

# Terms And Conditions for Finance – Easi-Own

## 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 for Consumer Credit Contracts; and the Schedule of Payments;

“**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 shown by visible marks or damage to the residence’s exterior 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;

“**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 Credit Contracts and Consumer Finance Act 2003 (“CCCFA”) in compliance with the disclosure requirements under the CCCFA;

“**DLW**” has the meaning prescribed to it in clause 12;

“**DLW Excess**” means the amount referred to in clause 12.3 and shown on the front page of this Agreement;

“**DLW Fee**” means the fee charged by us to you for the provision of DLW;

“**Equipment**” means the equipment listed on the Sales Invoice;

“**Establishment Fee**” means the fee charged by us to reasonably compensate us for any costs we incur in connection with your application for credit, the processing and documentation of this Agreement, and the advance of the Principal Sum;

“**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;

“**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 due date(s) set out in the Schedule of Payments on which payments must be made by the Borrower to the Lender against the Principal Sum, interest and any other sum that may be payable under this Agreement;

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

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

“**Property**” means the Equipment and the Secured Assets and all of your right, title, and interest (legal and equitable) in the Equipment and the Secured Assets;

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

“**Sales Invoice**” means the document that records the details of the Equipment, issued by us at the time this Agreement is entered into.

“**Schedule of Payments**” means a schedule of payments provided by us to you for the Equipment or each item of Equipment;

“**Secured Assets**” means any of your personal property described in this Agreement (including that described in the security interest section of the Disclosure Statement), or recorded on any of our sales confirmations or sales invoices, and includes any Proceeds of the Secured Assets and any personal property of yours subsequently agreed to be a Secured Asset;

“**Security Interest**” has the meaning prescribed to it under section 17 of the PPSA;

“**Service Plus**” has the meaning prescribed to it in clause 14;

“**Service Plus Fee**” means the fee charged by us to you for the provision of Service Plus; and

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

2.1 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.

2.2 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.

2.3 Where credit card details have been provided, you agree to authorise us to debit your credit card for any costs incurred relating to this Agreement at any time.

### 3. Manner and time of payment

3.1. Unless otherwise agreed, 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.

3.2. 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
- on account of any other matter, without any deduction or withholding whether by way of set-off, counterclaim or otherwise.

3.3. 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 Principal Sum, interest, fees or any other moneys due at 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 Principal Sum.

3.4. In the absence of obvious error, any statement setting out the amount owing under this Agreement signed by our duly authorised agent will be conclusive as to any amount owing under this Agreement.

### 4. Part Prepayment

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

### 5. Full Prepayment

5.1. You may at any time repay early the unpaid balance in full (Full Prepayment) provided you pay us any administrative costs incurred by us as a result of the Full Prepayment.

5.2. In the event of a Full Prepayment, we are not obliged to refund to you the Service Plus and DLW Fees.

### 6. Voluntary Return

6.1. You shall have the right to sell back to us the Equipment, or any item of the Equipment, only in accordance with the return provisions under Service Plus.

6.2. In the event of a sale-back pursuant to clause 6.1, we are not obliged to refund you the Service Plus Fee, the DLW Fee or the Establishment Fee.

### 7. Trade-ins

7.1. You transfer to us the legal ownership of any trade-in goods in consideration for an agreed trade-in allowance.

### 8. Covenants

8.1. You will:

- provide us with such information about your financial position as we may reasonably require from time to time; and
- advise us promptly of any circumstances (including pending litigation) which may have a material adverse affect on your ability to perform and observe your obligations under this Agreement.

8.2. **Good Order and Condition:** At all times during the currency of this Agreement and at your own expense, you shall keep and maintain the Property in good working order, repair and condition (fair wear and tear excepted), and replace any worn out or defective parts with new parts.

8.3. **Interference:** You shall not interfere with, add to or modify the Property without our prior written consent.

8.4. **Use:** You will use the Equipment in a careful and proper manner and shall keep the premises in which the Equipment is installed or situated secure against unauthorised entry.

8.5. **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 Property and for such purpose to enter onto the premises where the Equipment 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 Property.

## 9. Representations and Warranties

9.1. You represent and warrant to us that:

- a this Agreement constitutes valid and binding obligations of you and is enforceable against you in accordance with its terms;
- b 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;
- c no Event of Default has occurred and is continuing or is about to occur;
- d you own (or will own on advance of the Principal Sum) the Property, free of any prior lien, security interest or encumbrance except for the Security Interest created by this Agreement; and
- e you will not, without our prior written consent, create or permit to exist any Security Interest over or affecting the Property except as otherwise expressly permitted by this Agreement.

9.2. The representations and warranties contained in clause 9.1 will be deemed to be repeated by you on the date of payment of each instalment by reference to the facts and circumstances existing on each such date.

## 10. Default and Indemnity

10.1. If any of the following events occur ("Events of Default"):

- a you fail to make payment of any amount payable or secured under this Agreement;
- b you breach any term or condition of this Agreement;
- c a material adverse event or a change in the financial condition or stability of you 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;
- d any provision of this Agreement ceases to be valid and enforceable against you for any reason, or you so allege;
- e you are declared bankrupt, or being a company go into liquidation, or have a receiver appointed, or are deemed to be unable to pay your debts under any relevant legislation;
- f you transfer, dispose of to a third party, or allow the Property or any part of the Property to be seized or removed so as to satisfy other debts;
- g any distress or execution for an amount in excess of \$2,000 is levied or issued upon or against any of your property or assets;
- h 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;
- i an execution order or distress is levied on the Property;
- j you do or cause to be done or permit or suffer any act or thing which prejudices or jeopardises our rights in the Property;
- k you allow a financing statement (as defined in the Personal Property Securities Act 1999) to be filed against any of the Property;
- l you allow a lien to be created over the Property, or
- m 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,

then, in addition to our rights set out in clause 11, we may by written notice to you declare the Principal Sum, interest and all other moneys (if any) payable under this Agreement, or the 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.

10.2. 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 by you, 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).

## 11. Default and Repossession

11.1. If an Event of Default occurs, we may:

- a cancel this Agreement, and/or
- b without notice, sue for recovery of the balance of the Principal Sum; and/or
- c charge you a fee of an amount that reasonably compensates us for any loss or costs incurred by us as a result of your default under clause 10.1, or as a result of action taken by us under clauses 11.3 and 11.4, including without limitation, solicitor/client costs, repossession 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; and/or
- d without notice, cancel or refuse to provide you with some or all of the cover relating to Service Plus set out in clause 14; and/or
- e take possession of and sell the Property, including any accessions (if any), as defined in the Credit (Repossession) Act 1997, in accordance with the provisions of the same Act.

11.2. If an Event of Default under clause 10.1(a) occurs, in addition to the fees specified in clause 11.1, you shall also pay to us interest on the outstanding Principal Sum and any

interest accrued up to the date of payment at the Default Interest Rate specified in the Disclosure Statement.

11.3. In addition to our rights under clause 11.1, if at any time we consider the Property 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 Property.

11.4. 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 Property may be located, and if necessary, break into any business you occupy where the Property 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.

## 12. Damage Liability Waiver (DLW)

12.1. Subject to compliance with all of the obligations set out under clause 12.3 on your part payment of the DLW Fee under this Agreement means that you are not obligated to keep the Equipment insured against damage or loss due to lightning, windstorm, flood, smoke, fire, bursting of fixed water installation, Burglary or Housebreaking and:

- a we agree to forgo our right to receive the amount otherwise payable by you in respect of such damage or loss, and reduce your liability to us in respect of the Equipment to the sum indicated as the "DLW Excess" on the Disclosure Statement; and
- b if you decide to continue with the Agreement, we may, at our option, replace the Equipment, which will be subject to the terms and conditions of this Agreement. We are not obligated to replace the Equipment under the DLW more than once.

12.2. Our waiver of your liability under clause 12.1 is subject to your compliance with the obligations imposed upon you by this Agreement, including those set out under clause 12.3.

12.3. For the DLW provision to apply, you must have:

- a Paid the DLW Fee on the date of this Agreement; and
- b Complied with all the terms and conditions of this Agreement; and
- c Reported any loss of the Equipment 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
- d Fully and correctly completed a DTR Incident Report Form, as provided by us; and
- e Paid to us the applicable "DLW Excess" sum within 30 days of the damage occurring.

12.4. We shall not be liable for and you indemnify us against any claim for loss or damage to any Equipment or thing used in or with the Equipment which is not our property, whether caused by the Equipment or not.

12.5. The DLW provision under this clause 12, does not apply to damage due to moisture, scratches, mysterious disappearance, vandalism, abandonment, your neglect or intentional acts, and in respect of such events you remain liable to keep the Equipment insured against loss in accordance with clause 13.

12.6. Burglary and Housebreaking is defined as "The criminal taking of Equipment from the residence as shown on the agreement by a person entering the residence through force or violence as indicated by visible damage made by tools or other means at the point of entry."

## 13. No DLW Accepted

13.1. Where you have elected not to make any DLW payments, the Equipment shall be at your sole risk as at the date of delivery or possession and you shall keep the Equipment insured to its full insurable value against loss or damage due to lightning, windstorm, flood, smoke, fire, bursting of fixed water installation, Burglary or Housebreaking 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 Equipment, or in or towards payment of the balance owing under this Agreement in which case any surplus shall be paid to you.

13.2. Where you fail to keep the Equipment insured or where any insurance payments or any claims lodged by you have been declined by your insurer, the Equipment shall be at your sole risk, and you shall be obliged to complete the payment of the Principal Sum as provided in this Agreement and all other monies which may become payable under this Agreement even if the Equipment may be lost, damaged or destroyed before completion.

13.3. We shall not be liable for and you indemnify us against all claims for loss or damage to any item or thing used in or with the Equipment, which is not our property, whether caused by the Equipment or not.

## 14. Service Plus

14.1. The Principal Sum includes payment by you of a charge for Service Plus. Under Service Plus:

- a We will supply you with a replacement item while your Equipment is being repaired; and/or
- b The repair of your Equipment outside the requirement of the Consumer Guarantee Act 1993 is covered for the length of your Agreement; and/or
- c You can upgrade or downgrade your Equipment and receive a 25% discount based on the cost of goods set out in the Disclosure Statement under this Agreement; and/or

- d Equipment may be returned during the term of the Agreement and if the Agreement has been in place for greater than 6 months, we will not pursue the uncharged balance of the Agreement; and/or
- e We will move and reinstall any Equipment under this Agreement to a new address within the branch area at no additional cost.
- f We may amend these provisions relating to Service Plus at any time.

14.2 For the Service Plus provision to apply, you must have:

- a. Paid the Service Plus Fee on the date of this Agreement; and
- b. Complied with all the terms and conditions of this Agreement, including without limitation, the monthly payments specified in the Disclosure Statement.

14.3 We shall not be liable for and you indemnify us against any claim for loss or damage to any Equipment or thing used in or with the Equipment which is not our property, whether caused by the Equipment or not.

14.4 The Agreement must have been in place for greater than 6 months for 14.1 (c), (d) and (e) to apply.

## 15. Testing Standards

15.1 You acknowledge and accept that we accept no liability to you for any damage caused or any expense incurred due to non-compliance with the In-Service Safety Inspection and Testing of Electrical Equipment Standard AS/NZS 3670:2001, or any replacement or updated Standard, if the Equipment is moved from the Address, or is in any way modified.

## 16. Substituted Equipment

16.1 The Equipment described in this Agreement includes any goods which are substituted ("the substituted Equipment") for all or any part of the Equipment, and which are described in a variation of this Agreement, the Sales Invoice, or any other document recording the details of the substituted Equipment.

## 17 PPSA and Securities

17.1 You charge to us the Secured Assets as security for the due and punctual payment of the Principal Sum and due observance and performance of your obligations under this Agreement.

17.2 At our request you shall promptly execute any documents and do anything else required by us to ensure that the Security Interests created under this Agreement constitute first ranking registered Security Interests over the Property under the PPSA, including providing any information we reasonably require to complete a financing statement or a financing change statement.

17.3 You waive any right to receive a copy of a Verification Statement under the PPSA.

17.4 You will pay to 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.

17.5 You agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to this Agreement.

17.6 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.

17.7 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.

17.8 Until the Principal Sum, and any other sums or interest which may become payable to us under this Agreement, have been paid you shall:

- a. not remove any of the Property not defined from the Address without our prior consent ;
- b. not sell, assign, pledge, underlet, lend, hire, lease or otherwise part or dispose of any of the Property, or your interest under this Agreement;
- c. not permit any Security Interest to be created in favour of any other party over the Property, or any part of it;
- d. not allow to be created any lien over Property, or any part of it;
- e. not do, or omit to do, or allow to be done or omitted to be done, anything which might adversely affect the Property, including to modify the Property in any way;
- f. not allow the Property to become an accession to any item that is not also a Property, or any part of it;
- g. notify us immediately if any of the Property is taken out of your possession for any reason whatsoever and shall give full particulars of the address (if know) to which the Property has been removed; and
- h. protect the Property against distress, execution or seizure.

## 18 Collateral Securities

18.1 We may in the future hold other securities from you. In respect of these securities:

- a. This Agreement and the Property shall be deemed for all purposes to be collateral to and to secure the same Principal Sum as is intended to be secured by such other securities; and
- b. Such other securities shall be deemed for all purposes to be collateral to and to secure the same Principal Sum as is intended to be secured by this Agreement and the Property; and
- c. This Agreement and the Property and such other securities shall be read and construed together so that a default under one shall be deemed a default under any of each security and we may exercise our rights, remedies and powers under any of the securities separately or under all or any thereof concurrently.

## 19 Several Securities Covering Same Debt

19.1 The Principal Sum includes all money which you owe to us, even though:

- a. The money is secured by or is chargeable against some other security which we hold; and
- b. 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.

19.2 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 Principal Sum or is not otherwise secured by this Agreement by virtue of some other provision of this Agreement, then that money is (by virtue of this clause) deemed to be included in the Principal Sum and so secured by this Agreement.

## 20 Continuing Security

20.1 This Agreement remains in full force and is a running and continuing security for the payment of the Principal Sum 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 even though:

- a. Any sums may from time to time be paid to us;
- b. Any account between you and us may at any time be in credit;
- c. Any settlement of account or other matter has occurred.

## 21 Waiver

21.1 No failure on our part in exercising any right under this Agreement operates as a waiver of such right.

21.2 No single or partial exercise of any right under this Agreement precludes any other exercise of that right or any other right.

21.3 The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

## 22 Set-Off

22.1 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, time or demand, provisional or final) held for your account and any other indebtedness owing by us to you, against any amounts payable by you under this Agreement, irrespective of whether:

- a. we have made demand under this Agreement; and
- b. the time for payment may not have arrived.

22.2 We agree to notify you promptly after any such set-off and application.

22.3 The failure to give notice does not affect the validity of any set-off and application.

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

## 23 Assignment

23.1 You may not assign any of your rights under this Agreement or any rights to the Equipment.

23.2 We may at any time assign our rights under this Agreement or any rights to the Equipment to any party on such terms as we consider fit.

## 24 Costs

24.1 You must pay all expenses, costs and other charges incurred or expended in the preparation or enforcement of this Agreement and any of the securities referred to in this Agreement.

## 25 Notices

25.1 All notices, requests, demands, consents or other communications to or upon the parties must:

- a. be in writing by personal delivery or post, facsimile;
- b. be delivered, forwarded or sent to:
- c. the principal place of business of the addressee; or
- d. the address or facsimile number specified in this Agreement or otherwise specified by the addressee; or
- e. the registered office of the addressee; or
- f. in the case of a company registered under and/or subject to the Companies Act 1993, the address for service of the addressee;
- g. be deemed to have been received by the addressee;
- h. if served personally, at the time of service;
- i. if sent by post, on the third working day after being posted correctly addressed by prepaid postage;
- j. if sent by facsimile, on the day of transmission if before 5.00pm on a Business Day, and otherwise on the next Business Day.

25.2 You consent to the use, provision and acceptance of any information in electronic form pursuant to the Electronic Transactions Act 2002.