

## Standard Terms for Financial Markets Transactions - 04/2006 version

### Important notice

- *Financial markets transactions* involve various risks including movements in currency rates or interest rates. You can make losses and that is a risk you take. If you do not understand the risks or are not willing to accept the risks or make losses, you should not enter into these *financial markets transactions* with us.
- There are certain products that can help you to manage currency rate and interest rate risks. Details of these products are available on request.
- You must decide for yourself whether you should participate in *financial markets transactions* at all and, if you do, about each individual *financial markets transaction*.
- Our role is not to give advice, recommendations or warnings to you. We do not monitor your *financial markets transactions* or movements in currency rates or interest rates for you - this is your responsibility.
- Anything we, including any of our officers, employees or agents, say to you is opinion only. You may not rely on it or hold us liable for it, even if it is wrong. Similarly, you may not hold us liable if we fail to give you advice, recommendations or warnings.
- We will not be liable for your losses in any circumstances.
- By signing this facility agreement you acknowledge that you enter into each *financial markets transaction* for the purpose of managing your foreign exchange, interest rate risk or other commercial requirement. You also acknowledge that you are not entering into this transaction wholly or predominantly for private or domestic purposes. Each time you enter into a *financial markets transaction* with us you are taken to repeat this acknowledgment.

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# Standard Terms for Financial Markets Transactions

## About this facility agreement

The terms and conditions of your facility are set out in the *master facility offer* and in these standard terms. They should be read together.

## Key words

The meaning of words printed *like this* and of some other common key words used in these standard terms, *confirmations* and addendums is explained at the end of these standard terms and the addendum applicable for each *financial markets transaction*.

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## Entering financial markets transactions

- 1.1 If you are interested in entering into a particular type of *financial markets transaction*, you need to contact us to discuss your requirements. If we are prepared to consider entering into *financial markets transactions* of that type with you, we send you an offer attaching an addendum setting out the terms on which we offer to enter into that type of *financial markets transaction*. By entering into the first *financial markets transaction* of that type with us after you receive the offer, you are taken to have accepted an offer that the terms in that addendum apply to all *financial markets transactions* of that type you enter into with us until we send you another addendum for that type of *financial markets transaction*. By entering into another *financial markets transaction* of that type after we send you a replacement addendum, you are taken to have accepted an offer that the terms in the replacement addendum apply to all *financial markets transactions* of that type you enter into with us after you receive the replacement addendum.
- 1.2 Whenever you enter a *financial markets transaction* then, unless otherwise stated, the terms of the *financial markets transaction* are made up of:
- this facility agreement;
  - the addendum for that type of *financial markets transaction*; and
  - the specific commercial terms of the *financial markets transaction* (which are often agreed orally and then set out in a *confirmation*).

This facility agreement and the terms of all *financial markets transactions* constitute a single agreement between you and us.

1.3 If we enter into a *financial markets transaction* with you orally, the *financial markets transaction* is made from the time you make the oral deal.

1.4 If there is any inconsistency between this facility agreement, an addendum and a *confirmation*:

- (a) the *confirmation* prevails over the addendum and this facility agreement; and
- (b) the addendum prevails over this facility agreement.

### **Confirmation**

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2 Usually we will send you a *confirmation* for each *financial markets transaction*, containing the commercial details agreed for that *financial markets transaction*. Within one *business day* of receiving the *confirmation* you must sign and return a copy of it to us or tell us if you think there is an error in it (you are bound by the terms and conditions unless you tell us of a possible error within that time). However, the *financial markets transaction* is still valid if these procedures are not followed.

### **Settlement**

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3 The terms of settlement applicable to each type of *financial markets transaction* are set out in the addendum applicable to that *financial markets transaction* type.

### **Agreement to deliver documents**

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4.1 You must deliver the following documents to us when, or before, you sign this facility agreement:

- (a) copies of all documents reasonably required by us to evidence your authority to enter into this facility agreement and each *financial markets transaction* under it; and

- (b) a copy of a certificate specifying names, titles, authority and specimen signatures of the persons authorised to execute this facility agreement, and each *confirmation* on your behalf; and
- (c) any other document or information we reasonably require.

4.2 Each item required to be delivered under clause 4.1 must be satisfactory to us and our solicitors. Each item which is not an original document must be certified to be a true and up to date copy.

## **Payment**

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### **5 General**

5.1 Subject to what follows, you and we must make the payments required under each *financial markets transaction* in accordance with clause 3 in the currency required under the *financial markets transaction*.

5.2 Each of our obligations to make a payment to you referred to in clause 5.1 is subject to the condition precedent that you are not in default (see clause 19).

### **6 Payment netting**

If you and we owe each other amounts under this facility agreement in the same currency on the same day, then, unless otherwise agreed, the party owing the higher amount must pay the difference between those amounts. In those circumstances the other party would not make a payment.

### **7 Timing of payments**

If a *confirmation* requires you to make payments to us before we need pay you, then you must pay us sufficiently in advance for us to be satisfied that we have received your payment before we need pay you. Sometimes this means that you must make a payment the *business day* before. (For example, this can occur because of time differences.) If you must make a payment a *business day* in advance, then, as long as you have complied with all your obligations to us,

we will pay you any compensation set out in the *confirmation*.

## 8 Method of payment

Any amount payable in Australian dollars must be paid by bank cheque. Any amount payable in another currency must be paid in immediately available cleared funds. Payments cannot be made by cash. However, we may agree to accept payments in a different way.

## 9 Currency indemnities

9.1 If we receive an amount in a currency other than that in which it is due:

- (a) we may convert the amount received into the due currency (to do this it might be necessary to convert through a third currency) on the day and at such rates as we consider appropriate. We may deduct our usual *costs* in connection with the conversion; and
- (b) you satisfy your obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the *costs* of the conversion.

9.2 If a judgment, order or proof of debt in connection with any amount you owe us is expressed in a currency other than that in which the amount is due, then you indemnify us against, and you must therefore pay us on demand for:

- (a) any difference arising from converting the other currency if the exchange rate we use for converting currency when we receive a payment in the other currency is less favourable to us than the exchange rate used for the purpose of the judgment, order or acceptance of proof of debt; and
- (b) the *costs* of conversion.

You acknowledge that it might be necessary to convert the other currency through more

than one currency to determine the exchange rate available to us.

## 10 Place for payment

Normally, payments for a *financial markets transaction* must be made at the places and to any accounts specified in the relevant *confirmation* or otherwise agreed. However, either party may change the place or account for payments to it by giving the other party five *business days'* written notice.

## 11 Cut-off times

All payments you owe us in Australian dollars must be made by 3.00pm (Sydney time) on the due date. Payments in other currencies are to be made by the date specified in the *confirmation* and in accordance with cut-off times specified in that *confirmation*.

## 12 Set-off

12.1 We may set-off any money we owe you against any money you owe us (whether or not under this facility agreement or whether or not the obligation to pay is matured or contingent). If amounts are owing in different currencies, we may convert currencies in a manner that we consider appropriate.

If we have other obligations to you (for example, to sell a security to you) we may convert the cost of fulfilling that obligation into a monetary amount in a manner we consider appropriate. If an obligation is unascertained, we may estimate the obligation (which we must do in good faith) and set-off in respect of the estimate, subject to an appropriate adjustment when the obligation is ascertained.

12.2 Unless we agree otherwise in writing, you must pay us all amounts you owe us in full without set-off, counterclaim or deduction.

## 13 Withholding tax

If a law requires you to deduct an amount in respect of *taxes* from a payment to us with the result that we would not actually receive on the due date the full amount provided for under this facility agreement, then:

- (a) you agree to deduct the amount for the *taxes* (and any further deduction applicable to any further payment due under paragraph (c) below); and
- (b) you agree to pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipts to us; and
- (c) if the amount deducted is in respect of *accountable taxes*, the amount payable is increased so that, after making the deduction and further deductions applicable to additional amounts payable under this clause, we are entitled to receive (at the time the payment is due) the amount we would have received if no deductions had been required.

changed *directive* or changed interpretation or administration, directly or indirectly:

- (i) increases the cost of any facility to us; or
- (ii) reduces any amount received or receivable by us, or our effective return, in connection with any facility; or
- (iii) reduces our return on capital allocated to any facility, or our overall return on capital.

However, a reference to a *directive* does not include a *directive* imposing or changing the basis of a *tax* on our overall net income.

Compensation need not be in the form of a lump sum and may be demanded as a series of payments.

## **14 Payments to third parties**

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You may request us to pay amounts due to you to someone else instead of you. The request must be in writing signed by you. We need not agree to your request and may require further identification before agreeing to this request. We can act on faxed requests, but you must immediately forward the original to us. You indemnify us for any liability, loss or *costs* we suffer as a result of acting on a request to pay someone else.

15.2 You must compensate us whether or not the increase or reduction could have been avoided. However, at your request, we agree to consider ways of minimising any increase or reduction.

## **15 Compensation for unforeseen circumstances**

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- 15.1 You must compensate us on demand if we determine that:
- (a) a *directive*, or change in *directive*, in either case which comes into operation after the date of this facility agreement; or
  - (b) a change in a *directive's* interpretation or administration by an authority after the date of this facility agreement; or
  - (c) compliance by us or any of our *related entities* with such *directive*,

## **16 Security deposit**

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- 16.1 We may require you to deposit money with us as security for your obligations to us. Details of the security deposit (including the amount, the currency and the time by which the security deposit must be made) are set out in the relevant *confirmation*. You must make the deposit in accordance with those details.
- 16.2 We may ask you to increase the amount of the deposit you have with us under this clause 16 in respect of a *financial markets transaction*. You must pay the increase immediately we ask. The increase is to be based on our assessment of any increase in our exposure since the *financial markets transaction* was entered into.
- 16.3 We need not repay the security deposit to you until we are satisfied that no money is or could become owing by you to us in connection with any *financial markets*

*transaction* for which the security deposit was required.

16.4 You may not, and may not agree to, do any of the following in respect of the security deposit:

- (a) sell or dispose of it; or
- (b) create or allow to exist a *security interest* in connection with it; or
- (c) deal in any other way with it or any interest in it.

16.5 We agree to pay you interest on the security deposit. We calculate the interest at a rate and in a manner that we consider appropriate and add it to the security deposit.

## 17 Cash

Deposits or withdrawals may not be made in cash.

## 18 Attorney

You irrevocably appoint us as your attorney to do anything you are required to do in connection with any *financial markets transaction*.

- (d) if you are a corporation, you are or become deregistered, or steps are taken to deregister you; or
- (e) a change occurs in your financial circumstances which, in our opinion, may have a material adverse effect on your ability to observe your obligations to us; or
- (f) distress is levied or a judgment, order or *security interest* enforced, against you (or any of your property), for more than \$10,000; or
- (g) a person is appointed to investigate or manage your affairs; or

(h) if you are a corporation, you cease to be a subsidiary of the company which is your holding company at the date of this facility agreement or a company ceases to be your subsidiary; or

(i) if you are a corporation, the persons who at the date of this facility agreement have *control* of you cease to have *control* or one or more persons acquire *control* of you after that date; or

(j) if you are a partnership, that partnership is dissolved, an application is made for its dissolution or more than 20% of the partners retire in any 6 month period; or

(k) if you are a joint venture partner, that joint venture is terminated.

## Default and close out

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### 19 When are you in default?

We may terminate all of the *financial markets transactions* if:

- (a) you do not perform all of your obligations to any person (including us) by the time they must be performed; or
- (b) you give us incorrect or misleading information (including through your declarations in this facility agreement) in connection with a *financial markets transaction* or this facility agreement; or
- (c) you are or become *insolvent* or steps are taken to make you *insolvent*; or

### 20 Close out

20.1 If we terminate *financial markets transactions* under clause 19 or clause 20.5, we must calculate in Australian dollars the mark-to-market value of each *financial markets transaction* as at the date of termination using prevailing market rates chosen by us in good faith. We determine the mark-to-market value having regard to what a person would pay us (expressed as a negative number), or what we would have to pay another person (expressed as a positive number), to take over your rights and obligations under the terminated *financial markets transactions*.

- 20.2 The sum of all positive mark-to-market values is to be set-off against the sum of all negative mark-to-market values. If, as a result of this calculation, the overall sum is positive, you must pay us an amount equal to that overall positive sum. If as a result, the overall sum is negative, then, subject to clause 12.1, we must pay you the absolute value of that overall negative sum.
- 20.3 We must notify you as soon as practicable after making those calculations. Payments due under this clause must be made not later than two *business days* after we give this notice.
- 20.4 You must also pay us on demand our expenses in connection with terminating *financial markets transactions*. If we terminate a *financial markets transaction*, neither you nor we need make further payments for that *financial markets transaction* under clause 3.
- 20.5 Unless the addendum for the *financial markets transaction* type states otherwise, you can ask us to terminate one or more *financial markets transactions* early with the provisions of this clause 20 applying to that early termination subject to any differences you and we agree (for example, you and we might agree that amounts are payable at a different time to that under this clause 20).

### **Costs, indemnities and default interest**

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- 21.1 You must pay us:
- (a) our normal fees and *costs* in connection with any *financial markets transaction*; and
  - (b) any establishment fee notified by us to you; and
  - (c) all *taxes* payable in connection with this facility agreement or any *financial markets transaction* and any interest, penalties, fines and expenses in connection with them.

You must pay us these amounts when we ask. Unless you have already paid them, you

authorise us to debit these amounts to any of your accounts or deposits with us.

- 21.2 You indemnify us against, and you must therefore pay us on demand for, liability, loss or *costs* we suffer or incur if you breach any of your obligations to us. If we breach any of our obligations to you, you may not recover consequential loss from us.

### **22 Default interest**

- 22.1 From the time any amount is overdue for payment until it is paid, you must pay interest at the *default rate* on the overdue amount.
- These interest charges are calculated daily or at any other intervals we choose.
- 22.2 You must pay interest owing under this clause when we specify.
- 22.3 Each month (or any other period we choose) we may add to the overdue amount any interest under this clause which has not been paid. You are then liable for interest under this clause on the total amount.
- 22.4 If any amount you must pay under this facility agreement becomes covered by a court order, you must pay interest on that amount as a separate obligation. The interest accrues from and including the date we first ask you for the amount until but excluding the date that amount is paid. This obligation is not affected by the court order. The rate is the rate in clause 22.1 or the rate in the court order (whichever is higher). You must pay interest under this clause on demand from us.

- 22.5 Your obligation to pay on time is not cancelled by the provisions of this clause.

### **General**

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#### **23 Information on interest rates and fees**

Information on current interest rates and our normal fees and *costs* is available from us on request.

- 24 Statements**
- We issue statements for each *financial markets transaction* that includes a deposit account, monthly (or as otherwise agreed).
- 25 Notices**
- Despite anything else you and we have agreed, you are bound by, and we may act on, any communication (written or spoken) that we believe comes from you, even if it is made by an unauthorised person. You may not hold us liable for any loss you suffer as a result.
- 26 Certificates**
- We may give you a certificate about a matter or about an amount payable in connection with this facility agreement. The certificate is sufficient evidence of the matter or amount, unless it is proved to be incorrect.
- 27 Prompt performance**
- If this facility agreement specifies when you must perform an obligation, you must perform it by the time specified. You must perform all other obligations promptly.
- 28 How we may exercise our rights**
- 28.1 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate, including by imposing conditions.
- 28.2 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.
- 28.3 We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy, whether or not caused by our negligence.
- 28.4 Our rights and remedies under this facility agreement:
- (a) are in addition to other rights and remedies given by law independently of this facility agreement; and
- (b) may be exercised even if this involves a conflict of duty or we have a personal interest in their exercise.
- 28.5 Our rights and remedies under this facility agreement may be exercised by any of our directors, any of our employees whose job title includes the word “manager” or any other person we authorise.
- 29 Indemnities**
- The indemnities in this facility agreement are continuing obligations, independent of your other obligations under this facility agreement. It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this facility agreement.
- 30 Variation and waiver**
- 30.1 A provision of this facility agreement, or right created under it, may not be waived except in writing signed by the party or parties to be bound.
- 30.2 We may vary any provision of this facility agreement as we choose. If we do, we must notify you in writing (which may be by email) and the change takes effect from the time we specify in the notice.
- 31 Dealings**
- 31.1 Your rights are personal to you and may not be assigned or a *security interest* created over them without our consent.
- 31.2 We may assign or otherwise deal with our rights under this facility agreement in any way we consider appropriate. If we do this, you may not claim against any assignee (or any other person who has an interest in this facility agreement) any right of set-off or other rights you have against us. At our request you must execute and deliver to us or any other person we specify any document we reasonably require for this purpose.
- 32 Consent to telephone recording**
- You consent to us recording our telephone conversations with you. There will not necessarily be a warning tone when we do so.

### 33 Australian dollar equivalents

A reference to an equivalent of Australian dollars is a reference to such an equivalent determined by us based on prevailing exchange rates.

### 34 Previous *financial markets transaction* agreements

If, before the date of this facility agreement, you have entered into an agreement with us incorporating our previous Standard Terms for Financial Markets Transactions, this facility agreement replaces the earlier agreement.

You and we agree that every *financial markets transaction* (whether entered into before, on or after the date of this facility agreement) is a *financial markets transaction* governed by this facility agreement unless the terms of this facility agreement have been expressly excluded. This applies whether or not the parties:

- (a) refer to this facility agreement; or
- (b) state that a financial markets transaction is governed by the terms of any other facility agreement,

when entering into or confirming the *financial markets transaction*.

### 35 Applicable law

This facility agreement is governed by the law of New South Wales. You and we submit to the non-exclusive jurisdiction of the courts of that place.

### 36 Code of Banking Practice

The relevant provisions of the Code of Banking Practice apply to this facility agreement if you are an individual or a *small business*.

## Meaning of words

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37 ***accountable taxes*** means *taxes* imposed by a *relevant country* other than those which would not be required to be deducted by you if we provided you with any of our name,

address, registration number or similar details or any relevant tax exemption or similar details.

***authorised person*** means each person you nominate as authorised to access or to give us instructions via *global dealer*.

***business day*** means a day we are open in New South Wales unless otherwise specified in the *confirmation*. It does not include a public or bank holiday in that State or Territory.

***confirmation*** means a document issued under clause 2 confirming the terms of a *financial markets transaction*.

***control*** of a corporation includes the direct or indirect power to directly or indirectly:

- direct the management or policies of the corporation; or
- control the membership of its board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.

***controller*** has the meaning given to it in the Corporations Act.

***costs*** includes charges and expenses, and costs, charges and expenses in connection with advisers (in the case of legal advisers, on a full indemnity basis or solicitor and own client basis, whichever is higher).

***default rate*** means 3% per annum more than the rate we publish from time to time as our commercial base rate, or a name we substitute for that rate.

***directive*** means a treaty, a law, an official directive or request having the force of law, and an official directive, request, guideline or policy with which financiers carrying on business in Australia generally comply.

**financial markets transaction** means a financial markets transaction entered into between you and us (including an interest rate hedging transaction or a currency exposure management transaction).

**for example** see **including**.

**including** and **for example** when introducing an example does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

A person is **insolvent** if:

- they are (or state that they are) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- they have had a *controller* appointed, are in liquidation, in provisional liquidation, under administration or wound up or have had a *receiver* appointed to any part of their property; or
- they are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved, (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by us); or
- an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above; or
- they are taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand; or
- they are the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or they make a statement from which we reasonably deduce they are so subject); or

- they are otherwise unable to pay their debts when they fall due; or

something having a substantially similar effect to any of the things referred to above happens in connection with them under the law of any jurisdiction.

**master facility offer** means the most recent master facility offer we have provided to you which incorporates these standard terms.

**person** includes an individual, a firm, a body corporate, an unincorporated association or an authority.

**receiver** means a receiver or receiver and manager.

**relevant country** means any country, or political sub-division of one or more countries, or any federation or association of countries in which you are incorporated or is resident or domiciled for any tax purpose or in which you carry on business or own or lease property or from which, or through which, any payment to us is made.

**security interest** means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, title retention or flawed deposit arrangement. *Security interest* also includes a guarantee or indemnity.

**small business** means a business having:

- (a) less than 100 full time (or equivalent) people if the business is or includes the manufacture of goods; or
- (b) in any other case, less than 20 full time (or equivalent) people,

unless the banking service we provide is provided for use in connection with a business that does not meet the elements in (a) or (b) above.

**taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, our overall net income.

**this facility agreement** means the agreement arising out of your acceptance of the offer contained in the *master facility offer*.

**you** means the entities named in the *master facility offer* as “customer”. If there are more than one, **you** means each of them separately and every two or more of them jointly. **You** includes your successors and assigns.

**we** means whichever is named in the *master facility offer* of St. George Bank Limited ABN 92 055 513 070 or another entity related to it, and its successors and assigns.

The singular includes the plural and vice versa.

A reference to:

- a document includes any variation or replacement of it
- law means common law, principles of equity and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them)
- the Corporations Act is a reference to the Corporations Act 2001 (Cwlth)
- any thing (such as an amount) includes the whole and each part of it.

### **More information about banking**

There is a booklet called “Corporate and Business Accounts and Payment Services - Terms and conditions and general information” which is available on request from any of our branches. This booklet contains all types of information about banking services and the Code of Banking Practice, such as account opening procedures, confidentiality and complaint handling procedures, combining accounts, bank cheques, cheques and cheque clearing, the advisability of your notifying us if you are in financial difficulty, and the advisability of your reading the terms and conditions applying to any banking service we offer you which you may find helpful.