

Terms And Conditions for Finance – Easi-Cash

1 Interpretation

1.1 Definitions: In this Agreement unless the context otherwise requires:

“**Address**” means your address as specified in this Agreement;

“**Agreement**” means these Terms and Conditions for Finance, the Disclosure Statement, the Schedule of Payments and the Valuation Goods ID;

“**Burglary or Housebreaking**” means the criminal taking of the Secured Assets from the residence at the Address by a person feloniously entering the residence through force or violence, as may be shown by visible marks or damage to the exterior of the residence made by tools or other means at the point of entry, or by deceit;

“**Business Day**” means any Monday to Friday (inclusive) on which registered banks are open for general banking business in Auckland;

“**CCCFA**” means the Credit Contracts and Consumer Finance Act 2003, as amended from time to time;

“**Covenantor**” means any person who signs a Covenantors Acknowledgement, who makes various representations and warranties in that document, and who grants to us a security interest in all of his interests in the Secured Assets or any of them.

“**Default Interest Rate**” means the interest rate as specified on the front of this Agreement charged to you in the event of a default in payment;

“**Disclosure Statement**” means a statement which contains certain information required by the CCCFA in compliance with the disclosure requirements under the CCCFA;

“**DLW**” has the meaning prescribed to it in clause 10;

“**DLW Excess**” means the amount referred to in clause 10.3 and specified in the Valuation Goods ID;

“**DLW Fee**” means the fee charged by us to you for the provision of DLW as specified in the Valuation Goods ID;

“**Event of Default**” means those events specified in clause 8.1;

“**Full Prepayment**” means, subject to any amendment to section 5 of the CCCFA, the payment of the unpaid balance before the last amount to be paid under the Agreement becomes payable;

“**Moneys Owed**” means the principal sums, and all interest fees and other amounts owed or payable under this Agreement from time to time.

“**Part Prepayment**” means, subject to any amendment to section 5 of the CCCFA, the payment of an amount that is less than the unpaid balance before that amount is payable under the Agreement;

“**Payment Date**” means the dates set out in the Schedule of Payments on which payments must be made by you to us as repayment of the Principal Sum, interest and any other sum that may be payable under this Agreement;

“**Personal Property**” means all property that is personal property to which the PPSA applies;

“**Principal Sum**” means all sums advanced by us to you under this Agreement;

“**Proceeds**” has the meaning ascribed to it under section 16 of the PPSA;

“**PPSA**” means the Personal Property Securities Act 1999;

“**Schedule of Payments**” means a schedule of payments provided by us to you under this Agreement;

“**Secured Assets**” means all of your present, future and after acquired Personal Property, including but not limited to the goods and equipment listed in the Valuation Goods ID form, and includes any Proceeds of the Secured Assets and any personal property of yours subsequently agreed to be a Secured Asset and includes all of your right, title and interest (legal and equitable) in the Secured Assets;

“**Security Interest**” has the meaning ascribed to it under section 17 of the PPSA.

“**Valuation Goods ID**” means the EasiCash Valuation Goods ID form or forms signed by you from time to time;

1.2 Construction: In this Agreement, unless the context requires otherwise:

- references to any parties to this Agreement include their respective executors, administrators, successors and assigns;
- all covenants set out in this Agreement are joint and several;
- words importing the singular number include the plural and vice versa;
- words importing any gender also include the other genders; and
- references to individuals include corporations.

2. Payment

- In consideration of us advancing to you, or paying at your request or direction, the Funds Advanced (as detailed in the Disclosure Statement) you shall:
 - pay on the Payment Date each payment specified in the Schedule of Payments; and
 - pay any other sums that may be owing under this Agreement on demand by us.
- Payments accepted by us shall be credited by us against the payment due on the Payment Date. Payments that we receive and accept prior to the Payment Date shall be held unallocated by us, and shall not be credited to your account until the Payment Date.
- Where credit card details have been provided, you irrevocably authorise us to debit your credit card for any Moneys Owed relating to this Agreement that are outstanding at the end of this Agreement.
- You agree that interest, calculated and accrued daily on the Moneys Owed at the Interest Rate as shown in the Disclosure Statement, is included in the payments agreed to be made under clause 2.1(a).

3. Manner and time of payment

- Unless otherwise agreed in writing, you must make payments on the Payment Dates by direct credit to our nominated bank account as specified by us from time to time:
 - no later than 4.00 pm on a Business Day or where Payment Date is not a Business Day on the immediately preceding Business Day; or
 - where you make payment on the Payment Date but after 4.00 pm then payment is deemed to have been made on the next Business Day.
- Except to the extent required by law all payments to us are to be made:
 - free and clear of any restrictions, conditions or reservations (equitable or otherwise); and
 - free and clear of and without any deduction or withholding for or on account of any tax; and
 - without any deduction or withholding whether by way of set-off, counterclaim or otherwise.
- In addition to our rights under clause 2.2, we may apply any funds we receive in reduction of your liabilities in payment of the Moneys Owed in our absolute discretion notwithstanding any stipulation, purported appropriation by you or rule of law or equity to the contrary. Where we have not exercised our discretion all moneys received will be applied:
 - first, in payment of all outstanding fees, costs, expenses, losses or damages due by you to us;
 - secondly, in payment of all default interest payable by you to us;
 - thirdly, in payment of all other interest payable by you to us; and
 - fourthly, in payment of the balance of the Moneys Owed.
- In the absence of obvious error, any statement setting out the amount owing under this Agreement signed by a duly authorised employee or agent of ours will be conclusive as to any amount owing under this Agreement.

4. Part Prepayment

- Notwithstanding clause 2.2, we reserve the right to decline a Part Prepayment from you.

5. Full Prepayment

- You may at any time during the term of this Agreement complete full repayment of the Moneys Owed, all interest and other amounts accrued but unpaid under this Agreement. Interest on the Moneys Owed ceases from the actual date of payment. You agree to pay to us any administrative costs or losses incurred by us as a result of the full repayment, as permitted by the Regulations under the CCF current at the time of repayment.

6. Secured Assets

- Good Order and Condition:** At all times during the currency of this Agreement and at your own expense, you shall keep and maintain the Secured Assets in good working order, repair and condition (fair wear and tear excepted), and to replace any worn out or defective parts with new parts.
- Interference:** You shall not interfere with, add to or modify the Secured Assets without our prior written approval.
- Use:** You will use the Secured Assets in a careful and proper manner and shall keep the premises in which the Secured Assets are installed or situated secure against unauthorised entry.
- Inspection:** Subject to the Credit (Repossession) Act 1997 where applicable, you will permit us or our authorised agent from time to time to inspect or test the Secured Assets and for such purpose to enter onto the premises where the Secured Assets may be from time to time, and you will afford to us or our agent all such reasonable assistance as may be required to enable us or our agent to carry out the inspection or test of the Secured Assets.

7. Representations and Warranties

- 7.1 You represent and warrant to us that:
- this Agreement constitutes valid and binding obligations of you and is enforceable against you in accordance with its terms;
 - you have disclosed to us prior to the date of this Agreement all information relating to you, which you know or should reasonably know, and which is material to be known by a lender;
 - no Event of Default has occurred and is continuing or is about to occur;
 - you own (or will own at the date of initial payment of the Moneys Owed) the Secured Assets, free of any prior lien, security interest or encumbrance except for the Security Interest created by this Agreement; and
 - you will not, without our prior written consent, create or permit to exist any Security Interest over or affecting the Secured Assets except as otherwise expressly permitted by this Agreement.
- 7.2 The representations and warranties contained in this clause 7.1 will be deemed to be repeated by you on the date of payment of each payment under this Agreement by reference to the facts and circumstances existing on each such date..
- 7.3 You agree that we do not give any representation or warranty to you except as expressly set out in this Agreement or as implied by law.

8. Default and Indemnity

- 8.1 If any of the following events occur ("Events of Default"):
- you fail to make payment of any amount payable or secured under this Agreement when due;
 - you breach any term or condition of this Agreement;
 - a material adverse event or a change in your financial condition or stability occurs which gives reasonable grounds for us to conclude that such an event or change could result in you failing to discharge your obligations under this Agreement;
 - any provision of this Agreement ceases to be valid and enforceable against you for any reason, or you so alleges;
 - you are declared bankrupt or being a company go into liquidation, or have a receiver, administrator or statutory manager appointed, or are deemed to be unable to pay your debts under any relevant legislation;
 - you transfer, dispose of, or allow the Secured Assets or any part of the Secured Assets to be seized or removed so as to satisfy other debts;
 - any distress or execution for an amount in excess of \$2,000 in aggregate is levied or issued upon or against any of your property or assets;
 - a judgment for an amount in excess of \$2,000 is obtained against you and is not set aside for a period of 14 days;
 - an execution order or distress is levied on the Secured Assets;
 - you do or cause to be done or permit or suffer any act or thing which prejudices or jeopardises our rights in the Secured Assets;
 - you allow a financing statement (as defined in the Personal Property Securities Act 1999) to be filed against any of the Secured Assets;
 - you allow a lien to be created over the Secured Assets;
 - you otherwise make default in the observance or performance of any of the covenants or conditions contained or implied in this Agreement and fail to rectify such default within 15 Business Days of receipt of written notice from us to do so;
 - if any of the events described in clauses 8.1(a) to (m) above both inclusive occur with respect to the Covenantor;
- then, in addition to our rights set out in clause 9, we may by written notice to you declare the Moneys Owed payable under this Agreement, or any other agreement immediately due whereupon at which time you must immediately pay us that amount whether or not the time for payment has arrived
- 8.2 You agree to indemnify us against any losses, costs or expenses (including legal costs on a full indemnity basis) which may arise or we may incur as a result of an Event of Default, any breach by you of the above warranties and any other terms and conditions of this Agreement. Without prejudice to its generality, the foregoing indemnity shall extend to any interest, fees, penalty, expense or other sums whatsoever paid or payable (including loss of profit).

9. Default and Repossession

- 9.1 If an Event of Default occurs, we may:
- cancel this Agreement; and/or
 - by notice to you call up or demand payment of the balance of the Moneys Owed. Upon service of the notice, that amount becomes immediately due and payable; and/or
 - without notice, sue for recovery of the balance of the Moneys Owed; and/or
 - charge you a fee or fees of an amount or amounts determined by us that reasonably compensates us for any loss or costs incurred by us as a result of your default under clause 8.1, or as a result of action taken by us under clauses 9.3 and 9.4, including without limitation, solicitor/client costs, repossession fees, late fees, dishonour fees, door knocking fees and any costs in engaging the services of a debt collection agency to recover the debt owed by you to us, refinancing fees, repossession costs, storage costs, locksmith costs and disposal costs; and/or
 - take possession of and sell the Secured Assets, including accessions (if any), as defined in the Credit (Repossession) Act 1997, in accordance with the provisions of the same Act.

- 9.2 If an Event of Default under clauses 8.1(a) occurs, in addition to the fees specified in clause 9.1, you shall also pay us interest on the outstanding Moneys Owed from the date payment was due up to the date of payment at the Default Interest Rate specified in the Disclosure Statement.
- 9.3 In addition to our rights under clause 9.1, if at any time we consider the Secured Assets to be at risk (within the meaning of section 109(2) of the PPSA), we may take and keep possession of all or part of the Secured Assets.
- 9.4 To exercise the rights of repossession and enforcement, you irrevocably give us, our agents and representatives leave and licence (without a requirement to give notice) to enter into any premises in which the Secured Assets may be located, and if necessary, break into any business or premises you occupy where the Secured Assets may be held, and to search for, remove and take possession without any liability to you, or anyone claiming under you for doing so, including any claims for consequential loss or damage.

10. Damage Liability Waiver (DLW)

- 10.1 If this DLW provision applies, and subject to the terms of this clause 10 and clause 11 including compliance on your part with all of the obligations set out under clause 10.3, then payment of the DLW Fee and DLW Excess under this Agreement when due means that you are not obligated to keep the Secured Assets to which we agree the DLW applies (as listed on the Valuation Goods ID form signed by you and accepted by signing by us), insured against damage or loss due to lightning, windstorm, flood, smoke, fire, bursting of fixed water installation, Burglary or Housebreaking and, if any goods or equipment listed on the Valuation Goods ID form are lost or damaged in those circumstances then:
- we agree to reduce your liability to us in respect of this Agreement by the estimated valuation of the goods or equipment as specified on the Valuation Goods ID form so lost or damaged less a percentage of that sum as determined by us (that percentage being equal to the percentage that the principal sum payable under this Agreement has been repaid to us in clear funds as at the date the damage or loss occurred); or
 - if you decide to continue with the Agreement, we may, at our option, make a new advance to replace the relevant Secured Assets as so listed and lost or damaged in those circumstances to which the DLW applies and if so the terms and conditions of this Agreement will apply. We are not obligated to replace any Secured Assets under the DLW.
- 10.2 Our waiver of your liability under clause 10.1 is subject to your compliance with the obligations imposed upon you by this Agreement, including those set out under clause 10.3. It is agreed that the estimated valuation of the goods or equipment as set out in the Valuation of Goods ID form may be less than the market value of that equipment or those goods.
- 10.3 For the DLW provision to apply, you must have:
- Paid the DLW Fee on the date of this Agreement; and
 - Complied with all the terms and conditions of this Agreement; and
 - Reported any loss of the relevant Secured Assets to which the DLW applies as a result of a Burglary or Housebreaking to the Police within 7 days and our nearest store within 24 hours of the damage occurring; and
 - Fully and correctly completed a DTR Incident Report Form, as provided by us; and
 - Paid to us the applicable "DLW Excess" sum within 30 days of the damage or loss occurring in respect of each claim in respect of goods or equipment listed on the Valuation Goods ID form so lost or damaged in the circumstances set out in clause 10.1.
- 10.4 We shall not be liable for and you indemnify us on demand against any claim for loss or damage to any equipment or thing used in or with, or an accession to, the relevant Secured Assets to which the DLW applies which is not your property.
- 10.5 The DLW provision under this clause 10, does not apply to damage due to moisture, scratches, mysterious disappearance, vandalism, abandonment, your neglect or intentional acts, or if you are unable to provide reasonable evidence of the occurrence of any event as listed in clause 10.1, and in respect of such events you remain liable to keep the Secured Assets insured against loss in accordance with clause 11.

11. No DLW Accepted

- 11.1 If you have elected not to make any DLW payments or failed to make the DLW payments when due, all the Secured Assets shall be at your sole risk and you shall keep the Secured Assets insured to their full insurable value against loss or damage due to lightning, windstorm, flood, smoke, fire, bursting of fixed water installation, Burglary or Housebreaking and all other usual risks with an independent insurer and such insurance shall be in the joint name of you and us. All monies payable under such policy of insurance must be paid to us and shall be applied, at our option, in either making good any damage to the Secured Assets, or in or towards payment of the balance owing under this Agreement in which case any surplus shall be paid to you. You agree to provide evidence of that insurance cover when requested by us.
- 11.2 If you fail to keep the Secured Assets insured or where any insurance payments or any claims lodged by you have been declined by your insurer, the Secured Assets shall be at your sole risk, and you shall be obliged to complete the payment of the Moneys Owed as provided in this Agreement even if the Secured Assets or any part of them may be lost, damaged or destroyed.

12. PPSA and Securities

- 12.1 You charge to us, and grant to us a security interest in, the Secured Assets as security for the due and punctual payment of the Moneys Owed and due observance and performance of your obligations under this Agreement, together with all other amounts payable by you to us from time to time, whether under this Agreement, the Security or otherwise however.
- 12.2 At our request you shall promptly execute any documents and do anything else required by us to ensure that the Security Interest created under this Agreement constitutes and remains a first ranking registered Security Interest over the Secured Assets under the PPSA, including providing any information we reasonably require to complete a financing statement or a financing change statement.
- 12.4 You waive any right to receive a copy of a Verification Statement under the PPSA.
- 12.5 You will pay us all costs, expenses and other charges incurred, expended or payable by us in relation to the registering of a financing statement or a financing change statement.
- 12.6 You agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to this Agreement.
- 12.7 You agree that your rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to this Agreement.
- 12.8 We have no obligation to execute and deliver a discharge or release of a financing statement until all obligations under this Agreement have been met by you and until we are satisfied that no transaction between us and you will be avoided or avoidable.
- 12.9 Until the total Moneys Owed have been paid you shall:
- not remove any of the Secured Assets from the Address without our prior consent;
 - not sell, assign, pledge, underlet, lend, hire, lease or otherwise part with or dispose of any of the Secured Assets, or your interest under this Agreement;
 - not permit any Security Interest to be created in favour of any other party over the Secured Assets, or any part of it;
 - not allow to be created any lien over the Secured Assets, or any part of it;
 - not do, or omit to do, or allow to be done or omitted to be done, anything which might adversely affect the Secured Assets, including to modify the Secured Assets in any way;
 - not allow the Secured Assets to become an accession to any item that is not also a Secured Asset, or any part of it;
 - notify us immediately if any of the Secured Assets are taken out of your possession for any reason whatsoever and shall give full particulars of the address (if known) to which the Secured Assets have been removed; and
 - protect the Secured Assets against distress, execution or seizure.

13. Collateral Securities

- 13.1 We may in the future hold other securities. In respect of these securities:
- This Agreement and the Secured Assets shall be deemed for all purposes to be collateral to and to secure the same moneys and amounts payable as is intended to be secured by such other securities; and
 - Such other securities shall be deemed for all purposes to be collateral to and to secure the same Moneys Owed as is intended to be secured by this Agreement and the Secured Assets; and
 - This Agreement and the Secured Assets and such other securities shall be read together so that a default under one shall be deemed a default under the other and we may exercise our rights, remedies and powers under any of the securities separately or under all or any thereof concurrently.

14. Several Securities Covering Same Debt

- 14.1 The Moneys Owed includes all money which you owe to us from time to time, even though:
- The money is secured by or is chargeable against some other security which we hold; and
 - Any agreement or arrangement between you and us may exist which does not provide that money referred to in that agreement or arrangement is intended to be secured by this Agreement.
- 14.2 To the extent that any money which is secured by or chargeable against any other security that is held by us is not included in the Moneys Owed or is not otherwise secured by this Agreement or against the Secured Assets, then that money is (by virtue of this clause) deemed to be included in the Moneys Owed and so secured by this Agreement and against the Secured Assets.

15. Continuing Security

- 15.1 This Agreement remains in full force and is a running and continuing security for the payment of the Moneys Owed and for the observance and performance of all terms contained or implied in this Agreement or in any document which is collateral to this Agreement until a final discharge has been executed and delivered by us even though:
- Any sums may from time to time be paid to us;
 - Any account between you and us may at any time be in credit;
 - Any settlement of account or other matter has occurred.

16. Waiver

- 16.1 No failure on our part in exercising any right under this Agreement operates as a waiver of such right.
- 16.2 No single or partial exercise of any right under this Agreement precludes any other exercise of that right or any other right.
- 16.3 The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

17. Set-Off

- 17.1 We may at any time without notice to you (any such notice being expressly waived by you), set off and apply any and all deposits (general or special, term or demand, provisional or final) held for your account and any other indebtedness owing by us to you, against any amounts payable by you to us under this Agreement or otherwise, irrespective of whether:
- we have made demand under this Agreement; and
 - the time for payment may not have arrived.
- 17.2 We agree to notify you promptly after any such set-off and application.
- 17.3 The failure to give notice does not affect the validity of any set-off and application.

- 17.4 Our rights under this clause are in addition to other rights and remedies (including, without limitation, other rights and remedies (including, without limitation, other rights of set-off) which we may have.

18. Assignment

- 18.1 You may not assign any of your rights under this Agreement or any rights to the Secured Assets.
- 18.2 We may at any time assign our rights under this Agreement or any rights to the Secured Assets to any party on such terms as we consider fit.

19. Costs

- 19.1 You must pay all expenses, costs and other charges incurred or expended in the preparation or enforcement or attempted enforcement of this Agreement (including legal fees and disbursements on a solicitor and own client basis) and any of the securities referred to in this Agreement.

20. Notices

- 20.1 All notices, requests, demands, consents or other communications to or upon the parties must:
- be in writing by personal delivery, post, facsimile or e-mail;
 - be delivered, forwarded or sent to:
 - the principal place of business of the addressee; or
 - the address or facsimile number specified in this Agreement or otherwise specified by the addressee; or
 - the registered office of the addressee; or
 - in the case of a company registered under and/or subject to the Companies Act 1993, the address for service of the addressee;
 - be deemed to have been received by the addressee:
 - if served personally, at the time of service;
 - if sent by post, on the third working day after being posted correctly addressed by prepaid postage;
 - if sent by facsimile, on the day of transmission if before 5.00pm on a Business Day, and otherwise on the next Business Day.
- 20.2 You consent to the use, provision and acceptance of any information in electronic form pursuant to the Electronic Transactions Act 2002.

21. Over Term Credit Account Fee

- 21.1 If at any time, including following repayment of all moneys payable under this Agreement, you maintain a credit balance with us, then you agree to pay to us from time to time an Over Term Credit Account Fee determined by us to compensate us for the costs of maintaining that account.