

## Part 2 General Terms and Conditions

### What You must do

#### 1. Title risk and insurance

If this Agreement is a credit sale You acknowledge and agree that risk in the goods passes to You on delivery. Ownership in the goods will not pass to You until You have paid in full all of the payments set out in Part 1 of this Agreement and all other amounts payable under this Agreement and until You have performed and complied with all your obligations under this Agreement.

You must keep all secured property (including the goods sold to You) insured at all times to its full insurable value against fire, accident, and all other risks that we may ask to be insured. This insurance must be in our joint names and with a reputable insurer carrying on business in New Zealand. You must pay all insurance premiums on time and give us a copy of the policy and any premium receipt when we ask.

#### 2. Sign and deliver documents

Whenever we ask, even if You are in default, You must sign and deliver us any documents that we need – or do anything that is required - to make any security interest You give us enforceable. This includes doing what is required to perfect a security interest over the secured property.

#### 3. Use the loan to purchase the secured property

If the loan is being made to enable You to purchase the secured property then You must use the loan to buy that property. By signing this Agreement You are authorising us to pay the loan to the seller. We can put whatever payment conditions on the loan advance that we think are required to ensure we perfect the security of the secured property.

#### 4. Make all your payments on time and without set off

Part 1 of this Agreement tells You what You have to pay and when You have to pay it. You must make all payments, including fees and charges and any other amounts on time and in the way that we ask.

Unless we tell You otherwise, You must pay us at our address shown on Part 1 or by a direct payment from your bank account. If we give You a payment authority to sign, You must sign and give this back to us before we make the loan. If a bank payment is reversed or is not made, regardless of the reason, You must still pay us the amount when it is due. If You pay by cheque, the payment is not made until the cheque is cleared.

You can't deduct an amount from or withhold a payment for any reason, even if You claim we owe You something.

#### 5. Make all your payments even if the secured property is lost or destroyed

You must continue to make payments in accordance with this Agreement even if the secured property is lost or stolen or destroyed.

#### 6. Pay us additional charges for late payment

If any payment is not made on time, for whatever reason, You must pay us interest at the annual default interest rate on the amount that is unpaid from the date it is due until the date it is actually paid.

#### 7. Pay us for any loss we may make if You repay early

You can repay the loan in full, but not in part, at any time. If You repay in full You must also pay us all other amounts that are owing under this Agreement. You may also have to pay us an amount equal to our reasonable estimate of the loss we reasonably believe we will make if You repay us early. How we calculate this loss is set out in Part 1. If You are entitled to a rebate for any payment protection insurance then we will allow You to deduct this.

#### 8. In relation to the secured property

You must, at your own cost to do the following things with respect to the secured property:

- take good care of it and keep it in good working order, condition and repair. You must comply with all laws relating to its use and keep it registered or licensed and, if a motor vehicle, maintain a current warrant of fitness;
- tell us any information about it when we ask;
- keep it at your address as noted on part 1;
- use it only as allowed by any insurance policy;
- pay all Goods and Services Tax that may be payable on the supply of the secured property under this Agreement;
- allow us to or our agents to inspect it and/or test its condition at all reasonable times.

### What You must not do

#### 9. In relation to the secured property

You must not do any of the following things with the secured property:

- add to, modify or alter it or any identify mark on it without our prior written consent, other than for routine maintenance; or
- lose possession of it (this includes losing possession by sale or hire); or
- hide it from us, keep it at an address other than the address shown on the disclosure statement or take it out of New Zealand; or
- do anything that would invalidate the insurance over it – such as let an unqualified person use it; or
- create or give anyone else security over it or let anyone else register a financing statement under the PPSA over it; or
- sell, sublet, part with possession of any of it; or
- if the property is Land which if sold by You would not be subject to Goods and Services Tax, You use the land for a taxable activity under the Goods and Services Tax Act 1985 and a sale by You would become a taxable supply without first notifying us and obtaining our consent.

#### 10. Not change your name or address without telling us

You must not change your name or your address without giving us at least seven days' written notice before doing so. This also applies if a guarantor changes his or her name or address.

#### 11. Not assign your rights or interest in this Agreement

This Agreement is personal to You and You must not assign your rights or your interest under this Agreement.

#### 12. Give us notice other than in writing posted or delivered to us

Service of any notice or document by facsimile or by electronic mail upon us is not proper service. Any document to be given to or served on us by You must be posted or delivered personally to our address as shown in Part 1.

### What You promise us

#### 13. Information given to You is true

You undertake that all information that You have given us, or that others have given us on your behalf, to enable us to be satisfied that this Agreement meets your requirements and objectives and that You can make the payments without suffering substantial hardship was true and correct and will remain so during the term of this Agreement.

#### 14. Waiver of right to verification statement under the PPSA

You waive your right to receive a verification statement from us confirming registration on the PPSA of the security interest You have granted us in the goods.

#### 15. Authority to enter premises

You authorise us and / or our agents to enter any premises to search for, retake possession of and remove the secured property.

#### 16. Not to make claims against any of our assignees

To the maximum extent permitted by law, You agree not to assert defences or claims arising out of this Agreement, any related guarantee or indemnity (or a closely connected contract) against any assignee of any of those Agreements from us or any subsequent assignee.

#### 17. Use of information

You agree and acknowledge that we may disclose information about You to: In respect of us providing a credit facility and undertaking periodic reviews or for the requirements of the Anti-Money Laundering and Countering Financing Terrorism Act 2009, You authorise us to make credit references and other enquiries within our normal procedures. For this purpose, we may seek from any such source information concerning You. You also authorise the collection and disclosure of all information relevant to your accounts including repayment history information from/to any credit reporting agency. Credit reporting agencies may use information disclosed by us to update their credit reporting database, and disclose any information that they hold about You to their own customers as permitted under the Credit Reporting Privacy Code. In addition, we may use any service provided by our credit reporting agencies to receive updates of the information it holds about You. In the event that You are in default under any credit facility from us, we are authorised to disclose all relevant information about You, to and for the use by, credit reporting agencies, debt collection agencies, law firms, our related companies (as defined in the Companies Act 1993), assignees and prospective assignees and our agents and contractors.

## 18. Warranties and guarantees relating to goods sold

If this Agreement is a credit sale Agreement, You acknowledge and agree that:

- You have inspected the goods and have entered into this Agreement solely and exclusively in reliance upon your own skill and judgment as to the quality of the goods and the fitness of the goods for your purposes;
- no representation, warranty, promise or guarantee has been made about the goods except for any express written warranty given by us;
- subject to the last bullet point and to any terms implied by law which by law cannot be excluded, all terms relating to this Agreement and the goods that are implied by law or custom (including any implied term as to merchantable quality) are excluded; and
- You are aware that we are a finance company and do not rely on our judgment or skill in relation to the goods, except that such acknowledgment and Agreement is given only to the extent that it does not limit or exclude any provision of the Consumer Guarantees Act 1993 and shall (together with each other provision of this Agreement) take effect subject to that Act's provisions.

## What we can do

### 19. In relation to insurance

We can ask for copies of the insurance policies and receipts or confirmation of payment of the premiums. If You don't insure then we may, but are not obliged to, insure the secured property. You must pay us on demand the amount that we pay for insurance. We can also receive a commission on any insurance applied for under this Agreement or subsequently applied for.

The proceeds of any insurance policy are to be paid to us and we can apply these proceeds as we think fit. We can make good any damage to or replace the property insured. But we could also repay any amounts payable under this Agreement whether or not the time for payment has arrived. Any balance left over will be paid to You. Any shortfall will be payable by You to us.

### 20. When You are in default

You are in default when either:

- You don't pay us any amount when it's due; or
- You don't do what You are required to do.

You and a guarantor are in default if You become bankrupt or insolvent and any action is taken against any of You which we reasonably believe could impair your ability to meet your obligations to us under this Agreement or the guarantor of this Agreement.

### 21. The loan becomes due and we can sell the secured property

If You default then repayment of the loan becomes due and payable immediately and we can:

- demand immediate payment;
- take legal proceedings to recover any amounts unpaid
- retake possession of and resell the secured property;
- do anything or pay any sum we consider necessary or expedient to remedy the default;
- terminate this Agreement; and
- charge You default fees to reasonably cover our costs and expenses.

### 22. Appoint a receiver

If You default or if any secured property appears to us to be in jeopardy or in danger of being taken or affected under any process of law by anyone else then we can appoint a receiver of the secured property. We will do this in writing. We can also remove, replace and fix the terms of appointment on whatever terms we consider appropriate. We can make this appointment before or after we take possession of the secured property.

### 23. Use proceeds to pay amounts under this Agreement

After deducting all costs of retaking possession, storage, valuation, reconditioning, discharging any security interest and resale, we can apply any surplus arising from the resale towards payment of all amounts then due to us under this Agreement. If there is a shortfall after payment of the amounts owing, You will remain liable to pay us.

### 24. Vary the payments and extend the term

If You make a payment default, we may, but are not obliged to, vary any payment amount. This could include extending the final payment date or changing the amount of the regular payments. Any change we make is entirely at our discretion.

### 25. Whatever we do must be in accordance with the law

Any rights, powers or remedies that we chose to exercise against You or the secured property are subject to the provisions of the law. This means that if the PPSA and the CCCFA regulate how we can act, then to the extent applicable (but not otherwise) those laws apply.

### 26. Assign and give security interest

We may assign, or give a security interest in favour of any other person of all of our right, title and interest in this Agreement, any related guarantee and or the secured property without your consent.

### 27. Preservation of other rights and remedies

The exercise by us of any express rights set out in this Agreement will be without prejudice to any other rights, powers or remedies available to us under this Agreement, at law or in equity, including any rights, powers or remedies we would have without reference to this Agreement.

## How You give us security

### 28. Grant of security interest in personal property

By signing this Agreement, You, being the owner of the personal property specified in Part 1, grant us a security interest in that property.

### 29. Agreement to mortgage land

By signing this Agreement, You, being the owner of the land agrees to mortgage all of your present and future right, title and interest in the land in favour of the Creditor, and on the following terms and conditions

- You will, at our request, authorise and instruct a lawyer of our choice to act to register either a "fixed sum" or an "all obligations" mortgage instrument (whichever we choose) and the covenants implied in mortgages of land by schedule 2 of the Property Law Act 2007 will apply to that mortgage and the principal sum referred to in those covenants shall be all monies that You owe us under this Agreement;
- for the purposes of section 92(1) of the Property Law Act 2007, we may specify a priority figure to be included in the mortgage as the then outstanding balance plus \$150,000 plus interest and costs.

### 30. Right to caveat mortgaged land

You, agree that we may lodge a caveat against the land that You own that has been specifically identified in Part 1 (by address or title reference, as amended from time to time) so that third parties have notice of our interest under clause 30 (which gives us the right to mortgage the land)..

### 31. Prior and subsequent charges

The security interests granted under clauses 28 and 29 are given as security for payment to Us of all monies owing under this Agreement and the performance of all of the terms of this Agreement.

Each owner of the secured property promises us that there are no security interests in any land or any goods granted to any other person, or if there are, that these have been disclosed to us. You must not grant any further security over the land and goods without our prior consent.

### 32. You grant us a power of attorney

Each borrower and each guarantor, jointly and severally, irrevocably appoints the Creditor and any one director of the Creditor severally as their attorney to:

- do anything which a borrower or a guarantor is required to do under this Agreement, and
- do anything and to sign any document that the attorney thinks desirable to protect the interests of the Creditor under this Agreement to the extent permitted by law.

For example, the Creditor (as your attorney) may:

- sign any document required to register the mortgage and/or caveat granted under clauses 29 and 30, or to register a security interest over the goods under the PPSA.
- act on your behalf to notify insurance company of the Creditor's interest in any insurance policy over the secured property, deal with any claims and receive any payments from the insurance company on your behalf.

This power of attorney will remain until all money secured has been paid to us in full.

Each borrower and each guarantor is deemed to confirm anything done by an attorney under this clause and further indemnifies any person acting in reliance upon the power.

If we assign the benefit of this Agreement to another person (assignee), the assignee will have the same rights and powers under this clause as we have. That means each borrower and each guarantor irrevocably appoints the assignee his or her attorney with the power set out in this clause **BlockLand3**.

## Other Matters

### 33. Exclusion of liability

If this Agreement is a credit sale Agreement, without limiting clause 18, We are under no liability to You for:

- any repairs, servicing or maintenance of the goods;
- any interruption or loss of use of the goods caused by whatever reason;
- the goods being inadequate for any purpose or having any defect or being of insufficient quality for your purposes;
- any liability, claim, loss, damage or expense of any kind caused directly or indirectly by the goods or part of them; or.
- any consequential loss or damage however that loss or damage is caused or arises. This exclusion includes, but is not limited to, consequential loss or damage caused by or arising from negligence (including a failure to do something which should have been done or to prevent something from occurring), faulty design and faulty material, equipment or component parts of the goods.

### 34. Illegality

The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision.

### 35. No waiver

No failure to exercise, and no delay in exercising, any of our rights under this Agreement operates as a waiver of that right, nor does a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by us of our rights under this Agreement is effective unless it is in writing signed by us.

### 36. Cause of action

Any cause of action which may arise out of this Agreement shall be deemed to have arisen at our registered office. This means that all legal proceedings shall be commenced and heard at the Disputes Tribunal, District Court or High Court (as the case may be) at Auckland. The law of New Zealand shall apply.

### 37. Information You give us

Information provided by You to us will be securely held by us. You have the right to access that information and to request that it be corrected. A fee may be payable. We may use the information provided by You for credit and administration purposes and in accordance with clause 17 above.

### 38. Notices

Notices will only be deemed to have been given:

- in the case of delivery, upon actual delivery to the party's specified address (including, in the case of any notice served on You, actual delivery to any person in apparent occupation or any building manager or receptionist, or attachment to any external door, or delivery to any letterbox, at your specified address); and
- in the case of posting, two business days after despatch if the letter is sent in New Zealand and five business days in any other case.

### 39. Guarantee and indemnity

If this Agreement provides for a guarantor, the Guarantor:

- unconditionally and irrevocably guarantees to us the due payment by You of all amounts payable by You, and the due performance and compliance by You of your obligations, under this Agreement and undertakes that if, for any reason, You do not pay when due (whether by acceleration or otherwise) any amount payable by You, the Guarantor will pay the relevant amount on demand by us; and
- as a separate and continuing undertaking, the Guarantor unconditionally and irrevocably undertakes to us that, should any amounts not be recoverable from the Guarantor under (i) above for any reason whatsoever, whether or not that reason is or was known to us, the Guarantor will, as a sole and independent obligation, pay to us on demand the amount which we would otherwise have been able to recover (on a full indemnity basis).

The Guarantor is liable under this Agreement as a sole and principal debtor. The Guarantor is not to be discharged, nor are its obligations to be affected, by anything whatsoever which, but for this clause, would or might have discharged the Guarantor or affected its obligations. The Guarantor's obligations under this Agreement are by way of continuing security, are in addition to any other security or guarantee held at any time by any person and may be enforced without our first taking any steps against You, any other person or any security.

### 40. Definitions and interpretation

When any of the words that are italicised and written in bold below are used in this Agreement they have the meaning as set out opposite the word.

**Agreement** means this Agreement, whether it is a credit sale Agreement or a loan Agreement including Part 1 and Part 2;

**annual default interest rate** means the rate specified as such in the "default interest and charges and default fees" section of Part 1;

**business day** means a day (other than a Saturday or Sunday) on which registered banks are open for business in Auckland;

**CCCFA and PPSA** mean, respectively, the Credit Contracts and Consumer Finance Act 2003 and the Personal Property Securities Act 1999;

**goods** means the goods described under the heading "**Description of Goods**"

**in** Part 1 and includes any accessions, accessories, or replacement parts that are installed in, or affixed to, the goods;

**land** means the land, described under the heading "**Description of Land**";

**month** means a calendar month;

**Part 1** and **Part 2** mean the two parts to this Agreement that together make up the whole Agreement. Part 1 contains the Disclosure Statement required by the CCCFA.

**person** includes an individual, a body corporate, an association of persons (whether corporate or not) and a trust (in each case, whether or not having separate legal personality);

**security interest** includes any legal instrument, the practical effect of which is to secure a Creditor; and includes an interest defined in section 17 the PPSA.

**secured property** means the land and goods and includes any accessions, accessories, or replacement parts or improvements that are installed in, or affixed to, the secured property.

the singular includes the plural and vice versa;

reference to one gender includes the genders;

any legislation includes a modification or re-enactment of, legislation enacted in substitution for, and any regulation or other instrument from time to time issued or made under, that legislation;

unless otherwise expressly provided, reference to a party to this Agreement includes its successors and (in our case) our assignees and transferees and (in your case) your permitted assignees and transferees; and

if there is more than one Borrower or Guarantor, the provisions of this Agreement bind You or the Guarantors (as the case may be) jointly and severally and, if there is no Guarantor, the provisions of this Agreement insofar as they apply to a Guarantor are to be ignored.

### **Your right to cancel**

You are entitled to cancel the consumer credit contract by giving notice to the Creditor.

#### **Time limits for cancellation**

If the disclosure documents are handed to You directly You must give notice that You intend to cancel within 5 working days after You receive the documents.

If the disclosure documents are sent to You by electronic means (for example, email) You must give notice that You intend to cancel within 7 working days after the electronic communication is sent.

If the documents are posted to You, You must give the notice within 9 working days after the date they were posted.

Saturdays, Sundays, and national public holidays are not counted as working days.

#### **How to cancel**

To cancel, You must give the Creditor written notice that You intend to cancel the contract by-

- giving notice to the Creditor or an employee or agent of the Creditor; or
- posting the notice to the Creditor or an agent of the Creditor; or
- emailing the notice to the Creditor's email address (if specified on the front of this disclosure statement); or
- sending the notice to the Creditor's fax number (if specified on the front of this disclosure statement).

You must also, within the same time, return to the Creditor any advance and any other property received by You under the contract.

You must also pay the cash price of the property (or the balance of the cash price after deducting any amount You have already paid) within 15 working days of the day You give the cancellation notice.

#### **What You may have to pay if You cancel**

If You cancel the contract, the Creditor can charge You the amount of any reasonable expenses the Creditor had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc). If You cancel the contract the Creditor can also charge You interest for the period from the day You received the advance until the day You repay the advance.