

**VEHICLE SALES & FINANCE LTD**

**MEMORANDUM OF TERMS AND CONDITIONS**

You the Borrower(s) acknowledge the debt to the Lender of the initial unpaid balance and agree:

**Adjustment of Term of Loan**

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.

**Assignment of Contract**

The Lender may assign its right, title and interest in the Vehicle or in its right, title and interest in this Contract or any of them at any time.

**The Consumer Guarantees Act 1993**

The Consumer Guarantees Act 1993 shall not apply if the vehicle is acquired for business purposes.

**Continued Obligation to make Payments**

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 Contract. 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.

If at any stage need budgeting assistance we encourage you to make contact with an Independent Financial mentor or Budgeting Advice service. Confidential advice is offered free of charge by many organisations including:

The Salvation Army [www.salvationarmy.org.nz](http://www.salvationarmy.org.nz) 0800 530 000

Christians Against Poverty [www.capnz.org](http://www.capnz.org) 0508 227 111

**Default Interest**

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.

All default interest shall continue to be payable after and notwithstanding judgment against you.

**Disputed Debt**

If you fail to meet your commitments under the contract, then to the extent of the security interest the Lender may be entitled to repossess and sell this property and the money you owe will be deemed as a disputed debt and the Lender will have the right to seek the Courts assistance in the recovery of the debt at your cost.

**Execution of Contract**

This Contract shall be deemed to be signed by a party if that party has executed any of the following formats of the Contract: an original, a copy, a facsimile copy, a photocopy or any other electronic or any other type of copy of this Contract. The delivery by any party to the other of any type of copy of this Contract 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 there of and no party to this Contract 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.

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.

**Indemnity**

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 Contract 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.

You will and must indemnify the prior mortgagee or charge holder against any liability for making such payment and section 12 of the Contract and Commercial Law Act 2017 applies to such indemnity.

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.

#### **Information**

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.

#### **Insurance Commission**

The Lender may receive commission on any insurance included in this Contract or subsequently required.

#### **Insurance Cover**

You must insure or procure the insurance of the Vehicle (for full replacement value) 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.

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.

#### **Warrant of Fitness and Vehicle Registration**

You must ensure the vehicle holds a current Warrant of Fitness, for the duration of your loan. Maintaining your vehicle to WoF standards, as stipulated by NZTA (even whilst holding a current WoF) is your responsibility. You must further ensure that your vehicle always has active Registration.

The WoF and Registration labels must be attached to the inside of the windscreen in accordance with NZTA guidelines. Full information relating to standards required for road worthiness can be found at [www.nzta.govt.nz](http://www.nzta.govt.nz).

#### **Joint and Several**

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 Contract 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.

#### **Jurisdiction**

This Contract 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 Contract, the Borrowers may only do so in the New Zealand courts. This does not limit the Lender's rights to enforce this Contract 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.

#### **Marshall Clause**

The Lender shall not be obliged to Marshall in your favour or in favour of any other person.

#### **Notice provisions**

Subject to any other clause of this Contract 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 section 59A of the Credit Contracts and Consumer Finance Act 2003.

Service on you or any of you shall be deemed to have been affected if such notice, demand letter or document is handed to any person in apparent occupation of the address of the Borrower or by attaching the document to an external door at such address, or emailed to your nominated email address.

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 affected 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 affected 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.

#### **Order of Payments**

The Lender may appropriate any payment received from you or money which is proceeds of the sale of the vehicle 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.

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.

**Payment Dates**

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.

**Power of Attorney**

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 Contract, 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 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 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 Contract 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.

**Personal Property Securities Act 1999 (PPSA)**

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.

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 Contract. 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.

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.

**Privacy Waiver**

Pursuant to the Privacy Act 1993 during the application and loan documentation process you authorise Vehicle Sales & Finance Limited to contact any credit reporting agencies, credit providers, your employer, Government agency or department, accountant or any other source, to obtain, check and exchange (both now and in the future) such personal financial and commercial information and references about you as is necessary for the purpose of considering this application, the protection and administration of any loan arising out of the application, and to assist in the enforcement of any agreement between you and any finance company.

**Repair/ Replacement of Vehicle**

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 Contract shall apply as if that security had been the security described herein at the date of execution of this Contract, or the Lender may elect to have such money paid in discharge or partial discharge of the balance then owing under this Contract notwithstanding that the time for payment of the amount may not have arrived.

**Repossession of Vehicle**

If you default under this Contract the Lender may, pursuant to the Credit Contracts and Consumer Finance Act 2003, seize the vehicle 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 vehicle may be or is supposed to be situated or where you are for the purpose of searching for and seizing the vehicle.

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 vehicle or the exercise or execution by the Lender of any of the rights, powers or remedies expressed or implied by this Contract or otherwise conferred upon the Lender and you will indemnify the Lender against such damage or loss.

On seizure, the Lender may sell the vehicle 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 Contracts and Consumer Finance Act 2003.

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.

## Security Interest

You must store the Vehicle at the address shown as that of its owner in the Contract. You must not allow the Vehicle to be taken out of New Zealand. You must also care for and maintain the Vehicle and comply with any laws relating to its ownership and use, including undertaking any necessary repairs required to maintain the vehicle at the roadworthy standard required by Waka Kotahi (NZTA) to achieve a current Warrant of Fitness, and by ensuring Motor Vehicle Registration for the Vehicle is current at all times. You must not use the Vehicle in any dangerous or illegal activity or for any purpose for which it was not intended. You will not alter or deface the Vehicle. You may not race the Vehicle.

You must not do anything or allow anything to happen which may impair or undermine any Borrower's ownership of the Vehicle or the Lender's security interest in the Vehicle. 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.

You must not grant any other security interest over the Vehicle nor allow any lien to be created over it nor dispose of nor allow the disposal of the Vehicle 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.

The Borrower(s) that are the owners of the Vehicle 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.

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.

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.

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.

Any accessions (including replacements and accessories) which are attached to collateral which is goods shall become part of the collateral.

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.

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 Contract(s) of any kind between the parties shall also be deemed to be a default under all the Contracts and the Lender may exercise its powers, rights and remedies under all or any of such Contracts either separately or concurrently.

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 Contract shall be deemed to be owing under the Contract providing for the security interest with priority and default under this Contract shall be deemed to be default under the other security Contract and vice versa.