AU-LDGloa17

Loan agreement: company borrower; secured on physical assets; guarantor option

Borrower: [Name]

Lender: [Name]

Date: [Date]

This agreement is dated [date]
[ABC] Pty Ltd., a company registered in Australia [with Australian Company Number [number] and] whose ** ** ** ** ** ** ** ** ** ** ** ** **
and
[DEF] Pty Ltd, a company registered in Australia [with Australian Company Number [number] and] whose *** *** *** *** *** *** *** *** *** *
and
[Full name] of [full address], (■ ■ ■ ■ " ■ ■ ■ ")
Background
The purpose of this agreement is to set out the contractual terms under which the Lender will lend and the Borrower will borrow the sum of the Initial
It is now agreed as follows:
1. Definitions
In this agreement, the following words shall have the following meanings, ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
"Advance" means a part of the Loan drawn down by the

"Basic rate"

"Concessionary Rate"

means Interest at the rate of $[\blacksquare \blacksquare \blacksquare \blacksquare]\% \blacksquare \blacksquare \blacksquare \blacksquare$

means Interest at the rate of $[\blacksquare \blacksquare \blacksquare \blacksquare]\% \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare$

"Financial Information"	means all information relating to the financial affairs of the Borrower including the Borrower's audited [consolidated] financial statement on [date], consisting of a balance sheet as on that date and a statement of income and
"Interest Date	means the [date e.g. 3rd] of •••••••••••••••••••••••••••••••••••
"Initial Loan"	means the principal sum agreed to be lent $\blacksquare \blacksquare \blacksquare \blacksquare \blacksquare$
"Loan"	means the total amount of money outstanding at any time and due
"Repayment"	means a sum paid by the Borrower to the Lender which has
"Security"	means all goods accepted by the Lender from time to •••••••••••••••••••••••••••••••••••
"[Superdigger]"	means the two items of [DEF Company] plant by that name to be bought by the Borrower using the Loan, or
"Default"	means one of the circumstances set out ••••••••••••••••••••••••••••••••••

2. Interpretation

In this agreement unless the context otherwise requires:

2.1	to the singular may be interpreted where \blacksquare
2.2	a reference to a person includes a human individual, a corporate entity and any organisation

2.3	a reference to a person includes reference to that person's successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a
2.4	a reference to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context • • • • • • • • • • • • • • • • • • •
2.5	the headings to the paragraphs and schedules (if any) to this agreement are inserted ••••••••••••••••••••••••••••••••••••
2.6	any agreement by any party not to do or omit to do something includes an obligation not to allow some ••••••••••••••••••••••••••••••••••••
2.7	[Except where stated otherwise], any obligation of any person arising from this ••••••••••••••••••••••••••••••••••••
2.8	a reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information,
2.9	a reference to an act or regulation includes new law of substantially the same
2.10	this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or
Bori	rower's warranties
The B	sorrower represents and warrants that:
3.1	it has power to enter into this agreement [and has obtained \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
3.2	it is not aware of anything within its reasonable control which might or will adversely affect

it is not insolvent and knows of no circumstance which would entitle

any creditor to appoint a receiver or to petition for winding

3.

3.4	every subsidiary and associated company of the Borrower is authorised to accept the liabilities set out
3.5	the execution of this agreement, the borrowing, and the performance by the Borrower of its obligations are fully within the Borrower's legal authority, are not in breach of the articles of association of the Borrower, and do
3.6	the Financial Information fairly represents the financial state of the Borrower at the date of this agreement knowing that the
3.7	the Financial Information has been prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of preceding financial years. Since the date of preparation, ■
3.8	the Borrower has no undisclosed contingent obligations.
3.9	there are no material, unrealised or anticipated losses from ••••••••••••••••••••••••••••••••••••
3.10	the Borrower will advise the Lender of material adverse changes which occur at any
3.11	no litigation, arbitration proceedings or governmental proceedings are pending or threatened against the Borrower which would, if adversely determined,
3.12	none of the assets of the Borrower is subject •••••••,
3.13	the Borrower has filed all tax returns, •••••, •••••
3.14	the proceeds of the
	[]

4.	Sun	n of Loan and Advances
	4.1	The Initial Loan is \$[amount].
	4.2	The Loan will be drawn down
	OR	
	4.3	The Loan will be drawn
	4.4	Before any Advance is drawn • • • • , • • • • • • • • • • • • • •
		[specify information required].
	OR	
	4.5	The Loan will be drawn down
	OR	
	4.6	The initial draw down of the Loan
5.	Sec	urity
	5.1	The Borrower pledges the [• • • •] • • • • • • • • • • • • • •
	OR	

OR

	5.3	The Borrower pledges as Security for the Repayment
	5.4	All the Security
		5.4.1 keep the Security • • • • • • • • • • • • • • • • • • •
		5.4.2 insure the Security ••••;
		5.4.3 maintain the Security in good and clean condition;
		5.4.4 comply fully with the manufacturer's instructions, the [• • • • • • • • • • • • • • • • • •
		5.4.5 comply with [shipping / other] = = = = = = = = = = = = = = = = = = =
	5.5	The Lender acknowledges receipt of
	5.6	The Lender will keep • • • • • • [• • • • • • / • • • • • •
	5.7	The Lender will insure
6.	Loa	n condition: use by Lender
	6.1	It is a condition of this Loan that the Lender may have •••••
		6.1.1 the total number of days when *** ***
		6.1.2 the condition lapses when *** ***
		6.1.3 the Lender will pick up the [Superdigger] from the

		6.1.4	the [Superdigger] shall be returned to the premises • • • • •
			;
		6.1.5	the Lender shall insure the [• • • •] • • • • • • • • • • • • • •
		6.1.6	The Lender shall allow the [Superdigger] • • • • • • • • • • • • • • • • • • •
		6.1.7	at all times that the [Superdigger] is •••••••, •••••.
		6.1.8	the Lender now agrees to indemnify the Borrower against all claims, costs and expense
7.	Inte	rest p	ayable
	7.1	Interes	et on the
	OR		
	7.2	Interes	st on the Loan will be paid at the •••• [••••] % ••
	7.3	Interes	st will be = = = [= = =] = = = = = [= = =].
	7.4	Interes	et will be paid on the Interest Date.
	7.5	Interes	st will be calculated
	AND	/ OR	

	7.6	and so long as the Borrower compiles • • • • • • • • • • • • • • • • • • •			
8.	Rep	Repayment			
	8.1	The Loan will • • • • • • • • • • • • • • • • • •			
	OR				
	8.2	The Loan will be			
	OR				
	8.3	The Loan will be			
		[Set out the trigger events, such as the set set set set set set set set set se			
	8.4	The Loan may be repaid in			
		8.4.1 in multiples of \$[number];			
		8.4.2 a minimum of \$[number];			
		8.4.3 applied to any instalments • • • • • • • • • • • • • • • • • • •			
	8.5	The Borrower may, not more than once in every [two calendar months] demand a statement from the Lender • • • • • • • • • • • • • • • • • • •			
	8.6	All payments due to the Lender of both capital and			

	8.7	The Borrower may repay all or part of the Loan before the due date for Repayment provided that
9.	No	change to capital structure and administration
	Until t	the Loan = = = = = = = = = = = = = = = = = = =
	9.1	make any share issue by way • • • • • • • • • • • • • • • • • • •
	9.2	issue new share capital nor modify the rights attaching to ••••••
	9.3	reduce its share capital or any uncalled • • • • • • • • • • • • • • • • • • •
	9.4	change the location ••••;
	9.5	sell its undertaking or any fixed • • • • • • • • • • • • • • • • • • •
	9.6	change its accounting system • • • • • • • • • • • • • • • • • • •
	9.7	make any other • • • • • • • • • • • • • • • • • • •
10.	Event of Default	
	An "E	event of Default" occurs when:
	10.1	the Borrower fails to pay in full and on the

10.2	a petition is presented ;
10.3	the Security is dealt with by
10.4	the Security is lost or damaged whilst in the possession of
10 F	in the opinion of the Lender, ••••••••••••••••••••••••••••••••••••
10.5	in the opinion of the Lender,
10.6	a receiver is appointed to the Borrower; or
10.7	notice is given of
10.8	a petition is presented for the
Noti	ce of Default
11.1	Where an Event of Default has occurred the Lender may issue a " ■ ■
11.2	From the date when the Lender issues a Notice of Default, ■ ■ ■ ■ ■
11.3	Each Event of Default stands on its own,
11.4	When an Event of Default happens, the

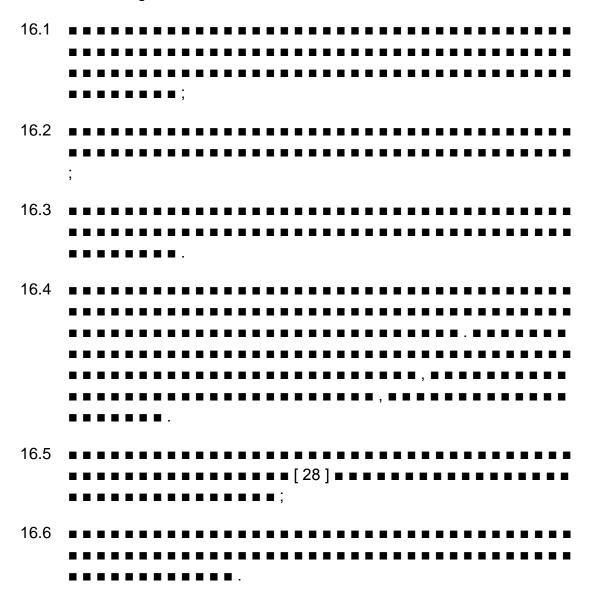
12. Consequences of Default

At any time after		
12.1		
	••••	,
12.2	the Bor	rower hereby irrevocably agrees that:
	12.2.1	
		[60] ;
	12.2.2	;
	12.2.3	
		;
	12.2.4	
		[24] • • • • • • • • • • • • • • • • • • •
12.3	••••	
	12.3.1	;
		damages for any breach of this agreement;
	12.3.3	
Sale	of Se	ecurity

	13.1	;
	13.2	;
	13.3	••••
14.	Ass	ignment
	14.1	
	14.2	
	14.3	,
15.	Pro	mise to provide information
	15.1	
	15.2	

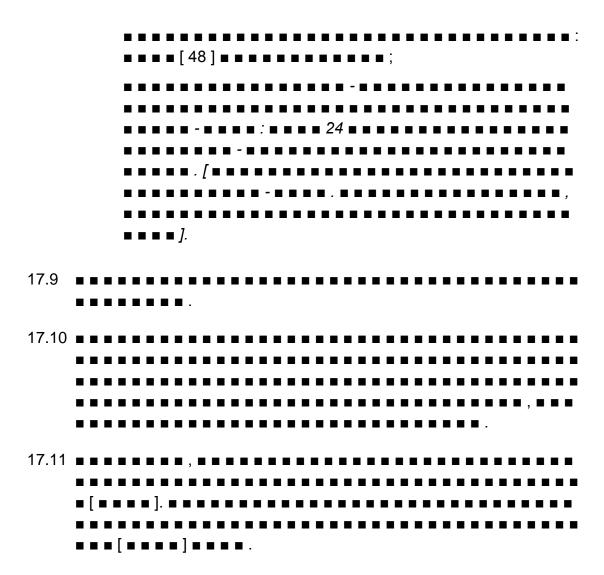
16. The Guarantor

The Guarantor agrees:



17. Miscellaneous matters

17.1	
	•••••
4 = 0	
17.2	
17.3	
17.4	
17.5	
17.5	
	,
17.6	
	•
17.7	
17.7	
4 = 0	
17.8	
	It shall be deemed to have been delivered:



Signed by [personal name] on behalf of [named Lender] as its representative who personally accepts liability for the proper authorisation by [named Lender] to enter into this agreement.

Signed by [personal name] on behalf of [named Borrower] as its representative who personally accepts liability for the proper authorisation by [named Borrower] to enter into this agreement.

Signed by [the Guarantor]

Schedule 1: the Securities

- 1 [Two David Brown Superdiggers].
- 2 500 gold Krugerrand coins.

3

4

Schedule 2: Loan Repayment

Dates	Amount to paid
dd-mm-yy	\$000

Schedule 3	: example finan	cial report		
-			• • • • • • • • •	•••••

Explanatory notes:

Loan agreement: company borrower; secured on physical assets; guarantor option

General notes

1. Registering a charge

You should consider registration of the debt as a "security interest". Registration of security interests protects you against your borrower's insolvency and preserves
And there are other benefits of registration. It can, for example, support your rights to continue your security interest in
Since 30 January 2012, the Personal Property Securities Act 2009 (PPS Act) has established a new system for the registration of security interests in personal property.
:

https://www.ppsr.gov.au/registrations

https://www.ppsr.gov.au/register-security-interests

2. A shareholders' agreement

If the lender is a shareholder in the borrower, then it should be a party to a shareholders' agreement. This will provide as high a level of control over the ■

Paragraph specific notes

Notes relating to the numbered paragraphs

1. Definitions

Note that the definition of "Loan" includes all money outstanding, which may

The definition of interest rates is important. It is not lawful to specify a "penalty" in any contract, no matter what you call it. A claimant is only ever entitled to his "
The lender cannot charge "penalty interest". This enables the lender to charge a higher rate by providing for a basic rate of interest, which is the sum "normally" due, and for a concessionary rate for good behaviour. In fact, we would expect the concessionary rate • • • • • • • • • • • • • • • • • • •
The result is of course that the lender gets an additional 5% if he has the problems associated with a defaulting borrower. This could be challenged by the borrower only if he could prove that the basic rate was a penalty rate. That would depend on all the circumstances, including the actual rates. In practice the fear of
Interpretation
Leave these items in place unless there is a good reason to edit or remove. Each of these items has been carefully considered in the context of this agreement and has been included for a purpose.
Borrower's warranties
The lender will want to be certain that
The provision dealing with subsidiaries will prevent a subsidiary from finding a reason to upset the agreement, but will not necessarily make ••••••••••••••••••••••••••••••••••••
Note that there is an obligation by the borrower to •••••••••••••••••••••••••••••••••••
The requirement to specify the purpose of the loan can be loose or

4. Sum of Loan and Advances

2.

	Inis paragraph provides options for alternative draw down arrangements.
	If the lender requires further information, you
	A provision for scheduled repayments by date is usually simplest to administer. If you go for other trigger events, they should be carefully
5.	Security
	We have no idea what will be lodged as security. We advise simply
6.	Loan condition: use by Lender
	This paragraph is an option. If you do not need it, delete it. If you do
7.	Interest payable
	The provision for cumulation of interest should have careful attention, particularly if the interest rate is high. Cumulation has the effect of adding the interest to the capital, so that the
8.	Repayment
0.	We have provided a menu of suggestions. The actual The
9.	No change to capital structure and administration
	This is obviously an important provision for a corporate borrower. If the lender
10.	Event of Default
	Provisions for "what happens if things go wrong" are very important

11.	Notice of Default
	No comment.
12.	Consequences of Default
	Edit carefully to suit your requirement.
13.	Sale of Security
	The
14.	Assignment
	No comment.
15.	Promise to provide information
	It is the lender's choice what information he requires.
16.	The Guarantor
	Delete if there is no guarantor.
17.	Miscellaneous matters
	A number of matters each of
	Schedule 1: the Securities
	List the securities = = = , = = = = = = = = = = = = = = =
	Schedule 2: Loan Repayment
	This covers the option mentioned in the agreement.
	Schedule 3: example financial report

Delete if not required.

End of notes