

**Summary of Changes to the
Terms and Conditions for
Business Finance –
as applicable to SuperGear**





1. General

From 30 April 2018, CBA's Current Terms and Conditions for Business Finance (the current version of which was issued 1 July 2017) (the Old Terms) will be replaced with new terms and conditions (the New Terms) which are shorter, better organised and simpler to read. For SuperGear, the New Terms have been renamed Current Terms and Conditions for SuperGear. The New Terms reflect CBA's commitment to ensure its customer contracts do not contain terms which are unfair and to implement recommendations of the Small Business Inquiry conducted by the Small Business and Family Enterprise Ombudsman.

This document explains the substantive changes that are made to the Old Terms as they apply to SuperGear facilities. If there is any inconsistency between this document, the tombstone published 16 March 2018 and the New Terms, the New Terms prevail.

Rights and obligations accrued before 30 April 2018 are unaffected.

Clause references in square brackets like this “[]” are to the Old Terms. Clause references in round brackets like this “()” are to the New Terms.

Find out more:

- The New Terms are available at commbank.com.au/ctcsg.
- Details of changes and a copy of the New Terms as they apply to other facilities are available at commbank.com.au/businessfinancetandc.

You can ask for an electronic or paper copy by contacting your relationship manager, business banker or broker, or by calling 13 1998

2. Current Terms and Conditions for SuperGear

General	
Removed	Various provisions relating to facilities other than SuperGear, or features of facilities not available for a SuperGear Facility.
	Express statements that a customer must be at least 18 years old and must not be an undischarged bankrupt or in similar circumstances (because we would not provide a facility without first verifying this). [A.1]
	<p>Some of the declarations you make when you sign including:</p> <ul style="list-style-type: none"> • as to your name being correct; • that the facility is for business or investment purposes; • that you have sole responsibility for managing your financial affairs so you can repay the facility; and <p>and if you are a company, the declarations that:</p> <ul style="list-style-type: none"> • you will tell us promptly of any intention to materially change your structure, ownership or financial position where such a change could affect your ability to repay the facility; • where the Transaction involves the giving of financial assistance by a company to acquire shares in it, the financial assistance is permitted under section 260A(1) of the Corporations Act. <p>[A.12.1](1.2.1, 1.2.2)</p>



	<p>Various provisions relating to Security, Security Property, and our authorised powers on default which are already dealt with in the relevant Security documents [A.3.1, A.3.7, A.4] / (1.5, 6.4.1)</p> <p>The express statement that "If you are a trustee, other conditions apply" (because with SuperGear, you will always be a trustee); [A.1]</p> <p>The clause under which anything we do under the contract is subject to any restrictions imposed by law. [A.10.3]</p> <p>The express permission you give to pay commission to brokers and referral agents and the exclusion of any liability we may have for their acts or omissions. [A.10.9]</p> <p>The condition that if Premium Custody Services Pty Ltd is the Custodian, it will only accept a transfer of the security property into its name if:</p> <ul style="list-style-type: none"> • copies of all enquiries and all reports and responses to enquiries about the security property have been provided to it, and • those enquiries, reports and responses are satisfactory to it, and • an acceptable property manager has been appointed under a SuperGear property management agreement. <p>[C.1.1]. Note that this or similar conditions may be set out in another agreement between you and the Custodian.</p> <p>The express restriction against us varying a term so as to cause the loan to breach section 67A of the Superannuation Industry (Supervision) Act 1993 (Cth). [C.1.12]</p>
Setting up and using your facility	
Removed	<p>Some circumstances in which we have a right to withdraw our offer if it is not accepted within certain time [A.2]/(2.2)</p>
	<p>References to payment of a commitment fee because all fee information is separately disclosed [A.2]</p>
	<p>The description of how we disburse funds under a facility [A.3.8]</p>
Changed:	<p>The permitted purposes for which we make a SuperGear Facility available.</p> <p>Now, you can only borrow for the purpose set out in the Offer Document, and only use your Loan to:</p> <ol style="list-style-type: none"> a) pay the purchase price of the Security Property at settlement and, if we previously agree, pay for repairs and maintenance when you buy it in accordance with section 67A of the Superannuation Industry (Supervision) Act 1993 (Cth); b) refinance a loan that complies with section 67A of the Superannuation Industry (Supervision) Act 1993 (Cth) and was used to buy the Security Property; or c) refinance a loan that was used to buy the Security Property in order to ensure compliance with the Superannuation Industry (Supervision) Act 1993 (Cth). <p>[C.1.3]/(2.1)</p>
	<p>The timeframe for withdrawal / cancellation by us for your failure to use the facility has changed from one month to three months [A.2]/(2.2).</p>
	<p>Clarification that redraw is not available with SuperGear. [C.1.5]/(2.3(b)).</p>

Costs and Payments	
Added	An explanation that any default interest must be paid on the day you pay out the Facility (3.1.4)
	A customer obligation to reimburse us for costs we incur in establishing or managing a facility (3.1.6.);
	Express statement of our right (without obligation) to change scheduled repayments in line with interest rate changes and a warning that if we don't, a larger than expected Outstanding Balance may result when the facility ends (3.2.2).
	An express obligation to pay the Outstanding Balance by the end of the Term and to pay interest and fees until then (3.2.2).
	An explanation that fixed rates we disclose are only indicative until the time of drawdown under the Facility (3.1.3.)
	Explanation that a under a fixed rate loan, pre-repayment, change to another fixed rate or a switch to variable rate are all treated as prepayments of the Outstanding Balance for the purposes of calculating an Early Repayment Adjustment (3.3.1.).
Removed:	Terms relating to interest in advance. Payment of interest in advance is not permitted in relation to SuperGear Facilities. [C.1.9]
	Our express authority to debit any amount exceeding the amount of the loan/facility we give to an account with us which you nominate [A.3.9]
	An explanation that for amounts payable where no payment time is specified, the amount is payable on our request.[A.5.1]
	An explanation that repayments include principal (unless it is an interest only repayment) [A.5.2]
	An explanation that if a loan is not repaid at the end of the term, we may require it to be repaid and until then, it continues on an interest only basis; [A.5.2].
	Our express right to debit amounts to an account when due and to use payments we receive to satisfy these amounts; [A.5.2]
	An explanation that some facilities allow payment by cheque [A.5.3]
	An express explanation of your right to nominate another account as your Nominated Account for debiting payments [A.5.3]/(3.4)
	An explanation of the actions we will take if the Nominated Account has insufficient funds for processing payments. .[A.5.3]/(3.4)
	Our express authority, where you have multiple loan accounts or sub-accounts, to debit interest to one of these where the Nominated Account has insufficient funds [A.5.3]/(3.4)
	The description of the types of interest rate options available to SuperGear, namely, fixed, fixed (residentially secured) and variable.[C.1.8]
	An explanation that where the Nominated Account or another account is debited and this results in a debit balance, we may capitalise interest, fees and other charges or debit an amount payable by you under the Contract to these accounts. This right continues in a different clause with different wording. [C.1.7]/(3.4)
	The customer obligation to reimburse us for amounts we pay the Custodian and to hold the Custodian and its officers harmless against liability or expense incurred in connection with acting as custodian of the Security Property.[C.1.4] Note that this or similar conditions may be set out in another agreement (such as the relevant Security).



Changed	Explanations of the concepts of principal and interest have been included (3.1);
	For details of payment obligations (for principal, interest and fees), you are now referred to your Offer Document (3.1).
	The default interest rate. This has been changed to the monthly excess drawing rate available at commbank.com.au/business/rates-fees.html . [A.7.2]/(3.1.4.).
	The Nominated Account criteria have changed. Now, the Nominated Account must be approved by us – usually, we will require the Nominated Account to be a transactional account with us that is in your name. [C.1.2]/(3.4.2).
	The timing requirements for pre-payments during a fixed rate period (10 days' notice, and payment within 3 months) have been replaced with our ability to refuse any pre-payment [C.1.9]/(3.3.1)
	There is now recognition that you and we may agree to change the interest charging frequency from monthly. The additional interest margin (where interest is charged other than monthly) is referred to as a premium to match the term used in the Offer Document [C.1.8]/(3.1.2)
Changes to your facility	
Added	A customer obligation to repay any amount exceeding the Limit when it is reduced or cancelled. In this case, an Early Repayment Adjustment may have to be paid (as for any pre-payment in a Fixed Rate Period). [C.1.3, C.1.9]/(4.3)
Changed	<p>The clauses which describe what changes we can make without your agreement and how and when we must give notice of those changes have been consolidated into a single table and changed.</p> <p>a. Changes to notice period:</p> <ul style="list-style-type: none"> i. you will receive at least 30 days' notice of any change adverse to you relating to interest rates, fees or repayments, except for changes to variable interest rates applicable to our customers generally (which can be notified on the date of change or, if the rate is linked to market rates, as soon as reasonably practicable afterwards) or to already publicised government fee changes; ii. For other changes which are adverse to you, you will generally receive 90 days' notice except where urgent action is necessary to manage our risk; iii. For changes which are not adverse to you, you will receive notice no later than the day the change takes effect; and iv. For changes which reduce your obligations or extend time for payment, you will receive notice no later than when we give you the next statement of account. <p>b. Changes to notice method: Most changes can be made by advertisement in the national or local media – it is only in certain limited circumstances where notice is required in writing (for example, where the change is specific to you, the change relates to the interest methodology or frequency, repayments or repayment frequency or new bank fees) and this is not required if we can't reasonably contact you. 'Writing' includes electronic notice by email or via our online banking platforms.</p> <p>[A.9]/(4.2)</p>
	The period of notice we must give for reducing or cancelling the Limit is increased from 30 days to 90 days [C.1.6]/(4.2).

Managing your account	
Added	A requirement for customers to provide evidence we need to complete <i>Know Your Customer Checks</i> in relation to a person before appointing that person as an Authorised Representative of the Customer (5.1)
Your ongoing obligations	
Added	An obligation for each customer and guarantor to ensure the contract and guarantee is effective (6.4.1)
	Our right to request a valuation of Security Property not more than once every 2 years at your cost, but if you pay, you will be entitled to a copy of the report (6.4.2)
	A general restriction against assigning your rights under the Contract without our written consent. (6.4.6);
	A commitment by us not to unreasonably withhold consent to certain changes you make as trustee including if you: <ol style="list-style-type: none"> i. retire or are removed as trustee; ii. allow additional trustees to be appointed; iii. terminate the trust or vary the trust deed in a way that affects <i>your</i> ability to fulfil <i>your</i> obligations under the <i>Contract</i>; iv. re-settle the <i>Fund</i> or determine a vesting date; v. limit <i>your</i> right of indemnity from the <i>Fund</i> for actions <i>you</i> take to fulfil <i>your</i> obligations under the <i>Contract</i>; or vi. change the members of the <i>Fund</i>. [A.11.3]/(6.4.8)
Removed	The customer obligation to notify us of a material default [A.3.2].
	The customer obligation to notify us if the customer believes we have made an offer to the customer which is not specified in the Offer Document or Account Confirmation Document [A.3.2].
	The customer obligation to tell us if the Loan Balance as a proportion of the Market Value of the Security Property exceeds the Loan to Value Ratio specified in the Offer Document.[C.1.6]
Changed	The customer obligation not to borrow more than \$5,000 without our consent if such borrowing would have a material adverse effect. The relevant threshold amount has been increased to \$100,000 [A.3.4]/(6.4.4);
	The Financial Covenants clause has been rewritten such that applicable covenants will appear in the Offer Document. Key definitions have been relocated and only 3 specific types of covenant definitions are identified as relevant to SuperGear customers: <ul style="list-style-type: none"> • interest coverage ratio • interest expense • net profit before tax. The interest coverage ratio definition has been amended to include depreciation and amortisation in the numerator of the ratio. [A.13]/(6.3, 10.2)
Defaulting on your contract	
Changed	The circumstances of default have changed (7.2). You are in default if: <ol style="list-style-type: none"> a) <i>you miss a scheduled repayment or don't pay us an amount by the due date</i>



	<ul style="list-style-type: none"> b) <i>you</i> exceed <i>your Limit</i> (whether due to <i>Drawings</i>, currency fluctuations, interest or other charges being debited to the <i>Loan Account</i>, or otherwise); c) <i>you</i> or a <i>Security Provider</i> is <i>Insolvent</i>, goes into bankruptcy, voluntary administration, other insolvency process or arrangement, or no longer has legal capacity; d) material creditor enforcement action is taken against <i>you</i> or a <i>Security Provider</i> or their assets; e) we believe on reasonable grounds that: <ul style="list-style-type: none"> i. it has become unlawful for <i>you</i> or us to continue with the <i>Loan</i>; or ii. <i>you</i> or anyone else associated with the <i>Facility</i> is a <i>Proscribed Person</i>; f) <i>you</i> or a <i>Security Provider</i> gives us information or makes a representation or warranty to us which is materially incorrect or misleading (including by omission) and which materially increases our risk in relation to a <i>Facility</i>; g) <i>you</i> use the <i>Facility</i> for a non-approved purpose which materially increases our risk in relation to a <i>Facility</i>; h) a <i>Security Provider's assets are dealt with, or attempted to be dealt with in breach of the Loan</i>, or any <i>Security</i> or other agreement with us without our consent and such dealing materially increases our risk in relation to a <i>Facility</i>; i) <i>you</i> or a <i>Security Provider</i> do not provide us financial information as required; j) <i>you</i> or a <i>Security Provider</i> no longer have required insurance for the <i>Security</i>; k) we decide there has been an unacceptable material change in the legal or beneficial ownership, or management or <i>Control</i> of <i>you</i> or a <i>Security Provider</i> or <i>your</i> or their business changes without our consent; or l) <i>you</i> breach a <i>Financial Covenant</i>. 										
	<p>The applicable rate for interest on judgement debts. This is now to be the highest of:</p> <ul style="list-style-type: none"> a) the rate in the court order; b) the applicable statutory interest rate; or c) the rate in the <i>Contract</i>. <p>[A.7.5](7.3.5.)</p>										
Trustees											
Removed:	The assurance: that you also enter the contract in a personal capacity [A.11.1]/(1.2.3).										
Notices											
Removed	An explanation of your right to withdraw your agreement to receive information by electronic communication [A.8.2]/(6.1.1).										
Changed	<p>The time at which our notices to you take effect has been restated and for a notice given by advertisement in the media, this will take effect on the day it appears. Also, these will be effective even if you are unable to receive or view them [A.8.1]/(8.2.2).</p> <table border="1" data-bbox="347 1727 1377 2047"> <thead> <tr> <th data-bbox="347 1727 587 1800">Notices sent by</th> <th data-bbox="587 1727 1377 1800">Take effect as follows (unless a later date is set out in the notice)</th> </tr> </thead> <tbody> <tr> <td data-bbox="347 1800 587 1839">Post</td> <td data-bbox="587 1800 1377 1839">On the day they would normally be received</td> </tr> <tr> <td data-bbox="347 1839 587 1912">Fax</td> <td data-bbox="587 1839 1377 1912">At the time shown on a transmission report showing the fax was sent in full</td> </tr> <tr> <td data-bbox="347 1912 587 1986">Email</td> <td data-bbox="587 1912 1377 1986">On the day the email is received by your email host or internet service provider</td> </tr> <tr> <td data-bbox="347 1986 587 2047">Making it available online</td> <td data-bbox="587 1986 1377 2047">On the day the notice advising you it is online takes effect</td> </tr> </tbody> </table>	Notices sent by	Take effect as follows (unless a later date is set out in the notice)	Post	On the day they would normally be received	Fax	At the time shown on a transmission report showing the fax was sent in full	Email	On the day the email is received by your email host or internet service provider	Making it available online	On the day the notice advising you it is online takes effect
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	Advertising in media	On the day the advertisement appears in the media
Our rights, reversed payments and refusal of service		
Changed	The exclusion of our liability for loss caused by our exercising, trying to exercise, failing to exercise, or delaying exercising, a right under the Contract includes an expanded proviso such that the exclusion does not apply if we caused the loss by our (or our receiver's) negligence, fraud or wilful conduct [A.10.2](9.2).	
	The 'mistaken credits' clause has been consolidated with the 'general refunds' clause to make it clear that we may be obliged or may reasonably agree to refund a payment if ordered by a court or if a trustee in bankruptcy, a liquidator or someone else asks us to do so (for example, as a result of a mistaken payment). If that happens, we may return the funds to the relevant party without notice to you and treat the original payment as if it had not been made including by stopping you from withdrawing the amount. [A.5.7, A.10.5]/(9.4).	
Meanings of words		
Changed	The definition of 'Group Member' has changed to mean you and each other entity for which we administer a customer service relationship as a group as determined by us and includes co-account holders, related entities, associates, guarantors and Security Providers (note that this will affect any existing financial covenants).	
	<p>The definition of 'insolvency' has changed to the following:</p> <p><i>Insolvent:</i> in respect of a person, means the happening of any of these events:</p> <ul style="list-style-type: none"> a) the person is, or makes a statement which leads us to reasonably conclude they are, insolvent under administration or insolvent (each as defined in the Corporations Act); b) the person has had a controller appointed over any property, is in any form of liquidation, is under administration or is wound up; c) the person is subject to any arrangement, assignment, moratorium or composition, is protected from creditors under any statute, or is dissolved other than on terms we approve ; d) an application or order has been made (which is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in connection with the person, which is preparatory to or could result in any of the things referred to above; e) the person is taken under the Corporations Act to have failed to comply with a statutory demand; f) a court would presume the person to be insolvent or unable to pay the person's debts or the person is otherwise unable to pay the person's debts when they fall due; or g) something having a substantially similar effect to any of the things referred to above happens to the person. 	