

Important information about your ANZ Merchant Facility

We are writing to you to advise that ANZ has recently made changes to the ANZ Merchant Services General Conditions that form part of your Merchant Agreement with ANZ. From 01 January 2012, the following changes will apply to the ANZ Merchant Services General Conditions.

1. Condition 1 is amended to include the following:

(xi) any documents relating to the Security (where applicable).

2. Condition 43 is amended to include the following:

- **Guarantor** means a person who has given, gives or is to give a Security and includes the person's executors, administrators, successors and transferees.
- **Material Adverse Effect** means a material adverse effect on:
 - (a) the Merchant's ability to comply with its obligations under the Agreement; or
 - (b) the Guarantor's ability to comply with its obligations under the Security; or
 - (c) the rights and remedies of ANZ under the Agreement; or
 - (d) the business, operation, property, condition (financial or otherwise), cashflows or prospects of the Merchant's business; or
 - (e) the effectiveness or priority of any Security or Security Interest granted under the Agreement; or
 - (f) the validity or enforceability of any document that forms part of the Agreement.



- **Permitted Security Interest** means a Security Interest provided for by one of the following transactions if the transaction does not secure payment or performance of an obligation:
 - (a) a transfer of an account or chattel paper in respect of which the Merchant or its Guarantor is the transferor; or
 - (b) a commercial consignment in respect of which the Merchant or its Guarantor is the consignee; or
 - (c) a PPS lease in respect of which the Merchant or its Guarantor is the lessee.
- **PPSA** means the Personal Property Securities Act 2009 (Cth).
- **PPSA terms** (unless the contrary intention appears in these General Conditions) the following terms used in the context of the PPSA, have the same meaning as in the PPSA: account, amendment demand, chattel paper, commercial consignment, control, financing statement, financing change statement, perfect, personal property, PPS lease, purchase money security interest, serial number, verification statement.
- **Review Event** means an event that, at any time after the PPSA starts to apply, ANZ determines has had, or is likely to have, a Material Adverse Affect.
- **Security Interest** means any:
 - (a) security interest under the PPSA including security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust or title retention or flawed deposit arrangement; or
 - (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
 - (c) licence to use or occupy; or
 - (d) third party right or interest, or any right arising as a consequence of the enforcement of a judgment, or any agreement to create any of them or allow them to exist.

3. **Condition 47. Personal Property Securities Act (PPSA) has been added as follows:**

47.1 **PPSA further steps**

If ANZ determines that any document that forms part of the Agreement is or contains a Security Interest for the purposes of the PPSA, the Merchant agrees to do

anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which ANZ asks and considers necessary for the purposes of:

- (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective; or
- (ii) enabling ANZ to apply for any registration, or give any notification, in connection with the Security Interest so that the security interest has the priority required by ANZ; or
- (iii) enabling ANZ to exercise rights in connection with the Security Interest.

47.2 PPSA undertaking

If the Merchant or its Guarantor holds any Security Interests for the purposes of the PPSA and if a failure by the Merchant or its Guarantor to perfect such Security Interests would result in a Material Adverse Effect, the Merchant agrees to implement, maintain and comply in all material respects with, procedures for the perfection of those Security Interests. These procedures must include procedures designed to ensure that the Merchant or its Guarantor takes all steps under the PPSA to continuously perfect any such Security Interest including all steps necessary:

- (i) for the Merchant or its Guarantor to obtain, the highest ranking priority possible in respect of the Security Interest; and
- (ii) to reduce as far as possible the risk of a third party acquiring an interest free of the Security Interest.

If ANZ asks, the Merchant agrees to arrange at the Merchant's expense an audit of the PPSA procedures. ANZ may ask the Merchant to do this if it reasonably suspects that the Merchant is not complying with this clause.

47.3 Costs of further steps and undertaking

Everything the Merchant or its Guarantor is required to do under this clause is at the Merchant's expense. The Merchant agrees to pay or reimburse the reasonable costs of ANZ in connection with anything the Merchant or its Guarantor is required to do under this clause (including any charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.)

47.4 No PPSA notice required unless mandatory

ANZ need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

47.5 Disclosure of confidential information under the PPSA

The Merchant and its Guarantor agree that despite anything else in the Agreement, neither the Merchant nor ANZ, may disclose any information of the kind referred to in section 275(1) of the PPSA (including any information or documents in connection with any Security) unless section 275(7) of the PPSA otherwise applies. Without the consent of ANZ, the Merchant and its Guarantor also agree:

- (i) not to authorise the disclosure of any information of the kind referred to in section 275(1) of the PPSA in response to a request made under that section;
- (ii) not to request ANZ to give the Merchant or its Guarantor any information of the kind referred to in section 275(1) of the PPSA.