

# Macquarie Express Guarantee

## Terms and conditions

These terms and conditions govern your use of MEG, in addition to the Macquarie Business Banking Deposit Accounts Terms and Conditions.

### 1. Application Fee

- a. On the Application Date, you must pay to us the non-refundable Application Fee.

### 2. Provision of Bank Guarantee

We will only issue a Bank Guarantee to you if:

- a. we have received:
  - i. the correctly completed Request for Bank Guarantee signed by you
  - ii. your Customer Identification Forms and supporting documentation
  - iii. the Deposit Amount and the Application Fee
- b. we have conducted and received satisfactory results of searches in respect of you and the Beneficiary, that are required for us to comply with applicable laws and/or our internal policies and procedures related to those laws, and
- c. we approve, in our reasonable discretion, the Purpose for which the Bank Guarantee is to be issued.

### 3. Repayment and fees

- a. You are not entitled to the Deposit Amount (or any part of it) until either:
  - i. the Outstanding Money has been repaid or discharged in full and no Default Event subsists, or
  - ii. the original Bank Guarantee has been cancelled by the Beneficiary or the Expiry Date has lapsed, and you have no Outstanding Money owing to us.
- b. If the Deposit Account is held jointly, please refer to the Deposit Terms and Conditions for further details as to how you can operate the Deposit Account, subject to clause 3(a) above.
- c. We may in our reasonable discretion determine whether:
  - i. the Outstanding Money has been repaid or discharged in full
  - ii. a Default Event subsists, and
  - iii. there is any Outstanding Money owing to us.

- d. No loan is granted to you by us until we have confirmation in writing that a Default Event has occurred.

### 4. Application of Deposit Amount

- a. We may, acting reasonably, and to the extent permitted by Law, apply the Deposit Amount (or any part of it) towards the satisfaction of the Outstanding Money (or any part of it). To the extent any part of the Deposit Amount is applied in satisfaction of the Outstanding Money, your right to receive any equivalent amount of the Deposit Amount is extinguished.
- b. We may exercise the rights conferred under clause 4(a) in our reasonable discretion at any time. If we do so, we will notify you as soon as reasonably practicable following the application of the Deposit Amount (or any part of it) towards the Outstanding Moneys.

### 5. No security interest

Nothing in this document creates a “security interest” (as that term is defined in section 12(1) of the Personal Property Securities Act 2009 or any other legislation concerning the registration of security interests) in favour of us.

### 6. Interest

- a. Subject to clause 20 and unless otherwise agreed with us in writing, we will pay interest on the Deposit Amount at the Macquarie Express Guarantee Rate and will pay the interest to the Deposit Account or to any other account you have nominated.
- b. Interest on the Deposit Account is calculated in accordance with the Deposit Terms and Conditions.

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- c. The Macquarie Express Guarantee Rate is a variable rate of interest and is subject to change at any time. The standard Macquarie Express Guarantee Rate is available on our website at **macquarie.com.au** or by contacting us. We will notify you of a change in the Macquarie Express Guarantee Rate on or before the day that the change takes effect, either by press advertisement or by writing to you.

### 7. General Representations and Warranties

You represent and warrant that:

- a. you have the power to enter into, comply with your obligations under this Agreement and allow them to be enforced
- b. each of your obligations under this Agreement are binding
- c. you are not, and will not be in contravention of any law, regulation, obligation, undertaking, deed, warranty or any directive of any Governmental Agency by entering into this Agreement
- d. there is no impending or threatened proceeding(s), enquiry or other action(s) which may affect you or any of your assets before any tribunal, court, commission or Governmental Agency
- e. if you are a trustee, you have full power and authority to execute and perform your obligations under this Agreement and all necessary action has been taken to authorise the execution and performance of the Agreement under the trust deed by which you have been appointed as notified in the Request for Bank Guarantee
- f. you are not the trustee of any trust or settlement which you have not notified to us in the Request for Bank Guarantee
- g. no Default Event has occurred or would be likely to occur as a result of you entering into this Agreement and complying with your obligations under this Agreement, and
- h. if a corporation:
  - i. you have been duly incorporated as a company limited by shares under the Corporations Act and are validly existing under the Corporations Act and have the power and authority to carry on your business and
  - ii. you have filed with the Australian Securities & Investments Commission all corporate notices and other documents as required by the Corporations Act and all such filings are complete and accurate.

### 8. Your Undertakings

- a. You undertake to do everything reasonably necessary to:
  - i. comply with all laws binding on you or to which any of your assets are subject to, and all requirements or orders of any Governmental Agency

- ii. ensure that sufficient funds are available in the Funding Account to be debited by us in order to process the Request for Bank Guarantee
- iii. if the Deposit Amount is less than the Guarantee Amount for any reason, pay into the Deposit Account, such additional amounts that may be necessary to ensure that the Deposit Amount remains equal to the Guarantee Amount.

### 9. Indemnity

To the extent permitted by any Law or Code, you indemnify us, against any reasonable loss, liability, cost and expense incurred directly or indirectly in connection with:

- a. the occurrence of any Default Event
- b. actions, claims, damages, demands or proceedings in connection with the Deposit Account, the Bank Guarantee or this Agreement
- c. any false or misleading information or statement provided or made by you (or on your behalf)
- d. the Bank Guarantee not being issued because of something you have failed to do (eg failure to satisfy any Condition Precedent), and
- e. any Tax payable or levied on or in connection with this Agreement.

### 10. Power of Attorney

- a. You irrevocably appoint us and each of our Authorised Officers jointly and each of them severally to be your Attorneys for the purposes detailed in this clause.
- b. Each Attorney may, on your behalf, exercise one or more of the following rights (acting reasonably and in good faith, and to the extent permitted by any Law or Code):
  - i. do anything which you ought to do in connection with this Agreement
  - ii. do anything which we consider reasonably appropriate to:
    - A. give effect to the exercise of our rights, or
    - B. enforce, protect or preserve the Deposit Account or to preserve and collect any money payable in connection with the Deposit Account, and
  - iii. date, complete or correct any details in the Agreement or the Bank Guarantee.

### 11. Direct Debit Service Agreement

If you provide a Direct Debit Request (DDR) in your Request for Bank Guarantee, you acknowledge and agree that you are authorising and requesting us to debit the funds (equivalent to the Guarantee Amount and Application Fee) from your Funding Account in accordance with the Direct Debit Request Service Agreement contained in the Deposit Terms and Conditions.

**12. Default Event**

- a. Upon the occurrence of a Default Event, we may, acting reasonably and subject to clause 12(b) and 12(c):
  - i. demand payment of the Outstanding Money, and if payment of the Outstanding Money is not received within a reasonable time frame, exercise our rights of set-off under the Deposit Terms and Conditions
  - ii. terminate this Agreement, and
  - iii. exercise all of our rights and remedies against you under this Agreement and under the Deposit Terms and Conditions.
- b. Before we take any action available to us under clause 12(a), we will make an assessment that the Default Event is material, either by its nature or where we reasonably consider that the event has had, or is likely to have, a material impact on:
  - i. your ability to meet your financial obligations to us
  - ii. credit or security risk (or our ability to assess these), or
  - iii. our legal or reputational risk, where the Default Event arises from a breach of limb (a) of that defined term.
- c. Where reasonable, we will provide you with at least 30 days notice before exercising the rights available to us under clause 12(a)(ii).
- d. You must immediately notify us of the occurrence or likely occurrence of any Default Event or Potential Default Event.

**13. Financial Difficulty**

- a. If you are experiencing financial difficulty, then you, or your representative should contact us as soon as possible. We will discuss your situation and the options available to help you. The sooner you contact us, the sooner we can try to help.
- b. Where the BCOP applies, if you enter into this Agreement jointly with someone else or another entity and you are experiencing financial difficulty, then we can assist you. If you ask us to, we will do so without involving the other person/entity initially.

**14. Notices**

- a. Any notice, demand, consent or other communication given or made under this Agreement must be made in accordance with the notice provisions of the Deposit Terms and Conditions and may be given electronically.

**15. Assignment**

- a. We may, upon prior reasonable notice, assign or otherwise deal with our rights under this Agreement without your consent for legitimate business purposes including business reconstruction, amalgamation or sale.
- b. We may disclose any information or documents we consider reasonably necessary to help us exercise

this right, provided that we will ensure that the recipient of such information and documentation observes the same duties of confidence and privacy we have to you under this Agreement.

- c. You must not assign any of your rights under this Agreement or the Bank Guarantee without our prior written consent (not to be unreasonably withheld).

**16. Waiver, Consent and Approval**

- a. Any waiver, consent or approval given by us under this Agreement is only binding on us if it is given in writing and executed by us or any of our Authorised Officers.
- b. Failure by us to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver, provided that any notice otherwise prescribed by this Agreement is provided.

**17. Governing Law**

Unless otherwise agreed to by the parties in writing this Agreement will be governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

**18. Invalidity**

If any part of this Agreement is unenforceable, only that part is to be read down to the extent necessary to preserve its operation and if it cannot be read down it is to be severed.

**19. Privacy Act**

- a. We need to collect the personal information requested in this Agreement to enable us to enter into the Bank Guarantee with the Beneficiary. We may disclose the personal information collected from this Agreement to:
  - i. our relevant staff involved in delivering services
  - ii. contractors and contracted service providers engaged by us to deliver our services, and/or
  - iii. the Beneficiary.
- b. By completing and signing the Request for Bank Guarantee and returning it to us, you agree that we may use and disclose your information as set out in the Privacy Consent and Collection Statement.

**20. Payments and Issuing the Deposit Account**

- a. Payments by you under this Agreement may be made via direct debit through the Bulk Electronic Clearing System (BECS) or such other means that we may reasonably determine from time to time.
- b. All amounts payable by you under this Agreement must be paid unconditionally and in full without:
  - i. set-off or counterclaim of any kind, or

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- ii. deduction or withholding for any Tax or any other reason, unless the deduction or withholding is required by applicable law. In this event, you must pay to us any such additional amounts necessary to enable us to receive a net amount equal to the amount which would have been received if no deduction or withholdings had been required.
- c. If we are not able to issue your Deposit Account within a period of one month starting from the day we identify the Deposit Amount (or if this is not practicable, by the end of such longer period as is reasonable in the circumstances), we will return the Deposit Amount to you.
- d. On the Expiry Date (where applicable) we will refund the Deposit Amount as soon as reasonably practicable to the Nominated Account or such other means that we may reasonably determine from time to time.

### 21. Codes of Practice

The Banking Code of Practice (BCOP) is an industry code which sets standards of good banking conduct. The relevant provisions of the BCOP will apply to this Agreement if you're an individual or a small business (as defined in the BCOP).

The ePayments Code (ePC) is an industry code administered by the Australian Securities and Investments Commission (ASIC). The Code regulates electronic payments, including online payments, internet banking, direct debits and BPAY. It applies in addition to other regulatory and licensing requirements that apply to us. The Code does not apply to products designed and established primarily for business purposes. From the date of our adoption of the Code we will comply with the Code in relation to transactions which are governed by it.

### 22. Definitions

Defined terms have the meaning given to them in the Request for Bank Guarantee application form unless otherwise defined below:

**Agreement** means the Request for Bank Guarantee application form, the Terms and Conditions and any amendments of those documents.

**Application Date** means the date of lodgement of the Request for Bank Guarantee by you.

**Application Fee** means the non-refundable \$1,000 fee payable to us to process the Request for Bank Guarantee.

**Attorney** means an attorney appointed under clause 10 of this Agreement.

**Authorised Officer** means:

- a. a person notified by us to you as our Authorised Officer, or
- b. any of our employees whose title contains the word 'director' or 'manager'.

**Authorised Signatory** has the meaning given to that term in the Deposit Terms and Conditions.

**Bank Guarantee** means the Bank Guarantee to be issued by us to the Beneficiary at your request, in accordance with this Agreement.

**BCOP** means the Banking Code of Practice.

**Business Day** means every weekday except for Australian national public holidays.

**Cleared Funds** means the funds that are available for withdrawal.

**Code** means any industry codes to which we have subscribed (including the Banking Code of Practice).

**Corporations Act** means the Corporations Act 2001 (Cth), as amended from time to time.

**Default Event** means the occurrence of any one or more of the following:

- a. a representation or warranty made or taken to be made on behalf of you in this Agreement or elsewhere is incorrect or misleading when made or taken to be made
- b. you breach an undertaking given to us, whether under this Agreement or otherwise
- c. you cease to carry on your business, or a substantial part of your business
- d. if you are a company, an Insolvency Event occurs
- e. any of the following occur if you are a trustee of a trust:
  - i. any application to a court for breach of trust, fiduciary duty, or any trustee legislation or regulation, or
  - ii. any application to a court for the termination of the trust being made
- f. if you are an individual, you commit an act of bankruptcy within the meaning of section 40 of the Bankruptcy Act 1966 (Cth)
- g. any of the following occur if you are comprised of a partnership:
  - i. the dissolution of the partnership
  - ii. any application to a court for the dissolution of the partnership being made, or
  - iii. the retirement within any period of 6 months of more than 20% of the members of the partnership without our consent
- h. you create, or attempt to create or permit the creation of a security interest (as that term is defined in the Personal Property Securities Act 2009 or any other legislation concerning registration) over:
  - i. the Deposit Account or the Deposit Amount
  - ii. any substitute or additional Deposit Account or Deposit Amount
  - iii. any chose in action or other rights comprised in or evidenced by (i) or (ii) above.

**Deposit Account** means the security-blocked account which is maintained by us in your name pursuant to this Agreement for the purpose of depositing the Deposit Amount.

**Deposit Amount** means the amount you hold in the Deposit Account pursuant to this Agreement, which may exceed the Guarantee Amount.

**Deposit Terms and Conditions** means the Macquarie Business Banking Deposit Accounts Terms and Conditions together with the Macquarie Banking Terms and Conditions, both as updated from time to time and published at [macquarie.com.au](http://macquarie.com.au).

**Direct Debit Request or DDR** means your authority and request to us to debit funds from your Funding Account in accordance with the Direct Debit Request and the Direct Debit Service Agreement under clause 11 of this Agreement.

**Expiry date** means the expiry date on the relevant Bank Guarantee.

**Funding Account** means your nominated bank account which will be debited to fund your Deposit Account.

**Governmental Agency** means the Crown, a government, a government departmental, or a governmental, semi-governmental, statutory, administrative, parliamentary, provincial, public, municipal, local, judicial or quasi-judicial body.

**Guarantee Amount** means the Guarantee Amount as stated on the Request for Bank Guarantee and the Guarantee Amount defined in the Bank Guarantee.

**Insolvency Event** means:

- a. an application is made, proceedings are initiated or a meeting (whether of shareholders, creditors or directors) is called with a view to winding it or any part of its undertaking up or placing it or any part of its undertaking under administration
- b. a receiver, liquidator, provisional liquidator or administrator is appointed, or steps are taken towards any of these things occurring
- c. a compromise or arrangement of the kind referred to in Part 5.1 of the Corporations Act is proposed
- d. an application is made, or an action is initiated with a view to cancelling its registration or appointing an inspector or other officer to investigate any of its affairs pursuant to any legislation
- e. it is, or may be deemed within the meaning of any applicable law to be, insolvent or unable to pay its debts, or
- f. circumstances exist which would enable a court upon application to order its winding up pursuant to section 461 of the Corporations Act or pursuant to any other law.

**Law** means:

- common Law
- principles of equity
- laws made by parliament (Laws made by parliament include State, Territory, and Commonwealth Laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacement of any of them).

**Nominated Account** means the bank account nominated by you on the application form where any credit interest and/or refund of the Deposit Amount (if applicable) will be paid.

**Outstanding Money** means all money which, at any time and for any reason and on any basis (whether or not contemplated by the parties at the date of this Agreement):

- a. is or becomes actually or contingently liable to be paid by you to us
- b. comprises all or any part of the Guarantee Amount including any amounts which we could be requested to pay under the Bank Guarantee and any Replacement Guarantee (even if no demand or request has been made on us to make any payment) and the Application Fee
- c. the parties agree will form part of the Outstanding Money, or
- d. we are entitled to debit to your account or are liable to pay by reason of any of your acts or omissions.

**Potential Default Event** means an event that on the giving of notice, lapse of time or fulfilment of any conditions would be likely to become a Default Event.

**Replacement Guarantee** means a Bank Guarantee issued by us or another issuer authorised to issue a Bank Guarantee, which is lodged with the Beneficiary in order to replace the Bank Guarantee issued by us under this Agreement.

**Taxes** means charges, deductions, duties (including stamp duty, financial institutions duty, transaction duty and bank account debit tax), fees, imposts, levies, taxes (including any consumption tax, goods and services tax and value added tax) and withholdings (together with any interest, penalties, fines and expenses in connection with any of them).

**We, us and our** means Macquarie Bank Limited, ABN 46 008 583 542, AFSL and Australian Credit Licence no. 237502; and

**You and Your** means the applicant under the Request for Bank Guarantee and this Agreement.

## 23. Interpretation

In this Agreement, unless the context otherwise requires:

- a. a reference to any party includes a reference to their successors and permitted assigns
- b. a reference to any document includes that document as amended, novated, supplemented, ratified or replaced from time to time
- c. a reference to a law includes that law as amended, consolidated, supplemented or replaced
- d. any term used in this Agreement which is defined in the Corporations Act has the meaning given to that term in the Corporations Act
- e. words imposing the singular include the plural and vice versa
- f. words importing any gender include all other genders
- g. a heading is for reference only. It does not affect the meaning or interpretation of this Agreement
- h. a schedule attached to this Agreement forms part of it
- i. anything required in this Agreement to be done on a day which is not a Business Day is to be done on the preceding Business Day.

## 24. Inconsistency with Other Agreements

These terms and conditions are to be read in conjunction with the Deposit Terms and Conditions. If anything in the Deposit Terms and Conditions is inconsistent with these terms and conditions, these terms and conditions will prevail.