

This Loan and Mortgage Agreement comprises the Loan and Mortgage Schedule and these Terms and Conditions made on the date in the Schedule between CNH Industrial Capital, you and any Guarantor named in the Schedule.

## **1. Offer and Acceptance**

- 1.1 By completing and signing this Agreement you make an irrevocable offer to borrow the Amount of Loan from CNH Industrial Capital and provide the Mortgage over the Goods to CNH Industrial Capital upon the terms of this Agreement.
- 1.2 CNH Industrial Capital is under no obligation to accept your offer. CNH Industrial Capital may accept your offer by signing the Loan and Mortgage Schedule in the space provided. The Agreement does not commence until and unless CNH Industrial Capital accepts the Loan and Mortgage Schedule.
- 1.3 CNH Industrial Capital may on or before acceptance of a Loan and Mortgage Schedule notify you that pre-settlement conditions or conditions precedent apply in which case no Agreement will be constituted by CNH Industrial Capital's acceptance of the Loan and Mortgage Schedule until all such conditions have been complied with to CNH Industrial Capital's reasonable satisfaction or waived by CNH Industrial Capital expressly in writing.
- 1.4 Where there is more than one Borrower named in the Schedule, each Borrower is jointly and severally liable to make the Loan Repayments and fulfil all other obligations to CNH Industrial Capital under this Agreement.

## **2. Term and Loan**

- 2.1 The Term commences on the Commencement Date and, subject to clause 23, continues for the number of months specified in the Schedule.
- 2.2 CNH Industrial Capital will pay the Amount of Loan to the Borrower or as the Borrower directs in the Direction and Authority to Pay specified in the Schedule.

## **3. Loan Repayments**

- 3.1 (a) You must repay CNH Industrial Capital the Amount of Loan and pay all Interest Charges which accrue on the Amount of Loan which are calculated in accordance with this Agreement.

(b) Throughout the Term you will pay to CNH Industrial Capital the Loan Repayments in the manner specified in the Schedule.

- 3.2 The Loan Repayments must be paid by direct debit or in such manner as CNH Industrial Capital may from time to time direct you in writing by 3.00 pm on the Payment Date in funds that are immediately available. If the date is not a Business Day then you must pay the Loan Repayment on the preceding Business Day.
- 3.3 Your obligation to pay the Loan Repayment and other moneys under these terms and conditions is absolute and unconditional. Without limitation your payment obligations will continue notwithstanding any defect in, breakdown, accident, loss, theft or damage to the Goods. Your payment obligations are absolute and are not subject to set-off or reduction for any reason.
- 3.4 You may not repay the whole or any part of the Amount of Loan or a Loan Repayment before it is due without CNH Industrial Capital's consent. If CNH Industrial Capital allows you to prepay the whole or any part of the Amount of Loan or a Loan Repayment CNH Industrial Capital will advise you of such in writing and you must pay the Prepayment Fee each time you make a prepayment.
- 3.5 If CNH Industrial Capital allows you to prepay part of the Amount of Loan or a Loan Repayment such prepayment will be applied against the unpaid balance of the Amount of Loan no later than the next Payment Date. CNH Industrial Capital will, at its discretion, recalculate and notify you of any variation to the amount of each Loan Repayment.

## **4. Interest Charges**

- 4.1 The Interest Charges payable by you to CNH Industrial Capital is calculated by multiplying the average of the unpaid balance of the Amount of Loan at the end of each day in the month, by the Interest Rate divided by 12.
- 4.2 The Interest Charges calculated in accordance with clause 4.1 are included in the Loan Repayment.
- 4.3 The Total Amount of Interest Charges specified in the Schedule are calculated on the assumption that you will pay each Loan Repayment on the Payment Date.
- 4.4 Where Loan Repayments are made quarterly, half yearly or yearly, the monthly interest charged is added to the unpaid balance of the Amount of Loan at the end of each month.

## 5. Your Warranties

5.1 You warrant to CNH Industrial Capital that:

- (a) all the information given to CNH Industrial Capital by you in connection with this Agreement is correct and is not by content or omission misleading;
- (b) you have entered into this Agreement exclusively for business purposes; and
- (c) in entering into this Agreement you have not relied upon any representation or statement made by CNH Industrial Capital or on its behalf.

## 6. Acquisition of Goods

6.1 You will obtain delivery of the Goods at your expense and, if required, arrange for its installation at your expense.

6.2 You acknowledge that:

- (a) you have examined the Goods before accepting it and satisfied yourself as to its condition and suitability for your purposes and its compliance with any prescribed safety standards;
- (b) CNH Industrial Capital has given no representation or warranty regarding the quality, fitness, safety or suitability of the Goods, and no person is authorised by CNH Industrial Capital to do so;
- (c) you will look to the supplier, and not CNH Industrial Capital, for any collateral warranty you may require in relation to the Goods; and
- (d) CNH Industrial Capital may assign to a third party its rights to certain amounts payable by you under this Agreement and in such event CNH Industrial Capital will undertake to the third party not to amend this Agreement or do anything which may reduce your obligations under this Agreement without the consent of the third party at its discretion.

## 7. Use and Location of Goods

7.1 Whilst the Goods are subject to the Mortgage to us you will:

- (a) preserve the value of the Goods and keep the Goods in good order and repair and properly operated and serviced in accordance with the manufacturer's instructions;

- (b) not attempt to sell, dispose of or encumber the Goods in any way without our prior written consent which we can provide at our absolute discretion and with such conditions necessary to protect our interest in and Mortgage over the Goods;
- (c) not alter any identifying markings on the Goods;
- (d) allow CNH Industrial Capital to inspect the Goods at any reasonable time upon CNH Industrial Capital giving you reasonable notice;
- (e) not remove the Goods from their Usual Location without CNH Industrial Capital's prior written consent; and
- (f) not allow the Goods to become a fixture.

## 8. Mortgage of Goods

8.1 You warrant that you own or will own the Goods and that nobody other than you or CNH Industrial Capital has or will have an interest in or claim over the Goods.

8.2 In consideration of CNH Industrial Capital providing the Amount of Loan, you agree to and grant a mortgage to CNH Industrial Capital of all your right, title and interest in and to the Goods to secure the payment of the Loan Repayments and any other monies owing to CNH Industrial Capital under this Agreement ("Mortgage").

8.3 The granting of the Mortgage confers, and CNH Industrial Capital acquires, a legal mortgage over the Goods as and from the Commencement Date.

## 9. Insurance

9.1 Whilst the Goods are subject to the Mortgage to us you must:

- (a) insure and keep the Goods insured against public risk, loss, fire, accident, theft and damage or as otherwise reasonably requested by CNH Industrial Capital for an amount equal to the full replacement value of the Goods and to insure and keep insured against all liability howsoever arising in respect of any such occurrence with a reputable insurer in CNH Industrial Capital's name as mortgagee and your name as owner;
- (b) hand to CNH Industrial Capital all policies of insurance and to pay promptly all premiums and stamp duty in respect of such policies and appoint us as your agent to make, enforce or settle any insurance claim in respect of the Goods and to permit

CNH Industrial Capital to receive all insurance moneys and execution of this Agreement shall be proof of CNH Industrial Capital's authority to act as agent and receive such moneys; and

- (c) not do or permit or suffer to be done anything which may prejudice any such insurance.

## 10. Loss or Damage

10.1 Whilst the Goods are subject to the Mortgage to us you must tell CNH Industrial Capital if any of the Goods are:

- (a) stolen; or
- (b) lost; or
- (c) destroyed; or
- (d) damaged or impaired to such an extent that you or the insurer decides that repair is impractical or uneconomic.

10.2 CNH Industrial Capital is entitled to receive all amounts which are payable to you by any insurer or other person because any of the things in clause 10.1 happens.

## 11. Essential Terms

11.1 The following terms are fundamental and essential terms of this Agreement:

- (a) that you pay all Loan Repayments on time (clause 3);
- (b) that you preserve the Mortgage over the Goods (clause 8);
- (c) that you insure the Goods whilst they are subject to the Mortgage (clause 9);
- (d) that you do not cease or threaten to cease carrying on business;
- (e) that you or a Guarantor do not become Insolvent;
- (f) that you do not attempt to sell, dispose of or encumber the Goods in any way whilst they are subject to the Mortgage (clause 7.1(b));
- (g) each of the warranties contained in clauses 5.1(a) and (b) are and remain correct;
- (h) that any Guarantor executes this Agreement effectively and is not discharged (clause 18);

- (i) you or a Guarantor are not in default of a Related Agreement; and

- (j) where you are a corporation (but not a Listed Corporation) no change in your control takes place without the prior written consent of CNH Industrial Capital.

11.2 You will be taken to have repudiated this Agreement if you breach or fail to comply with any of the essential terms referred to in clause 11.1.

## 12. Default

12.1 An event of default occurs if you do not perform on time any of your obligations under these terms and conditions, other than any of the essential terms referred to in clause 11.1, and fail to rectify such failure to perform within seven (7) Business Days of written notice from CNH Industrial Capital requesting its remedy.

## 13. Termination by CNH Industrial Capital

13.1 CNH Industrial Capital may give you notice terminating this Agreement if there is a breach of any essential term specified in clause 11.1 or if you commit an event of default in accordance with clause 12.1.

13.2 If CNH Industrial Capital terminates this Agreement under clause 13.1, you must immediately:

- (a) pay to CNH Industrial Capital the balance of the Amount of Loan then payable to CNH Industrial Capital under this Agreement ;
- (b) pay to CNH Industrial Capital any Interest Charges, or Government or Other Charges due but not paid by you;
- (c) pay to CNH Industrial Capital the Prepayment Fee and any early break costs incurred by CNH Industrial Capital to a third party in pre-paying any funding arrangements in connection with CNH Industrial Capital lending the Amount of the Loan to you and the termination of this Agreement prior to the expiry of the Term; and
- (d) pay to CNH Industrial Capital on demand the amount of any loss reasonably incurred by CNH Industrial Capital in terminating the Agreement.

13.3 If CNH Industrial Capital terminates this Agreement under clause 13.1, all moneys under a Related Agreement become immediately due and payable and you must pay them to CNH Industrial Capital.

- 13.4 In addition to the above CNH Industrial Capital and/or its authorised agents in enforcing its rights under the Mortgage may enter any premises where CNH Industrial Capital believes the Goods may be located and retake possession of the Goods. In such event you release CNH Industrial Capital and its authorised agents from and indemnify CNH Industrial Capital and its authorised agents against any liability or damage however arising or incurred in retaking or attempting to retake possession of the Goods.
- 13.5 After CNH Industrial Capital has taken possession of the Goods CNH Industrial Capital may sell the Goods.
- 13.6 If CNH Industrial Capital has taken possession of the Goods and sold them and the price CNH Industrial Capital gets for them is more than the money owed and paid by you to us CNH Industrial Capital will refund or credit to you the sale price of the Goods (less all costs and expenses CNH Industrial Capital incurs in selling or storing it). If the Goods are not returned or cannot be sold the sale price will be taken to be nil.
- 13.7 CNH Industrial Capital may also appoint one or more Receivers over all or part of the Goods.
- 13.8 Any termination of this Agreement or any payment by you does not affect any other rights CNH Industrial Capital has under these terms and conditions or at law or in equity.
- 13.9 CNH Industrial Capital will apply any moneys received by us under this clause in payment of the moneys owing to us by you in the order and manner we think fit in our absolute discretion.
- 13.10 Any sale or disposal of the Goods by CNH Industrial Capital or a Receiver is final and you agree not to challenge our right or the Receiver's right to sell or dispose of the Goods, nor the right of any person to acquire the Goods.

#### **14. Appointment of Receiver**

- 14.1 In exercising our power to appoint a Receiver, CNH Industrial Capital may appoint one or more Receivers to act individually or jointly over all or part of the Goods.
- 14.2 The Receiver may:
- (a) take or give up possession of the Goods;
  - (b) sever, remove and sell the Goods;
  - (c) do anything the law allows a Receiver to do;
  - (d) do any other thing specified in the terms of appointment of the Receiver.

- 14.3 The Receiver is your agent unless we specify otherwise and you are responsible for the actions and omissions of the Receiver and you are liable for payment of the fees, charges and expenses of the Receiver.

- 14.4 We may set the fees of the Receiver at an amount we consider appropriate.

#### **15. Release of Mortgage**

- 15.1 Upon all Loan Repayments and any other moneys owing to CNH Industrial Capital having been paid by you to CNH Industrial Capital and there are no other moneys owing or obligations outstanding by you to CNH Industrial Capital under this or any Related Agreement CNH Industrial Capital will discharge the Mortgage and release any claim on the Goods.

- 15.2 In circumstances where the Goods comprise more than one item of equipment, CNH Industrial Capital may, at its absolute discretion, at any time discharge the Mortgage over one or more items of equipment and release any claim on those Goods.

- 15.3 CNH Industrial Capital will also provide to you, at your expense, any document required to discharge or release the registration of a Mortgage.

#### **16. Exclusion of Warranties**

- 16.1 To the full extent permitted by law, all express and implied terms, conditions and warranties (other than those terms expressly set out in this Agreement) are excluded.

- 16.2 CNH Industrial Capital is not liable for any damage, injury or loss to any person or property arising from the possession, operation or use of the Goods.

#### **17. Costs, Duties, Charges and Commissions**

- 17.1 You must pay or reimburse CNH Industrial Capital for:
- (a) all current and future levies and taxes (other than income tax), stamp duties and other government duties payable in connection with this Agreement or any payment, receipt or other transaction arising under or contemplated by this Agreement or required to maintain CNH Industrial Capital's interest in the Goods;
  - (b) the Other Charges as and when they fall due;
  - (c) any expenses which CNH Industrial Capital may reasonably incur in retaking or

attempting to retake possession of the Goods and selling or attempting to sell the Goods;

- (d) any moneys which CNH Industrial Capital may reasonably think fit to pay to make good any failure by you to comply with any of your obligations; and
- (e) any costs or expenses (including legal and Receiver costs) reasonably incurred by CNH Industrial Capital in connection with the protection of the Goods or the enforcement of CNH Industrial Capital's rights under this Agreement.

17.2 You agree to CNH Industrial Capital paying commission, fees or other remuneration to the Dealer or any broker, agent, or other person who introduces you to CNH Industrial Capital or CNH Industrial Capital to you.

## **18. Indemnities**

18.1 You indemnify CNH Industrial Capital against:

- (a) any loss of or damage to the Goods however arising whilst they are the subject of the Mortgage;
- (b) liability for any death, injury or damage to any person or property arising directly or indirectly from the Goods or its use;
- (c) any claim for breach of intellectual property rights arising in connection with the Goods or its use;
- (d) any loss arising from any part of this Agreement being void, voidable or unenforceable for any reason;
- (e) any loss or liability incurred by CNH Industrial Capital resulting from possession, use or operation of the Goods by you;
- (f) anything done by CNH Industrial Capital in exercise or purported exercise of CNH Industrial Capital's rights under this Agreement;
- (g) any claim affecting CNH Industrial Capital's interest in the Mortgage over the Goods and any action taken by CNH Industrial Capital to protect such interest and Mortgage; and
- (h) any breach by you of your obligations under this Agreement, the occurrence of a breach of an essential term or an event of default in accordance with clauses 11 and/or 12 of this Agreement, or the repossession of the Goods or its storage.

18.2 Each Indemnity in clause 18.1 is a separate and independent obligation and continues after termination of this Agreement.

## **19. Overdue Payments**

- 19.1 You must pay interest calculated on daily balances on any amount which you do not pay on time for the period it is unpaid.
- 19.2 The rate of interest applying to each daily balance is the Default Rate.
- 19.3 Each month (or at any other time CNH Industrial Capital chooses) CNH Industrial Capital may add to the amount you owe CNH Industrial Capital any interest payable under clause 19.1 which is overdue (this is known as "capitalising" or "compounding" the interest). You will then be liable for interest under clause 19.1 on the total amount.
- 19.4 All interest payable under clauses 19.1 or 19.3 is payable by you on the next Payment Date or as CNH Industrial Capital otherwise specifies.
- 19.5 Your obligation to pay an amount on the Payment Date is not affected by clauses 19.1 –19.4.
- 19.6 If any amount you must pay under the Agreement becomes merged in a court order, you must pay interest on that amount as a separate obligation. The interest is payable from the date CNH Industrial Capital first asks you for the amount until that amount is paid. This obligation is not affected by the court order. The rate is the rate in clause 19.2 or the rate in the court order, whichever is the higher.
- 19.7 Clauses 19.1 – 19.6 apply equally to the Guarantor. In relation to any amount owed to CNH Industrial Capital by the Guarantor, each reference to "you" in these clauses is taken to be a reference to the Guarantor.

## **20. Compliance with Statutes**

20.1 You must at your own cost comply and cause CNH Industrial Capital to comply with all statutes, regulations, ordinances, and bylaws and the conditions of any licence or approval relating to the Goods or their use, installation, removal, replacement, maintenance or repair.

## **21. Trusts**

- 21.1 Your liability is not limited or otherwise affected by having entered into this Agreement as trustee of the trust named in the Schedule.
- 21.2 You warrant to CNH Industrial Capital that:
  - (a) you are the sole trustee of the trust;

- (b) you have the authority to enter into this Agreement as trustee of the trust and to do all things necessary to comply with your obligations under this Agreement in accordance with the deed of trust;
- (c) you have a right of indemnity against trust assets and will exercise that right to enable payment of money due under this Agreement;
- (d) this Agreement is for the benefit of the trust; and
- (e) no action has been taken or proposed to terminate the trust.

21.3 As a separate and independent right, you authorise CNH Industrial Capital to have recourse to and satisfy any of your liability under this Agreement directly out of the trust assets.

## **22. CNH Industrial Capital as your Attorney**

22.1 For valuable consideration you and all Guarantors each irrevocably appoint CNH Industrial Capital and each person within CNH Industrial Capital or a Related Entity whose title includes the word "director", "secretary", "manager" or "executive" severally your attorneys with power (before or after acceptance):

- (a) to do anything the attorney (acting reasonably) considers desirable to give effect to this Agreement;
- (b) to complete or correct any details of this Agreement;
- (c) to do anything you should have done pursuant to this Agreement; and
- (d) after the occurrence of any breach of an essential term or event of default in accordance with clauses 11 and 12 of this Agreement, to do anything the attorney considers desirable to facilitate the exercise of CNH Industrial Capital's rights under this Agreement.

22.2 Both you and each Guarantor must ratify all acts of its attorneys and pursuant to clause 22.1. You indemnify CNH Industrial Capital and each attorney appointed by clause 22.1 against any loss, damage, cost or claim suffered or incurred as a direct or indirect consequence of the exercise of any of CNH Industrial Capital's powers.

## **23. Variation**

23.1 No variation of this Agreement, other than pursuant to clause 3.5, will be effective unless it is in writing and signed by both parties.

## **24. Severance**

24.1 If any provision of these terms and conditions is or becomes illegal, invalid or unenforceable, such provision shall be severed and the remaining provisions shall continue unaffected.

## **25. Governing Law**

25.1 This Agreement is governed by the laws of New South Wales. You agree to submit to the non-exclusive jurisdiction of the courts of that state.

## **26. Waiver**

26.1 No waiver by CNH Industrial Capital of any default, breach or repudiation by you will affect CNH Industrial Capital's rights in respect of any further or continuing default, breach or repudiation.

## **27. Assignment and Agency**

27.1 CNH Industrial Capital may sell or assign, either absolutely or by way of security, its rights under this Agreement or its mortgage over the Goods.

27.2 You are not permitted to assign any rights or obligations you may have under this Agreement.

27.3 You acknowledge that CNH Industrial Capital may have entered into this Agreement as the agent for some other person and that the other person has or may acquire property in mortgage over the Goods.

## **28. Business Day**

28.1 If the day on which anything to be done is not a Business Day, then:

- (a) if it involves a payment other than a payment which is due on demand, it shall be done on the preceding Business Day; and
- (b) in all other cases, it shall be done no later than the next Business Day.

## **29. Notices**

29.1 Any notice to be given must be addressed to the relevant party at the address set out in the Schedule to this Agreement or at the address last notified by each party to the other in writing.

29.2 Notices may be hand delivered, sent by pre-paid mail, facsimile or email.

29.3 Notices sent:

- (a) by pre-paid mail will be taken to be received on the third Business Day after posting; and

- (b) by facsimile or email will be taken to be received on production of a transmission report from the transmitting machine indicating a successful transmission of the facsimile or email.

### 30. Blanks and Corrections

30.1 You authorise CNH Industrial Capital to complete any blank spaces in the Schedule relating to the Commencement Date and the serial numbers and other identification of the Goods. You also authorise CNH Industrial Capital to rectify any details in the Schedule to correct any manifest errors or omissions.

### 31. Certificates

31.1 The certificate of an officer of CNH Industrial Capital will (in the absence of manifest error) be prima facie evidence of the matters stated in that certificate.

### 32. PPSA

32.1 You agree to immediately notify CNH Industrial Capital in writing if you change your name or address or if there are any changes to any of the data relevant to a financing statement under the PPSA in respect of this Agreement, including (but not restricted to), any of the information in the Loan and Mortgage Schedule.

32.2 CNH Industrial Capital may register any Security Interest which it considers arises out of this Agreement (even before that Security Interest starts).

32.3 You agree that CNH Industrial Capital has a Security Interest in the Goods, securing the amount owing by you to CNH Industrial Capital under this Agreement and that the Security Interest extends to any *proceeds* (as defined in the PPSA) of the Goods.

32.4 You agree to promptly do anything (for example obtaining consents, signing documents, having others sign documents, supplying information, and entering into a subordination or priority agreement with any other secured party) which CNH Industrial Capital asks to:

- (a) ensure that the Security Interest created under this Agreement is perfected and otherwise effective;
- (b) assist CNH Industrial Capital to exercise any right in connection with the Security Interest.

32.5 If you also acquire a Security Interest in the Goods (for example, if you sublease them, even without consent), you must take all steps necessary to:

- (a) obtain the highest ranking priority possible in respect of that Security Interest (such as duly perfecting a purchase money security interest); and

- (b) reduce as far as possible the risk of a third party acquiring an interest in the Goods free of CNH Industrial Capital's Security Interest or your Security Interest.

32.6 You agree that any exercise by CNH Industrial Capital of its rights to enforce any Security Interest in the Goods necessarily also involves an exercise of all intellectual property rights relating to the Goods.

32.7 You certify that the Goods will be held by you in the furtherance of an enterprise to which an Australian business number has been allocated.

32.8 You waive any right you may have at any time (including under s157 of the PPSA) to receive a copy of a verification statement or other notice contemplated in the PPSA.

32.9 You waive your right to receive anything from CNH Industrial Capital under s275 of the PPSA, and agree not to make any request of CNH Industrial Capital under that section. You agree with CNH Industrial Capital for the purposes of s275(6)(a) of the PPSA that neither it nor you will disclose any information of the kind mentioned in s275(1) of the PPSA (except as provided for in s275(7)).

32.10 You authorise and request CNH Industrial Capital pursuant to s275(7)(c) of the PPSA to obtain from the holder of any other Security Interest in the Goods any of the information referred to in s275(1) of the PPSA relevant to that Security Interest.

32.11 Pursuant to s115 of the PPSA, you and CNH Industrial Capital contract out of each provision of the PPSA which s115 permits, except sections 123, 126, 128, 134(1) and 135. (However, sections 123, 128 and 134(1) do not apply to the extent that they would derogate from a right provided for in this Agreement on the part of CNH Industrial Capital).

32.12 To the extent permitted by law, you agree that CNH Industrial Capital owns, and you waive any rights you may have to, anything installed in or affixed to the Goods, including any rights you might otherwise have under Part 3.3 of the PPSA.

### 33. Guarantee and Indemnity

33.1 Each Guarantor acknowledges that CNH Industrial Capital enters into this Agreement at the Guarantor's request and upon the basis of this guarantee and indemnity having been given.

- 33.2 Each Guarantor unconditionally and irrevocably guarantees the punctual performance of all of the Borrower's obligations under this Agreement. Each Guarantor must immediately upon demand pay CNH Industrial Capital any amount not paid when due by the Borrower under this Agreement.
- 33.3 Each Guarantor unconditionally and irrevocably indemnifies CNH Industrial Capital against all losses, damages, costs, charges, liabilities and expenses which CNH Industrial Capital may at any time suffer or incur because:
- (a) any of the Borrower's obligations expressed in this Agreement is void, voidable or wholly or partially unenforceable;
  - (b) CNH Industrial Capital has to disgorge any money paid to CNH Industrial Capital on the Borrower's account under this Agreement; or
  - (c) the Borrower fails to perform any obligation under this Agreement.
- 33.4 The indemnity in clause 32.3 is a continuing obligation, separate and independent from each Guarantor's other obligations under any other Agreement. It continues after those other obligations end.
- 33.5 Each Guarantor must pay moneys owing under this Agreement in immediately available funds without any deduction and waives any right of set-off and any right to rely on any defence available to the Borrower.
- 33.6 The obligations and liabilities of each Guarantor and CNH Industrial Capital's rights under this Agreement continue and are not affected by:
- (a) CNH Industrial Capital granting of any time or indulgence to the Borrower or another person;
  - (b) CNH Industrial Capital compounding or compromising with or wholly or partially releasing the Borrower or another person;
  - (c) laches, acquiescence, delay, acts, omissions or mistakes by CNH Industrial Capital;
  - (d) CNH Industrial Capital taking, varying, wholly or partially discharging or otherwise dealing with or losing or impairing any security for the Borrower's obligations under any this Agreement or any such security being or becoming void, voidable or unenforceable;
  - (e) any person who is intended to assume liability as a Guarantor under this Agreement not doing so effectively, failing to execute this Agreement or being discharged;
- (f) any novation, assignment, termination or variation of this Agreement;
  - (g) the Borrower's death, mental illness or bankruptcy or the death, mental illness or bankruptcy of any individual Guarantor;
  - (h) if the Borrower or any Guarantor is a corporation and is Insolvent or deregistered;
  - (i) a Agreement being constituted without reference to or consent by the Guarantors; or
  - (j) anything else which might otherwise have such effect at law or in equity.
- 33.7 (a) Each Guarantor's liability is not limited or otherwise affected by having entered into this Agreement as trustee of the trust named in the Schedule.
- (b) If any Guarantor has entered into this Agreement as trustee of the trust, the Guarantor must exercise its right of indemnity against trust assets to enable payment of money due under this Agreement and as a separate and independent right, the Guarantor authorises CNH Industrial Capital to have recourse to and satisfy any liability of the Guarantor under this Agreement directly out of the trust assets.
- 33.8 Each Guarantor acknowledges CNH Industrial Capital may claim against the Guarantor under this Agreement before CNH Industrial Capital enforces any of its rights:
- (a) against the Borrower or any other person; or
  - (b) under another document such as a guarantee and indemnity, Mortgage, charge or other security.
- 33.9 This guarantee and indemnity does not merge with or adversely affect:
- (a) any other guarantee and indemnity, or Mortgage, charge or other security, or right or remedy to which CNH Industrial Capital is entitled at any time; or
  - (b) a judgment or order which CNH Industrial Capital obtains against any Guarantor in respect of an amount payable under this guarantee and indemnity.
- CNH Industrial Capital may still exercise its rights under the guarantee and indemnity as well as



under the judgment, order, other guarantee or security.

33.10 So long as an amount payable under this Agreement remains unpaid, each Guarantor may not, without CNH Industrial Capital's consent:

- (a) exercise any legal rights to claim to be entitled to the benefit of another guarantee or mortgage, charge or other security given in connection with an amount payable under this Agreement;
- (b) claim an amount from the Borrower or another Guarantor under a right of indemnity; or
- (c) claim an amount in the Borrower's or another Guarantor's insolvency.

### 34. Privacy Matters

(For the purposes of this clause 34 only, a reference to "you" or "your" is also a reference to the directors of the Borrower, and/or any Guarantor of the Borrower and, where the Borrower is one or more individuals or a partnership, each and every individual or partner.)

34.1 CNH Industrial Capital may collect personal information from you either directly or indirectly. CNH Industrial Capital will use, disclose and make accessible your personal information in accordance with its Privacy Policy, the Privacy Act 1988 and the National Privacy Principles.

34.2 You authorise CNH Industrial Capital to give to and seek personal information about your credit arrangements or obtain a consumer or commercial credit report containing information about you from any credit reporting agency.

34.3 The personal information which CNH Industrial Capital may give or seek includes (where applicable):

- (a) your name, sex, date of birth, current address and last two addresses, current or last known employer and driver's licence number;
- (b) the fact that you have entered into a Master Loan and Mortgage Agreement and propose to enter into Loan and Mortgage Agreements, the value of the Goods purchased or proposed to be purchased under a Loan and Mortgage Agreement, and any obligations you may have under this Agreement;
- (c) that you have drawn cheques for \$100.00 or more which have been dishonoured more than once; and

(d) that court judgments and/or bankruptcy orders have been made against you.

34.4 You authorise CNH Industrial Capital to use the credit report, or obtain a further credit report, for the purposes of collecting overdue payments relating to credit owed by you.

34.5 You authorise CNH Industrial Capital to give to and seek credit reports and other information about your credit arrangements from:

- (a) any credit providers named in any application or Schedule submitted by you; and
- (b) any credit providers that may be named in a credit report issued by a credit reporting agency.

34.6 Your authorisation entitles CNH Industrial Capital to exchange information about your credit worthiness, credit standing, credit history and credit capacity.

34.7 Your authorisation also entitles CNH Industrial Capital to give the following information to a credit reporting agency (where applicable):

- (a) that you are sixty (60) days or more overdue in making a payment to us and that steps have been taken to recover all or any part of the amount which you owe; and
- (b) that in CNH Industrial Capital's opinion you have committed a serious credit infringement.

34.8 Credit reports and other personal information CNH Industrial Capital obtains about your credit arrangements from a credit reporting agency or a credit provider may be used by CNH Industrial Capital for the following purposes:

- (a) to assess any application or Schedule by you;
- (b) to collect payments that are overdue;
- (c) to notify a credit provider if you breach any obligations you may have under this Agreement;
- (d) to exchange personal information with other credit providers as to the status of your account where you are in breach of a contract with a credit provider;
- (e) to assess your credit worthiness;
- (f) to allow a credit reporting agency to create a file about you;

- (g) to administer your account;
- (h) to monitor your performance or compliance under any agreement for sale or supply of goods or services connected to provision of credit by CNH Industrial Capital; and
- (i) any other purpose permitted or required by law.

34.9 You authorise CNH Industrial Capital to exchange personal information about you with:

- (a) any person or organisation named by you in an application or a Schedule submitted by you or provided from time to time;
- (b) your proposed Guarantors;
- (c) CNH Industrial Capital's collection agents or unrelated debt recovery organisation if you are in breach of this Agreement; or
- (d) CNH Industrial Capital's related companies and organisations which service your account and this Agreement.

34.10 You also authorise your accountant to release and disclose your financial information to CNH Industrial Capital or its agents and you authorise government authorities which hold your driver's licence and/or motor vehicle registration information to confirm your address details to CNH Industrial Capital or CNH Industrial Capital's authorised agents.

34.11 You authorise CNH Industrial Capital and its Related Entities to use your personal information for marketing, planning and product development purposes by CNH Industrial Capital or CNH Industrial Capital's Related Entities, agents, dealers, contractors and authorised suppliers. You can request not to receive direct marketing communications.

34.12 You can request a copy of CNH Industrial Capital's Privacy Policy or obtain access to or update your personal information by writing to "The Privacy Officer" at CNH Industrial Capital's address in this Agreement.

34.13 If you provide personal information about another individual you agree that you will inform the individual that personal information about them has been supplied to CNH Industrial Capital, why it has been provided and that they can contact CNH Industrial Capital to obtain access to or update their personal information or get a copy of CNH Industrial Capital's Privacy Policy.

34.14 If you do not provide the information requested or do not give your authority for the use of the information CNH Industrial Capital may decline any application or Schedule submitted by you.

34.15 CNH Industrial Capital may use or disclose this information before, during or after the term of this Agreement.

## 35. Definitions and Interpretation

35.1 In this terms and conditions:

**Borrower, you or your** means the person named as Borrower in the Schedule.

**Business Day** means a day in which banks are open for general banking business in the state or territory of the Borrower's address specified in the Schedule.

**Commencement Date** means the date specified in the Schedule being the earlier of:

- the date CNH Industrial Capital pays the Amount of Loan to you; and
- the date on which the Goods are delivered into your possession by the Dealer.

**Default Rate** means the interest rate which is three percent (3%) above the interest rate implicit in this Agreement.

**Goods** means the equipment described in the Schedule, and includes any part of that equipment, any substituted equipment and any accessories, modifications, implements, manuals, certificates of registration, licences or other items relating thereto (together the "accessories") regardless of whether such accessories were provided at the time of supply of the Goods or acquired subsequently by the Borrower.

**Guarantor** means any guarantor named as such in the Schedule.

**GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**Insolvent** means unable to pay debts when they fall due, in bankruptcy, in receivership, administration, wound up, subject to any arrangements, assignment or composition with creditors or protected from any creditors under any legislation.

**Listed Corporation** has the same meaning given to that term in the *Corporations Act 2001* (Cth)

**Loan and Mortgage Agreement or Agreement** means the agreement between CNH Industrial Capital, you and any Guarantor comprised of the Schedule and these Terms and Conditions.

**Loan Repayment** means the Loan Repayments as set out in the Schedule.

**Mortgage** means the mortgage over the Goods granted by the Borrower to CNH Industrial Capital set out in clause 8.

**Payment Date** means each date for a Loan Repayment calculated in accordance with the Loan Repayments section of the Schedule.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)* and all regulations and other subordinate legislation pursuant to it.

**Receiver** means a receiver or receiver and manager.

**Related Agreement** means any agreement between you and CNH Industrial Capital or any agreement between you, a Guarantor and/or a Related Entity of CNH Industrial Capital.

**Related Entity** has the meaning given to it in the Corporations Act.

**Schedule** means the schedule entitled Loan and Mortgage Schedule - Tax Invoice which forms part of this Agreement.

**Security Interest** means a *security interest* for the purposes of the PPSA.

**Term** means the term of the loan referred to in clause 2.1 and specified in the Schedule.

**Usual Location** of Goods means the address specified as such in the Schedule.

In these terms and conditions:

- (a) the singular includes the plural and vice versa;
- (b) "persons" includes a firm, body corporate, unincorporated association or any other body or entity;
- (c) a reference to either party includes that party's successors, legal personal representatives and permitted assigns;
- (d) any appointment, agreement, warranty, representation or obligations which binds or benefits two or more persons under this Agreement binds or benefits those persons jointly and severally;
- (e) a reference to a clause is a reference to a clause of these terms and conditions;
- (f) words or definitions used in the Schedule are to be read and interpreted in accordance with that definition in these terms and conditions unless a contrary intention applies;

(g) headings are inserted for convenience only and do not affect interpretation;

(h) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Saving Time as appropriate.