

## Premium Funding Conditions

### 1. Defined terms

1.1. In this document, capitalised words have the meaning given in the Premium Funding Details or as defined below:

**Default** means a default specified in clause 10.1.

**Fiat Interest Rate** means the Total Interest Charges expressed as a percentage of the Premium Loan.

**Funded Policies** means, in respect of a Premium Loan, the insurance policies specified in the Premium Funding Details for the Premium Loan (or as otherwise agreed by MEFL and the Borrower in writing).

**Initial Payment** means, in respect of a Premium Loan, the Initial Payment described in the Premium Funding Details for the Premium Loan which represents the total value of payments due in respect of the Premium Loan between the Application Date and the First Instalment Date and includes a deposit, Application Fee and Stamp Duty (if applicable), which is due and payable on the Application Date.

**Instalments** means, in respect of a Premium Loan, the Initial Payment and the equal monthly or quarterly Subsequent Instalments (as specified in the Premium Funding Details for the Premium Loan), calculated by MEFL to repay the Premium Loan and pay all Loan Charges to MEFL by the Last Instalment Date.

**Insurer** means each insurer of a Funded Policy.

**Loan Charges** means, in respect of a Premium Loan, the Total Interest Charges, and Fees and Charges payable to MEFL described in the Premium Funding Details for the Premium Loan.

**Macquarie Group** refers to MEFL and its related entities.

**MEFL** we or us, means Macquarie Equipment Finance Limited (Company Number 262381), of Level 17, 88 Shortland Street, Auckland, New Zealand.

**New Premium Loan** means each Premium Loan specified in a New Premium Funding Offer which is accepted by the Borrower in accordance with the New Premium Funding Offer and approved by MEFL accepting the Initial Payment.

**New Premium Funding Offer** means a written offer by MEFL to make a New Premium Loan to the Borrower.

**PPSA** means the Personal Property Securities Act 1999.

**Premium Funding Agreement** means the agreement made by MEFL's acceptance of the Borrower's offer contained in this document (or in the case of a New Premium Loan, the Borrower's acceptance of MEFL's offer), and includes the Premium Funding Details and these Premium Funding Conditions.

**Premium Funding Details** means, in respect of a Premium Loan, the section at the front of this document titled "Premium Funding Details".

**Premium Loan** means the premium loan specified in the "Loan Details" section of the Premium Funding Details.

**Privacy Policy** means the Macquarie Group Privacy Policy available on request and via [www.macquarie.co.nz](http://www.macquarie.co.nz).

**Refund Proceeds** means any premium refund (whether on cancellation or otherwise) paid or payable in respect of a Funded Policy.

**Secured Money** means all money that the Borrower is or may become liable at any time (actually or contingently) to pay to MEFL on any account under or in connection with the Premium Funding Agreement or otherwise.

### 2. Direction to pay advance amount

2.1. MEFL will provide each Premium Loan by making available committed funds with effect from the First Instalment Date, to be paid in accordance with clauses 2 and 3.

2.2. The Borrower directs MEFL to pay the amount of a Premium Loan to each Insurer or Broker, to the amount of the relevant premium under the Funded Policies, plus any related charges.

2.3. MEFL has no responsibility or liability to ensure how an Insurer or the Broker applies an amount paid under clause 2.2.

### 3. Advances and New Premium Loans

3.1. MEFL need not pay a Premium Loan as directed by the Borrower under clause 2.2 if a Default has occurred or if MEFL has not received the following in form and substance satisfactory to it:

- (a) evidence that each Insurer has accepted the Borrower's proposal for the relevant Funded Policies;
- (b) evidence of this document properly completed and signed or accepted by the Borrower (or by the Broker acting on the Borrower's behalf);
- (c) in the case of a New Premium Loan, acceptance of the New Premium Funding Offer in accordance with its terms (subject to satisfaction of any conditions precedent);
- (d) all information, credit checks and documents requested by MEFL (including any internal credit approval) in relation to the Borrower or the Funded Policies;
- (e) the Initial Payment for the Premium Loan in cleared funds; and
- (f) any Subsequent Instalments for the Premium Loan in clear funds which are then due.

MEFL will not be liable to the Borrower for any loss associated with any delay in advancing a Premium Loan due to a pre-condition in this clause 3.1 not having been satisfied.

3.2. The Borrower may request MEFL (which request may be made through the Broker which the borrower acknowledges has full authority to act as the Borrower's agent on such request) to offer to provide a New Premium Loan. MEFL's decision to offer any New Premium Loan is at its sole discretion. If MEFL agrees to offer a New Premium Loan:

- (a) MEFL will provide the Borrower with a New Premium Funding Offer for the New Premium Loan;
- (b) provision of the New Premium Loan will be subject to the terms and conditions specified in the New Premium Funding Offer and these Premium Funding Conditions (or any varied Premium Funding Conditions within a New Premium Funding Offer); and
- (c) if varied Premium Funding Conditions are notified with a New Premium Funding Offer and the offer is accepted, the varied Premium Funding Conditions replace these Premium Funding Conditions on and from the date of acceptance.

### 4. Fees and commissions

4.1. The Borrower must pay to MEFL all fees for each Premium Loan specified in the Premium Funding Details and other fees notified to the Borrower from time to time. All fees are non-refundable.

4.2. The Borrower acknowledges that MEFL may pay commissions to the Insurer or Broker in relation to the introduction or arranging of a Premium Loan.

4.3. In addition to any other amounts payable in connection with this Premium Funding Agreement, the Borrower will also pay all charges MEFL reasonably determine and require the Borrower to pay:

- (a) if any payment the Borrower makes is dishonoured by the Borrower's bank or financial institution; and
- (b) following a Default, if MEFL cancels the Funded Policy.

4.4. MEFL may vary any fees or charges or introduce a new fee or charge at any time by notifying the Borrower at least 30 days prior to the day on which the variation or introduction takes effect.

### 5. Interest

5.1. The Total Interest Charges are payable on the amount of each Premium Loan.

## 6. Repayment and Loan Charges

6.1. The Borrower must repay each Premium Loan and pay the Loan Charges for each Premium Loan to MEFL by paying the Instalments for the Premium Loan in advance.

6.2. The Initial Payment for a Premium Loan is due on the Application Date or, in the case of a New Premium Loan, on the date of acceptance of the New Premium Funding Offer. Subsequent Instalments are due monthly or quarterly (as specified in the Premium Funding Details) on the same day of each calendar month or quarter, or on the previous business day where an Instalment Date otherwise falls on a non-business day. The Borrower must pay to MEFL the last Subsequent Instalment for a Premium Loan on the Last Instalment Date for the Premium Loan. The Borrower must pay to MEFL all remaining Secured Money

6.3. If any amount payable by the Borrower to MEFL is not paid on time in accordance with this Premium Funding Agreement, the Borrower will pay to MEFL on demand, interest in accordance with clause 7.2 and such interest will: (a) accrue on any outstanding amount or amounts from and including the day after its due date up to but excluding the date of payment; and (b) be computed on a daily basis for actual days elapsed.

### 7. Payments generally

7.1. All payments to MEFL must be in New Zealand dollars unless otherwise agreed by MEFL in writing, and in full without set-off, counterclaim or deduction. Payments are only credited when actually received by MEFL in cleared funds.

7.2. Subject to clause 6.3, any Secured Money which is not paid on its due date will also bear overdue interest calculated on a daily basis at the rate prescribed from time to time for the purposes of section 62B(a) of the District Courts Act 1947 until paid in full. This is in addition to the Total Interest Charges referred to in clause 5.1.

7.3. MEFL may apply payments received against any part of the Secured Money in its absolute discretion. MEFL may, without any demand or notice, set off and apply indebtedness it owes to the Borrower on any account against any Secured Money, whether or not any of those amounts are immediately payable or are owed alone or with any other person.

7.4. The Borrower may not (either directly or indirectly) claim, exercise or attempt to exercise a right of set-off or counterclaim against MEFL (whether the right is the Borrower's or any other person's) or any other right which might have the effect of reducing the Secured Money.

### 8. Security

8.1. To secure payment of the Secured Money, the Borrower assigns and transfers to MEFL, by way of security, all of its right, title and interest in and to each Funded Policy (including by way of proceeds of an insurance claim), all Refund Proceeds and all rights, powers and remedies to cancel or enforce any Funded Policy and obtain Refund Proceeds.

8.2. This security continues until all Secured Money has been paid in full. While any Secured Money remains unpaid:

- (a) the Borrower may not require reassignment or transfer from MEFL of anything secured under clause 8.1 (except MEFL will, at the Borrower's request, reassign and transfer the Borrower's right, title and interest in and to a Funded Policy where all Secured Money outstanding in respect of the Premium Loan that funded the premium for that Funded Policy has been fully and finally repaid to MEFL and there is no proposal for a New Premium Loan);
- (b) MEFL may possess the originals of all documents evidencing Funded Policies; and
- (c) MEFL may notify each Insurer of the Borrower's security to MEFL, and arrange for MEFL's name (Macquarie Equipment Finance Limited) and interest to be noted on Funded Policies and in the Insurer's records.

8.3. The Borrower must not do (or attempt or agree to do) any of the following without MEFL's prior written consent:

- (a) assign, transfer, grant a security interest over or otherwise deal with, any right or power relating to any Refund Proceeds;
- (b) cancel, terminate or vary any Funded Policy or make or settle any claim under any Funded Policy; or
- (c) do or allow anything to be done which might prejudice MEFL's security over or collection of, any Refund Proceeds, or reduce the amount payable in respect of any Refund Proceeds.

### 9. Further assurances

9.1. If MEFL requests, the Borrower agrees, at its cost, to sign or cause to be done anything necessary to perfect, preserve, protect or otherwise give full effect, including under the PPSA and related regulations, to any security interest created under this document, including registering such security interest and complying with any requisition raised by any authority.

9.2. At MEFL's request, the Borrower must notify all such persons of MEFL's security over the Funded Policy and the Refund Proceeds and obtain all necessary consents and releases from them to perfect the assignment and payment to MEFL of any Refund Proceeds and to give first ranking priority to MEFL's security interest in the Funded Policy and the Refund Proceeds.

9.3. The Borrower must notify each Insurer of MEFL's interests and rights in respect of the Refund Proceeds, and that the Borrower irrevocably:

- (a) authorises the Insurer to cancel the Funded Policies identified in a notice of cancellation issued by MEFL to the Insurer and to pay to MEFL all sums representing Refund Proceeds for such cancelled policies; and
- (b) directs the Insurer, any Broker and any other person holding Refund Proceeds to pay all amounts representing Refund Proceeds to MEFL or as MEFL directs.

9.4. The Borrower acknowledges that MEFL has the right to register the security granted under clause 8.1. The Borrower agrees to provide all necessary assistance, and sign and do anything MEFL reasonably requires, to perfect any such registration.

### 10. Default

10.1. A Default occurs if:

- (a) a claim arises under any Funded Policy and the Borrower fails to meet the Insurer's requirements on time, or any Funded Policy is cancelled, invalid or otherwise void;
- (b) there is a claim for a total or substantial loss of the property the subject of a Funded Policy;
- (c) the Borrower fails to pay any Secured Money when due and in the manner required or breaches any of its obligations, representations or warranties under the Premium Funding Agreement;
- (d) the Borrower is unable to pay its debts as and when they fall due or is otherwise insolvent;
- (e) the Borrower elected to pay by direct debit, the Direct Debit Request is cancelled without MEFL's prior consent;
- (f) a receiver, liquidator, administrator or trustee in bankruptcy is appointed to the Borrower or to any of its assets.

- 10.2. If a Default occurs, MEFL may do one or more of the following:
- declare that the Secured Money is immediately due and payable, in which case the Borrower must immediately pay the Secured Money to MEFL;
  - cancel or otherwise deal with any Funded Policy, Refund Proceeds and the Borrower's rights to those things, as MEFL sees fit;
  - terminate MEFL's obligations under the Premium Funding Agreement; and
  - exercise and enforce its rights under the Premium Funding Agreement and at law.
- 10.3. If a Default occurs, the Borrower must pay or reimburse to MEFL on demand any enforcement expenses reasonably incurred by MEFL (including expenses reasonably incurred by the use of staff and facilities of MEFL).
- 11. Representations and warranties**
- 11.1. The Borrower represents and warrants to MEFL that while there is any Secured Money outstanding:
- no other person has or will have any interest in any Funded Policy or any Refund Proceeds;
  - the Borrower has not relied on any representation or statement by or on behalf of MEFL to enter the Premium Funding Agreement or to select or effect insurance under any Funded Policy;
  - the Borrower has obtained all necessary consents and releases, and complied with all internal procedures to enter and perform this document, including without limitation, if the Borrower is a partnership, that the signatory to this document is authorised by each of the principals of the partnership to enter into this document;
  - if acting as the trustee of a trust, acknowledges that this Premium Funding Agreement binds it personally and in its capacity as trustee, that it has entered into this Premium Funding Agreement for a proper trust purpose, that it has power and authority under the trust to enter this Premium Funding Agreement and it has the right to be fully indemnified from trust property before the trust's beneficiaries for all liabilities it incurs; and
  - it is and will remain registered for GST purposes and has made taxable supplies representing not less than 75% of total supplies in the previous 12-month period.
- 11.2. The Borrower acknowledges that MEFL relies on the Borrower's representations and warranties in order to provide the Premium Loans.
- 12. Power of attorney**
- 12.1. For valuable consideration, the Borrower irrevocably appoints MEFL and each of its officers and employees whose title includes 'director', 'manager' or 'executive' from time to time severally as the Borrower's attorney to:
- comply with the obligations of the Borrower under this Premium Funding Agreement;
  - do everything which in MEFL's reasonable opinion is necessary to enable MEFL to exercise any of its right under this Premium Funding Agreement;
  - date, complete or correct any details in any Premium Funding Details (before or after acceptance);
  - if a Default has occurred, do anything that the Borrower may lawfully authorise an agent to do in relation to this Premium Funding Agreement;
  - if a Default has occurred, cancel, terminate or procure the cancellation or termination of any Funded Policy (which is cancellable) and obtain and collect any Refund Proceeds; and
  - give valid receipts for any Refund Proceeds.
- 12.2. The Borrower will promptly ratify all acts of its attorneys.
- 13. Borrower's indemnities**
- 13.1. The Borrower indemnifies MEFL against, and must pay MEFL on demand amounts for, all actions, claims, demands, losses, liabilities, and expenses (including legal costs) of any nature incurred at any time actually or contingently by MEFL arising in connection with:
- a Default;
  - MEFL relying on any information supplied by or on behalf of the Borrower which proves to be incorrect or misleading (including by omission of information);
  - acting as the Borrower's attorney or providing any indemnity to any person so acting;
  - all stamp duty, taxes, GST and levies (including fines and penalties) payable or assessed in respect of the Premium Funding Agreement; or
  - the interest rate applying to a judgment debt being less than that applying to the Borrower's original payment obligation for which judgment was obtained.
- 13.2. MEFL need not incur an expense or make a payment before enforcing an indemnity. Unless otherwise stated, each indemnity is separate and independent of each other obligation of the Borrower, is absolute, irrevocable and unconditional and continues despite any settlement of account, termination of the Premium Funding Agreement or anything else.
- 14. PPSA – Part 9 and additional rights**
- 14.1. MEFL and the Borrower agree that, to the extent permitted by law the Borrower and MEFL contract out of and the Borrower waives its rights under sections 114(1)(a), 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA. The Borrower also waives its right to receive any verification statement in respect of any financing statement registered by MEFL.
- 15. Consumer Guarantees Act 1993**
- 15.1. The supply of financial services under this Premium Funding Agreement is, for the purposes of the Consumer Guarantees Act 1993, for business purposes and nothing in that Act shall apply to the supply (except the exemption in Section 43).
- 16. Notices and Account statements**
- 16.1. You agree that we may give all notices and other communications in connection with this Premium Funding Agreement electronically, and that we will do so by emailing them to your last known email address, sending them through SMS to your last known mobile telephone number, or by making them available online. Where communications are made available online, we will notify you of this fact by email or SMS. You should check your emails and SMS messages regularly.
- 16.2. You must ensure that the contact details that you provide to us remain up to date. If your contact details change, you must let us know as soon as possible.
- 16.3. Where posted, any notice by MEFL in connection with the Premium Funding Agreement is taken to be delivered to the Borrower two business days after posting it to the Borrower's last known address supplied to MEFL.
- 16.4. MEFL will provide to the Borrower a statement of its account in respect of a Premium Loan following the Borrower's written request and payment of MEFL's associated costs.
- 17. Privacy Collection and Usage Notice and Credit Reporting Consent**
- 17.1. MEFL collects personal information to:
- open, administer and operate products such as this Premium Funding Agreement;
  - provide quality products or services;
  - consider applications and approaches made to it;
  - maintain contact details; and
  - fulfil its obligations under the applicable laws and rules such as those relating to Anti-Money Laundering and Counter-Terrorism Financing.
- 17.2. The information will be collected by Macquarie Equipment Finance Limited, Level 17, 88 Shortland Street, Auckland and may be used and disclosed under the terms of the Privacy Policy.
- 17.3. The Borrower is entitled to access and may request corrections to any of its personal information supplied to and held by MEFL.
- 17.4. The Borrower consents to MEFL using the Borrower's personal information for the following purposes:
- assessing and processing any application for a Premium Loan;
- opening and operating the Premium Loan;
  - communicating with the Borrower about this Premium Funding Agreement and any other product or service supplied by MEFL to the Borrower.
- 17.5. The Borrower consents to MEFL disclosing personal information to:
- Macquarie Group Limited Australian Company Number 122 169 279 and its subsidiaries (the Macquarie Group), Macquarie Premium Funding Limited Company Number 4174359, or any external service providers in, or outside of, New Zealand, who provide services in connection with its products and services, including suppliers of administrative services (for example, mailing houses);
  - members of the Macquarie Group of companies and market research companies to advise of other products and services;
  - credit reference agencies to ensure the Borrower's suitability as a client and to obtain a personal credit and fraud check;
  - any party proposing to acquire a controlling or material interest in a non-listed Macquarie Group entity to the extent that such information is required for the transaction.
- 17.6. Under the Privacy Act, you may request access to your personal information that we hold. You can contact us to make such a request or for any other reason relating to the privacy of your personal information by emailing [privacy@macquarie.com](mailto:privacy@macquarie.com).
- 17.7. Subject to the Privacy Act 1993, the Borrower authorises MEFL to:
- give to and receive from any credit reporting agency or other organisation information about the Borrower's credit arrangements and credit worthiness, provided that the information is given or received to assess an application for credit made to MEFL or any related company, or in the collection of any overdue payments in respect of any credit provided to the Borrower.
  - disclose the Borrower's personal information (regardless of how or when that information is collected) to credit reporting agencies, other financial institutions or credit providers, service providers, governmental and regulatory organisations, any person otherwise authorised by the Borrower, any organisation through whom the Borrower chooses to make payments to MEFL or its related companies, and to any other entity to whom MEFL or any of its related companies is required by law, or authorised by the Borrower, to disclose the Borrower's personal information.
- 18. Anti-Money Laundering and Counter-Terrorism Financing**
- 18.1. The Borrower undertakes:
- not to knowingly do anything to put MEFL in breach of the Financial Transactions Reporting Act 1996, Anti-Money Laundering and Countering Financing of Terrorism Act 2009, or an equivalent law in other jurisdictions in which MEFL performs services related to this Premium Funding Agreement (AML/CTF Laws), and/or its internal policies and procedures, and to notify MEFL if the Borrower is aware of anything that would put MEFL in breach of AML/CTF Laws;
  - if requested, to provide additional information and assistance and comply with all reasonable requests to facilitate MEFL's compliance with AML/CTF Laws in New Zealand or an equivalent overseas jurisdiction; and
  - it is not aware and has no reason to suspect that the money used to repay the loan are derived from or related to money laundering, terrorism financing or similar activities (Illegal Activities).
- 18.2. The Borrower acknowledges:
- in making an application for any MEFL product or investment the Borrower consents to MEFL collecting and disclosing in connection with AML/CTF Laws any of the Borrower's Personal Information (as defined in the New Zealand Privacy Act 1993 or in the Australian Privacy Act 1988 (Cth));
  - in certain circumstances MEFL may be obliged to freeze or block an account where it is used in connection with Illegal Activities or suspected Illegal Activities. Freezing or blocking can arise as a result of the account monitoring that is required by AML/CTF Laws. If this occurs, MEFL is not liable to the Borrower for any consequences or losses whatsoever and the Borrower agrees to indemnify MEFL if it is found liable to a third party in connection with the freezing or blocking of the Borrower's account; and
  - MEFL retains the right not to provide services or issue products to any applicant that MEFL decides, in its sole discretion, it does not wish to supply.
- 19. Disputes**
- 19.1. The Borrower must notify MEFL (or its own financial institution) if it believes that an error or unauthorised transaction has occurred in relation to any transaction under or in connection with this document.
- 19.2. If MEFL does not rectify any problem or other complaint notified by the Borrower to MEFL under this clause (to the Borrower's satisfaction), or if MEFL do not respond to a complaint within 40 days of the Borrower making the complaint, the Borrower may take the matter to Financial Services Complaints Limited (FSCL). FSCL offers an independent and free resolution process of disputes between lenders and consumers. However, FSCL may not investigate complaints that:
- involve a claim for more than any maximum amount prescribed; or
  - otherwise fall outside its terms of reference.
- To contact FSCL, write to: Financial Services Complaints Limited, PO Box 5967 Wellington 6145, email [info@fscl.org.nz](mailto:info@fscl.org.nz) or call 0800 347257.
- 20. General**
- 20.1. (a) MEFL may assign, transfer or novate its obligations, rights or interest under this Premium Funding Agreement without the Borrower's consent.  
(b) The Borrower must not assign its obligations, rights or interest in this Premium Funding Agreement and any purported assignment is void.
- 20.2. The Premium Funding Agreement is governed by the laws of New Zealand.
- 20.3. A provision of the Premium Funding Agreement that is illegal or unenforceable in a jurisdiction is ineffective in that jurisdiction to the extent of the illegality or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the remainder of the Premium Funding Agreement in any jurisdiction.
- 20.4. Other than a variation occurring in accordance with clause 3, any variation of this document must be in writing and signed by the parties.
- 20.5. Unless the context otherwise requires, in this document.
- headings are for reference only and do not affect interpretation;
  - no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting;
  - references to the singular includes the plural and vice versa, and a gender includes other genders;
  - examples and use of the word "including" do no limit what may be included;
  - reference to a party to any document includes their successors and permitted substitutes and assigns, and a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
  - any undertaking, representation, warranty or indemnity by two or more parties binds them jointly and severally; and
  - references to a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time.