can be accessed on our website at [www.cat.com/en\\_AU/support/financing-protection/about-us/legal-notice](http://www.cat.com/en_AU/support/financing-protection/about-us/legal-notice). Hard copies of our current privacy policy and credit reporting policy may be requested by contacting us using the details on our website.

## 20.3 Our privacy policy

You acknowledge and agree that our privacy policy contains information about the circumstances in which we may collect Personal Information and Credit Information about you, including from other sources (such as a third party), how you can request access to and correction of any of the Personal Information and Credit Information we hold about you, and how you can raise concerns or make a complaint to us regarding a possible contravention of the *Privacy Act 1988* (Cth) or an applicable code and how we will deal with such a complaint.

## 20.4 Collection of sensitive information

You acknowledge and agree that we will not collect sensitive information about you, such as information about your current health, without your consent.

## 20.5 Personal Information you provide about a third party

- (a) If you provide or disclose Personal Information about another individual (including the Guarantor or a beneficial owner), you agree to provide a copy of this clause 20 so that they may understand the manner in which their Personal Information may be collected, used and disclosed by us in connection with their dealings with us.
- (b) You represent and warrant that you have the consent from such individual to disclose their Personal Information to us.