

GENERAL CONDITIONS (CONSUMER) – MAY 2015

These General Conditions (Consumer) are part of your agreement with the Creditor

The agreement between the Customer (and any Guarantors) and the Creditor governing the Facilities and, where relevant, the Securities consists of:

- (a) each Facility Agreement;
- (b) each document under which a Security is given (including its schedules); and
- (c) the General Conditions set out herein.

Some words and expressions have special meanings in these General Conditions. They are explained in clause 19, which should be referred to when reading these General Conditions.

The Creditor has certain obligations to the Customer which it takes very seriously. These include obligations under legislation such as the Credit Contracts and Consumer Finance Act 2003, the Personal Property Securities Act 1999, and the Consumer Guarantees Act 1993. This means that the Creditor will ensure that when dealing with borrowers and guarantors or exercising its rights under this agreement that:

1. The Creditor will comply with the lender responsibility principles under the CCCFA, and not act oppressively or in a way which is inconsistent with reasonable standards of commercial practice; and
2. all rights, duties or obligations that arise under a Security Agreement or the PPSA will be exercised or discharged by the Creditor in good faith.

1. Provision of Facilities

The Creditor agrees to provide the Customer with the Facilities in accordance with the Transaction Documents. The Creditor agrees to do this in exchange for the Customer carrying out its obligations under the Transaction Documents.

2. Term of the Facilities

The Creditor will provide each Facility for the Agreed Period unless:

- (a) the Customer is in default and the Creditor exercises its option to terminate the Facility; or
- (b) there is a change in circumstances that prevents the Creditor from providing the Facility.

3. Conditions precedent

The Creditor's obligation to make any of the Facilities available is subject to the Creditor being satisfied that:

- (a) Facility Agreement: it has received the Facility Agreement properly completed and executed and legally enforceable;
- (b) Direct Debit: it has received a completed and executed direct debit or automatic bank payment authorisation acceptable to it;
- (c) Securities: it has received the Securities described in the Facility Agreement, properly completed and executed and legally enforceable and with the priority required by the Creditor (and, if a Security is registrable, in registrable form), as well as all other documents needed to perfect the Securities;
- (d) No default: no Event of Default or Potential Event of Default has occurred and is continuing;
- (e) Fees paid: it has received payment of all fees and expenses (including legal fees) payable under the Transaction Documents;
- (f) Certificates and evidence of insurance: any certificates and evidence of insurance required by the Creditor in connection with any Transaction Documents have been received by the Creditor and are satisfactory to it;
- (g) Conditions in Facility Agreement: all conditions precedent set out in the Facility Agreement have been fulfilled; and
- (h) Other conditions: it has received all other documentation and all other matters have been attended to as required by it in its absolute discretion.

4. Representations

4.1 **General representations:** The Customer and each Guarantor each represents that:

- (a) **Binding obligations:** its obligations under the Transaction Documents are legal, valid and binding and enforceable against it, subject to insolvency laws of general application;
- (b) **No present default:** there is no default (that is material in the context of the Transaction Documents) under any agreement, undertaking or instrument to which it is a party and no Event of Default has occurred;

NOTE: The agreement, undertaking or instrument need not be the Facility Agreement or an undertaking or instrument under it. It may be with someone other than the Creditor.

- (c) **No potential default:** nothing has happened that would become a default mentioned in clause 4.1(b) simply by notice being given or time elapsing;

- (d) **No undisclosed security interests:** except as notified to the Creditor in writing, there are no security interests over:
 - (i) the Customer's property; or
 - (ii) any Guarantor's property;

over which a Security has been or is proposed to be given to the Creditor; and

- (e) Full disclosure: it has disclosed to the Creditor all material matters that it knows of which affect its ability to perform obligations under any of the Transaction Documents.

4.2 **Notice if any representation ceases to be true:** The Customer and each Guarantor each agrees to give the Creditor prompt written notice if, after it was made or given to the Creditor, a representation or statement made or information given ceases to be true or becomes misleading.

4.3 **Reliance on representations:** The Customer and each Guarantor each acknowledges that the Creditor has been induced to enter into the Transaction Documents and to make the Facilities available in reliance on the representations in this clause 4.

5. Undertakings

5.1 **General undertakings:** The Customer and each Guarantor each undertakes that:

- (a) Information: it will provide the Creditor with any financial or other information that the Creditor asks for by the time that it specifies;
- (b) Notification of change to Customer details: it will immediately give written notice to the Creditor of any change to its address or telephone number;
- (c) Laws: it will comply in all respects with all laws and requirements of government agencies to which it may be subject; and
- (d) Negative pledge: it will not, without the prior written consent of the Creditor, create or permit to subsist any security interest over the whole or any part of its assets which are subject to a security interest in favour of the Creditor other than a Permitted Security Interest.

5.2 **Goods specific undertakings:** In respect of each of the Goods (if any), the Customer undertakes that:

- (a) **Maintenance of Goods:** the Customer will at the Customer's expense:
 - (i) maintain the Goods in good operating repair and condition;
 - (ii) operate and use the Goods properly in accordance with the manufacturer's instructions and/or only for the purpose intended by the manufacturer and having regard to the design capabilities and limitations of the Goods;
 - (iii) advise the Creditor immediately of any loss or damage to the Goods;
 - (iv) comply with all laws affecting the Goods or their possession or use, keeping the Goods licensed and registered if required and (if a motor vehicle) with a current warrant or certificate of fitness; and
 - (v) replace all defective or worn out parts of the Goods;

- (b) **Alteration of Goods:** the Customer will not make any alterations to or modify the Goods without the prior written consent of the Creditor;

- (c) **Payment for maintenance of Goods:** the Customer will punctually pay all money payable for work done to, and accessories and replacement parts supplied for, the Goods and will discharge all liabilities in respect of that work, accessories and replacement parts;

- (d) **Notification of change to status of Goods:** if the Goods or any part of the Goods are removed, seized or taken out of the possession of, or withheld from, the Customer, the Customer will immediately give written notice to the Creditor of the address of the place where the Goods are located and of the name of the person who has possession of the Goods;

- (e) **Notification of Goods taken out of New Zealand:** the Customer will not take or permit the Goods to be taken out of New Zealand without first obtaining the Creditor's written consent. The Customer will, whenever requested to do so by the Creditor, notify the Creditor in writing within 24 hours after the Creditor's request, of the place where the Goods are located; and

- (f) **Creditor permitted access:** the Customer will permit the Creditor and any persons authorised by the Creditor to have access to the Goods at all reasonable times for the purpose of testing or inspecting the Goods. The Customer will at any time upon request by the Creditor produce the Goods for this purpose at any premises nominated by the Creditor.

6. Interest

6.1 **Payment of interest:** Interest on a Facility will accrue from the Commencement Date at the rate specified in the "Interest" section of the Principal Terms of the Facility Agreement and will be payable at the times and in the manner specified in that section. Interest on the Facility will be calculated in accordance with the "Method of Charging Interest" section of the Principal Terms of the Facility Agreement.

6.2 **Default interest:** If the Customer fails to pay any amount to the Creditor when due under a Transaction Document, the Customer will, upon demand by the Creditor, pay to the Creditor default interest on the overdue amount at the default interest rate and for the period specified under the "Default Interest Charges" heading in the "What could happen if you fail to meet your commitments" section of the Principal Terms of the Facility Agreement.

7. Payments generally

7.1 **Customer to make payments:** The Customer must duly and punctually and without demand make to the Creditor the payments set out in the schedule of payments in the "Payments" section of the Principal Terms of the Facility Agreement in the amounts and on the dates specified in that section. The Customer must also duly, punctually and without demand:

- (a) pay to the Creditor at the time the Customer signs the Facility Agreement, any cash deposit (or portion of the deposit (if specified)) set out in the "Credit Details" section of the Principal Terms of the Facility Agreement; and
- (b) authorise payment to, or credit on account with, the Creditor of any trade-in allowance set out in the "Credit Details" section of the Principal Terms of the Facility Agreement (being the agreed value of the trade-in less any amounts owing in respect of the trade-in whether pursuant to security interests or liens, or otherwise).

7.2 Each payment to the Creditor is to be made on the due date in immediately available funds in the manner and to the account of the Creditor which the Creditor, by notice to the Customer, specifies from time to time. All payments due under a Transaction Document must be made by automatic bank payment authority or direct debit form, as requested by the Creditor or as otherwise directed by the Creditor.

7.3 **Payments notwithstanding damage or loss:** All payments made in accordance with clauses 7.1 and 7.2 must be made notwithstanding any damage to or loss of any Goods.

7.4 **Credit of payments:** The Creditor will credit each payment received by the Creditor (other than a full prepayment) to the Customer's account either (at the Creditor's discretion):

- (a) as soon as practicable after the Creditor receives (in accordance with these terms) the payment; or
- (b) in accordance with the schedule of payments detailed in the "Payments" section of the Principal Terms of the Facility Agreement;

regardless of whether or not the payment is of an amount that is equal to the amount of the next scheduled payment.

7.5 **Appropriation of payments:** Where the Customer makes any payment to the Creditor under a Transaction Document then the Creditor may, subject to clause 7.4 and the requirements of the CCCFA (without prior consultation or notice to the Customer and notwithstanding any condition attached to that payment with regard to appropriation), appropriate at the time of payment or any time thereafter, any such payment in reduction or repayment of any of the amounts outstanding under that Transaction Document or any other such document to which the Customer is a party in the manner and proportions as the Creditor sees fit, notwithstanding that payment of those amounts may not yet be due.

7.6 **Business Day:** Unless and to the extent a Transaction Document provides otherwise, if the due date for a payment is not a Business Day, the amount is payable on the preceding Business Day.

7.7 **Offsets by the Creditor:** The Creditor may (but is not obliged to) debit any of the Customer's or Guarantors' accounts with the Creditor with any amount payable by the Customer or the relevant Guarantor (as the case may be) under a Transaction Document or deduct it from any amount the Creditor owes to the Customer or the relevant Guarantor (as the case may be). The Creditor may make such debit or deduction without making a demand even though another provision of a Transaction Document says that the amount is payable upon demand.

7.8 **Void payments:** If any payment received or amount applied by the Creditor in respect of payment obligations owing by the Customer or any Guarantor to the

- Creditor pursuant to any Transaction Document is avoided, whether by law or otherwise, then:
- (a) that payment will be deemed not to have discharged the liability of either the Customer or the Guarantor in respect of which that payment or application was received or made; and
 - (b) the Creditor, the Customer and the Guarantor will, to the maximum extent permitted by law, be deemed to be returned to the position in which each would have been, and will be entitled to exercise all the rights which each would have had, if that payment had not been received or that amount had not been applied.
- This clause 7.8 survives any release or discharge of any relevant Transaction Document by the Creditor.
- 7.9 **Payment times:** For the purposes of the Transaction Documents, any payment received by the Creditor after 10.00 p.m. on a Business Day, or on a day that is not a Business Day, shall be deemed to have been received by the Creditor on the earlier to occur of (a) the date on which the Creditor has the payment available for reinvestment and (b) the next following Business Day.
- 7.10 **Payment of GST:** Any reference in a Transaction Document to the payment of any amount includes the payment of any GST payable in respect of such amount, and where the Creditor has paid GST on any amount for which the Customer is liable, the Customer will pay the amount of GST paid by the Creditor to the Creditor, or the Creditor will be entitled to deduct the amount of GST so paid, from any amount for which it is obliged to account to the Customer.
- 7.11 **GST inclusive:** Unless otherwise stated, all amounts are inclusive of GST (if applicable). The amount of GST will be based on the rate current at the relevant time in the Goods and Services Tax Act 1985 which is subject to change. This may result in amounts payable increasing or decreasing, as appropriate.
- 7.12 **No deductions:** All payments made by the Customer or any Guarantor under any Transaction Document shall be made without any:
- (a) set-off or counterclaim;
 - (b) deduction; or
 - (c) except to the extent required by law, withholding for or on account of tax or duty.
- 7.13 **If deductions are made:** If a law requires the Customer or any Guarantor to make a deduction or withholding for or on account of any tax, fee, levy, or withholding of any nature from a payment to the Creditor:
- (a) **Gross up:** the amount in respect of which that deduction or withholding is made is to be increased, when the payment is due, by whatever additional amount is needed so that what the Creditor actually receives, after taking into account the deduction or withholding, is what the Creditor would have been entitled to receive if no deduction or withholding had been made;
 - (b) **Indemnity:** the Customer will indemnify the Creditor against any loss it suffers or cost it incurs because the deduction or withholding was not made; and
 - (c) **Tax receipts:** promptly after making a deduction or withholding, the Customer will give the Creditor a copy of any document relating to the amounts paid or payable in respect of the deduction or withholding.
8. **Prepayments**
- 8.1 **Part prepayments:** The Customer may not make any part prepayment of a Facility unless the Creditor agrees. If the Creditor agrees to the Customer making a part prepayment, then the Customer may prepay part of a Facility only in an amount and in a manner agreed by the Creditor.
- 8.2 At the time of any part prepayment under clause 8.1, the Creditor may require the Customer to pay to the Creditor:
- (a) a charge in respect of the administrative costs (or average costs) incurred by the Creditor arising from the part prepayment; and
 - (b) a fee or charge that does not exceed a reasonable estimate of the Creditor's loss arising from the part prepayment.
- 8.3 **Full prepayments:** The Customer may at any time make a full prepayment of a Facility, comprising the sum of the following (less any rebate of insurance premium, repayment waiver or extended warranty required under section 52, 52A or 52B of the CCCFA):
- (a) the unpaid balance at the time of the full prepayment;
 - (b) a charge equal to the Creditor's average administrative costs arising from full prepayments of credit contracts in the same class as the relevant Facility Agreement; and
 - (c) an early repayment recovery amount calculated in accordance with clause 8.4 below.
- 8.4 **Early Repayment Recovery:**
- (a) An early repayment recovery is an amount that the Creditor charges to recover the loss it suffers when the Customer chooses to repay a Facility early.
 - (b) The amount of the early repayment recovery will depend on:
 - (i) when the Customer repays the relevant Facility early;
 - (ii) how much the Customer owes; and
 - (iii) how much wholesale interest swap rates have moved since the start of the Customer's Facility. The Creditor calculates its loss using wholesale interest swap rates, which are a type of interest rate used by banks and large corporations when they borrow money on the wholesale money market. The wholesale interest swap rates that apply to the relevant Facility are available from the Creditor.
 - (c) The formula the Creditor uses to calculate the early repayment recovery is not the same as that set out under regulations to the CCCFA. However, the amount of the early repayment recovery only compensates the Creditor for a reasonable estimate of the loss it suffers when a Facility is repaid early. The amount of the early repayment recovery could be significant.
 - (d) To calculate an estimate of the loss the Creditor suffers when the Customer repays a Facility early, the Creditor compares:
 - **The first amount:** all of the scheduled payments and interest charges that would have been made over the remaining term of the relevant Facility using the wholesale interest swap rate that applied when the Facility started, as calculated by the Creditor.
 - **The second amount:** all of the scheduled payments and interest charges that would have been made over the remaining term of the relevant Facility using the wholesale interest swap rate that applies to that remaining term when the Facility is repaid early, as calculated by the Creditor.
 - (e) The Creditor adjusts the amounts in clause (d) to recognise that the Creditor receives the money now, instead of receiving it as income over the remaining term of the relevant Facility.
 - (f) Once the Creditor has adjusted the amounts in clause (d), the Creditor will charge the Customer the difference between the first amount and the second amount as an early repayment recovery. If the second amount is higher than the first amount, then the Creditor will only charge the Customer the charge for administrative costs mentioned in clause 8.3(b) above.
- 8.5 **Credit of full prepayment:** The Creditor will credit any full prepayment to the Customer's account as soon as reasonably practicable after the Creditor receives the full prepayment.
- 8.6 **Interest charges on prepayments:** For the purposes of calculating interest charges that have accrued at the time of part prepayments accepted by the Creditor or full prepayments, the end of the day shall be the time one hour before the time at which the Customer makes the part or full prepayment to the Creditor.
9. **Fees**
- 9.1 **Default fees:** If the Customer breaches a Transaction Document or enforcement action is taken under a Transaction Document, the Customer will, upon demand by the Creditor, pay to the Creditor default fees at the rates and
- times specified under the "Default Fees" heading in the "What could happen if you fail to meet your commitments" section of the Principal Terms of the relevant Facility Agreement.
- 9.2 **Credit fees and charges:** The Customer will pay to the Creditor the credit fees and charges at the rates and times specified in the "Credit Fees and Charges" section of the Principal Terms of the relevant Facility Agreement.
- 9.3 **Changes to fees and charges:** The Creditor may at its discretion from time to time:
- (a) change when, how often and how the Customer will pay fees or charges in respect of the Facilities; and
 - (b) alter any of the credit fees and charges referred to in the "Credit Fees and Charges" section of the Principal Terms of the Facility Agreement,
- in each case upon written notice to the Customer. Any such changes will take effect from the time stipulated by the Creditor which shall not be before the date of the notice.
- 9.4 **No refunds:** The fees payable by the Customer under a Transaction Document are not refundable.
10. **Default**
- 10.1 **Events of Default for all Customers:** An Event of Default occurs if any of the following things happen:
- (a) **Failure to pay:** the Customer fails to pay on time an amount that is due and payable by it under a Transaction Document;
 - (b) **Securities become enforceable:** an event occurs that causes a security interest granted by the Customer or a Security to become enforceable;
 - (c) **Statements false or misleading:** a representation or statement made to the Creditor or information given to the Creditor in or in connection with the Transaction Documents was false or misleading (whether by omission or otherwise) when it was made or given;
 - (d) **Acceleration of other obligations:** any obligation that the Customer has becomes due and payable, or capable of being declared due and payable, before its stated maturity, but this does not include where it does so at the Customer's option;
 - (e) **Transaction Documents ineffective:** a provision of a Transaction Document:
 - (i) does not have effect, or ceases to have effect, in accordance with its terms; or
 - (ii) is or becomes void, voidable, illegal, invalid or unenforceable (but not simply because of the principles and rules of the common law or of equity that affect creditors' rights generally);
 - (f) **Distress or execution:** some or all of the Customer's property is seized by or on behalf of a creditor or under legal process or a garnishee notice is given in respect of money the Customer is said to owe or a judgment of any court against the Customer remains unsatisfied for more than 7 days;
 - (g) **Other events:** the Creditor receives notice that the Customer is deceased, or that an order has been made in relation to the Customer under the Protection of Personal Property Rights Act 1988;
 - (h) **Insolvency:** an Insolvency Event occurs in respect of the Customer;
 - (i) **Material adverse change:** circumstances arise that, in the Creditor's opinion, may have a material adverse effect on the Customer's ability to perform its obligations under any Transaction Document;
 - (j) **Other events specified in other agreements:** an event that is an event of default (however described) or an acceleration event under any Transaction Document or any other agreement the Customer has with either the Creditor or ANZ occurs (and such event will be an Event of Default despite any provisions to the contrary in such other agreements);
 - (k) **Failure to comply with obligations:** the Customer fails to comply with an obligation under a Transaction Document and either:
 - (i) the failure cannot be remedied; or
 - (ii) if it can be remedied the Creditor gives the Customer a written notice requiring it to be remedied and, if 5 Business Days later, it is still not remedied (this clause 10.1(k)(ii) does not cover cases that are covered by other provisions of clauses 10.1 or 10.2); or
 - (l) **Notice reducing Guarantor liability:** any Guarantor gives notice determining or reducing their liability.
- 10.2 **Guarantors:** Clause 10.1 (modified as necessary) applies to a Guarantor on the understanding that if any such event occurs in respect of a Guarantor that shall be an Event of Default.
- 10.3 **Notification of a default:** The Customer agrees to promptly notify the Creditor in writing if an Event of Default or a Potential Event of Default occurs.
11. **Consequences of default**
- 11.1 **Securities enforceable:** Following the occurrence of an Event of Default, any Securities will become immediately enforceable.
- 11.2 **Creditor's options:** Following the occurrence of an Event of Default:
- (a) the Creditor may, by notice to the Customer, terminate immediately some or all of the Creditor's obligations under the Transaction Documents; and
 - (b) the Customer shall, upon demand by the Creditor, be required to immediately pay the Creditor some or all of the following amounts as the Creditor in its discretion may require:
 - (i) the unpaid balance as at the date of such demand;
 - (ii) any Default Amounts as at the date of such demand; and
 - (iii) an "early repayment recovery amount" calculated in accordance with clause 8.4 to compensate the Creditor for any loss it suffers as a result of a Facility being repaid early under this clause 11.2.
- 11.3 **Repossession of Goods:** Subject to any applicable law, upon the occurrence of an Event of Default the Creditor may without any prior notice repossess any Goods and for that purpose may by its officers or agents enter on any property occupied by the Customer, and (as the agent of the Customer) on any other property which the Customer might enter upon, where the Goods may be or may be supposed to be.
12. **Guarantee**
- Each Guarantor, in accordance with any guarantee given by it in a Facility Agreement:
- 12.1 **Guarantee:** Unconditionally and irrevocably guarantees (jointly and severally if more than one Guarantor) to the Creditor:
- (a) the due and punctual payment and delivery by the Customer of all amounts payable by the Customer now or in the future and all other monetary obligations owed by the Customer (whether alone or with any other person) to the Creditor pursuant to the Facility Agreement; and
 - (b) the due observance and punctual performance by the Customer of all obligations of any nature (present or future, express or implied) of the Customer to or for the benefit of the Creditor under the relevant Transaction Documents;
- 12.2 **Acknowledgment of the Creditor's reliance on guarantee:** Acknowledges that the Creditor has entered into the Facility Agreement with the Customer at the request of the Guarantor, that the Creditor might not have done so without the Guarantor's guarantee, and that the Creditor establishing the Facility for the Customer under the Facility Agreement is a benefit to the Guarantor;
- 12.3 **If Customer does not pay or observe obligations:**
- (a) agrees that if the Customer fails to pay to the Creditor all or any amounts payable by the Customer or otherwise owed by the Customer (whether alone or with any other person) to the Creditor pursuant to the Facility Agreement, the Guarantor will pay such amounts to the Creditor whether or not demand has been made on the Customer or any other person; and
 - (b) agrees that if the Customer defaults in the due and punctual observance or performance of all or any part of the obligations of the Customer to or for the benefit of the Creditor under the Facility Agreement, the Guarantor indemnifies the Creditor in respect of any loss or cost suffered by the

- Creditor, directly or indirectly, as a result and shall pay to the Creditor upon demand the amount of such loss or cost;
- 12.4 **Guarantor will indemnify Creditor:** Agrees that if for any reason any amounts payable by the Customer under the Facility Agreement are not recoverable by the Creditor from the Customer or the Guarantor(s), or any obligations of the Customer under the Facility Agreement are not enforceable by the Creditor for any reason whatsoever, whether as a matter of law or as a matter of fact, the Guarantor will indemnify the Creditor against any resulting loss or cost and will pay the amount of any such loss or cost to the Creditor as a principal debtor upon demand;
- 12.5 **Indemnity will survive termination:** Agrees that the obligations of the Guarantor(s) under clause 12.4 survive the termination of the Facility Agreement and payment of all amounts payable by the Customer to the Creditor in connection with the relevant Facility;
- 12.6 **Obligations absolute and unconditional:** Agrees that its obligations as a Guarantor are absolute and unconditional, and will not be released or in any way affected by:
- the Facility Agreement being unenforceable or otherwise defective; or
 - any variation or release of any Facility Agreement or of any collateral agreement or other Security at any time held by the Creditor, or the release of any other Guarantor; or
 - any concessions by the Creditor to the Customer or to any other Guarantor; or
 - the insolvency, bankruptcy or liquidation (as appropriate) of the Customer or any other Guarantor; or
 - any other act, omission, or rule of law which would, were it not for this clause, release a guarantor or indemnifier;
- and irrevocably waives any rule of law to a different effect;
- 12.7 **Acknowledgement of Guarantor's obligations:** Acknowledges that its obligations under the Facility Agreement:
- are as a principal debtor and not merely a guarantor;
 - are in addition to and independent of, and not in substitution for, any other guarantee, security or right the Creditor may have at any time; and
 - will not merge with or in any way be prejudiced or affected by, or prejudice or affect, any such guarantee, security or right;
- 12.8 **Creditor's discretion:** Acknowledges that:
- the Creditor may enforce against the Guarantor under the Facility Agreement at any time, without first taking steps or proceedings against the Customer or any other person;
 - the Creditor may make any arrangement or compromise with the Customer or any other person, without any notice to or consent of the Guarantor, notwithstanding that this may increase the amounts payable by the Customer to the Creditor and the obligations of the Customer to the Creditor, in each case that are subject to the guarantee of the Guarantor in the Facility Agreement; and
 - the Creditor is not required to marshal or exercise any security, guarantee or other right held by it at any time before enforcing against the Guarantor under the Facility Agreement;
- 12.9 **Waiver:** Agrees that it waives in favour of the Creditor all rights against the Customer and any other person or its estate and assets so far as necessary to give effect to anything in the relevant Facility Agreement;
- 12.10 **PPSA:** Acknowledges that the Guarantor is not a "debtor" for the purposes of the PPSA and, to the extent permissible by law, waives any notices or rights of a "debtor" (as that term is defined in the PPSA) to the extent inconsistent with these terms; and
- 12.11 **Reliance on advice:** Acknowledges that it did not rely on any statement, representation, warranty, document, information or promise (if any) made or provided by or on behalf of the Creditor.
- 13. Notices**
- 13.1 **In writing:** Subject to clause 18.14 and any applicable law, any communication in relation to a Transaction Document must be given in writing signed on behalf of the sender to the address notified by the addressee from time to time for that purpose and may be sent by hand, facsimile, pre-paid mail or courier.
- 13.2 **Receipt:** A communication under a Transaction Document which is sent:
- by hand or courier will be deemed to be received on the day on which it is delivered;
 - by facsimile will be deemed to be received when sent, upon production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile number of the recipient designated for the purposes of the relevant Transaction Document; and
 - by mail will be deemed to be received on the second Business Day following the day on which it was posted, provided that any communication received or deemed received after 5pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent shall be deemed not to have been received until the next Business Day in that place.
- 13.3 **Reliance:** The Creditor will not be liable for or in respect of any action taken, omitted or suffered in reliance upon any instruction, request or order from the Customer reasonably believed by the Creditor to be genuine and to have been delivered, signed or sent by the proper person.
- 13.4 **Oral and electronic instructions:** The Creditor may act in accordance with any instruction in relation to a Facility or in relation to anything else under or in connection with the Transaction Documents given, or purporting to be given to it by telephone or email or other electronic means.
- 13.5 **No Creditor liability:** If any oral or electronic communication is acted on by the Creditor, the Customer and each Guarantor agrees that the Creditor will not be liable for, and the Customer and each Guarantor will not make any claim for any loss or damage incurred as a result of, any error, omission or misinterpretation in respect of such instruction, however caused. The Creditor reserves the right to refuse to accept or act on any such instructions.
- 14. Waiver**
- The rights of the Creditor under the Transaction Documents cannot be waived except by the Creditor giving written notice waiving the particular right.
- 15. Law and jurisdiction**
- 15.1 **Law:** These General Conditions are governed by New Zealand law.
- 15.2 **Jurisdiction:** In relation to any proceedings about or in connection with the Transaction Documents, the parties agree to submit to the non-exclusive jurisdiction of the New Zealand courts.
- 16. Further assurances**
- The Customer and each Guarantor agrees to do all such things as are necessary to ensure that the Creditor receives the full benefit of each Transaction Document, if requested to do so by the Creditor.
- 17. Facsimile execution**
- If the Creditor consents to documentation being faxed to the Creditor, the Customer and each Guarantor will be deemed to undertake that:
- all documentation has been completed and signed in accordance with the Creditor's requirements;
 - the originals of all documentation relating to the transaction will be sent to the Creditor on the same day that the documents are faxed to the Creditor;
 - the Customer and each Guarantor will re-execute the documentation without delay, if that should be necessary for any reason; and
 - the Creditor will not be liable for any loss suffered by the Customer or any Guarantor as a result of the Creditor acting in reliance on documents that have been faxed to the Creditor.
- 18. Miscellaneous**
- 18.1 **Indemnities and costs:** Any costs incurred by the Creditor in connection with the enforcement of, taking advice on or taking any action pursuant to any

Transaction Document (including, for the avoidance of doubt, any action in connection with instructions received by the Creditor by telephone or email or other electronic means), or otherwise in connection with any Transaction Document, will be payable to the Creditor by the Customer upon demand, including legal costs on a full indemnity basis. The Customer will indemnify the Creditor and any attorney appointed under a Transaction Document (as applicable):

- for all costs, losses, expenses and liabilities incurred by the Creditor or such attorney in relation to any Transaction Document and in exercising any right under any Transaction Document or recovering any amounts payable under any Transaction Document; and
 - against any claim by any person relating to any property of the Customer or the use of any such property;
- and the Customer will pay upon demand all amounts payable in relation to the indemnities given under this clause provided that the Customer will not be obliged to indemnify the Creditor in respect of any costs that are incurred as a result of the Creditor's negligence or wrongful acts.
- 18.2 **Engagement of experts and consultants:** The Customer and each Guarantor each agrees that:
- any expert or consultant ("Creditor appointee") commissioned by the Creditor to provide services to the Creditor is engaged exclusively for the Creditor's benefit, whether or not their fees are for the Creditor's account or are borne directly or indirectly by the Customer; and
 - neither the Creditor, nor any employee of, will be liable to the Customer or any Guarantor or any other person for any loss, liability, cost or expense that is caused (directly or indirectly) by anything that a Creditor appointee does or does not do arising out of the provision of a service to the Creditor under this clause 18.2.
- 18.3 **Protection of the Creditor's interests:** If the Customer or any Guarantor has not complied with any of its obligations under a Transaction Document or the Creditor considers it necessary or desirable to pay any money or incur any expense in order to protect its interests under a Transaction Document, the Creditor may perform any such obligation, pay that money or incur that expense in such manner as it considers desirable, including in the name of the Customer or any Guarantor or as attorney for the Customer or any Guarantor. However, the Creditor is not obliged to do so, and will not be liable to the Customer or any Guarantor if the Creditor exercises the powers given to it by this clause in good faith.
- 18.4 **Power of attorney:** Each of the Customer and each Guarantor, in accordance with any power of attorney granted by it under a Facility Agreement, irrevocably appoints the Creditor, and every officer, manager and attorney of the Creditor, separately, for valuable consideration to be the attorney of the Customer and each Guarantor with power to:
- at the Customer's expense, do anything the Customer or any Guarantor is obliged to do under a Transaction Document to which the Customer and such Guarantor is party;
 - do anything the attorney thinks desirable to protect or secure the Creditor's rights or interests under such a Transaction Document, to protect or secure the payment or delivery of amounts payable by the Customer or any Guarantor to the Creditor under such a Transaction Document, and to give effect to the rights conferred on the Creditor by such a Transaction Document, or by law or otherwise (including power to delegate its powers to any person for any period and to revoke a delegation).
- Each of the Customer and each Guarantor agrees to ratify everything done by an attorney appointed under the applicable Facility Agreement on the terms set out in this clause, or by any delegate or agent of any such attorney, in accordance with this clause.
- 18.5 **Contracts (Privity) Act:** For the purposes of the Contracts Privity Act 1982, each attorney appointed under a Facility Agreement is entitled to enforce against the Customer and each Guarantor each provision of that Facility Agreement which confers a benefit on such attorney. However, no attorney need consent to any amendment made to that Facility Agreement.
- 18.6 **Release of Transaction Document:** The Creditor will not be obliged to release a Transaction Document, or any security interest created by it, nor to register any financing change statement under the PPSA, unless:
- any costs incurred by the Creditor in doing so have first been paid by the Customer; and
 - the Creditor is satisfied that any amounts paid by the Customer or any Guarantor to the Creditor prior to that release are not at risk of subsequently being set aside by the operation of any law, and if any such payment to the Creditor is avoided or otherwise becomes payable by the Creditor to the Customer or any other person, to the extent possible the relevant release will be of no effect, and execution by the Creditor of that release will not prevent the Creditor from registering a financing statement in respect of any Goods previously released, or from otherwise recovering the amount in question in such manner as the Creditor may be entitled to do.
- 18.7 **Obligations survive:** Any obligation under the Transaction Documents to pay the Creditor amounts of money as costs, or on account of a loss that the Creditor may have suffered, is a continuing and independent obligation and survives even if the relevant Transaction Document is terminated.
- 18.8 **Creditor's determination conclusive:** The Creditor's written determination of any amount in connection with a Transaction Document (including a determination of how much the Customer owes at a particular time) is conclusive unless there has been a manifest error.
- 18.9 **Information about the Customer and each Guarantor:** The Customer and each Guarantor each consents to the Creditor:
- obtaining such information and making such inquiries as the Creditor may consider warranted from any source, including credit reference agencies and companies related to the Creditor, in relation to the Transaction Documents, from time to time;
 - disclosing information to credit reference agencies, companies related to the Creditor, agents, contractors, professional advisers, Guarantors or assignees or anyone who is considering becoming a Guarantor or assignee; and
 - using information about the Customer or a Guarantor to:
 - unless the Customer or Guarantor (as the case may be) disagrees, send the Customer or any Guarantor promotional material from time to time;
 - obtain information about the Customer or Guarantor's driver licences from Driver Check, a secure internet site set up by the NZ Transport Agency, such as licence classes and endorsements held, any licence conditions, and licence status;
 - consider any application for facilities, products or services by the Customer or any Guarantor; and
 - administer, manage and/or monitor any facilities, products or services provided to the Customer or any Guarantor.
- 18.10 **Anti-money laundering:** The Creditor may disclose information relating to the Customer, a Guarantor or any of the Facilities to any authority, agency (including any government agency), the police or any financial institution in order to ascertain whether any government requirement applies to a transaction or if the Creditor reasonably believes that the disclosure will assist in the investigation, detection and/or prevention of fraud or other criminal offences, such as money laundering, and neither the Creditor or any related company to the Creditor will incur any liability to the Customer or any Guarantor as a result of such disclosure of information. Without limiting the generality of clause 5.1, the Customer and each Guarantor each:

- (a) undertakes to provide to the Creditor all information the Creditor reasonably requires to comply with any government requirement relating to anti-money laundering or terrorist financing which the Creditor or any related company to the Creditor is subject to; and
- (b) agrees that the Creditor may delay or block any transaction or refuse to pay any money in order to comply with any government requirement to which the Creditor or any related company to the Creditor is subject, and neither the Creditor or any related company to the Creditor will incur any liability to the Customer or any Guarantor as a result of any such delay, block or refusal.
- 18.11 **Privacy Act:** The Customer and each Guarantor has the right to access personal information (within the meaning of the Privacy Act 1993) about it held by the Creditor and request correction of any errors in that information. A fee will usually be payable for this.
- 18.12 **Partial invalidity:** If any provision of a Transaction Document is illegal or unenforceable, that Transaction Document is to be interpreted as if it had never included the provision so far as the provision is illegal or unenforceable.
- 18.13 **Assignment:** Each of the Customer and each Guarantor may not assign or transfer any of its rights or obligations under the Transaction Documents unless the Creditor consents in writing. The Creditor may assign or transfer any of its rights or obligations under the Transaction Documents. If the Creditor assigns or transfers any of its rights or obligations under the Transaction Documents then:
- (a) the Customer and each Guarantor each authorises such assignee or transferee to use information about the Customer and the Guarantor, disclose information about the Customer and the Guarantor and make credit and other enquiries about the Customer and the Guarantor to the same extent provided in the relevant Transaction Document as if such assignee or transferee was the Creditor; and
- (b) the Customer and each Guarantor each authorises the Creditor and/or ANZ (in addition to any assignee or transferee) to continue to use information about the Customer and any Guarantor at any time held by it for the purpose of continuing to maintain the relationship between the Customer and Guarantor and the Creditor and/or ANZ, notwithstanding the assignment or transfer.
- 18.14 **Methods of CCCFA disclosure:** If continuing disclosure is required under a Facility Agreement, the Customer and each Guarantor consents to all forms of disclosure under the CCCFA and any notice from the Creditor being made, subject to the Creditor's discretion, in electronic form by means of an electronic communication unless UDC maintains a website in accordance with section 21(1)(b) of the CCCFA. The Customer and each Guarantor each specifies its email address referred to in any Transaction Document as the email address for any such electronic communication. The Customer and each Guarantor each acknowledge that, in respect of such disclosure, it has imposed no conditions regarding the form of the information or the means by which the information is produced, sent, received, processed or stored. Where no email address is specified, the Creditor will use the other methods described in section 35 of the CCCFA.
- 18.15 **Variation requested by the Customer:** The Customer may request of the Creditor a variation of a Transaction Document (including, for the avoidance of doubt, by way of an assignment of a Transaction Document). The Creditor is not bound to accept any such request, but if it does, notice of any variation agreed to under this clause 18.15 will be provided to the Customer by the Creditor (including, where relevant, in accordance with and for the purposes of the CCCFA). Any resulting variation of a Transaction Document will take effect from the time stipulated by the Creditor which shall not be before the date of the notice given by the Creditor under this clause. A variation fee may be payable by the Customer to the Creditor in accordance with the terms of the Transaction Document being varied.
- 18.16 **Variation required by the Creditor:** If the Creditor has the power under a Transaction Document to vary certain terms of that Transaction Document (including in relation to fees and charges payable) the Creditor may so vary that Transaction Document at any time. Notice of any variation made under this clause 18.16 will be provided to the Customer by the Creditor (including, where relevant, in accordance with and for the purposes of the CCCFA). Any resulting variation of a Transaction Document will take effect from the time stipulated by the Creditor.
- 18.17 **Variation to Transaction Documents generally:** Except as provided for in clauses 18.15 and 18.16 above, no amendment to any Transaction Document is effective unless it is made in writing and signed by or on behalf of each party to it.
- 18.18 **Remedies cumulative:** The rights, powers and remedies provided in the Transaction Documents are cumulative and not exclusive of any rights, powers or remedies provided by law.
- 18.19 **Completion of documents:** The Customer and each Guarantor each acknowledges that dates and other variables may be inserted in any Transaction Document by the Creditor or its assignees after the relevant Transaction Document has been executed and that the Transaction Documents completed by the Creditor will be binding and enforceable against the Customer and each Guarantor.
- 18.20 **Inconsistent legislation:** Any legislation that is inconsistent with, or might limit in any way, the provisions of any of the Transaction Documents is hereby excluded, to the extent permitted by law.
- 18.21 **Cancellation by the Customer:** The Customer may cancel a Facility Agreement which is a consumer credit contract, in accordance with those parts of sections 27 to 31 of the CCCFA that apply to that Facility Agreement. Any notice of cancellation may only be given by the Customer in writing and in accordance with the CCCFA. The Customer acknowledges that upon cancellation of the Facility Agreement, the Customer will be liable to pay the Creditor the applicable expenses and costs referred to in section 30(1)(e) of the CCCFA.
- 19. Definitions and construction**
- 19.1 **Definitions:** In these General Conditions, unless the context otherwise requires:
- "acceleration event" means an event which, if it happens, results in money becoming due and payable to the Creditor or ANZ immediately under another agreement that the Customer has with the Creditor or ANZ;
- "Agreed Period" means the period commencing on the Commencement Date and ending on the date which is the date for the last payment in respect of the relevant Facility, as specified under the "Timing of Payments" heading in the "Payments" section of the Principal Terms of the Facility Agreement (or such other period as agreed by the Creditor).
- "ANZ" means ANZ Bank New Zealand Limited;
- "Business Day" means a day (other than a Saturday or Sunday) on which registered banks in New Zealand are open for general banking business;
- "CCCFA" means the Credit Contracts and Consumer Finance Act 2003;
- "Commencement Date" means the Commencement Date as specified in the Facility Agreement;
- "Creditor" means "Creditor" as defined in the Transaction Documents and includes the Creditor's assignees, so that all the rights, privileges and powers conferred upon the Creditor under the Transaction Documents are exercisable by any assignee of the Creditor under the Transaction Documents as fully and effectually in all respects as the same might have been exercisable by the Creditor;
- "Customer" means the person or persons described as the "Customer" in the Facility Agreement or the person who is otherwise the principal obligor to the Creditor under the Facility Agreement;
- "Default Amounts" means, at any time:
- (a) any credit fees and charges payable under clause 9.2 which are due and unpaid at that time;
- (b) any default fees payable under clause 9.1 and any default interest charges payable under clause 6.2 which are in each case due and unpaid at that time; and
- (c) any costs (including the Creditor's legal costs (calculated on a full indemnity basis)) incurred by the Creditor at that time in connection with the enforcement of, taking advice on or taking any action pursuant to a Transaction Document;
- "Event of Default" means any of the circumstances described in clause 10 of these General Conditions;
- "Facility" means any loan or credit facility which the Creditor establishes for the Customer under a Facility Agreement and "Facilities" has a corresponding meaning;
- "Facility Agreement" as the context requires, means each facility agreement between the Creditor and the Customer;
- "General Conditions" means these general conditions;
- "Goods" means:
- (a) anything defined as such in a Facility Agreement; and
- (b) any other such items which the Creditor notifies the Customer are Goods for the purposes of these General Conditions;
- "government requirement" means a law, or a direction or requirement, whether it has the force of law or not, imposed by any government, central bank or governmental, semi governmental, administrative, public, regulatory or judicial entity, body, department, commission, agency or authority;
- "GST" means a goods and services tax imposed under the Goods and Services Tax Act 1985;
- "Guarantor" means a person who has given, gives or is to give a Security and includes the person's executors, administrators, successors and transferees;
- "Insolvency Event" means any of the following in respect of the relevant individual:
- (a) it suspends or threatens to suspend payment of its debts;
- (b) it is, or states it is, or is presumed by law to be, insolvent or unable to pay its debts;
- (c) it takes a step for the purpose of entering into a compromise or arrangement with any of its creditors for their benefit or with any of its members;
- (d) any step is taken or proposal made to dissolve, amalgamate, bankrupt or liquidate it;
- (e) any step is taken to appoint, or with a view to appointing, a receiver, statutory manager, Official Assignee, a trustee for creditors or other similar officer in respect of it or over its assets; or
- (f) it commits an act of bankruptcy;
- "Permitted Security Interest" means:
- (a) a security interest in respect of which the Creditor has given its prior written consent;
- (b) in relation to personal property (as defined in the PPSA), a purchase money security interest arising in the ordinary course of business of the Customer or the Guarantor as the case may be;
- "PPSA" means the Personal Property Securities Act 1999;
- "Potential Event of Default" means circumstances that will become an Event of Default simply by the passing of time or if notice is given;
- "purchase money security interest" has the meaning given to it in section 16 of the PPSA;
- "Security" means a security given to the Creditor for the Customer's obligations (whether under a Transaction Document or not) and which has been given to the Creditor previously or will be given to the Creditor in the future including:
- (a) any right or interest of any kind given by way of security interest;
- (b) any other arrangement (including any preferential, trust, title retention or set-off arrangement) having a similar commercial effect as a grant of security; or
- (c) a guarantee or indemnity;
- and "Securities" has a corresponding meaning;
- "Security Agreement" means each security agreement referred to in the "Securities" section of a Facility Agreement and any other security agreement entered into by the Customer or a Guarantor in favour of the Creditor from time to time;
- "security interest" means:
- (a) any right or interest of any kind given by way of security (including, for example, a mortgage, pledge, lien, charge or assignment);
- (b) any other arrangement (including any preferential, trust, title retention or set-off arrangement) having a similar commercial effect as a grant of security; or
- (c) a guarantee or indemnity;
- "Transaction Document" means any of the following:
- (a) any Facility Agreement;
- (b) these General Conditions;
- (c) any document under which a Security is given; and
- (d) any other document required in connection with a Transaction Document or agreed by the parties to be a Transaction Document; and
- "upon demand" means immediately after the Creditor has given a notice to the relevant person requiring the action specified in that notice.
- 19.2 **Definitions from the CCCFA:** The following terms defined in the CCCFA and used in these General Conditions have the meanings given to them in the CCCFA, unless the context otherwise requires: "consumer credit contract", "electronic", "electronic communication", "full prepayment", "part prepayment", "payment" and "unpaid balance".
- 19.3 **Construction:** In these General Conditions, unless the context otherwise requires:
- (a) Provisions about companies: sections 2(3) and 2(4) of the Companies Act 1993 will be applied to determine whether one company is related to another; and
- (b) Another more than one person: if a Customer or Guarantor is made up of more than one person:
- (i) the liability of those persons under the Transaction Documents is joint and several; and
- (ii) a reference to "the Customer" or "the Guarantor" (as the case may be) includes a reference to each of those persons individually and to any two or more of them together.
- 20. Inconsistency**
- 20.1 **Facility Agreement prevails:** If any of the terms of a Facility Agreement are inconsistent with the terms of these General Conditions, to the extent of such inconsistency, the terms of the Facility Agreement will prevail.
- 20.2 **Security Agreement prevails:** If any of the terms of a Security Agreement are inconsistent with the terms of these General Conditions, to the extent of such inconsistency, the terms of the Security Agreement will prevail.