

# MEMORANDUM OF TERMS AND CONDITIONS

**You the borrower(s) acknowledge the debt to the lender of the initial unpaid balance and agree:**

## Major Terms and Conditions

### Grant of security interest in chattels or other personal property ("Collateral")

1. In exchange for the lender lending you the initial unpaid balance (of which you are acknowledging receipt) you grant to the lender a security interest over any collateral listed in the schedule that you are the owner. That includes a security interest in all your present and after-acquired property.

The security interest is to secure payment to the lender of the money secured and also to secure your performance of all other terms of this agreement. You promise to the lender that there is no security interest in collateral other than that granted by this agreement.

### Agreement to mortgage land

2. I In exchange for the lender lending you the total advance (of which you are acknowledging receipt), you, or such of you, who own the land to be mortgaged in the schedule shall execute in favour of the lender and at the cost of the borrower(s) a registrable mortgage over that land.

Such a mortgage shall be in an all obligations form published by the Auckland District Law Society so as to incorporate memorandum number 2005/4180 or the Society's replacement memorandum or, at the option of the lender, any form to the same or similar effect reasonably required by the lender and the terms of the relevant memorandum shall be incorporated into this agreement and the priority figure for further advances by way of financial accommodation for the purposes of section 92(1) of the Property Law Act 2007 shall be twice the value of the total advances and the total interest charges combined or such other amount as the lender may decide.

The mortgage will secure payment of the money secured and the performance of all other terms of this agreement and the borrower(s) who own the land to be mortgaged hereby charge that land accordingly.

If the land to be mortgaged is subject to any prior mortgage or charge, the borrower(s) who own the land to be mortgaged will in all respects comply with and perform the obligations in that prior mortgage or charge.

3. You agree that the land to be mortgaged shall also include your interest in any other land including land which a borrower may now own or may not yet own and the borrower(s) hereby charge or, as the case may be, will charge such other land accordingly.

### Power of Attorney

4. In exchange for the lender lending you the total advance (of which you are acknowledging receipt), and to enable the lender more effectively to obtain the benefits under this agreement, each borrower jointly and severally irrevocably appoints the lender and any one director or manager of the lender severally to be the attorney of each of you to do anything which the borrowers agree to do and to do anything and to sign any document which the attorney thinks desirable to ensure the lender is paid the money secured and otherwise to protect the interests of the lender under this agreement.

Without in any way limiting the generality of the power, the attorney may execute any document for the purposes of (a) the grant and registration of any interest (including a mortgage) under the Land Transfer Act 1952 (including a mortgage of land in which any borrower has no interest at the date of this deed) or (b) creating a security interest under the PPSA or causing one to attach.

The attorney may transfer ownership of, or take, or transfer possession of, negotiable instruments, of chattel paper, of negotiable documents of title and of investment securities and the attorney may request and obtain from any share registry, custodial service, securities depository or clearing house any shareholder number (including a common shareholder number) Faster Identification Number ("FIN") or other number of the borrower necessary for dealing with company shares and (by way of example and not by way of limitation) may sign any request to cancel FIN numbers as security for a loan.

The attorney may operate and draw on any bank, building society or credit union account held by any borrower and may debit any credit card or debit card account, in each case to reduce the debt owed to the lender. This power shall inure until the money secured has been paid to the lender in full and continues after judgment.

The borrowers ratify anything done by an attorney under this power and indemnify the lender, and or any attorney, and will keep them indemnified against any claim from any person that relates to damages or losses caused through any act or thing done by the attorney. The borrowers further indemnify any person acting in reliance upon the power.

If the lender assigns the benefit of this agreement the assignee shall have the same rights and powers under this paragraph as does the lender and each of you named as borrower irrevocably appoints the assignee his attorney accordingly.

## General Terms and Conditions

### Meaning

"The money secured" means all money, including, but without limitation, the total advance, the initial unpaid balance and default or other interest, and default and other fees and charges and disbursements and other money which the borrower must pay to the lender under this agreement or under any collateral or subsequent agreement of any kind.

"Default" under this agreement means that the borrower does something he is required not to do or fails to do something he is required to do.

"Default Fees" and "Default Interest" are listed under the heading "Default interest charges and default fees" in the disclosure statement.

"Working day" means any day but a Saturday, Sunday or a public holiday in Auckland.

"Agreement", "Contract" or "Deed" means at any time any document that makes up this agreement or part of this agreement. This includes without limitation the Deed by Way of Security, Memorandum of Terms and Conditions, Disclosure Statement for Consumer Credit Contracts and any other attachments as required from time to time. "Future advance" has the meaning expressed in section 16 of the PPSA. "Own" includes "having an interest in" and "owner" is interpreted accordingly.

"PPSA" means the Personal Property Security Act 1999. Any expression not described or defined in this agreement shall have the meaning ascribed to it in the PPSA unless the context requires otherwise. Unless the context prevents it, the singular shall include the plural and the plural shall include the singular and each gender shall include other genders. "Person" includes an organisation as defined in the PPSA. Any reference to an Act or Regulation shall include any amendment, modification, replacement or re-enactment of it.

1. Subject to any other clause of this agreement any notice, demand, letter or document for service on you shall be deemed to be properly served, in any court proceeding or otherwise, if served in accordance with the wording of section 38 of the Credit (Repossession) Act 2015 (excluding subsection 38(7)). This applies although that Act may not apply to the collateral and although the notice or demand is not one required or authorised under that Act.

In addition, service on you or any of you shall be deemed to have been effected if such notice, demand letter or document is handed to any person in apparent occupation of the address of any of you or of the property shown in this agreement as being the land to be mortgaged or by attaching the document to an external door at such address.

In addition, if your address is a flat or apartment or room in a building and if the lender or its agents are unable to obtain access to such flat, apartment or room by virtue of the security system of the building or for some other reason, then service will be deemed to have been effected on you if the document is posted at the letterbox corresponding to such flat, apartment or room.

If there is no such letterbox, service will be deemed to have been effected on you if the document is affixed to what appears to be the principal external entry to the building for purposes of obtaining access to the address provided by you or if the document is given to any building manager or receptionist for the building and directed to be given to you.

2. Despite sections 188 & 189 of the PPSA and part 2 of the Electronic Transactions Act 2002, service of any notice or document by facsimile or by electronic mail or by any other electronic means, upon the lender shall not be deemed to be proper service. Any document to be given to or served on the lender by the borrower shall be posted or shall be delivered personally to its address as shown in the schedule.
3. You promise that all information provided by you or on your behalf to enable the lender to decide whether or not to lend to you is true and correct and if it is found at any time to not be true and correct, the lender may demand payment of the then outstanding balance of the loan and you will pay forthwith on such demand.
4. This agreement is governed by New Zealand law and the parties irrevocably submit to the jurisdiction of the New Zealand courts. Should the borrowers wish to dispute the lender's rights or powers or any action of the lender in connection with this agreement, the borrowers may only do so in the New Zealand courts. This does not limit the lender's rights to enforce this agreement against the borrowers or any judgment against the borrowers or against the borrowers' real and personal property in any country where the borrowers or that property may be.
5. All obligations on the part of the borrowers are joint and several and the fact that an obligation, action, power or thing cannot be assumed, carried out, exercised or done by any borrower by virtue of that person's not owning or purchasing certain property, nor the fact that any borrower has not had any benefit from the loan of the initial unpaid balance under this agreement shall not release any other person so defined from such an obligation or from the requirement to carry out any action or to exercise any power or to do anything.
6. No borrower's right of subrogation or indemnity shall arise in favour of any borrower against the lender until the secured money has been paid in full.
7. You shall not be released from your obligations under this agreement or have your liability reduced by any lack of legal capacity or other reason which would result in the agreement not being enforceable against or any moneys not being recoverable from any other person nor by virtue of any security becoming all or partly void or unenforceable for any reason whatsoever.
8. You must make all payments as shown in the PAYMENTS section of the schedule when due without any deduction or set-off or counter-claim and in such a manner as the lender requires. If you make any payment which is not in accordance with the schedule of payments the lender may credit the payments in accordance with the schedule. The lender may also decline to accept any part prepayment but if it accepts it the lender may charge you administrative costs associated with the part prepayment. The lender need not make any demand for any payment due from you.
9. You must pay to the lender forthwith upon demand or when otherwise due (i) the lender's credit fees shown in the "CREDIT FEES AND CHARGES" section of the disclosure statement and (ii) the lender's default fees and default interest shown in the "WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS" section of the disclosure statement and (iii) all of the lender's costs, expenses and any other liabilities not now known by the lender (which include legal expenses on a solicitor and own client and on a full indemnity basis) which may be incurred or suffered by the lender in connection with;
  - a The preparation, signing, registration, administration, variation and release of this security agreement or any financing statement in relation to this security

- b The exercise or enforcement or protection or the attempted exercise, enforcement or protection of any power, right or remedy of the lender under this agreement or what the lender believes to be a power, right or remedy to which it is entitled including the conduct of any Court proceedings
- c Any dispute negotiation or communication with any other secured party or party claiming to be a secured party with respect to the collateral and or the priority of the security interest granted by this agreement and
- d The transfer of the security interest of any other secured party to the lender or the security interest of the lender to that secured party and
- e Any dispute negotiation or communication with any of you in default
- f The lender's doing anything you should have done but which you have not done

And you agree that such amounts are and are deemed to be contractual damages if they are incurred or suffered by the lender while you are in default hereunder and in any event if not paid shall incur default interest until paid in full. The lender may exercise all or any right, power or remedy at any time and failure to do or delay in doing so shall not constitute a waiver unless the lender grants it in writing.

10. The obligation of the borrower to pay the installments will continue notwithstanding the occurrence of any defect or breakdown in the collateral, or any failure by the lender to perform any other obligations in this agreement. If the lender is lending money to enable the borrower to purchase any collateral, the lender may pay such money directly to the vendor of the collateral. In such event the lender may impose such conditions on the payment of the money to the vendor as it sees fit in order to protect its security interest.
11. If you fail to pay one or more installments in full but otherwise are paying on time, the lender, at its absolute discretion may add the unpaid amount to the loan thus extending the term and varying the final payment or payments. The lender may, but is not bound to, do this more than once.
12. Subject to the terms of the Credit (Repossession) Act 2015, if you default under this agreement, or fail to do anything which you are required to do or do anything which you are required not to do under this agreement or any event or material adverse change occurs in your financial condition or stability or the enforceability of this agreement or any other security given by you to the lender or agreement between the parties or for any other reason the lender may require you to pay to the lender all principal, interest and other money then owing under this agreement.
13. The lender may call up that money even although the time for payment has not yet been reached. In addition, save for the purposes of enforcement, the lender may terminate this agreement.
14. The lender may (but is not bound to) do anything or pay any sum which in the lender's opinion is necessary or expedient to rectify any breach or default of this agreement and may add any expense or cost incurred for such remedy to the unpaid balance and if you do not pay the cost of such remedy on demand the lender may charge you default interest.
15. The lender may exercise all or any power, right or remedy at any time.
16. If you fail to pay any installment or other money (including any amount for which payment has been accelerated) due on the due date or on demand as the case may be you shall pay to the lender default interest on the unpaid arrears at the end of the day from the due date of such installment or from the date of receipt or deemed receipt of demand for the money as the case may be until actual payment of the installment or amount. All default interest shall continue to be payable after judgment against you and shall compound daily. Your obligation to pay default interest is independent of and shall not merge with such judgment.
17. All default interest shall continue to be payable after and notwithstanding judgment against you.
18. The lender may appropriate any payment received from you or money which is proceeds of the sale of collateral or of any land to be mortgaged against any debt owed by you in any manner that the lender may decide, notwithstanding any purported appropriation you claim to have made or the fact that the time for payment of the amount has not arrived.
19. To the extent allowed by the law, the lender may from time to time without notice set off against any claim or demand which you may have any claim or demand which the lender may have against you.
20. The lender may receive commission on any insurance included in this agreement or subsequently required.
21. This agreement secures future advances. This will apply even although any sum has been paid from time to time to the lender or any account between the borrowers and the lender may be or have been in credit or settled.
22. In accordance with section 50 of the Credit Contracts and Consumer Finance Act 2003 (as amended from time to time) you may repay the outstanding balance of your loan in full before it is due. However, you must also pay the lender the administrative costs arising from the full prepayment or a charge equal to its average administrative costs so arising. The lender may also charge you a fee representing a reasonable estimate of its loss arising from the full prepayment.
23. You must not change your name or address without first giving the lender two days' notice, in writing, of your intention to do so.

## Security Interest

24. You must store any collateral at the address shown as that of its owner in the schedule. You must not allow any collateral to be taken out of New Zealand. You must also care for and maintain collateral and comply with any laws relating to its ownership and use and you must not use it in any dangerous or illegal activity or for any purpose for which it was not intended. You will not alter or deface the collateral. You may not race any collateral which is a motor vehicle.
25. You must not do anything or allow anything to happen which may impair or undermine any borrower's ownership of the collateral or the lender's security interest in the collateral. If you have granted security over after-acquired property and if you obtain consumer goods in future, you must appropriate those goods to the lender's security interest.
26. You must not grant any other security interest over collateral nor allow any lien to be created over it nor dispose of nor allow the disposal of any collateral by sale, gift or lease or in any other way nor cause nor allow collateral to be taken out of the possession of the borrower who owns it, nor destroyed, damaged, endangered, disassembled, removed from the place where you are required to keep it or conceal it from the lender or the lenders agent.
27. The borrower(s) that are the owners of the collateral and/or the land to be mortgaged will pay punctually all rents, rates, taxes, charges and impositions from time to time due in respect of any collateral, land and/or buildings as is security or on which the collateral or any part thereof may from time to time be situated, garaged or kept, and to produce and deliver to the lender as and when required by the lender the true receipts for such payments.
28. You must not obtain any personalised registration plate on any motor vehicle which is collateral nor otherwise alter or remove any serial number unless you first obtain the lender's consent in writing.

29. From time to time if required by the lender you must provide further security for the money secured in the form of a security interest in a motor vehicle or other goods to the value of further 100% of the money secured at that time.
30. You will allow the lender, its officers or its agents, at all reasonable times, to have access to the collateral or the mortgaged land as the case may be to inspect and/or to test its condition or for any other reason.
31. Any accessions (including replacements and accessories) which are attached to collateral which is goods shall become part of the collateral.
32. From time to time if required by the lender you must provide further security for the money secured in the form of a security interest in a motor vehicle or other goods to the value of further 100% of the money secured at that time. If you have granted security over after-acquired property and if you obtain consumer goods in future, you must appropriate those goods to the lender's security interest.
33. This or any other security given by you to the lender is each security with the other to the intent that default under any one or more of any agreement(s) of any kind between the parties shall also be deemed to be a default under all the agreements and the lender may exercise its powers, rights and remedies under all or any of such agreements either separately or concurrently.
34. You must insure or procure the insurance of the collateral which is goods and (for full replacement value if possible) any buildings or improvements on the land to be mortgaged (in case of such buildings or improvements for full replacement value if possible) and keep them comprehensively insured against fire, accident, theft and all other risks as the lender may require both in the names of the lender and in your names for the lenders and your respective interests, with payment in the event of a claim to be made to the lender.
35. The lender may at its option elect to expend such money towards repairing, reinstating or replacing the security and in such event that repaired, replaced or reinstated security shall be deemed to be the security which is secured herein and all the provisions of this agreement shall apply as if that security had been the security described herein at the date of execution of this agreement, or the lender may elect to have such money paid in discharge or partial discharge of the balance then owing under this agreement notwithstanding that the time for payment of the amount may not have arrived.  
You must not do or allow any act or omission which causes any insurance policy to be invalidated or cancelled. You must provide receipts and an insurance company certificate of the insurance if required by the lender.
36. You indemnify the lender and will keep it indemnified against any claim from any person relating to the collateral or the land to be mortgaged or the use thereof. If the lender incurs any loss, liability or expense in respect of the collateral or the land to be mortgaged or this agreement as a result of any act or omission of yours then the amount of such loss, liability or expense plus goods and services tax if any, shall be payable by you to the lender and shall become part of the money secured and the lender may charge default interest on arrears at the end of the day outstanding until such money is paid in full.
37. The lender may assign its right, title and interest in the collateral or in the land to be mortgaged or in its right, title and interest in this agreement or any of them at any time.
38. If you default under this agreement the lender may, without notice save that required under the Credit (Repossession) Act 2015, seize the collateral and for such purposes you irrevocably give to the lender the right and license for its officers or agents to enter any premises and if necessary to break into any building where the collateral may be or is supposed to be situated or where you are for the purpose of searching for and seizing the collateral.  
The lender shall not be liable in any way to you or to any person claiming through you for any damage or loss which occurs in the process of entry into any premises or during or as a result of the seizure and subsequent sale of the collateral or the exercise or execution by the lender of any of the rights, powers or remedies expressed or implied by this agreement or otherwise conferred upon the lender and you will indemnify the lender against such damage or loss.  
On seizure, the lender may sell the collateral by auction or otherwise in any manner and in all respects (including, without restricting the generality of the power, the right to buy in, give credit and allow payment over time) as if the lender were the unencumbered owner subject to any applicable obligations under the PPSA and under the Credit (Repossession) Act 1997.  
On such sale the receipt of the lender or its agent will be sufficient discharge to the purchaser for the purchase money and no purchaser shall be bound to investigate the propriety or regularity of any such sale or be affected by any notice express or constructive that such sale is improper or irregular.
39. If the land to be mortgaged is sold by the holder of any prior mortgage or other charge those of you who own the land to be mortgaged hereby irrevocably expressly authorise and request such prior mortgagee or holder to pay all funds remaining after making payments under sections 104(1)(a), 104(1)(b) and 104(1)(c) of the Land Transfer Act 1952 to the lender up to the amount stated by the lender as owing.  
You will and must indemnify the prior mortgagee or charge holder against any liability for making such payment and section 4 of the Contracts (Privacy) Act 1982 shall apply to such indemnity.  
Those of you who own land irrevocably authorise the lender to pay any registered mortgagee or charge holder from the proceeds of sale of the land to be mortgaged if the lender sells the land to be mortgaged.
40. In the event that, contrary to your obligations hereunder, another security interest has priority over that of the lender with respect to collateral, and if the lender takes a transfer of that security interest to itself then any money owing under this agreement shall be deemed to be owing under the security agreement providing for the security interest with priority and default under this agreement shall be deemed to be default under the other security agreement and vice versa.
41. The Consumer Guarantees Act 1993 shall not apply if the collateral is acquired for business purposes.
42. The lender shall not be obliged to marshal in your favour or in favour of any other person.
43. If the lender does not at any time have priority over all other secured parties in relation to any collateral then pursuant to section 107(1) of the PPSA, for the purposes of dealing with that collateral the parties contract out of sections 108 and 109 to the extent that the words "with priority over all other secured parties" in sections 108 and 109(1) shall not apply so as to restrict the lender's ability to seize and sell the collateral. In addition you irrevocably authorise the lender to pay any secured party over whom the lender does not have priority.
44. You agree that none of sections 114(1)(a), 133 or 134 of the PPSA will apply to any dealings with the collateral under this agreement. You further waive your right to receive any part of the surplus under section 117(1)(c) or recover it under section 119 if the lender has in good faith made any payment to any person under sections 117(1)(a) or 117(1)(b) to which it subsequently transpires that person was not entitled. You waive your right to receive a verification statement following registration of any security interest.
45. You must not lodge any demand under section 162 of the PPSA unless one of more of sub-sections (a) to (e) inclusive of that section applies

46. You will and do indemnify the lender against any failure for any reason on the part of any other borrower to pay money owing or perform obligations under this agreement.
47. Where the security includes a mortgage over shares or stock in the capital of a company the security is deemed to include all bonus share issues, rights issues, share conversions, issue of newly created shares and dividends or any other issue made in relation to the mortgaged shares or stock.
48. This agreement shall be deemed to be signed by a party if that party has executed any of the following formats of the agreement: an original, a copy, a facsimile copy, a photocopy or any other electronic or any other type of copy of this agreement. The delivery by any party to the other of any type of copy of this agreement duly executed shall be deemed delivery of the original thereof and the party so delivering such copy shall deliver to the other party the original within 5 working days.
- If the original documents are not delivered within the specified time, the party accepting the copy pursuant to this clause may in any court of law or other proceeding, or for the purposes of registration of any interest under the Land Transfer Act 1952, produce, or exhibit such copy as if it were the original thereof and no party to this agreement may object to such copy being produced or exhibited as an original and shall be deemed to have waived any law of evidence or other requirement that an original executed document be produced or exhibited of its existence or of its contents.
49. If the principal and all other monies including interest is not repaid on the due date for repayment and if the lender and borrower(s) have not agreed in writing as to the terms of an extension of the loan, then the loan may, at the lenders sole discretion, be extended for two months longer than the initial term and in consideration therefore the loan will continue at the default annual interest rate for these two months.
- The borrower(s) also agree to pay to the lender a re-establishment fee equal to the application fee, being equal to the initial establishment fee amount, but not exceeding 5% of the current balance outstanding.
50. Payment dates are based on the assumption that the loan is drawn down on the date of the contract. The dates of payment are to be linked to the actual date of advance and will be adjusted to correspond with this date if it differs from the date of contract. If the loan is not drawn down on the date of the contract, unless agreed otherwise by the parties in writing, the date the loan is drawn down may be referred to as the date of the contract when referred to in correspondence or the issuance of notices.

## **Counterparts**

01. This Deed may be executed in two or more counterparts, each of which (including any facsimile transmitted copy) shall be deemed an original, but all of which together will constitute one and the same instrument.