



Corporate
Alliance

Finance

Terms and Conditions

Corporate Alliance Finance (CAFIN)

Corporate Alliance Group | FX | Payments | Finance

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Overview of the Trade Finance Facility

Our CAFIN *facility* that we offer provides you with our trade finance service. The *facility offer* and terms and conditions combined, to the extent it concerns the CAFIN trade finance *facility*, form the *facility agreement*.

CAFIN is used to assist with purchases for your business, from sellers both domestic and international. It is your responsibility to ensure that you are satisfied with the seller's terms and conditions, in which the goods or services are sold to you. Our CAFIN *facility* provides you with loans which are disbursed to pay the seller for your purchases. You cannot give us money for payment to the seller. All purchases must be made within the facility limit defined in the facility offer.

Our facility agreement

Please read - We are here to help

The above overview is only intended to highlight some features of the CAFIN *facility agreement*. It is important that you take the time to carefully read and understand all the terms and conditions in this *facility agreement* before you accept our *facility offer*. The terms and conditions of which are set out in the *facility agreement* and the "CAFIN Terms and Conditions" only apply to our trade finance service.

Our *facility agreement* does not require us to provide financial advice including management of risks associated with currency fluctuations. You agree that you will bear all the risks associated with currency exchange rates. Our CAFIN *facility* does not offer any financial products (such as foreign exchange forward contracts and option contracts) or any type of derivative products to you. If you would like to hedge or mitigate your exposure to exchange rate movements, you can take out protection in the form of derivative products with Corporate Alliance FX (ABN 51 644 169 148) (AFSL No. 523351) or alternatively from another provider or your bank.

For the interpretation of the *facility agreement*, certain terms in this document are given a particular meaning. The explanation and meaning of terms are printed in *italics*, and some other words and interpretations can be found in part (I) (clause 29.2).

If you are not completely sure you understand all the terms and conditions laid out in the documents that constitute the CAFIN *agreement*, we recommend you seek legal, financial and taxation advice before you accept our offer. Alternatively, you can talk to your account manager, or contact us on (02) 9006-8888.

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A. Your Contract with Us

1. OUR CAFIN FACILITY

1.1 Trade finance facility

- 1.1.1 Under these terms and conditions, we provide CAFIN as our trade finance facility to you via:
- our *website*;
 - our applications, being the *client's CAFIN account* and *CAPAY systems*; and
 - our communication with you including phone calls, email correspondence and meetings.
- 1.1.2 Subject to you fulfilling your obligations under these terms and conditions, CAFIN may, but is under no obligation to authorise transactions and/or provide CAFIN trade finance facility/service to you.

1.2 General information

- 1.2.1 These CAFIN Terms and Conditions (CAFIN T&Cs) are part of the *facility agreement* between Corporate Alliance Pty Ltd (ABN 51 644 169 148) (AFS 00197733) trading as Corporate Alliance Finance ("CAFIN", "we", "us", or "our") and you, the *Client* ("you" or "your"). These terms and conditions govern our dealings with you in relation to CAFIN. In other words, only dealings in relation to our trade finance *facility* and the *transactions* we conduct with you as part of our trade finance service.
- 1.2.2 The *agreement* between us is constituted by the following documents:
- CAFIN *account application form*;
 - These terms and conditions, including all schedules attached to it, as amended from time to time;
 - any additional terms and conditions issued by us and notified to you and accepted by you, in connection with our dealings with you;
 - our website, CAFIN account, and *CAPAY systems*; and
 - all and each *transaction* conducted under these terms and conditions, including all *transaction confirmations*.
- 1.2.3 By submitting your *account application form* to us, you acknowledge and agree that:
- you have read and understood all documentation provided to you by us in

relation to our CAFIN trade finance *facility* including all information on our *website*, and authorise us to open a CAFIN *account* for you;

- b) all information you provide to us must be complete, accurate and truthful at all times. You must update and inform us of any changes to the information provided and financial losses resulting from your failure to do will fall on you not CAFIN.
- c) all dealings with us and the performance by us of our obligations under the *facility agreement* are subject to the *applicable law*,
- d) we will not provide legal, tax, financial or accounting advice to you as part of our CAFIN trade finance facility/service. We do not act in a fiduciary capacity and we do not owe any fiduciary obligations to you in respect of our services provided to you in connection with these terms and conditions except as expressly stated in these terms and conditions;
- e) CAFIN operates as a related or associated entity of Corporate Alliance Group Pty Ltd (ABN 58 167 119 226) in which potential or perceived conflict of interest may arise. CAFIN is responsible for ensuring that, in all of its dealings to be at commercial arm's length and client confidentiality is retained.
- f) you accept the *facility agreement*.

1.3 Principal

1.3.1 In our dealings with you:

- a) we will act as principal to all *transactions* and not as agent on your behalf; and
- b) unless we agree otherwise in writing, you will also deal with us as principal, and not as an agent or representative of another person.

1.4 Relationship between CAFIN and you

1.4.1 Nothing in these terms and conditions:

- a) creates or will be deemed to create a partnership, a joint venture, the relationship of principal and agent or employee and employer or any other relationship as between you and us; or
- b) authorises you to act, or to enter into any contract or other agreement, on behalf of, or bind us except as otherwise expressly provided in these terms and conditions; or
- c) is intended to create or does create in favour of either of you or CAFIN any mortgage, charge, lien, pledge or other security interest in any cash or other property transferred by one to the other under any transaction.

1.5 All transactions at your risk

- 1.5.1 All transactions and use of our trade finance facility will be made at your own risk and to the maximum extent permitted by law, we will not in any way be liable for any claims, damages, *losses* (including consequential losses) or injury suffered or incurred by you as a result of or arising out of any statement, information or communication provided by, or on behalf of us relating to our trade finance facility under these terms and conditions.
- 1.5.2 You understand the risks of using our CAFIN trade finance facility and will rely solely upon your own judgement in dealing with us.

2. AGREEING AND PRIORITY OF THESE TERMS AND CONDITIONS

2.1 Accepting our facility agreement

- 2.1.1 If you do not agree with the terms and conditions of our facility agreement, you should not accept our offer.
- 2.1.2 If you accept the facility agreement we offer and satisfy all applicable conditions (to the extent it concerns the CAFIN trade finance facility) we will provide you with our trade finance facility. The facility offered will be provided on these terms and conditions.
- 2.1.3 If there is any inconsistency or uncertainty between these terms and conditions, the provision of the *account application form*, your facility offer, or any other terms and conditions that apply to the issue of a CAFIN account, then irrespective of the time of circumstances under which the various terms and conditions or provisions are said to apply, the relevant term or condition or provisions which most benefits CAFIN will prevail and take precedence over any other equivalent or applicable term or condition or provision.
- 2.1.4 You agree that we may amend, change, revise, add or modify the Agreements at any time without your consent. You understand that these terms and conditions cannot be modified by you without written acceptance or confirmation by us.
- 2.1.5 You must read these terms and conditions carefully in their entirety. We recommend that you consult appropriate professional advisers on any legal, stamp duty, taxation and accounting implications of using our Remittance Services.
- 2.1.6 If these terms and conditions are provided to you in any language other than English, then please note that it is for information only and that the governing language of these terms and conditions and of any dispute arising hereunder

is English. Where a foreign language version contradicts the English version of these terms and conditions the English version will prevail.

2.2 Commencement of *facility agreement*

- 2.2.1 The facility agreement commences, and you are bound by it when you accept our facility offer, unless the facility offer specifies a date for commencement.
- 2.2.2 We will give you access to your CAFIN account and *CAPAY systems* when the facility agreement commences. You must ensure that your CAFIN *account* and *CAPAY systems* are only used in accordance with the *facility agreement* and these terms and conditions.

B. Your CAFIN Account

3. CLIENT'S CAFIN ACCOUNT

3.1 Your CAFIN account

- 3.1.1 When we open a CAFIN account for you, you will be bound by the agreement facility in all your dealings with us. Transactions under the agreement facility are legally binding and enforceable.

3.2 Using your CAFIN account

- 3.2.1 In accordance with these terms and conditions, you and all *account operator(s)* can use CAFIN to make payments for goods and services unless the potential or event of default has occurred, or rights of use has been withdrawn, suspended, or cancelled by CAFIN.
- 3.2.2 CAFIN is not responsible or liable for anyone's refusal or failure to accept a transaction made with CAFIN/CAFIN transaction.
- 3.2.3 Goods or services purchased using CAFIN Trade Finance Facility will not constitute any warranty or representation (expressed or implied) by CAFIN.

3.3 Two or more persons

- 3.3.1 Where you are two or more persons in relation to one CAFIN *account*:
 - a) the liability of each person will be joint and several;
 - b) we may receive instructions from any one person who is, or appears to us to be, such a person, whether or not such person is an *authorised user*;

- c) any notice or other communication given by us to one person will be deemed to be notice to all persons in relation to the *client's CAFIN account*, and
- d) any *event of default* in respect of any one person will be an *event of default* in respect of you.

3.4 Making payments to the CAFIN Account

- 3.4.1 Payments can be made to your CAFIN *account* using:
 - a) payment option detailed on your *statement of account*, or
 - b) other payment methods authorised by CAFIN from time to time.
- 3.4.2 Payments made outside of *business days*, or after 4pm (EST) on *business days* will be deemed as made on the following *business day*.

3.5 Initiating charges to CAFIN

- 3.5.1 *Transactions* made on your behalf through the *client's CAFIN account* should only be made by the *client* on its own behalf or through its *authorised users*.
 - a) undertaking an *authorised transaction*.
 - b) using any other method authorised by CAFIN from time to time
- 3.5.2 Despite anything to the contrary in this clause 3.5, you are liable for all *transactions* made on your behalf or on your CAFIN *account* or in any other manner related to regardless of whether this clause has been complied with.

4. AUTHORISED USER(S)

4.1 Appointment of authorised users

- 4.1.1 You may nominate and we may accept your authorisation of a person, an *authorised user*, to give instructions and access to your CAFIN account. An *authorised user* can also send and receive communication/ correspondence on your behalf.
- 4.1.2 You must notify us in writing of any such authorisation, setting out the full name, telephone number, email address and specimen signature of that person and any other information required by us to identify the *authorised users*.
- 4.1.3 You may notify us a list of *authorised users* when you complete the CAFIN *account application form* or otherwise notify us at a later stage in writing.
- 4.1.4 We may refuse access to your nominated *authorised users* if we are concerned about unauthorised or fraudulent access by the nominated persons. We will

give you notice if we do this, either before or immediately after we refuse access, unless notifying you would be unlawful or compromise our reasonable security measures.

- 4.1.5 You may inform us of a limit applicable to some or all transactions or on any *authorised users*. Such limits must be notified to us in writing. Any limit(s) provided by you to us may be withdrawn by you at any time by giving written notice to us.

4.2 Changing authorised users

- 4.2.1 You shall immediately notify us when there is any change or revocation to such authority or any of the *authorised users*. Any change or revocation of such authority or any of the *authorised users* is only effective upon receipt by us of a signed written notice of change or revocation from you. We are only bound by any such variation upon written notice being received by us.
- 4.2.2 Until you have provided a written notice to us in accordance with clause 4.2.1, we may continue to assume that all existing *authorised users* have authority to legally commit and bind you to transactions with us.
- 4.2.3 If another person is later appointed an authorised user, the notice must include the full name, telephone number, email address and specimen signature of that person and be verified by an authorised user and any other information required by us to identify the authorised user and, if you are a body corporate, by a director.

4.3 Instructions by an authorised user

- 4.3.1 For the purposes of these terms and conditions, any instructions placed by, and other instructions or directions given by, an authorised user (or which appear to us on the face of instructions or directions to be placed or given by an authorised user) are taken to be your instructions or directions.
- 4.3.2 The authorised user will have the following rights in addition to others granted by these terms and conditions:
- a) authority to act for and bind you in relation to any dealings between the *Client* and CAFIN; and
 - b) authority to exercise any discretion, right or power granted to the *Client* by these terms and conditions and the *facility agreement*.

4.4 Liability for authorised user(s)

- 4.4.1 You are and remain solely liable and responsible for all acts and omissions of



your authorised user notwithstanding that the act or omission of the authorised user was:

- a) outside their actual or ostensible authority; or
- b) in error, fraudulent, negligent, in breach of their fiduciary duties or criminal.

4.4.2 You are responsible for ensuring that *authorised users*, given authority to operate the CAFIN account, will do so in accordance with the CAFIN terms and conditions and otherwise in accordance with the policies and procedures of CAFIN from time to time.

4.4.3 You will be responsible for all transactions undertaken by nominated *authorised users*, whose actions will be binding on the *client*.

4.4.4 Your responsibility to ensure that all *authorised users* operate with proper authority. CAFIN may, without more, rely upon the instructions or authority of any person purporting to act as an authorised user for operations of the CAFIN account.

4.4.5 You will be liable for all transactions facilitated by *authorised users* through *CAPAY systems* or on your CAFIN account no matter how the transaction occurs.

4.4.6 You agree not to make, and you release us from any liability to you under your right to make, any claim against us for any *loss* incurred or suffered by you which arises directly or indirectly due to us relying on instructions from or other communications from or acts or omissions by your *authorised user* (including your attorney).

C. Your ongoing obligations

5. USING IN ACCORDANCE

5.1 Use of CAFIN trade finance facility and CAPAY systems

5.1.1 You will not use our trade finance facility other than in the manner and for the purpose for which it is made available by CAFIN.

5.1.2 You must use our trade finance facility in strict accordance with the CAFIN terms and conditions published by CAFIN and incorporated in the *facility agreement*.

5.2 Restrictions on the use of CAFIN

5.2.1 The customer warrants and represents (on a continuing basis) and undertakes and covenants to CAFIN that:

- a) CAFIN will not be used for any unlawful or improper purpose

- b) CAFIN will be used in accordance with the terms and conditions specified in the *facility agreement*, as amended from time to time.
 - c) Purchases of goods or services using CAFIN satisfy conditions of an authorised *transaction*. Purchases which fail to do so are not permitted.
 - d) You will remain liable for all *transactions* made using CAFIN, regardless of whether they are *authorised transaction*.
 - e) Refunds of any goods or services will be provided by way of a credit to CAFIN, and you will not seek or accept any refund in the form of cash.
 - f) You will not make cash withdrawals from your CAFIN *account*
- 5.2.2 CAFIN may, at its absolute discretion, refuse or withdraw the following:
- a) authorisation for any charge against your CAFIN *account* or otherwise;
 - b) use of or access to CAFIN *account* or other CAFIN related accounts; or
 - c) approval of any *transaction* as an *authorised transaction* or otherwise.

D. Managing your account

6. STATEMENTS OF ACCOUNT

6.1 Providing a Statement of Account

- 6.1.1 Statement of accounts will not generally be sent to you, but we will make available to you for review through your CAFIN account.
- 6.1.2 Statements showing the transaction between you and us during that month will be made available by the seventh business day of the following month.
- 6.1.3 We need not send or make available a statement to you if no amount has been debited or credited to your account with us during the statement period and the amount outstanding is less than A\$5.00.
- 6.1.4 We will email or make it available to you on the CAFIN account.
- 6.1.5 CAFIN will not provide any physical or tangible form of statements of account unless request in writing to do so by you and then only upon payment of the applicable fee set out in the *facility offer*.
- 6.1.6 For the avoidance of doubt, and where permitted by law, any *account operator* will be entitled to receive a copy of the statement of account upon request.

6.2 Details shown on statements of account

- 6.2.1 The statement will include:
- a) the statement date (which will not always be the same day each month);
 - b) the start and end dates of the statement period;
 - c) the *account* balance on the start date of the statement period;
 - d) the due date for payment. This is the last *business day* of the month following the month to which the statement period relates, unless we have told you it is another date;
 - e) the interest charges debited to the *account* during the statement period;
 - f) the *fees* and charges debited to the *account* during the statement period;
 - g) other amounts debited or credited to the *account* during the statement period;
 - h) the minimum amount which you must pay by the due date; and
 - i) the *account* balance on the end date of the statement period
- 6.2.2 All amounts requiring payment will be shown on the statement in *Australian dollars*. If you have a liability to us in another currency, we may convert it into *Australian dollars*.

6.3 Error in statements of account

- 6.3.1 We encourage you to carefully review and check the statements and its entries.
- 6.3.2 Should you identify any errors, it is your responsibility to promptly report them to us
- 6.3.3 You must notify us in writing within 3 weeks (21 days) of the statement date of issue of an error in the statement of accounts. After 3 weeks (21 days) of the statement date of issue, you are not entitled to claim any errors in the statement and CAFIN is not liable for any *loss* you may suffer as a result. This is the case even if *loss* was caused by CAFIN's negligence.

7. Lost, stolen or fraudulently misused

7.1 Requirements

- 7.1.1 If you suspect fraudulent activity or misuse of your CAFIN account or *CAPAY systems*, you must notify us immediately.
- 7.1.2 In the event you do not inform us about *loss*, theft or misuse you may not be eligible for refunds, or any *losses* incurred (where you otherwise may have been).

7.2 We are not liable for certain losses

- 7.2.1 You are liable for any charges incurred by the use of your CAFIN account or

CAPAY systems that has been assessed fraudulently or improperly used, regardless of your lack of involvement or benefits gained from the fraud, theft or misuse.

- 7.2.2 Your liability continues after you have notified CAFIN of the fraud, theft, or misuse suspected.
- 7.2.3 We are not liable for *loss* caused unless the *loss* is caused by our or our receiver's negligence, fraud or willful misconduct.

E. In an event of a default

8. DEFAULTING ON YOUR CONTRACT

8.1 General obligations

- 8.1.1 You must ensure you are not in default.
- 8.1.2 Each of the following situations constitutes a default under the contract: You will be in default if:
 - a) You missed a repayment (whether it is a scheduled repayment or not) or do not pay us an amount by the due date;
 - b) You exceed your account limit, whether it is due to drawings, interest payment, currency fluctuations or other charges being debited and you failed to repay such amount as is necessary to reduce the outstanding amount to an amount not exceeding the limit by the time as required by this terms and conditions or if otherwise agreed with you in writing by that agreed time;
 - c) If you as the account holder or your guarantor is bankrupt or become insolvent including entering into voluntary administration or other insolvency processes and arrangements and no longer have legal capacity;
 - d) If creditor enforcement action is taken against you or a guarantor or your assets;
 - e) You or your guarantor stops repaying the creditors and admits that you cannot afford to make repayment on time;
 - f) We believe on reasonable grounds that you or your guarantor has become unlawful in using our account services;
 - g) You or your guarantor does not obtain the required licence or permit to conduct business;
 - h) We decide there has been an unacceptable and material change in the

management or legal/ equitable ownership of your business without our consent;

- i) You or your guarantor has given us materially incorrect or misleading information that materially increases our risk concerning our facility being provided to you;
- j) You or your guarantor is required to make an early repayment to us or to a third party (however this event has arisen) and you failed to meet that repayment obligation on time;
- k) You or your guarantor fails to observe the terms and conditions contained in this document; and
- l) We believe on reasonable grounds that your conduct has or will cause a material adverse effect on us providing our facility to you.

8.2 Repayment obligation in the event of default

- 8.2.1 If you default, CAFIN will give notice to the *client* and declare the outstanding balance and any other amounts due and payable by you immediately.
- 8.2.2 Upon receiving this notice under clause 8.1, you must immediately repay the outstanding balance and any other amounts payable by you in full.
- 8.2.3 We will give you 30 days to meet your outstanding payment obligations before enforcing further action, upon which we will charge default interest.

8.3 Default charges

- 8.3.1 In the event of a default where payment falls outside the standard payment terms, CAFIN reserves the right to charge default interest on any amount, including interest, which you fail to pay on the due date plus a handling fee, defined in the *facility offer*.
- 8.3.2 Default interest is charged daily on the overdue amount from the due date until the overdue amount is paid in full.
- 8.3.3 All outstanding default interest must be paid on the day you pay out the outstanding balance.

8.4 Action on default

- 8.4.1 If you fail to pay or discharge any of the CAFIN obligations when due or is otherwise in breach of its obligations under the facility agreement, CAFIN may deal with and take actions upon or at any time after the occurrence of an event of default.
- 8.4.2 Actions we may take in the *event of default*:
 - m) cancel or suspend access to CAFIN *account* or other CAFIN services and

CAPAY systems;

- n) stop payments under the CAFIN facility;
- o) termination of the *contract* and any other *contract* you have with us;
- p) seize and sell any security property or appoint one or more persons to be a receiver or manager of property that is the subject of a Security Interest or in relation to any security property;
- q) take legal action against you and seek damages in relation to a breach committed by you; and
- r) enter your premises or the premises of any transaction party and take possession of any goods which are the subject of a security interest or other proprietary interest held by us.

9. DECLARATIONS

9.1 Declarations in an event of default

In the *event of default*, you confirm:

- 9.1.1 These terms and conditions may be enforced at any time and with or without notice to or consent by:
 - a) You;
 - b) any guarantor of your performance of these terms and conditions; or
 - c) any other person
- 9.1.2 even if CAFIN accepts any part of the outstanding balance after an event of default or there has been any other event of default.
- 9.1.3 CAFIN is not liable to you, any account operator or guarantor of your performance of these terms and conditions for any *loss* or damage that you or the guarantor may suffer, incur, or be liable for arising out of or in connection with CAFIN exercising any power under these terms and conditions.
- 9.1.4 If CAFIN makes any declaration under clause 9.1, the declaration does not affect your obligation and duties under these terms and conditions, and you must continue to make all payments on time.

F. Costs and payments

10. ENFORCEMENT EXPENSES

10.1 Your expenses

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- 10.1.1 You authorise CAFIN to debit your CAFIN account or your nominated account for any fees, interest, repayments, establishment, and management costs, or other costs owing under these terms and conditions.
- 10.1.2 Costs or expenses incurred by CAFIN or its contractors or agents (including legal costs and collection agency fees) in enforcing or collecting payment of any amount due or in exercising and power under these terms and conditions.

11. PAYMENT CURRENCY

11.1 Permitted currency

- 11.1.1 All payments required under these terms and conditions are to be made in Australian dollars, or otherwise specified in the facility offer.
- 11.1.2 If CAFIN allows otherwise, payments made in a currency other than Australian dollars will be converted to Australian dollars at the rate of exchange determined by CAFIN on the date the payment is processed to the client's CAFIN account.

12. FEES AND TAXES

12.1 General

- 12.1.1 CAFIN is irrevocably authorised to charge your CAFIN *account* for any fee that is due and payable.
- 12.1.2 The fees that may be charged to the CAFIN *account* by CAFIN are detailed in the Fee Schedule.
- 12.1.3 In accordance with clause 13.1.1, you are liable for:
 - a) any tax, duty, or other charge imposed by law in Australia (including stamp duty or goods and services tax, unless otherwise stated to be included in the price) incurred by CAFIN, or
 - b) for which CAFIN is liable to reimburse another person, in respect of the use of the CAFIN *account* or any other *transaction* involving an *authorised user* or a payment or charge to your CAFIN *account*.
- 12.1.4 You acknowledge and agree that you may be liable for any charge or fee, including any surcharge payable to the *seller*, and in addition to any charge (as defined below) imposed by CAFIN in respect of the use of CAFIN trade finance facility or any other *transaction* involving:
 - a) an *authorised user*

- b) a payment from or charge to your CAFIN *account*; and
- c) where “charge” means in relation to a *client*, the charge made by CAFIN against your *account* as a result of *authorised transactions* undertaken between the *seller* and the *client*.

12.1.5 You acknowledge and agree that CAFIN does or may receive a commission or any other remuneration or benefit from the *seller* in respect of each *authorised transaction* and CAFIN does or may charge a *seller* service fee.

12.2 GST

- 12.2.1 Except as otherwise provided by this clause 12.2, all considerations payable under these terms and conditions in relation to any Supply is exclusive of GST.
- 12.2.2 If all or part of any payment to be made by you is the consideration for a taxable supply for GST purposes, when the *client* makes the payment, it must pay to CAFIN any GST chargeable in respect of the supply so that CAFIN will receive and retain, after payment of any GST, the amount otherwise payable for the supply.
- 12.2.3 To the extent that any supply under these terms and conditions constitutes a taxable supply, the applicable amount of GST (GST Amount) will be added to the consideration payable by the Recipient to the Supplier. The applicable amount of GST (GST Amount) shall be determined by multiplying the amount upon which GST is payable by the prevailing GST rate.
- 12.2.4 Any GST Amount must be paid by the Recipient to the Supplier at the same time and in the same manner as the relevant Consideration is paid or given under these terms and conditions, without any right of set-off or deduction (unless otherwise provided in this agreement).
- 12.2.5 If these terms and conditions require the Recipient to pay, reimburse or contribute to any expense, *loss* or outgoing suffered or incurred by the Supplier (Relevant Expense), the amount which the Recipient must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which the Supplier is entitled in respect of the Relevant Expense, together with any GST Amount if the payment, reimbursement or contribution constitutes a Taxable Supply by the Supplier to the Recipient.
- 12.2.6 The supplier must provide a valid Tax Invoice to the Recipient at or prior to the time of payment of any GST Amount.
- 12.2.7 To the extent that any adjustment occurs in relation to a Taxable Supply, the Supplier must issue an Adjustment Note to the Recipient within 7 days of becoming aware of the Adjustment, and any payment necessary to give effect to such Adjustment must be made within 7 days after the Adjustment Note’s date of receipt.

G. Payment to the Seller

13. LIABILITY FOR AMOUNTS CHARGED

13.1 We are not responsible for the sale contract

- 13.1.1 For the avoidance of doubt, you are liable, and if there is more than one of you, you are jointly and severally liable for any and all transactions charged or incurred against your CAFIN account or otherwise undertaken pursuant to this facility.
- 13.1.2 The charges, events and other particulars recorded in the systems and books of CAFIN (whether as an authorised transaction or otherwise) through the CAPAY system shall be conclusive evidence, subject to manifest error, that those charges, events and other particulars actually occurred and, in the case of charges, were properly incurred by you in the amount, by the authorised user(s), for the purpose and by the use of the CAFIN account referred to in those records.
- 13.1.3 A dispute between you and any of CAFIN or a *seller* concerning a charge or the existence of any transaction (whether or not an authorized transaction) or the nature, quality, defectiveness, existence or relevance of any goods or services the subject of any transaction (whether or not an authorized transaction) does not relieve you of your payment obligations in respect of that charge or transaction.
- 13.1.4 Except to the extent prohibited by law, CAFIN or a third party at the request of you may disclose information to you (or to a third party at request of you) about your CAFIN account or charges incurred using that CAFIN account. This may include detailed transaction information such as itemized and categorized purchase information.
- 13.1.5 CAFIN may be obliged by law to refund a payment if ordered by a court or if we are ordered to do so under any insolvency or bankruptcy procedures. If this happens, we will return the funds to the relevant party without giving you any notice and treat such payment as against us.

14. DISPUTES WITH SELLERS

14.1 We assume accuracy of information

- 14.1.1 You are responsible for the accuracy of transaction amounts entering in electronic equipment including our *CAPAY systems*, your *CAFIN Account* and

CAFIN *apps*.

- 14.1.2 You must deal directly with the *seller* if you or they have complaints about goods or services, or if either party dispute the amount charged.
- 14.1.3 If you disagree with any amount charged, or shown as being paid to your CAFIN account, you must contact CAFIN as soon as possible. A written confirmation of your claim and any supporting evidence must be provided to CAFIN upon request.
- 14.1.4 If your claim against the seller is deemed legitimate by CAFIN, we will not be required to help pursue that claim.
- 14.1.5 You and the *seller*, not CAFIN, will bear the risks, damages and costs associated with any claim against or dispute with the *seller*.
- 14.1.6 You are not permitted to withhold payment of any amount from CAFIN based or relying on or in connection with any claims made against or dispute with a *seller*.

H. Varying and Ending Agreement

15. VARIATION TO THESE TERMS AND CONDITIONS

15.1 We may vary the facility agreement

- 15.1.1 We may vary the *facility agreement* and subsequently these terms and conditions by giving you at least two weeks (14 days) notice of the change.
- 15.1.2 Changes may include:
 - a) introduction or different *fee* or any interest due on the CAFIN *account*;
 - b) the way a *fee* or *interest charge* is determined and when it is determined; and
 - c) changes to the facility limit presented in the *facility offer*.
- 15.1.3 We may issue you revised versions of this document at any time by giving you notice of the variation whether in writing or online at www.cafin.com. Such notice may be given to you by being addressed to the user of CAFIN *accounts* generally as a group, and not to you specifically.
- 15.1.4 The variation will take effect at the end of the notice period, or on any day specified by CAFIN.
- 15.1.5 Without limiting to clause 15.1, CAFIN may vary the fee schedule (without giving you any written notice) by varying the schedule of fees, charges and interest published by CAFIN on the *CAPAY systems* (or by any other means) as applying generally to CAFIN *accounts* from time to time and any such variation will apply to these terms and conditions and bind you accordingly.

- 15.1.6 If we consider the modifications to the facility agreement, inclusive of these terms and conditions, necessary to comply with legal, fiscal or regulatory requirements, the notice can be given at any time and can take effect at any later time we specify.
- 15.1.7 This clause 15.1 does not qualify or restrict the method by which these terms and conditions or fee schedule may otherwise be varied.

15.2 Different versions of the facility agreement

- 15.2.1 If the *facility agreement* (or any part of it) is translated into a language other than English that translation will be provided for information purposes and the English version will prevail if there is any inconsistency.

15.3 Your rights if we do vary our terms and conditions

- 15.3.1 should you be dissatisfied with any changes made to the facility agreement, you are entitled to terminate/end the agreement at any time.
- 15.3.2 Regardless of whether we have given you prior notice of any proposed change to the agreement in accordance with clause 15.1.1 and 15.1.6, you will be entitled to give us notice, within 7 *business days* after the date of our notice to you, that you are ending the *facility agreement* and, if you do, the agreement will end 60 days (or a shorter period you nominate) after you give notice.

16. CANCELLATION

16.1 Cancellation by CAFIN

- 16.1.1 Without limiting to clause 8, CAFIN reserves the right to suspend or cancel the *client* and authorised user right to access and use the CAFIN account or any CAPAY system at any time with or without cause or notice as allowed by law and notwithstanding other sections in this document.
- 16.1.2 Upon becoming aware of the cancellation, suspension or revocation, use of your CAFIN account and *CAPAY systems* must be immediately stopped by you and any *authorised users*.

16.2 Cancellation by you

- 16.2.1 You may choose to close or cancel your CAFIN *account* at any time by:
- sending a written request to CAFIN.
 - Visit any branch with appropriate identification

- c) Call us at (02) 9006-8888, or
- d) contact your account manager.

16.2.2 Any such cancellation will usually be effective from the business day after CAFIN receives the request.

16.3 Cancellation by authorised user on behalf of you

- 16.3.1 Nominated *authorised users* may close your CAFIN account on behalf of you at any time.
- 16.3.2 Any such cancellation will not be effective until CAFIN has received a written request from the *authorised user* requesting for CAFIN account closure, or the *account holder* themselves.
- 16.3.3 The *authorised user* must advise CAFIN immediately on the *account* closure or cancellation for whatever reason and ensure that the *account holder* and any other *authorised user* do not use or access the CAFIN account and other CAFIN Facilities, including no further payments.

16.4 Your responsibilities and liabilities remain

- 16.4.1 You are responsible for your CAFIN account after cancellation and will continue to be responsible for all obligations related to CAFIN.
- 16.4.2 These terms and conditions will remain in effect for the *client* and/or the *authorised use*:
 - a) after the closure/cancellation of your CAFIN *account*, and
 - b) if CAFIN reinstates access to your CAFIN *account* at any time after the cancellation

16.5 Credit balance

- 16.5.1 If a credit balance remains after *account* cancellation or closure, you authorise us to pay you the amount equal to the balance remaining after deducting all Outstanding Balance from the credit balance of your CAFIN *account* at the time of cancellation (unless CAFIN is required to remit those funds as unclaimed money in accordance with the law).

17. SUSPENSION

17.1 Suspension of your CAFIN account

- 17.1.1 CAFIN can suspend all of any *authorised users'* rights to access CAFIN services

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and *CAPAY systems* at any time without notice (and in CAFIN's sole discretion):

- a) if you are or any *authorised users* is in default under these terms and conditions;
- b) if CAFIN suspects that the CAFIN *account* or the CAPAY System has been used fraudulently by you, any *authorised user*, or any other person; or
- c) to prevent *loss* to either you and/or CAFIN.

17.1.2 If CAFIN suspends your facility, you must ensure relevant *authorised users* do not use the CAFIN *account* or *CAPAY systems* until such time as CAFIN advises you that the relevant *authorised users'* access has been reactivated or reinstated.

17.1.3 Should your CAFIN *account* and/or *CAPAY systems* be suspended:

- a) your obligations under these terms and conditions will not be affected; and
- b) CAFIN will not be liable on any *account* (including negligence) whatsoever.

I. Your representations and other obligations

18. YOUR REPRESENTATIONS

18.1 The representation and warrants you give

The *client* and each *account operator* acknowledge, represent, and warrant to CAFIN that:

- 18.1.1 No representation has been made by CAFIN and relied upon by you in accepting these terms and conditions, except as expressly set out by CAFIN in these terms and conditions; and
- 18.1.2 All previous negotiations, understandings, representations, warranties, memoranda, or commitments in relation to, or in any way affecting these terms and conditions are merged into and superseded by these terms and conditions and will be of no force or effect and no party will be liable to any other party in respect of those matters.

19. INDEMNITIES

19.1 General Indemnity/Your indemnity to us

- 19.1.1 Subject to any applicable law to the contrary, and to the extent they are caused by our negligence, wilful misconduct or fraud, you indemnify CAFIN against all *loss* (whether direct or indirect) that CAFIN suffers, incurs, pays or is liable for in respect of or in connection with:



- a) the breach of your obligations under the CAFIN terms and conditions
- b) the breach of a Transaction Document by a Transaction Party;
- c) any dispute between you and an *authorised users* or a *seller*;
- d) any Taxes now or in future assessed, levied, imposed or collected by any Governmental Agency in respect of the use of CAFIN services and *CAPAY systems* to buy goods or services from a *seller*; and Charge or any *transaction* under, or contemplated by, these terms and conditions;
- e) the possession, operation control or use of your CAFIN *account* to access the CAFIN service by any party;
- f) a claim by an *authorised users* or *seller* against you or CAFIN for any *loss* or to recover an amount from you or CAFIN for misrepresentation, breach of contract or failure of consideration relating to goods or services bought from or supplied by *seller*;
- g) outages, faults or delays in any of your computer systems or any infrastructure or systems connected to your computer systems, or any corruption of data caused by, or in any way attributable to, your use or the use by an *authorised user* of the *CAPAY system and CAFIN account*;
- h) the goods or services purchased using your CAFIN *account* or *CAPAY systems*;
- i) the exercise by CAFIN of any of its Power under these terms and conditions;
- j) any *loss* incurred as a result of or in connection with the action or inaction of any third party or as a result of any matter which is outside CAFIN's control; or
- k) any *loss* incurred as a result of or in connection with any fraudulent, improper, or unauthorised use of CAFIN's facilities and *CAPAY systems*.

19.2 Continuing indemnities

19.2.1 Your indemnities in these terms and conditions:

- a) are a continuing obligation, despite any settlement of account or anything else that occurs;
- b) remain in effect until all *money owing/guaranteed money*, contingently or otherwise, under the indemnity has been paid in full;
- c) is an additional, separate and independent obligation; and
- d) continues after the agreement ends.

19.3 Importance notice for each guarantor

19.3.1 This is a *guarantee* and indemnity. If the *client* does not pay when due, money presently or in the future owed to CAFIN, you must pay that money yourself

and indemnify us against any *loss* it suffers by not recovering from the *client*. It is therefore important that you understand:

- a) the nature and extent of the facilities being provided to the *client* and that future facilities provided to the *client* by CAFIN will also be *guaranteed* by you;
- b) that upon signing you become legally bound to pay the whole of the *client's* indebtedness to CAFIN together with interest and other costs and expenses which the *client* becomes liable to pay to CAFIN; and
- c) that if you have given or give security over any of your assets to CAFIN, CAFIN can seize and sell those assets if the *client* defaults and you do not pay the money which the *client* has failed to pay to CAFIN.

19.3.2 CAFIN recommends that you obtain independent legal advice as to the full effect of this document and the documents governing the facility to the *client*. If you cannot obtain a copy of the documents governing the facility from the *client* please request a copy from CAFIN. You should also obtain any other advice which is necessary to understand the financial position of the *client* and its ability to meet its present and future commitments to CAFIN.

20. PRIVACY AND DISCLOSURE OF INFORMATION

20.1 Privacy at CAFIN

CAFIN's privacy policy is available to view online, or downloaded at, www.cafin.com.au. Alternatively, you can ask us for a copy.

20.1.1 Our privacy policy is incorporated into the *facility agreement*. We are committed to comply with the Privacy Act 1998 (Cth) and the Australian Privacy Principles.

20.1.2 Our Privacy Policy and Credit Reporting Policy contains information about:

- a) any laws that require or authorise to collect certain personal information and why those laws require CAFIN to collect such personal information.
- b) the circumstances in which CAFIN may collect Personal Information from other sources (including from a third party);
- c) how we look after your personal information (general and credit related); and
- d) how an individual/you may:
 - 1) access their Personal Information and seek correction of their Personal Information;
 - 2) instruct CAFIN that the individual does not want to receive information about other products and services;

- 3) raise concerns that CAFIN may have breached the Privacy Act 1988 (Cth) or related code, and
 - 4) how CAFIN will deal with these matters.
- 20.1.3 The collection, use and disclosure of personal information by us is subject to the Privacy Act 1988 and the privacy policy. You consent to the collection, use and disclosure of personal information as outlined in the privacy policy. This clause continues until all of your liabilities to us have been satisfied and there is no *amount owing*.

20.2 Your privacy obligations

- 20.2.1 To meet your privacy obligations, you must:
- a) collect, use and disclose information as required by law;
 - b) ensure that each individual who becomes an *authorised user*, or is or becomes a director or shareholder of a *guarantor* is aware of our privacy policy and agrees to the collection, use and disclosure of personal information as outlined in that privacy policy; and
 - c) obtain any necessary approval so that you can provide information to us as required by the *facility agreement*.

20.3 Disclosures by CAFIN

- 20.3.1 We may choose to disclose any document (including the *facility agreement*) and any information which we have or obtain about you, or which you provide or have provided to us without any notice to you. You authorise CAFIN to disclose any or all *sellers* with all or any of the following information:
- a) your name and the details of any CAFIN *account* issued at your request;
 - b) advice that an *event of default* or potential *event of default* has occurred; or
 - c) advice that you are no longer authorized to transact business through CAFIN services and *CAPAY systems*.

21. OTHER OBLIGATIONS

21.1 General provisions

- 21.1.1 If an account is canceled under clause 16.1, 16.2, 16.3 and 16.4, CAFIN may convert the *account* to another CAFIN product of the relevant *authorized user's* choice. The *client* and the *authorised user* consents to CAFIN communicating directly with the *authorised users* for the purpose of converting the *account*.

- 21.1.2 The *client* and all *authorised users* must not, without prior written consent of CAFIN, use for any purpose, the CAFIN name or any trademarks, trade names, logos, copyright or other intellectual property which CAFIN owns or is authorized to use, unless CAFIN has provided its prior written consent.
- 21.1.3 The *client* must provide CAFIN with details of any proposed change in ownership or control of the *client*, prior to that change taking effect.

21.2 Receivables and retention of title provisions

- 21.2.1 This clause 21.2 applies if CAFIN takes (whether in law or in equity) an assignment of or procures another person to take an assignment of the chose in action (or receivable) representing the moneys owing by you to the *seller* in respect of the sale of goods the subject of a transaction.
- 21.2.2 Despite the terms of purchase between you and the *seller*, you acknowledge and agree with CAFIN that:
- a) Upon payments being made by CAFIN to a *seller* in accordance with the *CAFIN facility agreement*, the *seller* may have assigned to CAFIN or to such other person as CAFIN may direct from time to time, of its right title and interest in:
 - 1) The chose in action (or receivable) representing the moneys owing by you to the *seller* in respect of the sale of goods or services the subject of each *transaction*; and
 - 2) The goods the subject of each *transaction*; and
 - 3) Any Security Interest that it holds in respect of the goods which are the subject of the *transaction*.
 - b) For the purpose of section 12 of the Conveyancing Act 1919 (NSW), the charging of the CAFIN *account* in relation to a payment shall constitute sufficient notice of the assignment referred to in subparagraph (1) of this clause from the relevant *seller* to;
 - c) Without limiting the force or effect of any other term and conditions, CAFIN or the relevant assignee may enforce against your repayment of the relevant chose in action (or receivables) or take possession of goods which are the subject of a *transaction* or enforce any Security upon the occurrence of any event or potential *event of default*;
 - d) Notwithstanding the provisions of any document governing the terms of a dealing between you and a *seller* which is the subject of a *transaction (sale contract)*, if the *seller* has assigned its rights in the chose in action representing moneys owing by you pursuant to clause 22.2.2(a), the terms of each *sale contract* shall at our election in writing be taken to contain provisions to the effect of that provisions set out in the *retention of title provisions* and:



- 1) In the event of any inconsistency the *retention of title provisions* shall prevail; and
- 2) At our election in writing, the *retention of title provisions* will apply unless you have paid us the money's owing pursuant to clause 22.2.2(a), notwithstanding that the *seller* may have been paid by us; and
- e) The *client* will not be entitled to claim and must not claim any legal or beneficial title in or to the relevant goods involved in each such *transaction* unless CAFIN has been paid in full for any moneys paid by it in respect of such goods.

21.3 Increased costs

21.3.1 If CAFIN determines that it is affected by any future, or any change in any present or future, law, regulation, order, treaty, official directive or request (with which, if not having the force of law, compliance is in accordance with the practice of responsible bankers and financial institutions in the jurisdiction concerned) including, but not limited to in respect of:

- a) any reserve, liquidity, capital adequacy, capital allocation, special deposit or similar requirement; or
- b) tax on or in respect of payment made or to be made to CAFIN under these terms and conditions,
or a present or future interpretation or administration of any of them by a Governmental Agency, and that as a result:
 - c) the effective cost to CAFIN of making, funding, or maintaining the CAFIN *account* or performing any of its obligations under or in respect of these terms and conditions is in any way directly or indirectly increase; or
 - d) any amount paid or payable to, or received or receivable by, CAFIN or the effective return to CAFIN under these terms and conditions is in any way directly or indirectly reduced; or
 - e) CAFIN makes, or is required to make, any payment or foregoes any interest or other return on or calculated by reference to:
 - 1) Any sum received or receivable by it under or in respect of these terms and conditions in an amount which CAFIN considers material; or
 - 2) Any capital or other amount which is or becomes directly or indirectly allocated by CAFIN to its commitment in maintaining the CAFIN *account* in an amount which CAFIN considers material; or

- f) CAFIN is restricted in its capacity to enter into, or is prevented from entering into, any other *transaction* with any consequence referred to in clause 21.3.1 (c), (d) or (e) or with any other cost or *loss* of return to CAFIN, then, and in each such case:
- 1) when it becomes aware of the relevant results and has calculated or otherwise determined the relevant effect, CAFIN must promptly notify the *client* of such event; and
 - 2) on demand from time to time by CAFIN in accordance with and subject to clause 21.4, you must pay to CAFIN the amount which compensated CAFIN for such increased cost, reduction, payment or foregone interest or other *loss* of return.

21.4 Procedure for claim

- 21.4.1 If CAFIN makes a claim under clause 21.3.1(f)(2), it must deliver to you a certificate specifying the event by reason of which it is entitled to make the claim and setting out in detail the basis of the computation of the claim.
- 21.4.2 If CAFIN fails to give a certificate under clause 21.4.1 within 180 days after it becomes aware of the event entitling it to make a claim, CAFIN is not entitled to make a claim under clause 21.3.1(f)(2) for the period falling more than 180 days before the date it gives a certificate under clause 21.4.1.
- 21.4.3 In the absence of manifest error, a certificate by any two directors of CAFIN is conclusive evidence of the amount of any claim under clause 21.3.1(f)(2).
- 21.4.4 If CAFIN acts in good faith in all the circumstances it will not be a defence against CAFIN that the cost, reduction, payment foregone amount or loss of return could have been avoided.
- 21.4.5 In determining amounts payable under clause 21.3, CAFIN may use averaging and attribution methods commonly used by CAFIN.

21.5 Security for Payment

- 21.5.1 In consideration of the provision of the CAFIN account you hereby charge all of your present and after-acquired property (Charged Property) to CAFIN as security for payment of all moneys owed to CAFIN pursuant to this Agreement by you or an associate of you.
- 21.5.2 To the extent that the Charged Property includes property to which the *PPSA* does not apply, the charge created under clause 21.5 is:

- a) a fixed charge, over all of your buildings, fixtures, fittings, plan, equipment and machinery (other than stock in trade), uncalled or called by unpaid capital, insurance policies and their proceeds, computers and software, agreements or documents or any kind, books of account, financial records, goodwill, documents of title and current and later acquired real property and intellectual property and receivables which are required by us under this *agreement* or later to be paid into a nominated account or otherwise with in a particular way; and
- b) a floating charge over all or your other present and after-acquired property and assets

21.5.3 To the extent that the Charged Property includes property to which the *PPSA* does apply, you shall not deal with:

- a) any interest in the Charged Property over which the charge created is non-circulating as defined by the *PPSA* without the prior written consent of CAFIN;
- b) receivables which are required by us under this Agreement or later to be paid into a nominated account or otherwise dealt with in a particular way expect in accordance with the written instruction of CAFIN: or
- c) any other present and after-acquired property except in the ordinary course of business.

21.5.4 You further irrevocably agree and consent to CAFIN lodging a caveat over such real property as is charged herby to protect the interest conferred on it by this clause 21.5.

21.5.5 Upon demand by CAFIN, you agree to immediately execute a mortgage on terms satisfactory to CAFIN to further secure the security interest conferred by this clause 21.5 and should you fail to do so then CAFIN is entitled to use the powers conferred by clause 28.1.7 below or any other term in the CAFIN *facility agreement*.

22. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

22.1 PPSA

22.1.1 You agree that:

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- a) Any Security Interest, including but not limited to, the charge referred to in clause 21 of these terms and conditions, accepted by CAFIN, is a registrable Security Interest under the *PPSA* to the extent it relates to “personal property” within the meaning of the *PPSA*; and
- b) CAFIN registers a Security Interest under the *PPSA*, CAFIN may exercise any or all remedies afforded to CAFIN as a secured party under it without prejudice to any other rights or remedies arising out of a breach by you or any other party of an agreement with CAFIN.

22.1.2 You undertake:

- a) To provide to CAFIN, on request, any and all information reasonably required by CAFIN to register a Security Interest on the *PPSA* register; and
- b) To advise CAFIN in writing of any proposed change to its name or address at least 7 days before the changes take effect.

22.1.3 Unless the right cannot be excluded under the *PPSA*, you waive any right it has under the *PPSA*:

- a) To receive notice in relation to registration events; or
- b) To claim any damages available under the *PPSA*.

22.1.4 All your present and after-acquired personal property is collateral for the purpose of the *PPSA*

22.1.5 You agree that CAFIN may disclose information of the kind specified in section 275(1) of the *PPSA* to any part who requests it.

22.1.6 At the election of CAFIN to be exercised at any time in its absolute discretion, any section of the *PPSA* specified in Section 115 will not apply to the extent permitted by Section 115.

22.1.7 You must pay the costs, charges and expenses of and incidental to registering a Security Interest or any action taken by CAFIN to accompany with the *PPSA* (including any demand given under section 178 of the *PPSA*).

J. Other

23. SECURITY GUIDELINES

23.1 Your CAFIN Account and Code Security Guidelines

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- 23.1.1 This clause outlines your basic obligations concerning your CAFIN account and *code* security. This clause also contains suggestions to help you meet these obligations.
- 23.1.2 You are liable for transactions on your CAFIN account that were not made by you, even if you keep the *code's* secure.
- 23.1.3 You accept full responsibility for:
- a) Ensuing your CAFIN *account* to be solely used and accessed by only you and the nominated *authorised user*, who have been appropriately identified and are familiar with these terms and conditions under clause 4.4;
 - b) Not disclosing the *code* applicable to your CAFIN *account* to any other person other than the Authroised User(s);
 - c) Ensuring the *code* applicable to your CAFIN *account* is not recorded in an accessible place or electronic device (such as a personal computer or electronic organizer) which another person may easily access;
 - d) Ensuring the *code* applicable to your CAFIN *account* is not recorded on any article which is liable to loss or theft (unless the *code* is reasonably disguised); and
 - e) Maintaining confidentiality of the *authorised users code* by ensuring no one witnesses the *authorised users* enter their *code* when using or accessing any CAFIN facilities and *CAPAY systems*, including their CAFIN *account*.

23.2 Keeping access methods secure

- 23.2.1 To prevent misuse, theft or loss, you must tell us straight away if you know or suspect that:
- a) Your CAFIN *account* has been used in an unauthorised manner;
 - b) Your CAFIN facilities and *CAPAY systems* have been used in an unauthorized manner; or
 - c) Your *code* applicable to your CAFIN *account* or CAFIN facilities and *CAPAY systems* has been disclosed or obtained by someone other than you or the *authorised user*.
 - d)

23.3 How to inform us

23.3.1 In Australia:

- contact us on 9006-8888 during business hours,
- contact your Account Manager, or
- visit any branch during business hours.

23.3.2 Other methods we advise include in writing or on our website from time to time.

23.3.3 You must confirm your report in writing to CAFIN as soon as possible by faxing your report to (02) 9006-8888 or by such other methods as we may advise in writing or on your website from time to time.

24. OUR RIGHTS AND RESPONSIBILITY

24.1 Exclusion of our liability

24.1.1 Except as required by law, CAFIN is not liable or responsible for:

- a) goods or services purchased using your *CAFIN account* or *CAPAY systems*;
- b) the failure by a *seller* to accept a *transaction* on a *CAFIN account*;
- c) any dispute between you and a *seller* in relation to the supply, use, fitness for purpose or quality of goods or services;
- d) any *loss* incurred by you as a result of the action or inaction of any third party, or as a result of any matter which is outside CAFIN's control;
- e) any *loss* incurred by you as a result of the acceptance of an *authorised transaction* by a *seller*;
- f) any *loss* incurred by you as a result of any fraudulent use of the *CAFIN account* or *CAPAY systems*;
- g) any *loss* incurred by you as a result of any payment made by CAFIN in accordance with clause 16.5;
- h) any failure, error or delay occurring through or by reason of *CAPAY systems* or the use or effect of a *Seller's Account*; or
- i) The *CAPAY systems* not being available or accessible for any reason (including the negligence of CAFIN)

24.2 CAFIN is not liable for certain/indirect/consequential losses

24.2.1 Except as required by law, CAFIN will not be liable for any indirect or consequential *loss* that you may suffer or incur as a result of or in connection with:

- a) CAFIN failing to carry out its obligations under these terms and conditions;
- b) CAFIN attempting to carry out its obligations under these terms and conditions; or
- c) Any other act, negligence, or default of CAFIN its servants or agents.

24.3 Exclusions

24.3.1 To the extent permitted by law all warranties implied into these terms and conditions by law are excluded. The liability of CAFIN under or in relation to any warranty or condition implied into these terms and conditions by law which cannot be excluded, is limited to one or more of the following at the option of CAFIN:

- a) In the case of goods, the replacement or repair of the goods or payment of the cost of having the goods replaced; or
- b) In the case of services, the supply of the services again or payment of the cost of having the services supplied again.

25. NOTICES

25.1 How to send us notices

25.1.1 Parties may give notice to each other under these terms and conditions by post, fax, email, any Approved Medium or in any other manner permitted by law. Except where separate notices are required to be given by law, CAFIN's notice to either you or an *authorised user* in accordance with these terms and conditions will constitute notice to the other.

25.1.2 All notices you send us must be in writing. You can send us notices by:

- a) delivering them to the branch; or
- b) post, fax or email, using the contact details in your Contract.

25.2 How we will contact you

25.2.1 Notice methods/ methods in which we can give you a notice include:

- a) in person at a branch;
- b) by delivering or posting it to your last known address;
- c) by faxing it to your last known fax number;
- d) if we are permitted by law and the Code of Banking Practice or the Banking Code of Practice (as the case may be):
 - 1. by emailing it directly your last known address;
 - 2. by notifying you that you can view it on our website or online banking platform; or
- e) in any other way permitted by law.

25.3 When a notice takes effect

- 25.3.1 When CAFIN gives you a notice, you agree that, unless otherwise stated in these terms and conditions, the notice is deemed to have been given to you on the date of actual receipt of the notice.
- 25.3.2 Unless a later date is set out in the notice, our notices to you take effect as follows:

Notices sent by	Take effect
Post	On the date it would have been delivered in the ordinary course of post
Fax	At the time shown on a transmission report showing the fax was sent in full
Email	On the date the email is received by your email hoist or internet service provider

- 25.3.3 Where CAFIN gives you a notice by another Approved Medium:
 - a) the notice is deemed to have been given to you, whether or not legibly received, when transmitted to the addressee; and
 - b) the notice takes effect on the date of actual receipt of the notice
- 25.3.4 Notices are considered fully effective even if, at the date of the service, you are:
 - a) bankrupt;
 - b) Insolvent;
 - c) absent from your usual residence;
 - d) lacking in mental capacity;
 - e) deceased;
 - f) a *corporation* in liquidation or which has had an administrator or receiver appointed; or
 - g) are incapable of accessing your email, or the online information, as relevant; or
 - h) are unable to receive or view the advertisement in the media.

26. WAIVER, CONSENTS AND APPROVALS

26.1 Waivers by us

- 26.1.1 No failure or delay on our part to exercise any right, power, authority, discretion or remedy under these terms and conditions will constitute a waiver of those rights, power, authority, discretion, or remedy.
- 26.1.2 If we waive a breach by you of a term of the facility agreement or release you

from an obligation under it, that does not amount to a waiver of any other breach or a release from any other obligation. Further, it does not imply that we consent to any other breach.

- 26.1.3 To be effective, a waiver or release by CAFIN must be in writing, signed by us or one of our *authorised officers*.

26.2 Assignment

- 26.2.1 CAFIN may assign its rights under these terms and conditions at any time without your consent.
- 26.2.2 Without CAFIN's written consent, you cannot assign your rights under these terms and conditions. CAFIN reserves the right to withhold written consent at CAFIN's discretion.

27. ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING

27.1 AML/CTF representations and obligations

- 27.1.1 We are required by law (including AML/CTF Laws) to carry out all necessary security and customer due diligence checks on you (including any parties involved in your transactions for example, your recipient) in order to provide any trade service to you.
- 27.1.2 By submitting the *account application form* to us, you undertake to provide CAFIN with all information and assistance that CAFIN may reasonably require to comply with the AML/CTF Laws including carrying out any credit and identity checks on you as we consider necessary.
- 27.1.3 In addition, you agree that:
- a) we may make, directly or through any third party (such as a credit reporting agency), any inquiries (which will involve disclosing your name, residential address and date of birth to third parties) we consider necessary to validate the information you provided to us, including checking commercial databases or credit/identity reports;
 - b) You authorise us to obtain one or more of your credit/identity reports, from time to time, to establish, update, or renew your CAFIN *account* with us or in the event of a dispute relating to the *agreements* and activity under your CAFIN *account*;
 - c) If you disagree with having your identity information provided to a credit reporting agency or other third parties, please contact us.
- 27.1.4 We may pass on information collected from you and relating to the transactions you conduct with us as required by the AML/CTF Laws or other Applicable Law

and are under no obligation to inform you we have done so. We may undertake all such anti-money laundering and other checks in relation to you (including restricted lists, blocked persons and countries lists) as deemed necessary or appropriate by us, and we reserve the right to take any action with regard thereto with no liability whatsoever therefore.

27.1.5 You also warrant that:

- a) You are not aware and have no reason to suspect that:
 - i. the monies used for the CAFIN service you request have been or will be derived from or relate to any money laundering, terrorism financing or other illegal activities, whether prohibited under Applicable Law, international law or convention or by agreement; or
 - ii. the proceeds of your *transactions* will be used to finance any illegal activities; and
- b) Neither you nor your directors, in the case of a company, are a politically exposed person or organisation as the term is used in the AML/CTF Laws.

28. GENERAL TERMS AND CONDITIONS

- 28.1.1 CAFIN account remains our property and are not transferable.
- 28.1.2 You and each *authorised user* must notify CAFIN immediately of any change to the CAFIN account and changes to any information provided to us at the time of application. We are not liable or responsible for any financial losses arising from your failure to do so.
- 28.1.3 You agree that a certificate signed by an officer of CAFIN stating the amount owing by you to CAFIN is sufficient evidence of the amount owing (subject to manifest error).
- 28.1.4 *client* and *authorised users* agree that time shall be of the essence in relation to the performance of these terms and conditions and the payment of amount owing to CAFIN.
- 28.1.5 Governing Law:
 - a) Unless specified otherwise, these terms and conditions are construed according to and are governed by the Laws of the Governing Jurisdiction and the parties submit to the jurisdiction of the Courts of that Governing Jurisdiction and of any Courts competent to hear appeals from those Courts
 - b) You agree to submit to the non-exclusive jurisdiction of the courts of New South Wales (including, but not limited to, in relation to any disputes arising under these terms and conditions).
- 28.1.6 No rule of construction is applied to the disadvantage of a party because these terms and conditions are prepared by (or on behalf of) that party.
- 28.1.7 For the purpose of giving effect to your obligations in these terms and

conditions, you hereby irrevocably appoint CAFIN or any authorized representative of CAFIN from time to time, as your attorney in all things related to the facility hereby granted to you by CAFIN.

29. COMPLAINTS AND DISPUTE RESOLUTION

29.1.1 If you have a complaint about our services or products, you can call or write to us by email or by letter sent to our office. We will then advise you of our internal dispute resolution process and one of our officers will investigate and deal with your complaint thoroughly. We will endeavour to resolve your complaint promptly wherever possible.

I. General terms and interpretation

30. GENERAL TERMS AND DEFINITIONS

30.1 Terms applying

30.1.1 Unless a contrary indication appears, clause 30.2 applies to all documents which constitutes the CAFIN *agreement*.

30.2 Definitions

30.2.1 In these terms and conditions, unless the context otherwise requires, words printed in *italics* will be interpreted in accordance with the following definitions assigned respectively.

Account means the *client's* CAFIN *account* established and provided by CAFIN to the *client* under these terms and conditions, and serves as a trade finance facility to you for which fees and charges are incurred in accordance with these terms and conditions.

Account holder means the primary user of the *client's* CAFIN *account* whose details are recorded in the *account application form* under "account primary contact".

Account operator means any person, *authorised users* included, that have access and from time-to-time operation the CAFIN *account*. CAFIN shall act on the instructions of *account operators* (or any person purporting to act in the

client).

AML/CTF laws means any anti-money laundering, counter-terrorism financing Act 2006 (Cth) and all regulations, rules and instruments made under that Act or economic or trade sanctions laws or regulations.

Amount owing means, at any time, all amounts:

- a) that are payable, are owing but not currently payable, are contingently or prospectively owing, or remain unpaid, by you to us;
- b) we have advanced to you (even if the amount has been applied towards meeting your obligation to reimburse us);
- c) comprising financial indebtedness which you owe us;
- d) we have advanced or paid on your behalf or on your express or implied request;
- e) you owe us (including amounts which are owed contingently or prospectively) under any guarantee or other undertaking you provide to us;
- f) we are liable to pay by reason of any act or omission on your part; and
- g) that are reasonably foreseeable as likely to fall within any of the above paragraphs.

Account application form means the application form used to applying for a CAFIN *account* (for any variations or previous or subsequent versions) submitted to an accepted by CAFIN under which the *client* requests that a CAFIN *account* be established as provided in these terms and conditions.

Agreement has the meaning given to it in clause 1.2.2

API means the application programming interface made available to you by CAFIN, forming part of the *CAPAY systems*.

App means the mobile application software, the data supplied with the software and the associated media, forming part of the *CAPAY systems*.

Applicable Law means any statute, regulation, rule, subordinate legislation or other document enforceable under any statute, regulation rule or subordinate legislation.

Associate means, in relation to a person:

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- a) if the person is a company, each director or officer of the person;
- b) if the person is a natural person, the husband, wife, de facto partner or child (including stepchild) of the person;
- c) each partner or employee of the person;
- d) a subsidiary of that person;
- e) a company which is another subsidiary of a company of which the person is a subsidiary;
- f) a company which is, or whose directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directors, instruction or wishes of the person;
- g) a company in accordance with the directors, instructions or wishes of which, or of the directors of which, the person is accustomed or under an obligation, whether formal or informal, to act;
- h) the trustee of a trust estate where the person or another person who is an associate of the first person by virtue of another paragraph of this definition benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts; and
- i) any person who is, by virtue of this definition, an associate of any other person who is an associate of the person (including a person who is an associate of the person by another application or other applications of this definition).

Australian dollars means the lawful currency of the Commonwealth of Australia.

Authorised transaction means any *transaction* represented by the purchase by the *client* of goods or services from a *seller*.

Authorised officers means each of CAFIN's directors and company secretaries; each person who is employed by CAFIN or an entity which is related to CAFIN whose title includes "manager", "company secretary" or "accountant"; and each person CAFIN advises is an *authorised officer*.

Authorised user, in respect of a *client*, means a person whose identity has been verified to the satisfaction of CAFIN who the *client* nominates from time to time to act on its behalf to submit any application or request, or give any Communications and includes any persons who are authorised by the *client* to use the *client's* CAFIN *account*. CAFIN shall act on the instructions of *authorised*

users.

Business day means a day, other than a Saturday, Sunday or public holiday, CAFIN is open for business in Sydney, Australia.

Client means the entity or entities that request the issue of a CAFIN *account* or which otherwise acquires goods and services with the assistance of funding supplied by CAFIN through CAFIN facilities and platforms or otherwise and:

- a) if two or more persons are named, a reference to "*client*" is to all of them and any one or more of them; and
- b) if the *client* at any time acts as the trustee of any trust (whether under a trust deed, deed of settlement or other instrument, or a trust arising by law or implication), a reference to the *client* is a reference to it both in its personal capacity and trustee capacity.

CAFIN means Corporate Alliance Pty Ltd (ABN 51 644 169 148) (AFS 00197733) trading as Corporate Alliance Finance and its successors and assigns.

CAPAY systems mean any internet, electronic system and web-enabled platform and systems of CAFIN that is made available to you which allows you to access the CAFIN trade finance service through an interface or protocol or application program interface, including but not limited to our Website, the API and APP, any Client portals or payment platform in which *authorised transaction* are undertaken using a *code*, and any electronic services provided by us. The *CAPAY systems* are proprietary software developed by Corporate Alliance Payments Pty Ltd (ABN 66 650 245 382) which is a wholly-owned subsidiary of CAFIN. CAFIN holds a licence to use the *CAPAY systems*.

Code means, in relation to each account operator, any information which is used to gain access to the *CAPAY systems* or the use of the *client's* CAFIN *account*. It includes but is not limited to the *account operator's*:

- a) Login details; and
- b) PIN; and
- c) Password.

Corporation means a corporation as defined in section 9 of the Corporations Act 2001.

Entity includes an individual, firm, partnership, joint venture, organisation, society, unincorporated body, trust (in each case whether or not having separate legal personality), a corporation and any other legal entity under any law.

Event of default (default) means any of the events or circumstances listed below:

- a) the *client* fails to pay or repay any part of the amount owing when due;
- b) the *client* or any other party other than CAFIN, fails to perform or observe any undertaking, obligation or agreement expressed or implied in, or given in relation to these terms and conditions or any other *transaction document*;
- c) any present or future, or actual, prospective or contingent indebtedness of the *client* or any other *transaction party* in respect of any financial accommodation including, but not limited to, moneys payable under a guarantee;
 - 1) is or becomes due an payable or is or becomes capable of being declared due and payable before the due date for payment; or
 - 2) is not paid when due or upon the expiration of any period of grace which may apply;
- d) any encumbrance is or becomes enforceable against any asset or the undertaking of the *client* or any other *transaction party*;
- e) any guarantee is or becomes enforceable against the *client*;
- f) You or any *account operator* give us any accounts or information, whether before or after the date of the facility offer, which are incorrect in any material particular.
- g) Any change occurs, any circumstances arise or any event or series of events (whether related or not) occurs which in our reasonable opinion may have a material adverse effect on:
 - 1) the effectiveness, validity or enforceability of the facility agreement, or our rights, powers, authorities, discretions or remedies under the facility agreement; or
 - 2) your ability or a guarantor's ability to perform obligations to us or on your or the guarantor's financial condition or business
- h) You or a guarantor die or become legally incapacitated;
- i) A partnership, firm or joint venture of which either you or a guarantor is a member has a change in membership or the partnership, firm or joint venture is dissolved.
- j) You fail to pay any taxes when they should have been paid or enter into a payment arrangement with the ATO.
- k) Any debt which is part of your *financial indebtedness* or that of a guarantor



is not paid when due (or within an applicable grace period) or becomes due and payable or capable of being declared due and payable before its stated maturity or expiry.

- l) *client*, a *transaction party* or one of your *associates* suspends payment of its debts generally;
- m) *client*, a *transaction party* or one of your *associates* is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act, or is presumed to be insolvent under the Corporations Act;
- n) *client*, a *transaction party* or one of your *associates* enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- o) *client*, a *transaction party* or one of your *associates* ceases or threatens to cease to carry on business;
- p) All or any part of any provision of these terms and conditions is or becomes illegal, void, voidable, unenforceable or otherwise of limited force or effect;
- q) Any person becomes entitled to terminate, rescind or avoid all or any material part or material provision of any of these terms and conditions;
- r) The execution, delivery or performance of any of these terms and conditions by *client* or any of the transaction parties violates, breaches or results in a contravention of any law, regulation or authorization; or
- s) Any other change occurs in the financial position of the *client* or a transaction party, which, in the opinion of CAFIN, may have a *material adverse effect*.

Charge default interest means the interest charges specified in item X of the *facility offer*.

Facility means the trade finance service that we provide given by the name CAFIN.

Facility agreement means the CAFIN trade finance *facility offer* from CAFIN to the *client*, as well as its provisions;

- a) incorporated terms and conditions under which CAFIN provides a Trade Finance Facility to the *client*;
- b) the *account application form*; and
- c) the fee schedule.

Where two or more agreements are specified, a reference to “facility agreement”



is to all of them and any one or more of them.

Facility offer is the letter or similar document we, or someone on our behalf, send to you containing an offer to provide the CAFIN trade finance facility and services to you and which specifies terms and conditions.

Fees means the fees, charges and interest described in the *fee schedule*.

GST means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999.

Guarantee means a guarantee, indemnity, letter of credit, legally binding letter of comfort or suretyship, or any other obligation (including an irrevocable offer) of any kind at all of the *client's* obligations under the CAFIN *account* by another party

Guaranteed money means all money which at any time:

- a) is actually or contingently owing or remains unpaid; or
- b) may, because of a then existing arrangement or circumstance, become actually or contingently owing in the future,

to CAFIN by the *client* whether alone or jointly or jointly and severally with others and whether under a finance document or otherwise. However, amounts due and payable under a contract are excluded to the extent that the contract is a credit contract as defined in the National Credit Code.

Guarantor means the person(s) or organisations who has provided surety for the CAFIN *account* through the provision of a guarantee

Interest rate means the rate referred to as the interest rate in the *facility agreement*. If there is more than one of those rates, it means the higher rate.

Instruction means a request by the Client for CAFIN to provide Remittance Services, including any request for CAFIN trade finance service.

Loss or losses means any claim, action, damage, loss, liability, cost, charge, expense or payment of any kind.

Material Adverse Effect means a material adverse effect upon:

- a) a *client's* ability to perform any of its obligations under any of these terms and conditions;
- b) the value of the *client's* receivables purchased by CAFIN from a *seller*;
- c) the value of the assets or a material asset of the *client*;
- d) the business or operations of the *client*.

Outstanding balance means:

- j) in relation to the *client*, the aggregate of:
 - i. the amount charged to the *client's* CAFIN account and which remains unpaid;
 - ii. the total interest accrued on the *client's* CAFIN account, and which remains unpaid
 - iii. the total outstanding *fees*, and
 - iv. all other debts and monetary liabilities of the *client* under or in relation to these terms and conditions, irrespective of whether the debts or liabilities are present or future or are or are actual, prospective, contingent or otherwise;
- b) in relation to a *client's* CAFIN account, the aggregate of:
 - i. the amount charged to the *client's* CAFIN account which remains unpaid;
 - ii. the total interest accrued on the *client's* CAFIN account which remains unpaid
 - iii. the total outstanding *fees* incurred with respect to the *client's* account; and
 - iv. all other debts and monetary liabilities of the *client* under or in relation to these terms and conditions by use of the *client's* CAFIN account, irrespective of whether the debts or liabilities are present or future or are or are actual, prospective, contingent or otherwise.

PPSA means the Personal Property Securities Act 2009.

Sale contract means each contract made between you and the seller by you sending an order confirmation to the seller and the seller sending an accepted order confirmation to you. The terms and conditions of that contract are found exclusively on the order confirmation or a document which is referred to in the order confirmation with the intention that it be included as part of the contract between you and the seller. If there is any inconsistency between a



provision in the order confirmation and a provision in a document referred to in the order confirmation the former will prevail to the extent of the inconsistency.

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

Seller means an *entity* that sells goods to you for delivery or performs services for you, who has invoiced the *client* for costs incurred and which CAFIN in its sole discretion has determined is a bona fides seller.

Retention of title provisions means a clause in the form set out in the Schedule to these terms and conditions or as varied from time to time by notice in writing to you

Statement of account means any statement, including statements in or on an approved medium, issued or made available by or on behalf of CAFIN and setting out the charges (including any tax, duties, interest, *fees*, or enforcement expenses) and other amounts (including any minimum payments) charged against your CAFIN *account*.

Tax or taxes means taxes, imposts, duties, levies, charges, fees, withholdings and deductions imposed by statute or any government or governmental authority (including, but not limited to, land tax, stamp duty, goods and services tax, transaction duties, fines and penalties, except if imposed on income).

Transaction means a transaction by or on behalf of a *client* on the CAFIN platform or by some other means which may include or result in the making of a payment by CAFIN to a *seller* on the *client's* behalf for goods or services acquired by a *client* or associate of a *client* regardless of whether it is the subject of a transaction acceptance instruction.

Transaction confirmation means a document issued by CAFIN setting out

material details of a transaction.

You or **your** means the person, body corporate, firm, partnership, joint venture, sole trader or other business entity requesting the trade finance service and CAFIN *account* defined in the *account application form* together with its subsidiaries, affiliates, successors and/or assigns, as well as its officers, directors, employees and agents.

31. INTERPRETATION

31.1 Contents and headings

- 31.1.1 Contents and headings are only for ease of reference and convenience.
- 31.1.2 Contents and headings do not affect interpretation of the terms and conditions in this document.

31.2 General interpretation rules

- 31.2.1 Obligations, agreements, representations, warranties or undertakings by two or more persons bind them jointly and each of them severally.
- 31.2.2 Words implying the singular include the plural and vice versa and words implying one gender also include all genders.
- 31.2.3 A reference to anything (including any right) includes the whole and each part of it, but this does not mean that performance of part of an obligation constitutes performance of the obligation
- 31.2.4 A reference to “Australian dollars”, “A\$” or “\$” is a reference to the lawful currency of Australia.
- 31.2.5 A reference to “US dollars” is a reference to the lawful currency of the United States of America.
- 31.2.6 References to “CAFX” or “CAFIN” includes CAFX's and CAFIN's successors and assigns
- 31.2.7 A reference to any statute, or a provision of it, includes any modification, amendment, replacement or re-enactment of it, a provision substituted for it and a regulation or statutory instrument issued under it. A reference to a statute of any jurisdiction, or a provision of it, includes any corresponding statute (or provision) of any other applicable jurisdiction.
- 31.2.8 A reference in these terms and conditions to any agreement or document (including a finance document) is to that agreement or document as amended, novated, supplemented or replaced (whether in writing or otherwise) from time

to time, so long as the change did not contravene a finance document.

- 31.2.9 The words “including” and “includes” when used to introduce an item do not limit the meaning of the words to which the item relates to items of a similar kind.