



2018 Loan Funded Share Plan Loan Agreement

Electro Optic Systems Holdings Ltd 092 708 364

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THIS AGREEMENT is made on the [insert numeric day] day of [insert month] [insert year]
Electro Optic Systems Holdings Ltd ACN 092 708 364 whose registered office is situated at:
Suite 2, Level 12, 75 Elizabeth Street, Sydney NSW 2000 (the **Lender**)

AND

The person specified in Item 1 of the Schedule (the **Borrower**).

Part A: Recitals

- (A) The Lender has agreed to make available the Loan Facility to the Borrower for the purpose of purchasing Shares under the Electro Optic Systems Holdings Ltd 2018 Loan Funded Share Plan (**LFSP or Plan**) and on the terms and conditions contained in this Agreement.
- (B) The Lender and Borrower agree as set out in the operative part of this Agreement, in consideration of, among other things, the mutual promises contained in this Agreement.

Part B: Defined terms and interpretation

1. Defined terms and interpretation

Defined terms

1.1 In this Agreement, unless the context otherwise requires:

Advance means the drawing of Loan Value under this Agreement

After-tax Amount means in respect of a financial year the dividend paid in cash by the Company multiplied by the After-tax Rate.

After-tax Rate means in respect of a financial year during which a Company dividend is paid on a Loan Funded Share, the rate that will be calculated as one (1) minus the top marginal rate individuals for who are resident in Australia for tax purposes for that year inclusive of Medicare Levy but exclusive of any Medicare Levy surcharge or other levies imposed from time to time (and where applicable, taking into account the benefit of franking credits for franked dividends).

Agreement means this agreement between the Lender and Borrower known as a 2018 Loan Funded Share Plan Loan Agreement.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales, Australia.

Event of Default means an action or circumstance that causes the Lender to demand full repayment of an outstanding balance and commencement of default proceedings.

Loan Facility means the provision of the Advance by the Lender to the Borrower in accordance with this Agreement.

Loan Term means the period commencing on the date the Advance is drawn down and ending on the first to occur of the following:

- (a) Loan Funded Shares are forfeited by the Participant in accordance with rule 8 of the Plan Rules;
- (b) The date determined in accordance with the Plan Rules in circumstances where the Participant retains Vested Loan Funded Shares on cessation of employment;
- (c) Loan Funded Shares that are subject to a Loan are disposed of or Bought-Back in accordance with rule 9 of the Plan Rules;

- (d) the number of years specified in item 4 of the Schedule from the date the Advance is provided to the Borrower; or
- (e) the parties to the Agreement otherwise agree in writing.

Loan Value means the total of the amount specified in item 3 of the Schedule.

Principal Outstanding means at any time, the aggregate of all Advances outstanding at the time together with all accrued interest (if any) and all other debts and monetary liabilities of the Borrower to the Lender under or in relation to this Agreement.

Plan means the Electro Optic Systems Holdings Ltd 2018 Loan Funded Share Plan as constituted by the Rules and pursuant to which an Invitation has been made to the Borrower.

Power means any right, power, authority, discretion or remedy conferred on the Lender by this Agreement or any applicable law.

Rules means the rules contained in the Plan Rules.

Security Trading Policies means the Company's security trading policies (if any).

Share means an ordinary share in the capital of the Lender.

Tax means any present or future tax (including value added tax), levy, charge, impost, duty, fee, deduction, compulsory loan or withholding of any nature, and any interest, fine, penalty, charge fee or other amount imposed on or in respect of any of the above.

Interpretation

1.2 In this Agreement, unless the contrary intention appears, or context otherwise requires:

- (a) a reference to any document includes any variation, replacement, or equivalent, of the document;
- (b) a reference to a statute, or a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) headings do not affect the interpretation of these terms and conditions;
- (d) singular includes the plural and vice versa;
- (e) words importing a particular gender include other genders;
- (f) a reference in these terms and conditions to a person includes that person's administrators, successors and permitted assignees;
- (g) a reference to "A\$", "\$" or "dollar" is a reference to Australian currency;
- (h) words or phrases that have a defined meaning are identified by the use of a capital letter;
- (i) unless a term is specifically defined in this Agreement, it is to be given the same meaning as defined in the Rules;
- (j) the word "includes" in any form is not a word of limitation;
- (k) where a word or phrase is defined, cognate words and phrases have corresponding meanings;
- (l) if a day on or by which an obligation must be performed or an event must occur is not on a Business Day, the obligation must be performed or the event must occur on or by the Next Business Day; and
- (m) if any provision of these terms and conditions is invalid, unenforceable or otherwise ineffective, that invalidity, unenforceability or ineffectiveness does not affect the validity, enforceability, operation, construction or interpretation of any other provision of these terms and conditions, with the intent that the invalid or unenforceable provision will be read down or, if it is not capable of being read down, will be treated for all purposes as severable from these terms and conditions.

2. Loan

Loan Facility

- 2.1 The Lender agrees to make available the Loan Facility to the Borrower on the terms and conditions set out in this Agreement.

Drawing

- 2.2 The Lender agrees to make available the Loan Value in a single Advance contemporaneously with the purchase of the Loan Funded Shares by the Borrower under the Plan.

Payment request

- 2.3 The Borrower directs the Lender, in making the Loan Value available to the Borrower, to pay the Loan Value to the Lender to acquire the Loan Funded Shares under the Plan.
- 2.4 No interest is payable on the Loan Value for the duration of the Loan Term.

3. Repayment and prepayment

Repayment


- 3.1 Subject to clause 3.3, on expiry of the Loan Term, the Borrower must repay to, or as directed by, the Lender the remaining Principal Outstanding in accordance with the Rules, unless determined otherwise by the Lender.
- 3.2 If the Borrower receives a dividend or capital distribution in respect of the Shares that are subject to a Loan in cash, and holds those Shares after such receipt, the After-tax Amount of that dividend or the capital distribution (as the case may be) must be used to repay the Principal Outstanding in accordance with rules 5.7 and 5.8 respectively of the Rules, unless otherwise determined by the Lender.
- 3.3 Notwithstanding any other clause in this Agreement, unless otherwise specified in the Rules or determined by the Board, in seeking repayment of the amount payable under clause 3.1, the Lender will have recourse only to the cash proceeds received by the Borrower from a disposal of Shares that are subject to a Loan in accordance with the Rules and the After-tax Amount in respect of a cash dividend or a capital distribution calculated in accordance with clause 3.2 received by the Borrower in respect of the those Shares.

Prepayment

- 3.4 The Borrower may at any time pre-pay all or part of the Principal Outstanding before expiry of the Loan Term.

4. Payment

- 4.1 All payments required to be made under this Agreement by the Borrower to, or at the direction of, the Lender must be, unless otherwise specified by the Lender in writing:
- (a) made in immediately available funds in Australian dollars;
 - (b) not later than 2.00pm in the location specified in item 2 of the Schedule on the due date; and
 - (c) to the account specified by the Lender to the Borrower or at such place as the Lender may from time to time specify in writing to the Borrower. In the absence of such a direction the place of payment will be at the last address of the Lender recorded in the records of the Borrower.

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- 4.2 Any payment made otherwise than in accordance with clause 4.1 above (including any payment made by post) is at the Borrower's risk until it is actually received by the Lender.

5. Payment in gross

- 5.1 All payments which the Borrower is required to make under this Agreement must be:
- (a) without any set-off, counterclaim or condition; and
 - (b) without any deduction or withholding for any Tax or any other reason, unless the Borrower is required to make a deduction or withholding by applicable law.

6. Event of Default

- 6.1 It is an Event of Default if the Borrower fails to pay or repay any amount under this Agreement within:
- (a) five Business days of the expiry of the Loan Term; or
 - (b) if that failure is due to a technical or administrative error in the banking system used for the transfer of funds, ten Business Days of notice of that failure being given by the Lender.

Effect of Event of Default

- 6.2 Upon the occurrence of an Event of Default which is subsisting, the Lender may by notice to the Borrower declare that the Principal Outstanding is immediately due and payable.

7. Tax, costs and expenses

- 7.1 Each party must bear its own costs and expenses in relation to the negotiation, preparation, execution, performance and discharge of this Agreement.

8. General

Assignment

- 8.1 The Borrower may not, without the prior written consent of the Lender, assign any of the Borrower's rights, obligations or powers under this Agreement.
- 8.2 The Lender may not, without the prior written consent of the Borrower, assign any of the Lender's rights, obligations or powers under this Agreement.

9. Notices

Address for notices

- 9.1 Any notice given under or for the purposes of this Agreement must be given in writing, signed, and addressed to:
- (a) in the case of the Company – the Secretary of the Company at such address as is nominated by the Company; or
 - (b) in the case of the Borrower – the address nominated by the Borrower.

Variation

- 9.2 A variation of any term of this Agreement must be in writing and signed by the parties.



Counterparts

- 9.3 This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument. A party may execute this Agreement by signing any counterpart.

Waiver

- 9.4 The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

Prohibition and enforceability

- 9.5 Any provision of, or the application of any provision of, this Agreement or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 9.6 Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

Cumulative Powers

- 9.7 The Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of the Lender.

Assignment

- 9.8 The Borrower must not transfer or assign any of its rights and obligations under this Agreement without the prior consent of the Lender.
- 9.9 The Lender must not transfer or assign any of its rights or obligations under this Agreement without the prior consent of the Borrower.

10. Governing law

- 10.1 These terms and conditions are governed by, and construed in accordance with, the laws of the location specified in item 5 of the Schedule and the Borrower and the Company agree to submit to the non-exclusive jurisdiction of the courts of the location specified in 5 of the Schedule and any courts hearing appeals from those courts.



Schedule

- 1) [name of Borrower] located at [address].
- 2) [location e.g. Sydney].
- 3) \$[insert amount, for the purposes of determining the Loan Amount].
- 4) For the purposes of the Loan Term, the number of years is [Loan Term].
- 5) New South Wales, Australia.



Executed as an **AGREEMENT**

**Signed by Electro Optic Systems Holdings Ltd
ACN 092 708 364** in accordance with section
127(1) of the *Corporations Act 2001 (Cth)*:

Signature of Director and Date

Signature of Director or Company Secretary and Date

Name of Director (print)

Name of Director or Company Secretary (print)

Signed by [name of participant] in the presence of:

Signature of witness and date

Signature of Borrower and date

Name of witness (print)

Name of Borrower (print)