

## Finance Direct Limited Terms and Conditions

### Important information about **YOUR LOAN**

#### **A. INTRODUCTION**

##### **1. Documentation of your Loan**

- 1.1 The terms of your Loan are set out in: -
- (a) these Terms and Conditions;
  - (b) the Finance and Security Deed;
  - (c) any Securities; and
  - (d) the Fees Schedule.

As required by the CCCFA, we will provide you with six monthly statements during the term of your Loan. These statements will give you information about your Loan including all payments made and charges incurred.

##### **2. Inconsistency & Amendment**

- 2.1 (a) If there is an inconsistency between these Terms and Conditions and the Finance and Security Deed or any Security, the term and conditions of the Finance and Security Deed or the Security shall prevail.
- (b) The terms of any Finance and Security Deed may be amended from time to time by Amendment Deeds entered into by you including, without limitation, to provide for any further advances that we agree (in our sole discretion) to make made to you. Any Amendment Deed (inclusive of disclosures that we are required to make to under the CCCFA) will form part of the Finance and Security Deed and be governed by the terms of your Loan as set out in clause 1.

#### **B. PAYMENTS**

##### **3. General**

- 3.1 You shall pay the Loan (inclusive of any future advances), together with interest payable, in instalments as set out in the Finance Details section of the Finance and Security Deed by automatic bank payment or direct debit directly to our bank account.
- 3.2 Interest charges are calculated by multiplying the unpaid balance at the end of the day by a daily interest rate. The daily interest rate is calculated by dividing the annual interest rate by 365. Interest is charged to your account monthly. The annual interest rate is fixed for the whole term of the Loan.
- 3.3 (a) Subject to sub-clause (b), all moneys paid under the Finance and Security Deed to us shall, as at the date upon which each such payment is made, be appropriated on account firstly of interest then accrued, secondly of any other monies payable hereunder, and thirdly of the Loan.
- (b) If you are in default (including by virtue of any part payment made and accepted by us), we may apply any payment or other amount on account of the Loan (including, without limitation, the proceeds of any Security realized by us) received by us in any way that we determine. If we elect to, we may also capitalize any overdue payment by adding it to the outstanding balance of the Loan. We may also choose (in our sole discretion) to extend the term of the Loan and/ or the amount of the payment instalments.
- 3.4 Each payment to us must be made in full on the due date in immediately available freely transferable funds in the manner and to the account which we specify from time to time. If any payment is not received in full, we may accept it (in our sole discretion) and apply it in accordance with clause 3.3.
- 3.5 Each payment made by you, or by any other person on account of any amount due from you, to us is to be unconditional and is to be in full, without any deduction or withholding whatsoever (whether in respect of tax, set-off, counterclaim or otherwise) unless such deduction or withholding is required by law. If any deduction or withholding is required by law, you will pay to us an additional amount so that the net amount actually received and retained by us on the due date (free from any liability in respect of any deduction or withholding, and ignoring any amount which we are deemed to have received by reason of any legislation) equals the full amount which we would have received had no deduction or withholding been made or required.
- 3.6 We may without notice to you combine, consolidate or merge all or any of your accounts with, and liabilities to, us and may set-off or transfer any sum standing to the credit of any of your accounts in satisfaction of any liabilities to us under the Finance and Security Deed.
- 3.7 You may prepay your Loan in full at any time provided that you pay, in addition to any amounts

due under the Finance and Security Deed: -

- (a) all the prepayment administration fees as set out in the Fees Schedule;
- (b) all the prepayment charges as set out in the Fees Schedule, being an amount calculated using the following formula:

$$u \times (i - (r + 2.50)) / 100 \times d / 365$$

where:

- u = unpaid balance at the time of full prepayment;
- i = the annual fixed interest rate applicable to the Loan for the term of the Loan.
- r = ANZ Bank New Zealand Limited 90 day bill rate previously set on the first day of most recent calendar quarter (i.e. 01 January, 01 April, 01 July or 01 October). If no rate is available then the 90 day rate set by any other major registered bank.
- d = the lesser of (i) 90; and (ii) if the balance of the term remaining under the Finance and Security Deed is less than 90 days, the number of days remaining.

- (c) if your Loan is not for personal, domestic or household purposes (and therefore it is not a consumer credit contract under the CCCFA), by way of charges in the nature of penalty and/ or default interest you pay an amount equal to three months' instalments in addition to any other prepayment fees or prepayment charges payable.

- 3.8 (a) You acknowledge and agree that: -
  - (i) the terms of any loan repayment insurance policy taken out by you in connection with your Loan do not form part of the Finance and Security Deed and any such policy is a separate agreement between you and the relevant insurer; and
  - (ii) where applicable, it is your responsibility to cancel any loan repayment insurance policy and/ or request any refund of any such policy by notice in writing to the relevant insurer.
- (b) Upon written request from you and subject to payment of any refund processing fees as set out in the Fees Schedule, we will arrange for payment to you of any rebate due to you in respect of any loan repayment insurance taken out by you for your Loan.
- (c) If you are in default (including by virtue of any part payment made and accepted by us), you automatically and irrevocably assign all right, title and interest in any refund due to you to us and we may apply any payment or other amount on account of such refund received by us in any way that we determine to the Loan and other Secured Moneys outstanding.

#### 4. **Payment of Costs and Outgoings**

4.1 In the event that:

- (a) you shall fail to perform any obligation under the Finance and Security Deed; or
- (b) we shall consider it necessary or desirable to perform any obligation, pay any money or incur any expenses or liabilities (whether in the course of taking possession of or selling or preserving or protecting the Goods or Land, or in the discharge of your obligations, whether under the Finance and Security Deed or under any Security) in order to protect our interests under the Finance and Security Deed,

THEN we may perform such obligation, pay such money or incur such expenses and the moneys paid or expenses incurred by us shall form part of the Secured Moneys.

4.2 You will pay all costs sustained or incurred by us (including as set out in the Fees Schedule) in connection with:

- (a) the preparation, negotiation, entry into and registration of the Finance and Security Deed and each Security, and for a financing statement for the Finance and Security Deed and each Security as may be required to achieve perfection in terms of the PPSA;
- (b) the preparation, registration, entry into and registration of a financing change statement in relation to each renewal, amendment or discharge of a registration, or any subordination, release or partial release of any of the Goods from the security interest under this Deed and under any Security as may be required by the PPSA;
- (c) the preparation, registration, entry into and registration of any mortgage or caveat required pursuant to clause 13 or under any Security;
- (d) the preparation, registration, entry into and registration of any document in relation to any variation, subordination, withdrawal or discharge of any registration in relation to any mortgage or caveat required pursuant to clause 13 or under any Security; and
- (e) the exercise of, or in protecting or enforcing or otherwise in connection with, our rights under the Finance and Security Deed or a Security or another transaction required or contemplated by a Security,

in each case on demand and on a full indemnity basis.

4.3 A statement of account purporting to be made from our books and signed by any of our

directors and managers shall (without it being necessary to produce any other verification) be prima facie evidence of the amount of Secured Moneys or any specified part owing or unpaid by you to us from time to time and of all other matters set out in such statement.

**5. Default Interest**

5.1 Where any amounts payable to us by you pursuant to the Finance and Security Deed are overdue for payment, or where there is any Event of Default such that the whole of the balance of the Loan has become due and payable pursuant to the provisions of clause 7.2, interest payable shall be payable at the Default Interest Rate on the overdue amounts only (including interest which has been charged to your account and which remains unpaid) computed from the dates on which the payment should have been made until the dates of actual payment, together with any other default charges payable. For the avoidance of doubt, interest will not be payable on any amounts that are not overdue for payment or have only become overdue for payment by virtue of the whole of the balance of the Loan has become due and payable pursuant to the provisions of clause 7.2.

**C. REPRESENTATIONS & UNDERTAKINGS**

**6. Representations & Undertakings**

6.1 **Goods & Land:** You represent and undertake that you will:

- (a) keep the Goods in good order and repair (reasonable wear and tear excepted) and properly operated and serviced. In particular, without limiting the generality of the foregoing:
  - (i) you will replace any defective or worn out parts, and any such replacement parts or accessories will upon attachment, become part of the Goods and subject to the security interest created by the Finance and Security Deed;
  - (ii) you will ensure that all times that the Goods are used solely for the purposes intended by the manufacturer having regard to the design capabilities and limitations of them and in accordance with the manufacturer's instructions and within the rated capacity of the Goods; and
  - (iii) in respect of any motor vehicle, you will keep it regularly serviced by a reputable garage and under cover and thoroughly protected from the weather when not in use.
- (b) not, or attempt to, sell, assign, or otherwise dispose of or encumber the Goods or Land in any way;
- (c) keep the Goods in your sole possession and not take the Goods out of New Zealand;
- (d) allow us and any persons authorised by us to inspect the Goods or Land at any reasonable time upon our first giving you reasonable notice;
- (e) not, without our prior consent, alter or make any addition or modification to the Goods, or alter any markings on the Goods;
- (f) immediately notify us following any loss of, or damage to, the Goods, or if the Goods or any part of them are removed or taken out of your possession and must also give to us the address of the place to which they have been removed;
- (g) not use, attach or install the Goods to land or buildings in any manner that would lead to the Goods becoming a fixture;
- (h) comply with the provisions of all Acts of Parliament, by-laws and regulations affecting the Goods or Land or the use or possession of the Goods or Land and must keep the Goods registered or licensed if required to do so;
- (i) if the Goods are a motor vehicle or aircraft: -
  - (i) maintain a current vehicle inspection certificate or certificate of fitness or certificate of airworthiness (as the case may be) and shall not permit an unlicensed person to drive it or fly it and shall not permit it to be used in any circumstance which would entitle the insurer of the vehicle or aircraft to disclaim liability under the policy of insurance effected in respect of the vehicle or aircraft;
  - (ii) not use the Goods in any race or competitive activity; or
  - (iii) not obtain any personalized plate or remove or alter any serial number; or
- (j) not do anything that would otherwise adversely affect your rights of ownership in the Goods or Land.

6.2 **General:** You represent and undertake that:

- (a) you will immediately notify us in writing of any change of your address, telephone or facsimile number or authorised signatories;
- (b) you have full power and authority to enter into and comply with your obligations under the Finance and Security Deed or other document to which you are expressed to be a party and has obtained all consents needed to enable you to do so;

- (c) the Finance and Security Deed has been (or when executed will have been) duly authorised and entered into by you;
  - (d) the Finance and Security Deed is (or when executed will be) legal, valid, binding and enforceable against you respectively;
  - (e) no Event of Default has occurred and is continuing;
  - (f) all information provided by you or any other party to us in connection with the Finance and Security Deed was true and accurate when provided and except as disclosed to and accepted in writing by us remains so, and there are no facts or circumstances which have not been disclosed to us which would make that information untrue, inaccurate or misleading;
  - (g) except as disclosed to and accepted in writing by us, no security interest or other encumbrance exists over or affects, nor is there any agreement to give or permit to exist any security interest or encumbrance over or affecting, the Goods or the Land;
  - (h) if you are a company, that you satisfy the solvency test (as that term is defined in the Companies Act 1993) and, if you are an individual, that you have never been adjudicated bankrupt;
  - (i) you are not party to any litigation or arbitration, nor subject to any administrative proceedings or investigation, which if decided against you might have a material adverse effect on your business or the Goods, nor is any such litigation, arbitration, proceeding or investigation threatened or pending;
  - (j) if you are a company, you will not without our prior written consent:
    - (i) make a substantial change in the nature or scope of your business; or
    - (ii) at any time following the occurrence of an Event of Default make any return of capital, pay any dividend or make any other distribution; or
    - (iii) pass any resolution for or in contemplation of your amalgamation with, or involving, any other company then existing or yet to be formed; or
    - (iv) make or attempt to make a distribution (as that term is defined in the Companies Act 1993), except on such terms and in compliance with such conditions previously agreed between us in writing; and
  - (k) you shall notify us of the occurrence of any Event of Default and any event or circumstance which may have a material adverse effect on you, immediately upon becoming aware of it.
- 6.3 Each of the statements in clauses 6.1 and 6.2 will be deemed to be repeated continuously so long as any Secured Moneys are still payable to us by you, by reference to the facts and circumstances then existing.

## **D. DEFAULT**

### **7. Default**

- 7.1 You agree that you are in default of the Finance and Security Deed upon the happening of any of the following events if:
- (a) you default in performance of any obligation under the Finance and Security Deed, any Security or other agreement with us or in payment of any of the moneys payable under the Finance and Security Deed, any Security or other agreement with us (or any part of it) on the due date for payment or performance, time being strictly of the essence; or
  - (b) an Insolvency Event occurs in relation to you; or
  - (c) you attempt to sell, dispose of or encumber the Goods or Land in any way or the Goods are at risk (whether determined under section 109(2) of the PPSA or section 83E of the CCCFA (as applicable)); or
  - (d) any judgment is obtained against you and shall remain unsatisfied for a period of 7 days; or
  - (e) any term, condition or provision in the Finance and Security Deed or any Security is or shall become void, voidable, illegal, invalid or unenforceable or you allege or any court decides that any such term, condition or provision is void, voidable, illegal, invalid or unenforceable; or
  - (f) you default under any agreement or deed entered into by you in favour of a third party where security has been given by you, whether in part or in whole, over the same assets, property or collateral over which security has been given to us; or
  - (g) distress or execution is levied or issued against the Goods;
  - (h) any lien is lawfully claimed against the Goods;
  - (i) any insurance policy in respect of the Goods or Land is cancelled (for whatever reason); or
  - (j) you destroy, damage, endanger, disassemble or abandon the Goods, or conceal or hide the Goods from us.

- 7.2 At any time upon the occurrence of any Event of Default we may immediately or at any time thereafter, upon notice and without waiting any time (but subject always to compliance with relevant legislation):
- (a) require that: -
    - (i) the whole of the balance of the Loan then outstanding and unpaid together with all other Secured Moneys (including all accrued interest and Default Interest) is due and payable immediately notwithstanding that the time or times for payment may not have arrived; and
    - (ii) if your Loan is not for personal, domestic or household purposes (and therefore it is not a consumer credit contract under the CCCFA), by way of charges in the nature of penalty and/ or default interest, you pay an amount equal to three months' instalments in addition to any other default interest or default charges payable;
  - (b) where the Finance and Security Deed is in relation to consumer goods, enter the premises where the Collateral is held and repossess and sell the Collateral in accordance with provisions of the CCCFA subject to your right to reinstate the Finance and Security Deed and your right to settle the Finance and Security Deed conferred by sections 83ZB and 83ZE of the CCCFA;
  - (c) where the Finance and Security Deed is not in relation to consumer goods, exercise any or all rights conferred on us by Part 9 of the PPSA;
  - (d) enter on any land or premises where the Goods may be situated and take possession thereof and use such force as may reasonably be necessary to do so;
  - (e) sell and dispose of the Goods whether together or in lots or by public auction, private contract or otherwise and upon such conditions in all respects that we think fit;
  - (f) buy in and resell the Goods without being liable for any loss however incurred;
  - (g) employ and pay for all repossession agents, auctioneers, salesmen and other consultants as we may consider necessary or expedient for the foregoing purposes;
  - (h) execute all documents and instruments that we consider necessary for effecting any sale or other disposition;
  - (i) exercise and enforce all other powers, rights and remedies that are conferred upon mortgagees by law notwithstanding any prior waiver or neglect;
  - (j) leave the purchase price pursuant to any sale or other disposition owing over such period of time as we may think fit with or without interest and with or without security;
  - (k) let or bail the Goods for such term and for such rent and subject to such conditions as we think fit; and
  - (l) proceed to execute and register the memorandum of mortgage pursuant to clause 13 against the certificate of title for the Land and exercise all of the rights conferred upon us as mortgagee under that mortgage, including but not limited to the power of sale of the Land; or
  - (m) where applicable, appoint a receiver or receiver and manager of all the Goods or such part of the Goods as we nominate,
- AND all sales and things authorised by this clause 7.2 shall be as valid and effective as if done by you. We or any receiver shall, in addition, be accountable only for so much of the moneys actually received by us pursuant to any sale or disposition and you shall remain liable for any principal, interest or other moneys secured on any sale or disposition beyond the amount of moneys actually received by us.
- 7.3 We are not:
- (a) obliged to enforce payment of the Secured Moneys or take any action or bring any proceedings for any of this purposes; or
  - (b) liable in respect of any loss or damage which results from the exercise or attempted or purported exercise or the non-exercise by us of our rights under the Finance and Security Deed, any Security or at law.
- 7.4 A purchaser from, or other person dealing with, us, our directors and managers or any receiver appointed exercising or purporting to exercise rights conferred under the Finance and Security Deed (including any person to whom is tendered for registration a document executed by us):
- (a) need not enquire whether the relevant rights were exercised or are exercisable, or about the propriety or regularity of any transaction or dealing; and
  - (b) will not be affected by notice that any transaction or dealing is unnecessary or improper.
- As regards other parties, each such transaction or dealing will be deemed to be authorised by those rights and to be valid regardless of any irregularity or impropriety in it.
- 7.5 You will indemnify us and our directors and managers against each cost, loss, expense (including all legal expenses on a solicitor and own client basis and taxes) and other liability (including loss of profit or margin) sustained or incurred by us as a result of:
- (a) the occurrence or continuance of an Event of Default;

- (b) anything done or omitted, or purported to be done or omitted, by us in the exercise or purported exercise of our rights under the Finance and Security Deed or any Security or conferred by law (and whether or not arising by reason of mistake, oversight, negligence or error of judgment);
- (c) a defect in your title to the Goods or Land; or
- (d) us performing any of your obligations under the Finance and Security Deed, paying any money or incur any expenses in order to protect our interests under the Finance and Security Deed or any Security,

by payment to us on demand of the amount which we certify is required to compensate us for that cost, loss, expense or other liability.

- 7.6 We need not marshal, enforce or apply under, or appropriate, recover or exercise:
  - (a) any security interest, guarantee or other entitlement held at any time by us; or
  - (b) any moneys or assets which we at any time holds or is entitled to receive, before the Finance and Security Deed is enforced.
- 7.7 Neither we, any of our directors and managers nor any receiver appointed will be liable to account as mortgagee in possession for anything except actual receipts for any loss on disposal of any Goods, for any loss or accident occurring in the course of carrying on your business, or for any other negligence, default or omission for which a mortgagee in possession might be liable or for which any of them may be liable on any other basis.
- 7.8 Any receiver appointed under the Finance and Security Deed shall have the following powers: -
  - (a) all the powers and authorities a receiver or receiver and manager has at law or otherwise (including under the Receiverships Act 1993); and
  - (b) to do all things with the Goods as if the receiver was the absolute owner thereof.
- 7.9 Any receiver shall, to the fullest extent permitted by law, be your agent and we shall not be responsible or liable for the receiver's acts or omissions.
- 7.10 In addition to the right to repossess the Goods upon your default in accordance with clause 7.1, we also have the right to repossess the Goods at any time without notice where we have reasonable grounds to believe that the Goods have been or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold or otherwise disposed of contrary to the provisions of the Finance and Security Deed in accordance with section 83E(2) of the CCCFA.

## **8. Proceeds of Realisation**

- 8.1 The net proceeds of any sale or other realisation of the Goods shall be applied by us (subject to the claims of any person ranking in priority to the Finance and Security Deed):
  - FIRST in payment of all costs, charges and expenses of and incidental to the exercise by us of all or any of our powers;
  - SECOND in payment of the Secured Moneys to us; and
  - THIRD in payment of any residue to you or such other person who shall otherwise be entitled to such residue.
- 8.2 In the event of any sale or other disposition of the Goods by us being taxable under the Goods and Services Tax Act 1985 you shall on demand:
  - (a) pay or refund to us the amount of such tax when it is due for payment (and such tax shall form part of the Secured Moneys); and
  - (b) supply or provide to us any GST tax invoice statement pursuant to section 5 of the Goods and Services Tax Act 1985 or such other information as we shall require in relation to such Act.
- 8.3 We shall not be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss in realisation or for any loss or accidents occurring in any business or operations carried on or for any negligence, default, omission for which a mortgagee in possession might be liable.

## **E. SECURITY**

### **9. Securities**

- 9.1 The Finance and Security Deed is collateral with and secures the same moneys as are intended to be secured by any Securities. We may, however, pursue our remedies and exercise our powers under the Finance and Security Deed or any Security separately or concurrently.
- 9.2 The Finance and Security Deed is given in addition to and not in substitution for any other security held by us. Neither the Finance and Security Deed nor anything contained in the Finance and Security Deed shall discharge, merge, abate or prejudice:
  - (a) any other security or securities now or in the future held by us for payment of the Secured Moneys; or
  - (b) any claim or rights we have or may have upon any guarantee, bill of exchange, promissory note, cheque or other instrument.
- 9.3 The terms of any Security shall be deemed incorporated into the Finance and Security Deed to

the intent that they shall be collateral to it and that a breach of any of the terms contained in any Security shall be deemed not only to be a breach of each Security but also to be a breach of the Finance and Security Deed.

- 9.4 To the extent that there is any conflict between the terms of the Finance and Security Deed and the terms of any Security, the terms of the Finance and Security Deed shall prevail.

**10. Creation of Security Interest in Goods**

- 10.1 In consideration of all Secured Moneys present or future provided by us, and to secure repayment of the Secured Moneys and performance of your obligations set out in the Finance and Security Deed, you charge and assign in favour of us all your right, title and interest (present and future, legal and equitable) in, to, under or derived from the Goods, including without limitation:

- (a) proceeds derived directly or indirectly from the Goods;
- (b) after-acquired property to the extent that it replaces or restores the Goods pursuant to or as required by the Finance and Security Deed.

- 10.2 The security interest created by you in clause 10.1 is an absolute assignment by way of mortgage of the Goods consisting of existing or future rights. You must give notice in writing of this assignment promptly:

- (a) to each of your insurers;
- (b) to each other person against whom you have any rights as required by us at any time.

- 10.3 If the Finance and Security Deed is given as security for a loan or advance to be expended in whole or in part (to the extent required for the purpose) in the purchase by you of the Goods or any of the Goods then you will apply the Loan (or such part as may be required for the purpose) in and towards purchase forthwith and will do and execute all such acts, deeds, matters and things necessary to perfect your title to the Goods subject only to the Finance and Security Deed. If required, we may pay the relevant portion of the Loan directly to the vendor of such Goods, and you authorise and request us to make any such payment.

- 10.4 Except to the extent inconsistent with the terms of the Finance and Security Deed or any Security, the covenants implied in Part 2 of Schedule 2 of the Property Law Act 2007 in relation to mortgages over goods are implied in the Finance and Security Deed.

**11. Insurance**

- 11.1 Until such time as the Secured Moneys have been paid to you in full:

- (a) you shall insure and keep the Goods insured against loss, fire, accident, theft and damage for an amount equal to the full insurable value of the Goods with a reputable insurer in your name as owner and our name for our respective interests, and shall pay promptly all premiums in respect of such policies and to permit us to receive all insurance monies, and execution of the Finance and Security Deed shall be proof of our authority to receive such monies and not to do or permit or suffer to be done anything which might prejudice any such insurance; and
- (b) pay all the proceeds of insurance or other moneys received under the insurance policies to us,

we may in our discretion use the insurance moneys either in or towards the cost of repairing damage to the Goods or in satisfaction of the Secured Moneys (subject to such rebate as we may allow) whether or not the due date for payment has arrived.

**12. Personal Property Securities Act**

- 12.1 You:

- (a) acknowledge that, where we have rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA;
- (b) agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to the Finance and Security Deed, or any Security; and
- (c) waive your right to do any of the following:
  - (i) receive notice of our proposal to retain any Goods under section 120(2) of the PPSA or object to such proposal under section 121;
  - (ii) not have Goods damaged when we removes an accession under section 125 of the PPSA;
  - (iii) receive notice of the removal of an accession under section 129 of the PPSA;
  - (iv) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA; or
  - (vi) receive a copy of the verification statement in relation to any financing statement registered by us pursuant to the Finance and Security Deed or any Security.

- 12.2 You shall at our request do anything reasonably required by us to protect the security interest created in any personal property by any of the Securities including:

- (a) providing to us any details of any item of the collateral which may be required by us in

order to protect the security interest in that item, including any registration number, registration mark, serial number or identification mark; and

- (b) deliver to us any chattel paper, document of title, investment security or negotiable instrument.

### **13. Agreement to Mortgage Land**

- 13.1 You agree to grant a mortgage in favour of us over all of your right, title and interest in the Land as security for the payment of the Secured Moneys and the due performance and observance of the obligations under the Finance and Security Deed and hereby charges all of your right, title and interest in the Land in favour of us as security for the payment of the Secured Moneys and the due performance and observance of the obligations under the Finance and Security Deed.
- 13.2 You authorise us to lodge and maintain a caveat against the certificate of title to the Land as notice of our interest arising under the agreement to mortgage made pursuant to the Finance and Security Deed.
- 13.3 You covenant that the Land is only subject to the encumbrances and mortgages set out in the Finance and Security Deed and agree not to sell, transfer, encumber, assign or agree to sell, transfer or exchange your interest in the Land without obtaining our prior written consent.
- 13.4 You agree to, immediately upon request by us, execute in favour of us a registrable all obligations mortgage in such form as we may require over the Land which you own as security for the due payment of the Secured Moneys. You irrevocably and unconditionally acknowledge that in the event that you have not executed the said mortgage within two days of receipt of the said mortgage, we may execute and register the said mortgage against the Land as attorney for you.
- 13.5 You covenant to insure the buildings and improvements on the Land for their full replacement value against fire, accident, earthquake, weather damage and such other risks as we may require in our names for our respective rights and interests and with an insurer approved by us and to pay all premiums for the insurance and upon request by us produce policies and premium receipts to us.
- 13.6 Except to the extent inconsistent with the terms of the Finance and Security Deed or any Security, the covenants implied in Part 1 of Schedule 2 of the Property Law Act 2007 in relation to mortgages over land are implied in the Finance and Security Deed.

### **14. Continuing Security**

- 14.1 The Finance and Security Deed and each security interest created under it:
  - (a) is a continuing security, notwithstanding intermediate payments, settlement of accounts or any other matter or thing whatsoever;
  - (b) is in addition to and not to be merged in any other security interest, guarantee, agreement or right which we may at any time have; and
  - (c) will remain in full force and effect until the execution by us of an unconditional release of the Finance and Security Deed.
- 14.2 The Finance and Security Deed and each security interest created under it will not be discharged, nor will your obligations be affected, by:
  - (a) any time, indulgence, waiver or consent given to you or another person;
  - (b) any amendment to any other security, guarantee or agreement (whether or not that amendment increases your liability);
  - (c) the existence, validity or enforcement of, or failure to enforce, or the release of any person or property from, or the failure of a person to execute or otherwise be bound by, any other security interest, guarantee or agreement for any reason, whether or not known us;
  - (d) your or any other person's dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation (in the case of any company) or the commencement of steps to effect any of them; or
  - (e) anything else whatsoever.
- 14.3 We are under no liability to you in relation to any of these matters, even if your rights are prejudiced as a result.
- 14.4 For the purposes of certainty, the Finance and Security Deed secures advances which may be made by us presently, and future advances which may be made hereafter by us.

## **F. GUARANTEE**

### **15. Terms of Guarantee**

- 15.1 Where you are entering into the Finance and Security Deed as a Guarantor, in consideration of us advancing the Loan to the Borrower, you:
  - (a) guarantee to us the due and punctual payment by the Borrower to us of the Secured Moneys and the due and punctual performance of all obligations imposed upon or assumed by the Borrower in our favour pursuant to the Finance and Security Deed; and



- (b) covenant with us that you will immediately on demand by us on the default by the Borrower in payment of the Secured Moneys or in performance of the obligations imposed upon or assumed by the Borrower in our favour pursuant to the Finance and Security Deed pay to us the Secured Moneys and perform all of the obligations imposed upon or assumed by the Borrower in our favour pursuant to the Finance and Security Deed.
- 15.2 The guarantee set out in this clause 15 is a continuing guarantee and remains in full force and is not discharged by any payment or anything else, until we have signed and delivered a release.
- 15.3 Your obligations as Guarantor under the Finance and Security Deed are principal obligations and may be enforced against you without us being required to first exhaust any remedy against the Borrower or to enforce any security we may hold.
- 15.4 Your obligations as Guarantor are absolute and no waiver, granting of time or other indulgence, variation or modification of the obligations of the Borrower under the Finance and Security Deed, or the doing or omission to do anything which would release a person liable as surety only will release you from liability under the Finance and Security Deed.
- 15.5 Until the Secured Moneys have been paid in full, you may not exercise any right of subrogation to us or exercise any rights as surety in competition with us.
- 15.6 As Guarantor, you unconditionally and irrevocably indemnify us on demand against any loss, cost or expense which we may suffer due to any part of the Secured Moneys not being recoverable for any reason from the Borrower or from you.

## **G. GENERAL**

### **16. Assignment**

- 16.1 We shall have the right to assign all or any of our right, title and interest in the Finance and Security Deed (including for the avoidance of doubt, our right to mortgage the Land following our request to do so and any rights and powers under the power of attorney set out in clause 17) and/ or any Security. For the purposes of such assignment only we may disclose information about you to any potential assignee on a confidential basis whether or not such information is confidential or otherwise.
- 16.2 You shall have no right to assign any right, title or interest under the Finance and Security Deed or any Security.

### **17. Power of Attorney**

- 17.1 You hereby irrevocably appoint us and each of our directors and managers severally to be your attorney to do and execute anything which you covenant or agree to do or execute under the Finance and Security Deed and generally to do all such things as may be in our sole discretion or that of any of our directors and managers necessary or desirable in order to fully protect our interests under the Finance and Security Deed, including, without limitation, the execution and registration of any mortgage pursuant to clause 13, and the realisation of any assets secured by any Security upon the enforcement of the Finance and Security Deed.
- 17.2 This power of attorney shall remain in full force and effect until all the Secured Moneys has been paid to us in full.
- 17.3 You ratify anything done by any attorney under this clause and further indemnify any person acting in reliance upon this power of attorney

### **18. Further Assurance**

- 18.1 At our request, you must, at your own cost, promptly execute and deliver to us all assignments, transfers, security interests and other agreements and documents, and do anything else which we may deem appropriate to:
  - (a) perfect your title to any Goods; or
  - (b) perfect a security interest intended to be created under the Finance and Security Deed; or
  - (c) vest, or enable you to vest, any Goods in us (or our nominee) or in a purchaser; or
  - (d) facilitate the realisation of any of the Goods or any Land; or
  - (e) secure to us the full benefit of our rights and intended rights under the Finance and Security Deed.
- 18.2 Without limiting clause 18.1, at our request, you must, at your own cost promptly:
  - (a) provide to us any details of any item of the Goods which may be required by us in order to perfect our security interest in that item, including any registration number, registration mark, serial number or identification number; or
  - (b) deliver to us any document of title, in relation to the Goods.

### **19. Notices**

- 19.1 Any notice or communication to be given to you under the Finance and Security Deed shall be in writing and shall be delivered personally or sent by post to your address shown in the Finance and Security Deed or to your registered office or business address last known to us.
- 19.2 Notices of cancellation (where permitted by section 27 of the CCCFA) may be given to us by fax or e-mail transmitted to the fax number or email address specified for that purpose in the Finance

and Security Deed, subject to the following conditions:

- (a) our electronic records confirm receipt of the communication; and
- (b) the communication is in English and is legible,

but, notwithstanding the above, any document or notice (including cancellation) to be given or served on us must be posted or delivered to us personally.

19.3 Proof of posting shall be deemed to be proof of receipt two (2) working days after having been posted.

19.4 You agree that: -

- (a) you will maintain a landline or mobile phone number during the term of the Loan; and
- (b) we can leave our name and telephone number with anyone who answers that phone or with anyone you tell us is your contact person.

## **20. Commission**

20.1 You acknowledge and consent to the fact that we may receive from or pay commissions to suppliers of services, retailers, merchants, brokers, insurers or any other person out of moneys payable to us or the insurer under the Finance and Security Deed or the contract of insurance as the case may be or from their own moneys.

## **21. Trustees**

21.1 If you enters into the Finance and Security Deed as a trustee of a trust named in the Finance and Security Deed then you:

- (a) warrant to us that you have the power and authority as trustee of the trust to enter into the Finance and Security Deed and that you are doing so for a proper purpose;
- (b) undertake to use your best endeavours to ensure that, on the appointment of any new or replacement trustee of the trust, that trustee will enter into an acknowledgment in favour of us that he or she is bound by the terms of the Finance and Security Deed;
- (c) undertake that if you ceases to be a trustee of the trust you will immediately inform us of this in writing; and
- (d) agree that if you are named in the Finance and Security Deed as a professional trustee you are liable only to the extent of an amount equal to the value of the assets of the trust available from time to time to meet your liability, to which shall be added the sum (if any) by which the value has been diminished by any breach of trust caused by your wilful default or dishonesty.

## **22. Partnerships**

22.1 If you enter into the Finance and Security Deed as members of a partnership named in the Finance and Security Deed then you are liable under the Finance and Security Deed only for those amounts which are payable to us by the members of the partnership in their capacity as members of that partnership and not for any amounts which are payable to us by those members in any other capacity.

## **23. General**

23.1 A waiver by us of any of your obligations in terms of the Finance and Security Deed shall not prevent subsequent enforcement of those obligations by us and shall not be deemed to be a waiver of any continuing or subsequent breach of the terms of the Finance and Security Deed by you.

23.2 Time is of the essence in respect of all dates and times for performance by you of your obligations under the Finance and Security Deed. Our rights under the Finance and Security Deed are cumulative, may be exercised as often as we consider appropriate and are in addition to our rights provided by law. No failure to exercise, and no delay in exercising, any such right will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right.

23.3 The Finance and Security Deed may be enforced in respect of any default for the time being unremedied notwithstanding the acceptance of any instalment of principal and interest by us after any default.

23.4 The Finance and Security Deed shall be governed by and construed in accordance with the laws for the time being in force in New Zealand.

23.5 You authorise us to date the Finance and Security Deed as at the date the advance is actually made notwithstanding the earlier execution of the Finance and Security Deed by you.

23.6 You agree any accessories supplied with or subsequently fixed to the Goods shall become part of them.

23.7 The illegality, invalidity or unenforceability of a provision of the Finance and Security Deed under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

23.8 You agree that you will not be released from the Finance and Security Deed or your obligations under the Finance and Security Deed reduced if it transpires that you lacked the legal capacity to contract in the capacity pursuant to which you entered into the Finance and Security Deed.

**24. Consumer Guarantees Act 1993**

24.1 You acknowledge that your right to undisturbed possession of the Goods conferred by section 5(c) of the Consumer Guarantees Act 1993 could be affected by the terms and conditions of the Finance and Security Deed.

**25. Definitions & Interpretation**

25.1 In these Terms and Conditions, terms defined in the Finance and Security Deed and the Fees Schedule shall bear the same meaning where used in these Terms and Conditions, and:

**Amendment Deed** means any amendment deed whereby the terms of the Finance and Security Deed are amended.

**CCCFA** means the Credit Contracts and Consumer Finance Act 2003.

**Event of Default** means the occurrence of any of the events specified in clause 7.1 of these Terms and Conditions.

**Fees Schedule** means the fees schedule in which we detail all our standard fees and charges in relation to loans made by us to you and other borrowers, as set out on our website [www.financedirect.co.nz](http://www.financedirect.co.nz) and as may be amended by us from time to time.

**Finance and Security Deed** means the finance and security deed that incorporates by cross reference these Terms and Conditions and provides details of your Loan, as may be amended by any Amendment Deed from time to time.

**Guarantee** means each guarantee entered into by a Guarantor.

**Insolvency Event** occurs when a person is unable to pay debts when they fall due, is placed in receivership and/or management, liquidation, provisional liquidation, under official management or administration, wound up, subject to any arrangement, or the assignment or composition with creditors or protected from any creditors under any legislation.

**Land** as defined in the Finance and Security Deed includes all building and improvements and any interest in land.

**PPSA** means the Personal Property Securities Act 1999.

**Secured Moneys** means all moneys, including the initial unpaid balance, interest (default or otherwise), fees and charges (default or otherwise), and any other moneys that are payable by you to us under the Finance and Security Deed, any Security or under any other agreement with us.

**Security** means any Guarantee, every security interest and any mortgage, charge, lien or pledge granted by you in favour of us.

**Terms and Conditions** means these Finance Direct Limited Terms and Conditions.

**we** or **us** means Finance Direct Limited.

**working day** means any day upon which banks and financial institutions are open for business in Auckland, other than a Saturday, Sunday or public holiday.

**you** includes each and every Guarantor.

25.2 In these Terms and Conditions:

- (a) the singular includes the plural and vice versa;
- (b) **person** or **party** includes a firm, body corporate, unincorporated association or any other body or entity;
- (c) a reference to any party includes that party's successors and permitted assigns;
- (d) headings are inserted for convenience only and do not affect interpretation;
- (e) references to legislation includes all delegated legislation made under it and amendments, consolidations or replacements or re-enactments of any of them; and
- (f) **security interest, collateral, accession, chattel paper, document of title, investment security, negotiable instrument, future advances, at risk** and other terms defined in the PPSA bear the same meaning unless otherwise defined in these Terms and Conditions.

25.3 Where you comprise more than one (1) party, the obligations of those parties under the Finance and Security Deed are joint and several.

25.4 Any reference to you in the Finance and Security Deed is reference to each of the parties comprising you and all of such parties.

**26. Financial Services**

26.1 As a registered financial service provider under the Financial Services Providers (Registration and Dispute Resolution) Act 2008 (FSP33362), we are a member of the following dispute resolution scheme:

Financial Services Complaints Limited  
Level 4, Sybase House, 101 Lambton Quay, Wellington 6011  
<http://www.fscl.org.nz>

**27. AML/CFT**

27.1 For the purposes of the Anti-Money Laundering and Counter Financing of Terrorism Act 2009

**(AML/ CFT):**

- (a) unless you have otherwise advised us and we have accepted, you represent and

undertake that:

- (i) you are entering into the Finance and Security Deed in your own right as the sole person(s) with a beneficial interest in the Finance and Security Deed and in all Goods, Land or other property given as security;
  - (ii) no information has been withheld and all information you have given us is correct to enable us to determine your status under AML/ CFT; and
  - (iii) You will provide such other information as we may reasonably request during the term of the Loan to enable us to comply with our obligations under AML/ CFT;
- (b) if:
- (i) any representation set out in sub-clause(i) is incorrect or you fail to comply with any undertaking set out in sub-clause (i), or we determine on reasonable grounds that your status under AML/CFT has changed; and
  - (ii) as a result of such incorrect representation, failure to comply or change in status, your ability to meet your obligations under the Finance and Security Deed is impaired

you will be deemed to have given us incorrect or misleading or deceptive information and, pursuant to clause 7.1, default will have occurred under the Finance and Security Deed.

## **28. Privacy**

28.1 You hereby agree to the information provided being used by us for the purposes of administering the Finance and Security Deed and any other account with us and authorise us to retain and use the information for these purposes.

28.2 You authorise us to:

- (a) collect, retain and use such other information as we may require for the above purposes from any other source including credit reporting agencies and you authorise each of those other sources to disclose that information to us, and to retain and use this information for the purpose of informing you of any matters or new products which we believe may be of interest to you; and
- (b) disclose any information that we hold to other persons but only where disclosure is:
  - (i) required or permitted by law;
  - (ii) to any of our employees or agents;
  - (iii) to credit reporting agencies;
  - (iv) to our legal or other professional advisors,
  - (v) in any other circumstances is authorised by you.

28.3 You acknowledge that you have the right to access and, if necessary to request the correction of, personal information that we hold.

## **29. Statement of right to cancel**

29.1 The CCCFA gives you a right for a short time, after the terms of the Finance and Security Deed have been disclosed to you, to cancel the Finance and Security Deed.

- 29.2
- (a) You must give notice that you intend to cancel this Deed within five working days of the date of the Finance and Security Deed (as shown on the front page) if the disclosure documents (e.g. a copy of the Finance and Security Deed, the Finance Direct Limited Terms and Conditions and the Fees Schedule) are handed to you directly.
  - (b) You must give notice that you intend to cancel within five working days after the electronic communication is sent if the disclosure documents are sent to you by fax or e-mail.
  - (c) You must give the notice within seven working days after they were posted if the disclosure documents are mailed to you.

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

29.3 To cancel, you must give us written notice that you intent to cancel the Finance and Security Deed by:

- (a) giving notice to us or any of our employees or our agent; or
- (b) posting the notice to us or our agent; or
- (c) emailing the notice to our email address; or
- (d) sending the notice to our fax number.

You must also, within the same time, return to us any advance and any other property received by you under the Finance and Security Deed.

29.4 If you cancel the Finance and Security Deed we can charge you:

- (a) the amount of any reasonable expenses we have to pay in connection with Finance and Security Deed and its cancellation (including legal fees and fees for credit reports, etc.); and
- (b) interest for the period from the day you received the Loan until the day you repay the Loan.

29.5 The statement set out in this clause 29 only contains a summary of your rights and obligations in connection with the right to cancel under the CCCFA. If there is anything about these rights and obligations under the CCCFA that you do not understand, if there is a dispute about your rights, or if you think that we are being unreasonable in any way, you should seek legal advice immediately.

**30. Statement of right to apply for relief on grounds of hardship**

30.1 The CCCFA gives you a right to request changes to the Finance and Security Deed on grounds of hardship.

30.2 If you are unable reasonably to keep up your payments or other obligations because of illness, injury, loss of employment, the end of a relationship (including as a result of death of your spouse or de facto partner), or other reasonable cause, you may be able to apply to us for a hardship variation

30.3 To apply for a hardship variation you need to:

- (a) make an application in writing; and
- (b) explain your reason(s) for the application; and
- (c) request one of the following: and
  - (i) an extension of the term of the Finance and Security Deed (which will reduce the amount of each payment due under the Finance and Security Deed); or
  - (ii) a postponement of the dates on which payments are due under the Finance and Security Deed (specify the period for which you want this to apply); or
  - (iii) both of the above; and
- (d) give the application to us.

You should do this as soon as possible. If you leave it for too long, we may not have to consider your application.

30.4 The statement set out in this clause 30 only contains a summary of your rights and obligations in connection with the right to apply for relief on grounds of hardship under the CCCFA. If there is anything about these rights and obligations under the CCCFA that you do not understand, if there is a dispute about your rights, or if you think that we are being unreasonable in any way, you should seek legal advice immediately.