

Macquarie Express Guarantee

Terms and conditions

These terms and conditions govern your use of MEG, in addition to the Deposit products and non-cash payment facilities Product Disclosure Statement.

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, and
- c. we approve, in our absolute 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 Crystallisation 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 PDS 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 Crystallisation Event subsists, and
 - iii. there is any Outstanding Money owing to us.
- d. No loan is granted to you by us until the point in time a Crystallisation Event occurs.

4. Application of Deposit Amount

- a. You irrevocably authorise us to 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):
 - i. in our absolute discretion at any time
 - ii. without prior notice to, or further authority or instructions from, you or any other person (however we will promptly inform you after we have done so)
 - iii. irrespective of whether the Outstanding Money (or any part of it) is presently due and payable, and
 - iv. in relation to the whole or any part of the Deposit Amount or the Outstanding Money.
- c. Without limiting clause 4(a) or our rights under clause 12, immediately on the occurrence of any Crystallisation Event you must pay to us the Guarantee Amount regardless of whether we have paid, or have been requested to pay, money to the holder or beneficiary of any Bank Guarantee or Replacement Guarantee, and we can, without notice to you, and without having to comply with any requirements of any other instrument between us and you, apply the Deposit Amount towards satisfaction of your payment obligation.
- d. 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.

Macquarie Express Guarantee

Terms and conditions

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 PDS.
- 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 request or on our website at macquarie.com.au. 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 advertising in a national newspaper 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 Crystallisation 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:
 - i. fully 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 no Crystallisation Event occurs
 - iii. do everything necessary or reasonably required by us to preserve and protect our rights in relation to the Deposit Account
 - iv. ensure that sufficient funds are available in the Funding Account to be debited by us in order to process the Request for Bank Guarantee
 - v. ensure that the Deposit Amount is not less than the Guarantee Amount at any time, and
 - vi. without limiting clause (v) above, pay into the Deposit Account without the need for any demand or request from us, such additional amounts may be necessary to ensure that the Deposit Amount remains equal to the Guarantee Amount.

9. Indemnity

You indemnify us, each Attorney, any associated agents, contractors and employees, against any reasonable loss, liability, cost and expense incurred directly or indirectly in connection with:

- a. the occurrence of any Crystallisation 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)
- e. us paying or receiving any amount under or in connection with the Bank Guarantee in any currency other than Australian Dollars, and
- f. any Tax payable or levied on or in connection with this Agreement.

In the absence of manifest error, a certificate or statement by us is conclusive evidence of the amount payable by you pursuant to this clause.

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):
 - 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.
- c. You must promptly ratify all acts performed by your attorney under this clause.

11. Direct Debit Service Agreement

By completing 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 following terms and conditions:

- a. you must allow two Business Days from the date of receipt by us for funds deposited through the direct debit service to be cleared
- b. it is your responsibility to ensure that your nominated financial institution allows payments to be processed from your Funding Account via DDR. If your nominated financial institution does not process DDRs from your Funding Account, you may incur dishonour fees as a result of nominating a bank account that does not permit DDRs
- c. it is your responsibility to ensure that there are sufficient Cleared Funds in your Funding Account to process your DDR. Where there are insufficient funds in your Funding Account, a dishonour fee may be charged by us and/or your nominated financial institution
- d. you confirm that you are the account holder, or duly authorised by the account holder(s), of the Funding Account for funds to be debited in accordance with the DDR and this Direct Debit Service Agreement
- e. you must notify us as soon as reasonably possible if you believe that there has been an error in debiting your Funding Account. You should also notify your nominated financial institution if possible. If our investigations conclude that your Funding Account has been incorrectly debited, we will respond to your query by adjusting your Funding Account. We will also notify you of the amount by which your Funding Bank Account has been adjusted. If we conclude that your Funding Bank Account has been correctly debited, we will respond to your query by providing reasons and evidence of this finding
- f. where the due date for a debit does not fall on a Business Day, your nominated financial institution may vary the timing of the debit. If you are uncertain as to when a debit will be processed, you should ask your nominated financial institution and/or enquire with us
- g. you can stop a particular debit payment that has not been processed or cancel your DDR at any time by giving us at least 14 days written notice. A debit payment submitted by you cannot be reversed, changed or varied after it has been processed by us
- h. you acknowledge that we may be required pass on details of your DDR to our sponsor bank to assist with the checking of any incorrect or wrongful debits to your Funding Account
- i. acting reasonably, we may vary the terms of this DDR at any time by giving you at least 14 days prior written notice.

12. Crystallisation Event

- a. Upon the occurrence of a Crystallisation Event, we may, subject to clause 12(b):
 - i. demand immediate payment of the Outstanding Money, and if payment of the Outstanding Money is not received immediately, exercise rights of set-off available to us under the PDS
 - ii. terminate this Agreement (and give notice to you as soon as reasonably practicable thereafter), and
 - iii. exercise all of our rights and remedies against you under this Agreement and any associated documents.
- b. Before we take any action available to us under clause 12(a), we will make an assessment that the Crystallisation 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 Crystallisation Event arises from a breach of limb (b) of that defined term.

We are not required to make the above assessment in relation to a Crystallisation Event of the nature described in limb (a) of that defined term.

- c. We will provide you with at least 30 days notice before exercising the rights available to us under clause 12(a). This notice period may be less where your loan is for business purposes and there is a Crystallisation Event of the nature described in limb (d), (e) or (i) of that defined term or we determine (in our reasonable opinion) that it is necessary for us to act promptly in order to manage an immediate risk (particularly with respect to the value of the Deposit Amount or reputational concerns), or where the Crystallisation Event arises from a failure by you to comply with a relevant law.
- d. You must immediately notify us of the occurrence or likely occurrence of any Crystallisation Event or Potential Crystallisation 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.

Macquarie Express Guarantee

Terms and conditions

- 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 PDS and may be given electronically.

15. Assignment

- a. We may assign or otherwise transfer all or any part of our rights or obligations under this Agreement and the Bank Guarantee without your consent, with prior notice. We may disclose to a proposed assignee information relating to this Agreement and the Bank Guarantee.
- b. 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. All payments by you under this Agreement are to be made via direct debit through the Bulk Electronic Clearing System (BECS) or such other means that we may 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
 - 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 determine from time to time.

21. Banking Code of Practice

This is a banking service to which the BCOP applies. The BCOP is an industry code which sets standards of good banking conduct for banks, their staff and their representatives. The BCOP will apply to this contract if you are an individual or a small business (as defined in the BCOP).

22. Definitions

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

Agreement means the Request for Bank Guarantee, 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 PDS.

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.

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

Crystallisation Event means the occurrence of any one or more of the following:

- a. the Beneficiary presents the Bank Guarantee to us in the manner specified in the Bank Guarantee
- b. 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
- c. you breach an undertaking given to us, whether under this Agreement or otherwise
- d. you cease to carry on your business, or a substantial part of your business
- e. if you are a company, an Insolvency Event occurs
- f. 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
- g. if you are an individual, you commit an act of bankruptcy within the meaning of section 40 of the Bankruptcy Act 1966 (Cth)
- h. 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
- i. 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.

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.

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.

Macquarie Express Guarantee

Terms and conditions

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.

PDS means the Macquarie Bank Limited Deposit products and Non-Cash Payment Facilities Product Disclosure Statement issued from time to time and published at macquarie.com.au.

Potential Crystallisation Event means an event that on the giving of notice, lapse of time or fulfilment of any conditions would be likely to become a Crystallisation 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 terms and conditions contained in the PDS. If any of the terms and conditions in the PDS are inconsistent with these terms and conditions, these terms and conditions will prevail.