

VEHICLE SALES & FINANCE LIMITED
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 0800 530 000

Christians Against Poverty www.capnz.org 0508 227 111

Default

The Borrower is in default under this Contract if the Borrower fails to meet any commitment, obligation or requirement imposed on the Borrower by this Contract, including by failing to make a payment when due or by breaching any term or condition of this Contract.

Without limiting the general meaning of default, the Borrower will be in default if the Borrower:

- (a) fails to make a payment or other amount payable under the Contract when due;
- (b) makes a late or short payment;
- (c) fails to comply with any obligation or requirement under the Contract;
- (d) fails to maintain, protect or properly care for the Vehicle as required by the Contract;
- (e) fails to maintain the Vehicle's required Warrant of Fitness, registration or insurance where required under the Contract;
- (f) sells, transfers, gives away, disposes of, conceals or otherwise deals with the Vehicle in a manner inconsistent with or prejudicial to the Lender's security interest;
- (g) damages, endangers, conceals, impairs or otherwise prejudices the Lender's security interest; or
- (h) otherwise breaches a term of the Contract

Default Fees and Consequences

If the Borrower is in default, the applicable Default Fees set out in the Schedule of Fees may be charged in accordance with this Contract and applicable law. No default interest is charged under this Contract.

Depending on the nature of the default, the Lender may also exercise its contractual and other lawful rights in relation to the debt and its security interest, including enforcement and repossession where legally permitted. Any enforcement, repossession or recovery action will be undertaken only to the extent permitted and in the manner required by applicable law.

Disputed Debt and Recovery

If the Borrower fails to meet the Borrower's commitments under this Contract and an amount remains owing, the Lender may, to the extent permitted by the security interest and applicable law, enforce its security and pursue recovery of the amount owing. The outstanding amount may be treated as a disputed debt where there is a dispute, default or unresolved amount requiring determination or recovery, and the Lender may seek the assistance of a Court or the Disputes Tribunal where legally available.

The Borrower remains liable for amounts properly owing under this Contract and for applicable fees, costs and disbursements to the extent lawfully recoverable.

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 thereof 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.

[AccountId]

Initials:_____ Initials:_____

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, at your own expense, insure and keep insured the Vehicle for its full replacement or market value (as required by the Lender) under a comprehensive motor vehicle insurance policy with an insurer acceptable to the Lender. Such insurance must include cover against accidental loss or damage, fire, theft and any other risks reasonably required by the Lender.

The Lender's interest in the Vehicle must be noted on the Cover Note / insurance policy and all insurance proceeds must, to the extent permitted by law, be payable to the Lender or as the Lender directs.

You must not do, permit or omit to do anything which may invalidate, prejudice, reduce or cancel the insurance cover. You must immediately notify the Lender of any cancellation, lapse, non-renewal, claim, loss or damage affecting the Vehicle.

Prior to delivery of the Vehicle and upon request, you must provide the Lender with copies of insurance policies, certificates of currency, premium receipts and any other information reasonably required by the Lender to verify compliance with this clause.

If you fail to maintain the required insurance cover, the Lender may (but is not obliged to) arrange insurance on your behalf and all costs, premiums, fees and charges incurred by the Lender will be payable by you and may be debited to your loan account.

Failure to maintain the required insurance cover constitutes a breach of this Agreement and places the Lender's security at risk. If the Vehicle is uninsured or the required insurance cover has lapsed, the Lender may take any action available to it under this Agreement and applicable law, including treating the Vehicle as security at risk and taking steps to protect, recover or enforce its security.

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.

Privacy Waiver

Under the Privacy Act 2020, you authorise Vehicle Sales & Finance Limited, its authorised agents, contractors and service providers to collect, obtain, verify, use, hold, exchange and disclose your personal information for purposes relating to assessing, administering, monitoring, enforcing and recovering your loan and protecting the Lender's security interest.

You expressly authorise the Lender to obtain information from current or previous finance companies, lenders, creditors, credit providers, financial institutions and credit reporting agencies, including information about your borrowing, repayment history, arrears, defaults, existing commitments and enforcement activity, and authorise those parties to provide such information where permitted by law.

You acknowledge that information may be collected indirectly from third parties and external sources, including Government agencies, Waka Kotahi NZ Transport Agency, employers, insurers and external databases, in accordance with IPP3A of the Privacy Act 2020.

This authority applies now and in the future, without requiring a separate authority on each occasion, and information may be disclosed where reasonably necessary for the administration, enforcement, assignment or recovery of the loan, or as otherwise permitted or required by law.

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

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 the Borrower is in default, or if the Lender is otherwise entitled by law to take enforcement action in relation to the Vehicle, the Lender may take steps to enforce its security interest, including taking possession of the Vehicle, only in accordance with applicable statutory requirements and enforcement processes.

The Borrower agrees to cooperate with any lawful enforcement process and not to conceal, damage, dispose of or unlawfully interfere with the Vehicle or the Lender's security interest.

Repossession, Surrender and Recovery Costs

If the Vehicle is voluntarily surrendered or lawfully repossessed, the Borrower must pay reasonable costs, fees, charges and disbursements properly incurred in connection with surrender, recovery, storage, transportation, inspection, valuation, repair, cleaning, registration, Warrant of Fitness, insurance, marketing and sale, to the extent lawfully recoverable under this Contract and applicable law.

Security at Risk

The Borrower must take reasonable care of and maintain the Vehicle and comply with all obligations concerning possession, condition, maintenance, insurance, registration, Warrant of Fitness and lawful use.

The Lender may reasonably consider its security interest to be at risk where the Vehicle is materially damaged, deteriorating, concealed, removed, sold, transferred, given away, disposed of or otherwise placed beyond the Borrower's possession or the Lender's ability to locate, protect or recover it without the Lender's authority; **where the Vehicle is uninsured, the required insurance has lapsed, been cancelled or is otherwise not maintained;** where the Borrower fails to maintain a current Warrant of Fitness or registration; where a material safety or roadworthiness issue is not remedied; or where another act, omission or breach may materially affect the value, condition, possession, recoverability or protection of the Lender's security interest.

A circumstance giving rise to a concern that the security is at risk may also constitute a default, but the two concepts are not necessarily identical.

Any action taken by the Lender to protect or enforce its security interest, including any notice or repossession process, will be taken only where permitted and in accordance with applicable law.

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.

Warrant of Fitness and Registration

You must ensure that the Vehicle maintains a current Warrant of Fitness (WoF) and current vehicle registration at all times during the term of this Agreement. You are solely responsible for ensuring the Vehicle complies with all applicable legal requirements, including maintaining the Vehicle in a roadworthy condition and to the standards prescribed by NZTA, regardless of whether the Vehicle holds a current WoF.

You must promptly rectify any defect, fault or condition identified during a WoF inspection or otherwise which may affect the Vehicle's safety, roadworthiness or compliance with applicable laws.

The WoF and registration labels must be displayed in accordance with NZTA requirements and must not be allowed to expire.

Upon request, you must provide evidence satisfactory to the Lender that the Vehicle has a current WoF and registration.

Failure to maintain a current WoF or registration may constitute a default under this Agreement and may affect any entitlement to claim under any Mechanical Breakdown Warranty provided by the Lender.

Failure to maintain a current Warrant of Fitness or current registration may also cause the Lender to deem its security interest in the Vehicle to be at risk. In such circumstances, the Lender may exercise any rights and remedies available to it under this Agreement, at law, or under any security interest held by the Lender, including requiring the defect to be remedied, demanding repayment, or taking possession of the Vehicle.

BORROWER SIGNATURE AND FINAL ACKNOWLEDGEMENT

By signing below, the Borrower(s) acknowledge and confirm that:

1. They have read and had the opportunity to read the **Memorandum of Terms and Conditions** in full.
2. They understand that these Terms and Conditions form part of the Contract with **Vehicle Sales & Finance Limited** (the Lender).
3. They have had the opportunity to ask questions about the Contract and its Terms and Conditions and are satisfied that they understand their obligations.
4. They acknowledge their responsibility to comply with all obligations contained in the Contract, including obligations relating to payments, the Vehicle, Warrant of Fitness, registration, insurance, maintenance, care of the Vehicle, and protection of the Lender's security interest.
5. They acknowledge that failure to comply with the Contract may constitute a default and may result in the Lender exercising its rights and remedies in accordance with the Contract and applicable law.
6. They confirm that the information they have provided to the Lender is true and correct to the best of their knowledge.
7. Where there is more than one Borrower, each Borrower acknowledges that their obligations may be **joint and several** as provided for in the Contract.
8. They acknowledge that they have received, or have been provided with access to, a copy of the Contract and these Terms and Conditions.

Final Acknowledgement

I/We confirm that I/we have read, understood and agree to be bound by the Memorandum of Terms and Conditions and the Contract to which these Terms and Conditions relate.

Borrower 1

Full Name: _____

Signature: _____ Date: _____

Borrower 2 / Co-Borrower (if applicable)

Full Name: _____

Signature: _____ Date: _____