

Tyro EFTPOS Banking Terms and Conditions

PART D – Tyro Business Loans – SME Guarantee Scheme

This Part D forms part of the Tyro EFTPOS Banking Terms and Conditions and applies to all Loans issued under the SME Guarantee Scheme.

Effective: 11 May 2020

1. Meaning of words

All capitalised words have the same meaning as in Part A of the Tyro EFTPOS Banking Terms and Conditions unless specifically defined in this Part.

In this Part D:

- (a) **“Agreement”** has the meaning given in Part A of the Tyro EFTPOS Banking Terms and Conditions but also includes this Part D and the Loan Summary.
- (b) **“Default”** means any event described in clause 10.
- (c) **“Guarantor”** means the person who guarantees to us the payment of the Total Repayment Amount.
- (d) **“Loan”** means a loan provided by us to you as outlined in the Loan Summary and in an amount equal to the Total Repayment Amount.
- (e) **“Loan Agreement Date”** the date on which you accept our offer for the Loan.
- (f) **“Loan Amount”** means any principal amount advanced by us to you.
- (g) **“Loan Fee”** means the fee set out in the Loan Summary applicable to the respective Loan Amount.
- (h) **“Loan Summary”** means the loan details summarised by us to you in the Tyro App based on your input to the loan calculator and containing the key terms of the Loan. For the purpose of any guarantee, Loan Offer has the same meaning.
- (i) **“Repayment %”** or **“Repayment Percentage”** means the percentage set out in the Loan Summary, which is applied to the total dollar value of all Transactions processed by you each day for the purposes of repaying your Loan.
- (j) **“Repayment Holiday Period”** means the six (6) month period commencing on and from the Loan Agreement Date.
- (k) **“Scheme Rules”** means the ‘Scheme Rules’ issued by the Commonwealth of Australia in connection with the SME Guarantee Scheme, from time to time (available here as at the date of these terms: <https://treasury.gov.au/sites/default/files/2020-04/sme-guarantee-scheme-scheme-rules.pdf>).
- (l) **“SME Guarantee Scheme”** means the Australian Government’s SME Guarantee Scheme, established by the Commonwealth of Australia under the *Guarantee of Lending to*

Small and Medium Enterprises Coronavirus Economic Response Package) Act 2020 (Cth) and rules created under its provisions, as amended or supplemented from time to time.

- (m) **“Taxes”** means any tax, levy, duty, rate, impost or charge imposed, levied or assessed by the Australian Taxation Office and any revenue authority, and any related penalty, fine, fee or interest.
- (n) **“Total Repayment Amount”** means the aggregate of any part of the Loan Amount or the Loan Fee that is unpaid and any reasonable costs we reasonably incur in the recovery of any amount that you owe, less any amounts paid or repaid by you in accordance with this Agreement.

2. Loan Offer and Acceptance

We may provide you with an offer for a Loan in the form of a Loan Summary in our absolute discretion.

Loans made by us under these terms are, subject to meeting all eligibility criteria under the SME Guarantee Scheme, offered pursuant to the SME Guarantee Scheme.

Each Loan Summary will be subject to this Part D. The Loan Summary may contain other terms and conditions. To the extent that those other terms and conditions are inconsistent with this Part D, those other terms prevail to the extent of the inconsistency.

You irrevocably authorise Loans to be accepted electronically on your behalf in accordance with your Administration Authority. Once a Loan is accepted, you will be bound by this Agreement including this Part D and any other terms and conditions contained in the offer for a Loan.

3. Information

You must provide us with any information we reasonably request from time to time.

You consent to us disclosing your personal, credit and other information to the Commonwealth of Australia, plus any additional disclosures in the Privacy Statement and Consent.

4. Purpose

You must:

- (a) only use the Loan for your business purposes;
- (b) apply the Loan Amount to support current and upcoming cash flow needs (including working capital, liquidity and operating expenditure);

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- (c) not use the Loan to purchase equipment or property;
- (d) not use the Loan to refinance any existing financial indebtedness (other than to repay a 'Scheme-Backed Loan' (as defined in the Scheme Rules)).

5. Loan

We provide the Loan by depositing the Loan Amount into your Tyro Bank Account.

6. Fees

The Loan Summary sets out the Loan Fee that you are required to pay us which forms part of your Total Repayment Amount.

7. Repayment

You owe us the Total Repayment Amount. You must repay it to us by making the repayments described below.

Final Repayment Date:

The Total Repayment Amount must in all cases be repaid to us in full by the date that is 3 years after the Loan Agreement Date (**Final Repayment Date**). Where the Final Repayment Date is not a Business Day, you must repay the Total Repayment Amount in full on the immediately preceding Business Day.

Repayment Percentage:

Commencing on the date immediately following the Repayment Holiday Period, you authorise us to deduct from your Tyro Bank Account the Repayment % of the total dollar value of all Transactions processed by you each day until the Total Repayment Amount is repaid in full. We will make this deduction at or before the settlement of your Transactions to your Tyro Bank Account, and apply the deduction to the outstanding balance of your Loan.

Where there are one or more Tyro Terminals issued to you in respect of different business locations, you authorise us to deduct the Repayment % of the total dollar value of all Transactions processed by you from any or all Terminals and Tyro eCommerce until the Total Repayment Amount is paid in full.

Minimum repayments:

Despite the Repayment %, you must repay a minimum of 10% of the Total Repayment Amount in each period of 90 days (starting on the date immediately following the Repayment Holiday Period). If your repayments during the 90 day

period (based on the Repayment %) are less than the minimum repayment, you authorise us to debit the balance required to make up the minimum repayment from your Tyro Bank Account or Linked Account without notice. You must ensure that the Tyro Bank Account or Linked Account is open and contains enough money to cover your minimum repayments.

If you make payments to the Loan in respect of a 90 day period that exceed the minimum amount required to be paid in that period, it will not reduce the minimum amount repayment required to be paid in a subsequent 90 day period (that is, you must still pay a minimum of 10% of the Total Repayment Amount in each subsequent 90 day period).

Following the Repayment Holiday Period, you can make additional payments at any time. You however cannot redraw any amounts paid.

Debits of outstanding amounts:

In addition to any minimum repayments that are missed, you authorise us to debit from your Tyro Bank Account or Linked Account any other amounts which are owing by you under or in connection with the Loan (including any Taxes). We may debit such amounts following the Repayment Holiday Period or earlier in the case of a Default.

To the extent that the funds in your Tyro Bank Account or Linked Account are insufficient to repay us in full, you authorise us to debit the available balance in those accounts and apply it to any amount that forms part of the Total Repayment Amount and is due to us and unpaid and acknowledge that the residual amount payable will be a debt due and payable by you to us. You agree that we may combine or set-off the balance of any accounts you have with us and apply any funds in those accounts to repay all or any part of the Total Repayment Amount that is overdue for payment. If we exercise our right to combine or set-off accounts, we will notify you promptly.

You should tell us as soon as you can if you are experiencing financial difficulty or you believe you may find it difficult to make repayments when due so we can work with you to try to help you.

8. Additional obligations

Until you repay the Total Repayment Amount in full you must:

- (a) continue to hold and operate a Tyro Bank Account as your Settlement Account for all Transactions you process;

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- (b) continue to prudently manage your business and process Transactions in the manner in which you usually process them;
- (c) not revoke or attempt to revoke our authority to debit your Linked Account without first establishing alternative arrangements with us that we have approved (acting reasonably);
- (d) not declare, pay or make any asset distribution (e.g. dividends) which may have a material adverse impact on your ability to make repayments;
- (e) not change your business location without giving us prior notification;
- (f) not materially amend your constitution or any other document that is material to your business;
- (g) not enter into any transaction that is not on arm's length terms;
- (h) not allow any consent, authorisation, registration, permit or exemption that is necessary to conduct your business or perform your obligations to lapse.

In addition, because repayments calculated using the Repayment Percentage are based on the total dollar value of Transactions processed, until the Total Repayment Amount is paid in full, you must:

- (a) not take steps that are likely to materially decrease the value of processed Transactions, or direct customers to use alternative payment methods in each case with the intent to avoid or delay repayment; or
- (b) not stop carrying on all or a material part of your business, or sell a material part of your business or assets.

9. Representations and warranties

On each day until you repay the Total Repayment Amount in full you represent and warrant to us that:

- (a) if you are a company, you are properly registered and incorporated as a corporation which validly exists under the laws of its jurisdiction of incorporation;
- (b) if you are a partnership, the partnership has not been terminated nor has any event occurred which could result in the termination of the partnership;
- (c) you have obtained all authorisations required to be obtained by you in connection with the execution, delivery and performance of this Agreement;
- (d) you have power and authority to carry on your business as it is being conducted as at the date

that you accept the Loan and during each day the Loan remains outstanding;

- (e) if you are acting as trustee of a trust, you have the authority to agree to the Loan on behalf of the trust and authority under the deed constituting the trust to borrow money;
- (f) the Loan will not infringe or conflict with any law, judgment, ruling, order, document or agreement applying to you or your assets;
- (g) you have paid all Taxes that are due and payable;
- (h) you are solvent and you have no reason to reasonably believe that you will become insolvent or otherwise unable to pay all or any part of the Total Repayment Amount when due;
- (i) the Total Repayment Amount, when aggregated with all other 'Loan Limits' of all other 'Scheme-Backed Loans' (as those terms are defined in the Scheme Rules) to you from any 'Participating Lender' (as defined in the Scheme Rules), is less than \$250,000;
- (j) your SME Declaration is true and correct and is not misleading; and
- (k) all information that you have given to us, that is material to us protecting our rights and legitimate business interests, is true and correct and not misleading.

10. Defaults

Each of the following is a Default:

- (a) you fail to make a repayment in full on the due date, and do not correct the failure within 3 Business Days of the due date.
- (b) we determine (acting reasonably) that you have breached any obligation under the Agreement which, in our reasonable opinion, presents a material risk to your ability to repay, and if, in our reasonable opinion, the breach is capable of remedy, the breach is not remedied within 5 Business Days of us giving notice to remedy the breach;
- (c) any warranty, representation or statement made or repeated by you in this Agreement is materially untrue in any respect or misleading in a material respect when made or repeated and which, in our reasonable opinion, presents a material risk to your ability to repay, and if the circumstances causing that untrue warranty or misrepresentation are capable of being remedied, those circumstances have not been remedied within thirty (30) days of the occurrence of that untrue statement or misrepresentation;

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- (d) all or a substantial part of your assets are compulsorily acquired or divested by order of a government agency or by law;
- (e) a statutory or law enforcement authority notifies us or we reasonably suspect that you are involved in an illegal activity and that may have an adverse impact on us (unless the failure can be rectified and you do so within 5 Business Days of us giving notice to remedy the breach); or
- (f) an Insolvency Event occurs.

You must notify us as soon as practicable if a Default occurs or is reasonably likely to occur.

11. Consequences of Default

In addition to any rights at law, at any time after a Default, we may do any of the following:

- (a) by notice to you, declare the Total Repayment Amount to be immediately due and payable, and upon receipt of the notice, you must immediately pay us the outstanding Total Repayment Amount;
- (b) debit the Tyro Bank Account or Linked Account for an amount sufficient to repay the outstanding Total Repayment Amount;
- (c) by notice to the Guarantor, declare the outstanding Total Repayment Amount to be immediately due and payable by the Guarantor; and/or
- (d) do anything else the law allows us to do.

At any time after a Default you irrevocably authorise us to withhold, apply or direct settlement monies received through all Transactions processed by us towards the repayment of the Loan in priority to any or all of your other creditors.

We can exercise any of these rights despite any delay or previous waiver of these rights and are not liable for any loss caused by exercising, not exercising or delaying in exercising any of our rights.

12. Indemnity

You indemnify us for any expenses, liabilities, loss (including loss of profits), compensation or other damages we reasonably incur in connection with:

- (a) a Default;
- (b) where you are acting as trustee for a trust, any claim that the trust does not have the power to enter into the Loan; or
- (c) any actual or contemplated costs of enforcement of the Agreement, or the actual or contemplated exercise, preservation or consideration of any of our rights, powers or remedies,

but excluding Loss that is due to our fraud, negligence or willful misconduct.

13. Avoidance

If a payment made by you to us is void, voidable, unenforceable or defective for any reason or we choose to direct that payment to another party who is entitled to the money that is subject to the payment (each an "Avoidance"), then even though we knew, could, or should have known of the Avoidance:

- (a) your liability under these terms will be what it would have been, and will continue, as if the payment which was subject to the Avoidance had not occurred; and
- (b) you will execute and do anything necessary or required by us to restore us to the position immediately before the Avoidance.

This clause survives termination of this Agreement.

14 Miscellaneous

We may assign any of our rights under these terms at our absolute discretion. You must not assign your rights under these terms.

Reference to dollars, \$ or AUD is to Australian Dollars, the lawful currency of Australia.