




Heartland Bank's PGG Wrightson Store Account

STANDARD CONDITIONS



Please read this document carefully
and keep it in a safe place.

HEARTLAND
— BANK —

Heartland Bank's PGG Wrightson Store Account Standard Conditions

Heartland Bank's PGG Wrightson Store Account Standard Conditions, together with the Facility Application, contain the terms on which Heartland have agreed to make available a Facility to you. This Agreement is made between the Lender, each Borrower and each Guarantor named in the Facility Application. **The Lender is Heartland Bank Limited.** PGG Wrightson Limited is not a party to this Agreement and is not a subsidiary or a related company (as defined in the Companies Act 1993) of the Lender, or Heartland Bank Limited, or any other member of the Lender Group.

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PART A – GENERAL TERMS AND CONDITIONS

1. Initial conditions precedent

- 1.1 The documents set out below must be received by us to our satisfaction in all respects (or waived by us) before the Facility will become available for drawing:
- (a) this Agreement and each of the Securities duly executed by each Borrower and each Guarantor;
 - (b) an authority for direct debit signed by you;
 - (c) confirmation of independent legal advice from each Guarantor or (with our agreement) waiver of such advice;
 - (d) a business purpose declaration signed by you;
 - (e) each insurance policy for the Secured Property, with our interest in the Secured Property being noted on the policy;
 - (f) any documents or evidence that may be required to enable us to meet our 'know your customer' requirements; and
 - (g) any other documents, certificates or evidence which we may require.

2. Availability of the Facility

- 2.1 Subject to our approval of the Facility Application, we agree to make the Facility available to you on the terms of this Agreement. The Facility will be made available by way of multiple Advances so long as the Amount Outstanding under the Facility does not, at any time, exceed the Facility Limit. We may review the Facility Limit at any time. Any amendment to the Facility Limit will be notified to you by us.
- 2.2 If the Facility Application is approved by us, it will immediately constitute a binding facility agreement on the terms set out in this Agreement. We may approve the Facility Application subject to any special conditions that we see fit in our absolute discretion. If we notify you that we have approved the Facility Application subject to any such special conditions, those special conditions are deemed to form part of this Agreement.
- 2.3 You agree to use the proceeds of each Advance solely for the purpose of paying the purchase price for PGG Wrightson Products as more particularly described in each invoice and/or other document or information describing the PGG Wrightson Products to be purchased with the proceeds of the Advance, in each case as accepted by us.
- 2.4 We will make an Advance available to you on any Business Day during the Availability Period by paying the Advance direct to PGG Wrightson Limited, if:
- (a) each of the initial conditions precedent described in clause 1 above has been provided in a form and substance satisfactory to us;
 - (b) we have received and accepted a copy of the invoice from you provided by PGG Wrightson Limited and/or other such other document or information describing the PGG Wrightson Products to be purchased with the proceeds of the Advance at least 2 Business Days prior to the proposed Date of Advance;
 - (c) we are satisfied that the proposed Date of Advance is no later than 10 Business Days after the date you took possession of the relevant PGG Wrightson Products;
 - (d) we have received any fee(s) due on or before the proposed Date of Advance;
 - (e) the Advance (when aggregated with the Amount Outstanding) would not cause the Facility Limit to be exceeded on the Date of Advance;
 - (f) no Event of Default has occurred, or will occur, as a result of the making of the Advance;
 - (g) the representations and undertakings made in the Relevant Documents are true, accurate and complied with in all respects on the Date of Advance as if repeated on that date by reference to the facts and circumstances then existing; and
 - (h) we have received any other document or information requested from you.
- 2.5 We may, at our discretion, pay the proceeds of the Advance direct to you if you request us to do so.

3. Payment of Advance, interest and fees

- 3.1 You shall repay the Amount Outstanding in full on the Repayment Date. We may review the Repayment Date at any time. Any amendment to the Repayment Date will be notified to you by us.
- 3.2 Interest accrues on each Advance daily at the Interest Rate and will be capitalised in arrears on the last Business Day of each month.
- 3.3 We may change the Interest Rate and/or the Default Rate at any time. We will give you not less than one month's written notice of any change to the Interest Rate or the Default Rate.
- 3.4 You must pay each fee, charge and other amount as required by us in relation to this Facility on its due date for payment. We may change our fees and charges at any time. We will give you not less than one month's written notice of any change to our fees and charges. Without limiting the foregoing, an establishment fee notified to you by us will automatically be added to the total principal amount outstanding under the Facility on the first Date of Advance (and treated as an Advance on that date).
- 3.5 Any amount payable to us under a Relevant Document shall be paid no later than 4.00 pm on the due date to the account advised by us to you. If any due date is not a Business Day, payment shall be made on the next Business Day.
- 3.6 If you do not make any payment on or before its due payment date, interest on the amount unpaid shall accrue at the Default Rate (both before and after judgment) for the period from the due payment date until the actual date of payment. Default interest will accrue daily, and will be compounded monthly.
- 3.7 All amounts which we receive under a Relevant Document shall be appropriated as between principal, interest and other amounts in such manner as we determine, notwithstanding any rule of law or any purported appropriation made by you.
- 3.8 All amounts payable under a Relevant Document shall be paid free and clear of any restriction or condition and (except to the extent required by law) without any deduction or withholding on account of any tax or other amount.
- 3.9 If:
 - (a) a Relevant Party is required by law to make any deduction or withholding for or on account of tax from any amount paid by it under a Relevant Document; or
 - (b) we are required by law to make any payment for or on account of tax (other than tax on our overall net income) on or in relation to any amount received under a Relevant Document,then:
 - (c) that Relevant Party shall pay the amount required to be so deducted, withheld or paid to the relevant authority; and
 - (d) the amount payable by that Relevant Party in respect of which that deduction, withholding or payment is required to be made shall be increased to the extent necessary to ensure that, after that deduction, withholding or payment is made, we receive and retain a net amount equal to the amount which we would have received had no such deduction, withholding or payment been made or required.
- 3.10 You may at any time prepay an Advance in full upon giving 14 days' prior written notice (which notice shall be irrevocable and shall bind you to make the prepayment). In that event, you must also pay at the same time all interest accrued on the Advance to the date of prepayment and any other costs and fees payable pursuant to this Agreement. Any amount prepaid shall be available for re-drawing on the terms and conditions set out in this Agreement.
- 3.11 Notwithstanding clause 3.10 above, you must immediately prepay to us any amounts required to ensure that the Amount Outstanding does not at any time exceed the Facility Limit. Such amount is payable by you even if no demand is made by us.

4. Representations and warranties

- 4.1 You represent and warrant to us that:
 - (a) you have the power, authority and capacity to enter into and perform your obligations under, the Relevant Documents;
 - (b) no Event of Default has occurred;
 - (c) your obligations under the Relevant Documents are legal, valid, binding and enforceable in accordance with their respective terms;
 - (d) all information provided by you to us in connection with the Relevant

Documents was true and accurate as at the date when that information was provided and remains so at the date of this Agreement and there are no facts or circumstances which have not been disclosed to us which would make that information untrue, inaccurate or misleading; and

- (e) each of the representations and warranties in paragraphs (a) to (d) of this sub-clause would be true, accurate and complied with if it were also expressed as being made in respect of each Relevant Party other than the Borrower.
- 4.2 Each of the representations and warranties in this clause will be deemed to be repeated continuously so long as this Agreement remains in effect by reference to the facts and circumstances then existing.
- 4.3 You acknowledge that we have been induced to enter into this Agreement and will be induced to make the Facility available in reliance on the representations and warranties in this clause.

5. Undertakings

5.1 You undertake that you will:

- (a) notify us of the occurrence of any Event of Default or any event which, with the lapse of time or giving of notice, may become an Event of Default immediately upon becoming aware of it;
- (b) maintain in full effect all consents required to enable you to comply with your obligations under the Relevant Documents and procure that each other Relevant Party does the same;
- (c) duly and promptly comply, and procure that each other Relevant Party will duly and promptly comply, with all laws, directives and consents the non-compliance with which might have a material adverse effect on you or on a Relevant Party;
- (d) promptly, and at your own cost, execute and deliver to us all transfers, assignments and other agreements, and do all acts and things in respect of a Relevant Document, as we may deem necessary or desirable to secure to us the full benefit of our rights under a Relevant Document and procure that each other Relevant Party does the same;
- (e) use the Advance solely for the purpose as set out in clause 2.3 above and, until so used, you will hold the proceeds of the Advance on trust for us;
- (f) comply with any special conditions notified by us to you under clause 2.2 above;
- (g) as soon as available and in any event within 3 months after the end of your financial year, deliver to us your financial statements and, if you have subsidiaries, your consolidated financial statements; and
- (h) provide us with all such other information relating to your financial position or business operations as we may from time to time require.

6. Events of Default

6.1 If, at any time:

- (a) you fail to pay on its due date:
 - (i) any amount payable under any Relevant Document; or
 - (ii) any amount payable to any company in the Lender Group; or
 - (iii) any other indebtedness when due; or
- (b) you fail to comply with any of your other obligations under any Relevant Document; or
- (c) any representation, warranty or statement by you in or in connection with any Relevant Document is not true, accurate and complied with when made or deemed to have been made; or
- (d) any Relevant Document, or any part of it, ceases to be, or is claimed not to be, in full force and effect, or the validity or enforceability of a Relevant Document is contested by any person (other than us); or
- (e) you:
 - (i) die, become insolvent, commit an act of bankruptcy, or have a receiver, administrator or similar officer appointed in respect of you or any of your assets or are unable to pay your indebtedness as it falls due; or
 - (ii) make, or propose to make, an assignment, arrangement, composition or compromise with, or for the benefit of, your creditors in respect of any of your indebtedness; or

- (f) a distress, attachment, execution or other legal process is levied or enforced against your assets and is not discharged or stayed within five days; or
- (g) an order is made, resolution passed or other step taken for your termination or dissolution; or
- (h) in our opinion, a material adverse change occurs in relation to you; or
- (i) a present or future security interest over or affecting any of your assets becomes enforceable; or
- (j) in our opinion, any Secured Property is at risk; or
- (k) any event specified in the preceding paragraphs of this clause occurs with respect to another Relevant Party as if references in those paragraphs to you were to each other Relevant Party,
then this Agreement, the Securities and the other Relevant Documents shall become immediately enforceable and we may, at any time, by notice to you:
- (l) cancel the Facility; and/or
- (m) declare all or any part of the Amount Outstanding and any other indebtedness under the Relevant Documents to be, and that indebtedness will be, due and payable either immediately or upon demand or at a later date as we may specify.

7. Indemnities

- 7.1 You will, on demand, indemnify and hold us harmless against each cost, loss (including loss of profit or margin), expense (including all legal expenses on a solicitor and own client basis and taxes) and liability sustained or incurred by us as a result of:
- (a) the occurrence or continuation of an Event of Default; or
 - (b) an amount payable under a Relevant Document:
 - (i) not being paid when due, whether by prepayment, acceleration or otherwise; or
 - (ii) being paid otherwise than on its due date for payment (whether or not that payment is permitted or required under this Agreement); or
 - (c) an Advance not being drawn on the date requested, by payment to us of the amount we certify is required to indemnify us for that cost, loss, expense or other liability, including each cost and loss incurred in liquidating or re-employing deposits or other funds acquired or arranged to fund or maintain the Advance or any part of it.
- 7.2 The above indemnity is unconditional and irrevocable and is to survive termination of the Facility and payment of all other indebtedness due under any Relevant Document.

8. Set-off

- 8.1 Each of you and each Guarantor authorises us to apply (without prior notice or demand) any credit balance held by you, or the relevant Guarantor, on any account with us in or towards satisfaction of any indebtedness then due to us under a Relevant Document and unpaid. You and each Guarantor acknowledge and agree that you have no right to set off any amount payable by us to you against any amount payable by each of you under the Relevant Documents.

9. Trustee liability

- 9.1 We will have no recourse to the assets of any Professional Trustee which is a party to this Agreement, which assets are not assets of the Trust, except in respect of any loss incurred by us:
- (a) by reason of a breach of trust by that Professional Trustee; or
 - (b) by reason of any lack of capacity, power or authority of that Professional Trustee to enter into this Agreement or any Relevant Document; or
 - (c) resulting from the negligence, wilful default or dishonesty of that Professional Trustee; or
 - (d) resulting from a breach on that Professional Trustee's part of the statements or undertakings made by it in clause 9.2 below.

Each trustee entering into this Agreement as a trustee (**the Trustee**), other than a Professional Trustee, will have full personal liability, so that we may have recourse to that trustee's personal assets as well as to the assets of the Trust.

- 9.2 Each Trustee warrants and undertakes that:
- (a) the Trust is properly constituted under a trust deed;
 - (b) the persons entering into this Agreement as trustees are all the current and validly appointed trustees of the Trust as at the date of this Agreement and no such Trustee has resigned, nor has any action been taken or event occurred to remove any such Trustee or appoint any new Trustee of the Trust;
 - (c) the Trustee has the power and capacity to execute, enter into and perform the Trustee's obligations under this Agreement (and any other Relevant Document to which the Trustee is a party) and to grant any security interest to be given over assets of the Trust in its capacity as trustee, and in each case does so for the benefit of and for the proper purposes of the Trust, and this Agreement and each other Relevant Document to which the Trustee is a party are legal, valid, binding and enforceable on and against the Trustee in the Trustee's capacity as trustee in accordance with their terms;
 - (d) in order to execute, enter into and perform the Trustee's obligations under this Agreement (and any Relevant Document to which the Trustee is a party):
 - (i) the Trustees of the Trust have passed any necessary resolutions, and those resolutions remain (and will remain) in full force and effect;
 - (ii) all necessary consents and approvals required, by law or otherwise, have been (and will be) obtained; and
 - (iii) no Trustee of the Trust is (or will be) in breach of the trust deed of the Trust, any law or other obligation; and
 - (e) the Trustee will not, without our prior written consent, permit:
 - (i) the trust deed of the Trust to be varied in any way that affects the warranties and undertakings given in this clause;
 - (ii) any of the assets subject to the Trust to be disposed of, transferred, distributed, loaned or advanced other than for the purposes of the Trust;
 - (iii) the capital of the Trust to be distributed to the beneficiaries of the Trust;
 - (iv) the Trust to be terminated or dissolved, or any action to be taken to terminate or dissolve the Trust; nor
 - (v) a Trustee of the Trust to resign or be removed, or a new Trustee of the Trust to be appointed, without immediate notification to us.
- 9.3 Each Trustee is to remain liable under this Agreement and any Relevant Document after it ceases to be a trustee of the Trust until released in writing by us.
- 9.4 The above warranties and undertakings are to survive termination of the Facility and payment of all other indebtedness due under any Relevant Document.

10. Partnerships

- 10.1 Where you enter into this Agreement or any other Relevant Document as a partner (the **Partner**) of a partnership (the **Partnership**) the following terms and conditions apply:
- (a) each Partner represents and warrants that:
 - (i) the Partnership is properly constituted under a partnership agreement or deed;
 - (ii) the persons entering into this Agreement as Partners are all the current and validly appointed Partners of the Partnership as at the date of this Agreement and no such Partner has resigned, nor has any action been taken or event occurred to remove any such Partner or appoint any new Partner of the Partnership; and
 - (iii) the Partner has the power and capacity to execute, enter into and perform the Partner's obligations under this Agreement (and any other Relevant Document to which the Partner is a party) and to grant security interest to be given over assets of the Partnership and in each case does so for the benefit of and for the proper purposes of the Partnership, and this Agreement and each other Relevant Document to which the Partner is a party are legal, valid, binding and enforceable on and against the Partner in the Partner's capacity as Partner in accordance with their terms;

- (b) in order to execute, enter into and perform the Partner's obligations under this Agreement (and any Relevant Document to which the Partner is a party):
 - (i) the Partners of the Partnership have passed any necessary resolutions, and those resolutions remain (and will remain) in full force and effect;
 - (ii) all necessary consents and approvals required, by law or otherwise, have been (and will be) obtained;
 - (iii) no Partner of the Partnership is (or will be) in breach of the partnership agreement or deed of the Partnership, any law or other obligation;
- (c) the Partner will not, without our prior written consent, permit:
 - (i) the partnership agreement or deed of the Partnership to be varied in any way that affects the warranties and undertakings given in this clause;
 - (ii) any of the assets of the Partnership to be disposed of, transferred, distributed, loaned or advanced other than for the purposes of the Partnership;
 - (iii) the Partnership to be terminated or dissolved, or any action to be taken to terminate or dissolve the Partnership; nor
 - (iv) a Partner of the Partnership to resign or be removed, or a new Partner of the Partnership to be appointed, without immediate notification to us.

10.2 Each Partner is to remain liable under this Agreement and any Relevant Document after it ceases to be a Partner of the Partnership until released in writing by us.

10.3 The above warranties and undertakings are to survive termination of the Facility and payment of all other indebtedness due under any Relevant Document.

11. Limited Partnerships

11.1 Where you enter into this Agreement or any other Relevant Document as the general partner (the **General Partner**) of a limited partnership (the **Limited Partnership**) the following terms and conditions apply:

- (a) each General Partner represents and warrants that:
 - (i) the Limited Partnership is properly constituted under a limited partnership agreement;
 - (ii) the persons entering into this Agreement as General Partners are all the current and validly appointed general partners of the Limited Partnership as at the date of this Agreement and no such General Partner has resigned, nor has any action been taken or event occurred to remove any such General Partner or appoint any new General Partner to the Limited Partnership;
 - (iii) the General Partner has the power and capacity to execute, enter into and perform the Limited Partnership's obligations under this Agreement (and any other Relevant Document to which the General Partner is a party) and to grant any security interest to be given over the assets of the Limited Partnership in its capacity as General Partner and in each case does so for the benefit of and for the proper purposes of the Limited Partnership, and this Agreement and each other Relevant Document to which the General Partner is a party are legal, valid, binding and enforceable on and against the General Partner in the General Partner's capacity as General Partner in accordance with their terms;
- (b) in order to execute, enter into and perform the General Partner's obligations under this Agreement (and any Relevant Document to which the Limited Partnership is a party):
 - (i) the General Partners of the Limited Partnership have passed any necessary resolutions, and those resolutions remain (and will remain) in full force and effect;
 - (ii) all necessary consents and approvals required, by law or otherwise, have been (and will be) obtained;
 - (iii) no General Partner of the Limited Partnership is (or will be) in breach of the limited partnership agreement of the Limited Partnership, any law or other obligation;

- (c) the General Partner will not, without our prior written consent, permit:
 - (i) the limited partnership agreement of the Limited Partnership to be varied in any way that affects the warranties and undertakings given in this clause;
 - (ii) any of the assets subject to the Limited Partnership to be disposed of, transferred, distributed, loaned or advanced other than for the purposes of the Limited Partnership;
 - (iii) the Limited Partnership to be terminated or dissolved, or any action to be taken to terminate or dissolve the Limited Partnership; nor
 - (iv) a General Partner of the Limited Partnership to resign or be removed, or a new General Partner of the Limited Partnership to be appointed, without immediate notification to us.
- 11.2 Each General Partner is to remain liable under this Agreement and any Relevant Document after it ceases to be a General Partner of the Limited Partnership until released in writing by us.
- 11.3 The above warranties and undertakings are to survive termination of the Facility and payment of all other indebtedness due under any Relevant Document.

12. Expenses

- 12.1 You will pay each cost and expense (including all legal expenses on a solicitor and own client basis and taxes) sustained or incurred by us in connection with:
 - (a) the preparation, negotiation and entry into of each Relevant Document and each other transaction required or contemplated thereby;
 - (b) each amendment to, or waiver in respect of, a Relevant Document; and
 - (c) the exercise of, or any action taken to protect or enforce, our rights under any Relevant Document, in each case on demand and on a full indemnity basis.
- 12.2 You will pay promptly any tax payable in connection with:
 - (a) the entry into, performance, registration, enforcement or admissibility in evidence of any Relevant Document; and
 - (b) any amendment to, or waiver in respect of, any Relevant Document, and will indemnify and hold us harmless against any liability resulting from any failure to pay such tax.

13. Miscellaneous

- 13.1 Time is of the essence of this Agreement but no failure or delay by us to exercise any right under this Agreement or any Relevant Document shall operate as a waiver of that right, nor shall any single or partial exercise by us of any right preclude any other or further exercise of that right or of any other right. No waiver by us of our rights under a Relevant Document will be effective unless it is in writing signed by us. Our rights expressed in this Agreement and any Relevant Document are cumulative and do not exclude any rights provided by law.
- 13.2 This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same agreement. Any of the parties may execute this Agreement by signing any such counterpart.
- 13.3 Neither you nor any Guarantor may assign any of your rights or obligations under this Agreement.
- 13.4 We may at any time, assign or transfer all or any part of our rights or obligations under this Agreement or any Relevant Document. Any transfer of obligations may be effected by means of a notice from us to you.
- 13.5 We may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with this Agreement are contemplated, any information about you or any Guarantor whether or not that information was obtained in confidence and whether or not that information is publicly available.
- 13.6 Notices may be given to you and any Guarantor at the addresses as set out in the Facility Application, and shall be deemed to have been received:
 - (a) in the case of a facsimile, upon transmission;
 - (b) in the case of mail, 2 Business Days after posting; and
 - (c) in the case of electronic mail, upon transmission.
- 13.7 If there is more than one Borrower named in this Agreement, the Borrowers' obligations shall be joint and several.

- 13.8 If there is more than one Guarantor named in this Agreement, the Guarantors' obligations shall be joint and several.
- 13.9 Any statement or certificate setting out the rate of interest applicable or the amount of any moneys due signed by us shall, unless it is manifestly wrong, be conclusive as to the interest rate or the amount due.
- 13.10 For the purposes of the Contracts (Privity) Act 1982, each Borrower and each Guarantor acknowledges that its obligations under this Agreement are enforceable by the Lender although the Lender does not sign this Agreement.

PART B – TERMS OF SECURITY

1. Charging clause

- 1.1 As security for:
- (a) the payment of the Secured Money; and
 - (b) the performance by you of the Secured Obligations to us at any time, you:
 - (c) grant to us a security interest in the Secured Property; and
 - (d) in addition to the security granted under sub-paragraph (c) above, assign by way of security to us all Secured Property which constitutes present or future rights or things in action.

The security granted under this clause is a security interest for the purposes of the PPSA. You acknowledge and agree that the security is granted in consideration for us having provided value to you, being the making available of the Facility on the terms of this Agreement.

- 1.2 You may, at any time prior to the occurrence of an Event of Default, in the ordinary course of your ordinary business sell the Secured Property on arm's length commercial terms.

You shall not otherwise dispose of any Secured Property, or grant a security interest in any Secured Property, without our prior written consent.

- 1.3 You shall promptly deliver to us any transfer, assignment, security, instrument, or other document, and shall promptly do any other thing, which we require in order to:
- (a) perfect your title to, or rights to, or in, any Secured Property; or
 - (b) maintain, perfect, or otherwise give full effect to the security intended to be created under this Agreement, and the priority of that security; or
 - (c) facilitate the exercise of any right conferred on us or any Receiver at any time; or
 - (d) more satisfactorily secure to us the Secured Money; or
 - (e) facilitate the realisation of any Secured Property; or
 - (f) otherwise to enable us to obtain the full benefit of the provisions of this Agreement.

- 1.4 The security granted under this Agreement in personal property has the same priority in respect of all Secured Money, including future advances.

- 1.5 The security granted under this Agreement is collateral to each other security (whenever executed or given) which is at any time held by us in respect of any Secured Money. We may exercise any of our rights under this Agreement and any such other security separately or concurrently.

- 1.6 This Agreement creates a continuing security and shall operate irrespective of any intervening payment, settlement of account or other matter or thing whatever, until a release has been signed by us and delivered to you.

2. PPSA rights

- 2.1 Nothing in this Agreement shall be construed as:
- (a) an agreement to subordinate the security under this Agreement in favour of any person; or
 - (b) an agreement to defer or postpone the date of attachment of the security created under this Agreement.
- 2.2 You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security under this Agreement.
- 2.3 You:
- (a) agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Agreement, or the security under this Agreement; and
 - (b) waive your right to:

- (i) receive notice of our proposal to retain any personal property under section 120(2) of the PPSA; or
 - (ii) object to our proposal to retain any personal property under section 121 of the PPSA; or
 - (iii) not have goods damaged when we remove an accession under section 125 of the PPSA; or
 - (iv) receive notice of the removal of an accession under section 129 of the PPSA; or
 - (v) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA.
- 2.4 For the avoidance of doubt, nothing in this Agreement shall have the effect of contracting out of any provision of the Credit (Repossession) Act 1997.

3. Insurance

3.1 You shall:

- (a) keep all of your insurable assets insured for their full replacement value, against loss or damage by fire, earthquake, theft, burglary, weather damage, marine risks and such other risks as it is prudent to insure against;
- (b) maintain the insurance required by this clause with insurers acceptable to us;
- (c) promptly pay all premiums and do all such other things as may be necessary to keep in force all insurance required by this clause; and
- (d) not do, or permit to be done or occur, anything which prejudices or may prejudice any insurance over the Secured Property or your other assets.

4. Access and inspection

- 4.1 Without limiting any rights or powers which we may have under this Agreement or at law, we may at any time (in each case, at your cost and without prior notice) enter on any land or premises where we believe any Secured Property is kept and inspect such Secured Property.

5. Undertakings

- 5.1 You agree that, except to the extent otherwise expressly agreed in writing by us, you shall promptly give written notice to us:

- (a) of the receipt of any notice, or the commencement of any proceedings, adversely affecting a material part of the Secured Property;
- (b) in advance of any change of your name;
- (c) if you acquire, or agree to acquire, any investment securities or chattel paper;
- (d) upon request, of the present location of any Secured Property; and
- (e) upon request, of the details of your serial-numbered goods (including motor vehicles and aircraft) that are not inventory.

- 5.2 You agree that, except to the extent otherwise expressly agreed in writing by us, you shall:

- (a) keep and maintain the Secured Property in a good state of repair and in good working order and condition, promptly rectify defects therein, and protect the Secured Property from loss or damage;
- (b) ensure that no Secured Property becomes an accession or fixture to an asset that is not Secured Property, or vice versa, except in the ordinary course of your ordinary business;
- (c) ensure that no Secured Property is located or moved outside New Zealand, except in the ordinary course of your ordinary business; and
- (d) not do, or omit to do, anything which could prejudicially affect the security created by this Agreement, render any Secured Property liable to forfeiture or cancellation, or cause or contribute to a deterioration in the value of any Secured Property.

- 5.3 We may, at any time, employ such consultants or persons as we in our absolute discretion think fit to assist in determining whether you are complying with clause 5.2 above. You shall reimburse us for all fees we pay to such persons upon receipt of a written demand. All determinations by us that you are in breach of clause 5.2 above shall in the absence of manifest error be final and binding on you.

6. Representations and warranties

6.1 You represent and warrant that:

- (a) you have good title, and have full and unfettered rights, to all Secured Property;
- (b) except as disclosed to us prior to the date of this Agreement, no other security exists over or affects any of the Secured Property, and you have not entered into any other agreement or arrangement to give or permit to exist a security over or affecting any of the Secured Property; and
- (c) you are lawfully entitled to create, in our favour, security in the Secured Property.

6.2 The representations and warranties contained in this clause 6 shall be deemed to be repeated by you on the first day of each month during the term of this Agreement by reference to the facts and circumstances then existing.

7. Enforcement events

7.1 The Securities shall become enforceable if an Event of Default has occurred.

7.2 At any time after the occurrence of an Event of Default, we may (without it being necessary to appoint a Receiver under this Agreement or give any prior notice to you) do all or any of the following:

- (a) declare the Secured Money to be due and payable, whereupon it shall become immediately due and payable;
- (b) enter into possession of all or any of the Secured Property as mortgagee (and, for that purpose, enter on any land or premises on which the Secured Property is kept and remove the Secured Property);
- (c) sell or otherwise dispose of all or any of the Secured Property in such manner and generally on such terms and conditions as we think desirable; and/or
- (d) (whether or not a Receiver has been appointed) exercise all or any rights which a person would have if appointed as a Receiver under this Agreement.

Our rights under this clause are in addition to any other rights we may have (whether under this Agreement or by law, by any other document or otherwise).

7.3 In respect of any sale, we may (subject to any applicable mandatory provisions of law):

- (a) sell all or any part of the Secured Property;
- (b) sell subject to or free of any security having priority over the security under this Agreement;
- (c) sell altogether or in lots;
- (d) sell by public auction or by private contract or partly by one and partly by other of those methods of sale;
- (e) sell subject to such conditions as to title or evidence of title, time or mode of payment of purchase money, or otherwise as we think fit;
- (f) buy in the Secured Property or any part of it at any sale by auction;
- (g) cancel any contract for sale, may resell the relevant property without being answerable for any loss or diminution in price and may allow or refund to the purchaser any sum which the purchaser may be entitled to upon such cancellation and to that extent may reverse any application of sale proceeds previously made;
- (h) execute assurances, give effectual receipts for the purchase money and do all such other acts and things for completing the sale as we may think proper; and
- (i) exercise any other incidental powers in relation to the sale as are conferred upon us whether under a Relevant Document or by law or by any other document.

8. Appointment of Receiver

8.1 We may (whether or not we have exercised any of our rights under clause 7 above):

- (a) at any time after the occurrence of an Event of Default; or
- (b) at your request, appoint in writing any person or persons to be Receiver of all or any of the Secured Property. We may remove any Receiver and may appoint a new Receiver in place of a Receiver who has been removed, retired or died, or in addition to a Receiver already appointed.

- 8.2 Every Receiver is your agent, except where (but only to the extent that) the Receiver is required by notice from us to act as our agent. We are not responsible for a Receiver's actions (including any misconduct, negligence or default of a Receiver).
- 8.3 A Receiver has the power to do all things in relation to the Secured Property and your business as if the Receiver had absolute ownership of the Secured Property and carried on your business for the Receiver's own benefit.
- 8.4 The rights of a Receiver under this clause are:
- (a) in addition to any other right to which that Receiver is at any time entitled (whether under a Relevant Document or by law or by any other document); and
 - (b) subject to any specific terms of appointment of that Receiver.
- 8.5 We may fix the remuneration of a Receiver at an amount, or on a basis, agreed with the Receiver or, failing agreement, as determined by us. All remuneration payable to any Receiver shall be payable by you upon demand, and shall form part of the Secured Money.
- 8.6 The provisions of this section are expressly subject to any applicable mandatory provisions of law.

9. Application of amounts

- 9.1 All amounts received or recovered, or applied, by us or any Receiver from the security created under this Agreement will be applied in the manner and order determined by us or the Receiver. In the absence of any determination, those amounts will be applied in the order described in clause 9.2 below. This clause is subject to:
- (a) any claims ranking in priority to the security created under this Agreement; and
 - (b) any mandatory provisions of law.
- 9.2 Subject to clause 9.3 below, amounts received or recovered by us or any Receiver from the security created under this Agreement will be applied in payment:
- (a) first, of all expenses incurred by one or both of us, and any attorney in the exercise, or attempted exercise, of rights under, or otherwise in connection with, any Relevant Document;
 - (b) secondly, of the Receiver's remuneration;
 - (c) thirdly, of all other Secured Money in such order as determined by us;
 - (d) fourthly, to each holder of a security of which we are aware and which ranks after this Agreement in relation to the Secured Property, to the extent, and in the order, of such priority; and
 - (e) fifthly, of any surplus to you.
- 9.3 If any Secured Money is contingently owing or not yet owing at the time any application of money is made, we or any Receiver:
- (a) may retain an amount equal to all or part of the amount of such Secured Money;
 - (b) will place that retained amount in an interest bearing deposit account until such Secured Money becomes actually due and payable or ceases to be contingently owing;
 - (c) will pay from the amount retained, all amounts which become actually due and payable after that time; and
 - (d) will apply the balance of the amount retained, together with interest earned whilst on deposit, in accordance with clause 9.2 above.

10. Other rights, powers and protections

- 10.1 Whenever you fail to comply with any obligation under this Agreement, we may (without prejudice to its other rights) pay all amounts and do all such other things as we deem necessary or desirable to remedy any such default or otherwise protect the security created by this Agreement.
- 10.2 To the maximum extent permitted by law, neither we nor a Receiver shall be accountable for any losses which may occur in, or as a result of, the exercise, purported exercise or non-exercise of any of their rights, and any such losses which are borne by us or a Receiver shall form part of the Secured Money.

11. Attorney

- 11.1 For the purpose of enabling us to obtain the full benefit of this Agreement, you irrevocably appoint us, every officer of us and every Receiver, individually, to be your attorney (the **Attorney**).
- 11.2 Each Attorney may:
- (a) on your behalf, in your name or otherwise, and at your expense do anything which you agree to do under the provisions of this Agreement or which, in the Attorney's opinion, is necessary or expedient to give effect to any right conferred on us or a Receiver by this Agreement, by law or otherwise (including executing deeds and instituting, conducting and defending legal proceedings); and
 - (b) delegate the Attorney's powers (including this power of delegation) to any person for any period, and revoke a delegation.
- 11.3 You hereby ratify anything done by any Attorney or delegate in accordance with this section.

12. Release and reinstatement

- 12.1 We shall not be obliged to release the security granted under this Agreement unless we are satisfied that:
- (a) we have received all of the Secured Money and all of the Secured Obligations have been performed;
 - (b) no payment received, or to be received, by us may be avoided, or required to be repaid by us, under any law relating to insolvency; and
 - (c) you have paid us such fee, charge or other amount as required by us in relation to that release (including our then-current security discharge fee being, as at the date of this Agreement, \$100).
- 12.2 If any payment received or recovered by us, a Receiver, or any other person on our behalf is or may be avoided by law:
- (a) such payment shall be deemed not to have affected or discharged your liability under any Relevant Document and we and you shall be restored to the position in which each would have been if such payment had not been received or recovered; and
 - (b) we shall be entitled to exercise all its rights which we would have been entitled to exercise if such payment had not been received or recovered, notwithstanding that we may have signed a release pursuant to this section.

PART C – TERMS OF GUARANTEE

1. Guarantee and indemnity

- 1.1 The Guarantor unconditionally and irrevocably guarantees to the Lender the due payment by the Borrower of the Secured Money and the due performance of, and compliance by the Borrower with, the Secured Obligations.
- 1.2 The Guarantor undertakes that if, for any reason, the Borrower does not pay when due (whether by acceleration or otherwise) any Secured Money, it will pay the relevant amount immediately on demand by the Lender.
- 1.3 As a separate and continuing undertaking, the Guarantor unconditionally and irrevocably undertakes to the Lender that, should the Secured Money not be recoverable from the Guarantor under this Agreement or another Relevant Document for any reason, including a provision of this Agreement or another Relevant Document or an obligation (or purported obligation) of the Borrower to pay Secured Money or to perform or comply with a Secured Obligation being or becoming void, voidable, unenforceable or otherwise invalid, whether or not that reason is or was known to the Lender and whether or not that reason is:
- (a) a defect in or lack of powers of a Relevant Party or the irregular exercise of those powers; or
 - (b) a defect in or lack of authority by a person purporting to act on behalf of a Relevant Party; or
 - (c) a legal or other limitation (whether under the Limitation Act 2010 or otherwise), disability or incapacity of a Relevant Party; or
 - (d) a dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation of a Relevant Party (or the commencement of steps to effect the same),

the Guarantor will, as a sole and independent obligation, pay to the Lender on demand the amount which the Lender would otherwise have been able to recover (on a full indemnity basis). In this clause, the expressions "Secured

Money” and “Secured Obligations” includes any indebtedness or obligation which would have been included in those expressions but for anything referred to in this clause.

- 1.4 All moneys from time to time received by the Lender in respect of the Secured Money from or on account of the Guarantor may be placed in a suspense account with a view to preserving the rights of the Lender to prove for the whole of the Secured Money in the event of any proceeding in, or analogous to, dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation of a Relevant Party.

2. Nature of guarantee and indemnity obligations

- 2.1 As between the Guarantor and the Lender (but without affecting the obligations of the Borrower) the Guarantor is liable under this Agreement as a sole and principal borrower and not as a surety.
- 2.2 The Guarantor is not to be discharged, nor are its obligations to be affected, by anything which, but for this clause, would or might have discharged the Guarantor or affected its obligations, including:
- (a) time, indulgence, waiver or consent whenever given to a Relevant Party or another person; or
 - (b) an amendment to a Relevant Document or to another security interest, guarantee, indemnity or other agreement (whether or not that amendment might increase the liability of the Guarantor under this Agreement or otherwise); or
 - (c) the making of, or failure to make, a demand on a Relevant Party or another person for payment; or
 - (d) the failure to obtain, or the failure of a person to execute or otherwise be bound by, a Relevant Document or another security interest, guarantee, indemnity or other agreement; or
 - (e) the enforcement of, or failure to enforce, a Relevant Document or another security interest, guarantee, indemnity or other agreement; or
 - (f) the release of, or the release of a Relevant Party from, a Relevant Document or a security interest, guarantee, indemnity or other agreement; or
 - (g) the dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation of a Relevant Party or another person (or the commencement of steps to effect the same); or
 - (h) the illegality, invalidity, unenforceability of, or defect in, a provision of a Relevant Document or a Relevant Party's obligations under any of them for any reason whatsoever, whether or not known to the Lender; or
 - (i) a person named as a Guarantor in this Agreement, or who was intended to enter into this Agreement or otherwise become a guarantor of the Secured Money, not having done so or not having done so effectively; or
 - (j) any other matter or thing whatsoever.

The Lender is to be under no liability to the Guarantor in respect of any of these matters, even if the Guarantor's rights in subrogation or otherwise may be prejudiced as a result.

- 2.3 The Guarantor's obligations under this Agreement:
- (a) are by way of continuing security, notwithstanding intermediate payments, settlement of accounts or payments or any other matter or thing whatsoever;
 - (b) are in addition to, are not to be merged in and are without prejudice to, any security interest, guarantee, indemnity or other agreement, whenever in existence, in favour of any person, whether from the Guarantor or otherwise; and
 - (c) are to remain in full force and effect until the execution by the Lender of an unconditional discharge of the obligations of the Guarantor under this Agreement pursuant to clause 2.4 below.
- 2.4 If, in the opinion of the Lender the Borrower has paid all the Secured Money and performed and complied with all the Secured Obligations, the Lender will execute a discharge of the obligations of the Guarantor under this Agreement.
- 2.5 The Guarantor will not, without the written consent of the Lender:
- (a) take, accept or hold a security interest from the Borrower or, in relation to Secured Money, from another person; or

- (b) take steps to recover (whether directly or by set-off, counterclaim or otherwise) or accept money or other property, or exercise or enforce rights in respect of, indebtedness of the Borrower to the Guarantor or, in relation to Secured Money, indebtedness of another person to the Guarantor; or
- (c) claim, prove or accept payment in composition by, or a dissolution of, the Borrower or, in relation to Secured Money, another person, and until such time as the Secured Money has been fully paid and the Secured Obligations have been fully satisfied the Guarantor waives all rights of subrogation to which it would otherwise be entitled by reason of performance of its obligations under this Agreement.

2.6 Representations and warranties

The Guarantor represents and warrants that each of the warranties set out in clause 4 of Part A would be true and correct if set out in full herein and made in respect of it.

2.7 Undertakings

The Guarantor undertakes to comply with each of the undertakings set out in clause 5 of Part A (other than sub-paragraph (e)) as if these undertakings were set out in full herein and made applicable to it.

PART D – DEFINED TERMS

1.1 Definitions

Advance means each amount advanced by us to you under this Agreement, or, where the context requires, the outstanding amount thereof.

Agreement means the Facility Application together with these PGG Wrightson Store Account Standard Conditions.

Amount Outstanding means, at any time, the aggregate principal amount of all Advances (or, as the context may require, any Advance) outstanding at that time, together with any capitalised or accrued and unpaid interest, fees and all costs and other amounts then due and payable by you to us.

Availability Date means the date on which we are satisfied that we have received all the documents described in clause 1 of Part A (and is the first date on which the Facility will become available for drawing by you).

Availability Period is the period commencing on the Availability Date and ending on the date on which the Facility is cancelled in accordance with this Agreement.

Borrower means each borrower specified in the Facility Application.

Business Day means a day (other than a Saturday or a Sunday) on which registered banks are open for general banking business in Auckland.

Date of Advance means, in relation to an Advance, the day on which the Advance is made or is to be made.

Default Rate is 5.00% per annum above the then-current Interest Rate, or such other default rate as notified to you by us in accordance with this Agreement.

Event of Default means the occurrence of any event specified in clause 6.1 of Part A.

Facility means the loan facility, the terms of which are set out in this Agreement.

Facility Application means the PGG Wrightson Store Account application duly signed by you and each Guarantor and accepted by us.

Facility Limit means the then-current Facility Limit notified to you by us from time to time.

Guarantor means each guarantor specified in the Facility Application.

Interest Rate is the then-current interest rate notified to you by us from time to time.

Lender means Heartland Bank Limited.

Lender Group means Heartland Bank Limited and:

- (a) all companies which, as at the date of this document are subsidiaries or related companies (in each case, as defined in the Companies Act 1993) of Heartland Bank Limited; and
- (b) all companies which may at any time hereafter become subsidiaries or related companies (in each case, as defined in the Companies Act 1993) of Heartland Bank Limited.

Limited Partnership means a partnership incorporated under the Limited Partnerships Act 2008 that is party to this Agreement.

PGG Wrightson Products means any goods and/or services sold or (as the context requires) available for sale by PGG Wrightson Limited to you on account, but excluding any goods and/or services that we determine to be used or acquired primarily for personal, domestic or household purposes, any charge card payments invoiced through PGG Wrightson Limited, and any other goods and/or services that we reasonably determine at any time to be inappropriate for funding by us under this Agreement.

PPSA means the Personal Property Securities Act 1999.

Professional Trustee means each person identified as such in the Facility Application.

Receiver means a receiver, or receiver and manager, appointed by us under this Agreement.

Relevant Document means this Agreement, the Securities and each other agreement, present or future, required or contemplated by or relating to this Agreement or the Securities.

Relevant Party means you, each Guarantor and each of the parties to a Relevant Document (other than the Lender).

Repayment Date means the then-current date for repayment of the Amount Outstanding as notified to you by us from time to time.

Secured Money means all your indebtedness (whether alone or with any other person, and in any capacity) to us (whether alone or with any other person, and in any capacity) including all interest, costs, taxes, commissions, charges and expenses (including legal fees and expenses) incurred or sustained in any way by us in connection with that indebtedness or the enforcement or attempted enforcement of that indebtedness under a Relevant Document.

Secured Obligations means all your obligations (whether present or future but other than obligations to pay money) to us under each Relevant Document.

Secured Property means all of your present and future right title and interest in personal property, and a reference to Secured Property includes any part of it.

Securities means the security interest over the Secured Property created by and under this Agreement, and any other security agreement, guarantee or other document (present or future) required by us and expressed as being, or intended to be, security for the Secured Money and the Secured Obligations.

Trust means each trust of which any trustee who is party to this Agreement is a trustee for the purposes of this Agreement.

1.2 PPSA references

The expressions **accession, accounts receivable, after-acquired property, aircraft, attach, chattel paper, financing statement, financing change statement, future advance, goods, inventory, investment security, motor vehicle, personal property, proceeds, purchase money security interest, security interest, serial-numbered goods, value** and **verification statement** have the respective meanings given to them under, or in the context of, the PPSA.

1.3 Interpretation

In this Agreement, unless the context otherwise requires, any reference to:

an **agreement** also includes a contract, deed, licence, franchise, undertaking, and other document (in each case whether oral or written) and includes that document as modified, supplemented, novated or substituted from time to time;

compromise includes a compromise as defined in section 227 of the Companies Act 1993;

a **consent** also includes an approval, authorisation, exemption, filing, licence, order, permit, recording and registration (and references to obtaining consents are to be construed accordingly);

disposal includes any sale, assignment, exchange, transfer, concession, loan, lease, surrender, licence, reservation, waiver, compromise, release, dealing or parting with possession, or the granting of any option, right or interest whatever, or any agreement for any of the same (but excludes any transaction which is a security), and dispose means to make a disposal, and acquisition and acquire shall be construed accordingly;

the **dissolution** of a person also includes the winding-up, bankruptcy, administration or liquidation of that person and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, carries on business or has assets;

indebtedness includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money;

something having a material adverse effect on a person is a reference to it having a material adverse effect:

- (a) on that person's financial condition or operations or on the consolidated financial condition or operations of it and its subsidiaries; or
- (b) on its commercial or financial prospects; or
- (c) on its ability or willingness to perform and comply with its obligations under any Relevant Document; or
- (d) on our ability to exercise our rights against it under any Relevant Document,

and references to **material adverse change** are to be construed accordingly;

a **person** includes an individual, body corporate, an association of persons (whether corporate or not), a trust and a state or agency of a state (in each case, whether or not having separate legal personality);

a **security interest** includes:

- (a) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement and other arrangement of any kind, the economic effect of which is to secure a creditor; and
- (b) a "security interest" as defined in section 17(1)(a) of the PPSA in respect of which the relevant person is the debtor;

tax(es) includes any present and future direct or indirect tax, levy, impost, duty, rate, charge, fee (including registration fees), deduction and withholding of any nature (including Goods and Services Tax) regardless of where and by whom imposed, levied, collected, withheld and assessed and includes interest, penalties, fines, costs, charges and expenses and other amounts relating to and arising in connection with taxes;

a gender includes each other gender;

the singular includes the plural and vice versa;

any legislation includes a modification and re-enactment of, legislation enacted in substitution for and a regulation, order-in-council and other instrument from time to time issued or made under that legislation; and

a party to this Agreement or another agreement includes its successors and, in the case of the Lender, its assignees and transferees and, in the case of a Borrower or a Guarantor, its permitted assignees and transferees.

Headings shall be ignored in construing this Agreement.

1.4 **Relationship with laws**

- (a) The rights provided in this Agreement are in addition to, and not exclusive of, any rights provided by law or by any other document.
- (b) If any provision in this Agreement conflicts with the provisions of any law or any provisions implied by any law, then:
 - (i) if the provisions of or implied by that law may be varied or negated, the provisions of this Agreement will take precedence and the provisions of or implied by that law will be deemed not to apply to this Agreement or to apply only as varied by the provisions of this Agreement; and
 - (ii) if the provisions of or implied by that law may not be varied or negated, then the provisions of this Agreement must be read subject to the provisions of or implied by that law.

1.5 **"You" and "us"**

In this Agreement, references to "you" are to the Borrower (and references to "your" are to be interpreted accordingly) and references to "we" and "us" are to the Lender (and references to "our" are to be interpreted accordingly).

HEARTLAND

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