

## STANDARD TERMS

### Section 1 – Credit contract

Read and understand this Contract before you sign it

#### 1.0 Conditional purchase, loan and security

By signing this Contract, you agree:

- 1.1 To purchase (and Creditor agrees conditionally to sell) any Purchased Goods.
- 1.2 You take possession of any Purchased Goods on the express condition that, until the 'Total amount of payments' in the 'Payments' section of the Disclosure Statement and any other money owing under this Contract and any other contract between you and Creditor that is in default has been paid, ownership of any Purchased Goods does not pass to you.
- 1.3 You are deemed to have taken possession and accepted the risk of any Purchased Goods when it is available for delivery to you, even if any Purchased Goods remain with Creditor for the completion of work, or for any other purpose.
- 1.4 To transfer ownership of any Trade-in Goods, free of security interests, to Creditor for the 'net trade-in amount' in the 'Credit details' section of the Disclosure Statement.
- 1.5 To pay the 'cash deposit payable by Customer' in the 'Credit details' section of the Disclosure Statement.
- 1.6 To borrow (and Creditor agrees to lend to you) an amount equal to any 'loan advance' referred to in the 'Credit details' section of the Disclosure Statement.
- 1.7 To repay that loan and to pay interest on it by paying the 'Total amount of payments' in the 'Payments' section of the Disclosure Statement in the instalments specified.
- 1.8 To grant Creditor a security interest in the 'Goods' (which you confirm you own, free of other security interests) to secure the payment of all money you owe Creditor and the performance of all your obligations to Creditor under this Contract and any other contract between you and Creditor.

#### 2.0 Optional Payment waiver – []

2.1 This option only applies if an amount is shown as payable for Payment waiver under 'Credit details' on page 1. By signing this Contract you agree to pay an additional amount specified in the 'Credit details' section of the Disclosure Statement to Creditor in return for Creditor agreeing to waive certain amounts payable by you under this Contract in the circumstances set out in this clause 2.0.

2.2 Creditor offers seven levels of payment waiver covering the **Events** set out below:

- Payment waiver - Platinum: the **Events of Death, Disablement, Terminal Illness, Redundancy and Insurance Shortfall.**
- Payment waiver - Gold: the **Events of Death, Disablement, Terminal Illness and Redundancy.**
- Payment waiver - Silver plus: the **Events of Death, Disablement, Terminal Illness, Bankruptcy and Insurance Shortfall.**
- Payment waiver - Silver: the **Events of Death, Disablement, Terminal Illness and Bankruptcy.**
- Payment waiver - Bronze plus: the **Events of Death and Insurance Shortfall.**
- Payment waiver - Bronze: the **Event of Death.**
- Payment waiver - Jade: the **Event of Insurance Shortfall.**

You acknowledge you have selected Payment waiver – [].

2.3 If an **Event** covered by the Payment waiver you have selected as detailed below occurs before the Termination Date, Creditor will waive payment by you of all or part of the payments in the 'Payments' section of the Disclosure Statement up to the corresponding Waived Payments for that **Event** set out below, if all of the following apply:

- (a) None of the corresponding **Exclusions** for that **Event** applies; and
- (b) None of the general exclusions for all **Events** applies; and
- (c) MTF (or anyone MTF has transferred its rights under this contract to) has received an amount equal to those Waived Payments directly from Creditor or pursuant to the Payment Waiver Security Arrangements. This condition arises because even if you are released from your payment obligation, Creditor remains liable to pay a matching amount to the Waived Payment to MTF under Section 2 of this Contract. If Creditor doesn't make those payments, or the security arrangements put in place between MTF and Creditor to fund those payments are inadequate, you will not be entitled to the benefit of your Payment waiver cover.

2.4 Until your entitlement to Waived Payments is confirmed by Creditor you must continue to make the payments you are required to make under this Contract. In the case of the **Events of Disablement, Bankruptcy and Redundancy**, your obligation to make payments under this Contract will be waived as those payments fall due only if the condition in clause 2.3(c) is satisfied on each occasion. If at the time that your entitlement to Waived Payments is confirmed, the amount of the Waived Payments exceeds the total of the amounts owing under this Contract, Creditor will pay you that excess as soon as reasonably practical after the final amount payable under this Contract has been paid or waived.

Event	Details	Waived Payments	Exclusions
<b>Death</b>	The Named Person's death before his or her 70 <sup>th</sup> birthday.	The 'Total amount of payments' in the 'Payments' section of the Disclosure Statement, excluding: <ul style="list-style-type: none"> <li>• Instalments already paid, and</li> <li>• Instalments in arrears for more than 3 months</li> </ul> at the date of the Named Person's death.	No payments are waived if the Named Person's death arises directly or indirectly from: <ol style="list-style-type: none"> <li>a) The Named Person's attempted suicide or self inflicted injury or illness.</li> <li>b) The normal effects of the Named Person's pregnancy or childbirth.</li> <li>c) Alcoholism, drug addiction, or the influence of intoxicating liquor, narcotics or non-prescribed drugs.</li> <li>d) The Named Person taking part in any criminal act.</li> <li>e) The Named Person being outside of New Zealand.</li> <li>f) Asbestos, asbestosis or related diseases.</li> </ol>
<b>Disablement</b>	The Named Person suffers an illness or Accidental Injury that: <ul style="list-style-type: none"> <li>• Results in the Named Person being totally disabled for at least 8 consecutive days, and</li> <li>• Prevents the Named Person from engaging in or attending to the Named Person's usual business or employment or any business or employment for which the Named Person is reasonably suited (by education, training or experience) before his or her 70<sup>th</sup> birthday.</li> </ul>	The amount calculated by dividing the 'Total amount of payments' in the 'Payments' section of the Disclosure Statement, by the number of days of the whole term of the Contract, and then multiplying the result by the number of days of the Named Person's total disablement, excluding the first 7 days.	No payments are waived if the Disablement arises directly or indirectly from: <ol style="list-style-type: none"> <li>a) The Named Person's attempted suicide or self inflicted injury or illness.</li> <li>b) The normal effects of the Named Person's pregnancy or childbirth.</li> <li>c) Alcoholism, drug addiction, or the influence of intoxicating liquor, narcotics or non-prescribed drugs.</li> <li>d) The Named Person taking part in any criminal act.</li> <li>e) The Named Person being outside of New Zealand.</li> <li>f) Asbestos, asbestosis or related diseases.</li> </ol>

<b>Terminal Illness</b>	The Named Person suffers an illness or Accidental Injury before his or her 70th birthday that: <ul style="list-style-type: none"> <li>Results in the Named Person being totally disabled, and</li> <li>Prevents the Named Person from engaging in or attending to the Named Person's usual business or employment, which in the sole opinion of Creditor, after consideration of such medical evidence as Creditor determines is reasonably necessary, is likely to result in the Named Person's death within 6 months of the date on which the illness or Accidental Injury was diagnosed or suffered.</li> </ul>	The 'Total amount of payments' in the 'Payments' section of the Disclosure Statement, excluding: <ul style="list-style-type: none"> <li>Instalments already paid, and</li> <li>Instalments in arrears for more than 3 months</li> </ul> at the date on which the Terminal Illness was diagnosed.	No payments are waived if the Terminal Illness arises directly or indirectly from: <ol style="list-style-type: none"> <li>The Named Person's attempted suicide or self inflicted injury or illness.</li> <li>The normal effects of the Named Person's pregnancy or childbirth.</li> <li>Alcoholism, drug addiction, or the influence of intoxicating liquor, narcotics or non-prescribed drugs.</li> <li>The Named Person taking part in any criminal act.</li> <li>The Named Person being outside of New Zealand.</li> <li>Asbestos, asbestosis or related diseases.</li> </ol>
<b>Redundancy</b>	The Named Person is made involuntarily Redundant from any Permanent Employment before his or her 70 <sup>th</sup> birthday, and the Named Person has registered with Work & Income New Zealand as unemployed, and the Named Person is actively seeking new employment.	The amount (which may not exceed \$10,000) calculated by dividing the 'Total amount of payments' in the 'Payments' section of the Disclosure Statement, by the number of days of the whole term of the Contract, and then multiplying the result by the number of days of the Named Person's Redundancy (not to exceed 180 days).	No payments are waived in the following circumstances: <ol style="list-style-type: none"> <li>The Named Person's resignation, retirement, dismissal or voluntary redundancy.</li> <li>Redundancy or Threatened Redundancy that you or the Named Person knew, or should have known, about when this Contract started.</li> <li>Redundancy occurring outside New Zealand.</li> <li>Redundancy due to cessation of a season where the work is of a seasonal nature (e.g. fruit picking, shearing, working in a freezing works) or where the work is for a defined period.</li> <li>Where the Named Person is Self Employed or a working director.</li> <li>When the Named Person obtains further employment of any kind after the Named Person's Redundancy. Provided that if the Named Person is engaged for a finite temporary period only and again becomes unemployed solely by reason of the expiry of that period, payments are waived again from the day on which such unemployment recommences.</li> </ol>
<b>Bankruptcy</b>	The Named Person is Self Employed and adjudicated bankrupt as a result of a creditor's petition under the Insolvency Act 2006.	The amount (which may not exceed \$10,000) calculated by dividing the 'Total amount of payments' in the 'Payments' section of the Disclosure Statement, by the number of days of the whole term of the Contract, and then multiplying the result by the number of days the Named Person is an undischarged bankrupt, excluding the first 28 days.	No payments are waived in the following circumstances: <ol style="list-style-type: none"> <li>Threatened bankruptcy that you or the Named Person knew, or should have known, about when this Contract started.</li> <li>If the Named Person has not been carrying on the same business in the same style for at least 2 years prior to when this Contract started.</li> </ol>
<b>Insurance Shortfall</b>	A Total Loss arises and the Total Loss Payment is less than the Vehicle Finance Payout.	The amount by which the Vehicle Finance Payout exceeds the Total Loss Payment, up to a maximum of \$10,000.	No payments are waived in the following circumstances: <ol style="list-style-type: none"> <li>The Named Person had no Comprehensive Motor Vehicle Insurance Policy at the time of the Total Loss.</li> <li>The Comprehensive Motor Vehicle Insurance Policy claim was declined.</li> <li>The Comprehensive Motor Vehicle Insurance Policy sum insured was less than the aggregate of the purchase price of the Motor Vehicle and the cost of any modifications, extras or add-ons to the Motor Vehicle.</li> <li>The payment waiver request is not received by MTF within 90 days of the Total Loss.</li> </ol>

**General exclusions for all Events**

No payments are waived if any of the above **Events** arise directly or indirectly from:

- A state of affairs that existed prior to this Contract starting that you or the Named Person knew, or should have known, was likely to lead to an **Event**.
- Any medical condition for which the Named Person has received any medical advice or medical treatment in the six months immediately prior to this Contract starting.
- Any Accidental Injury for which the Named Person has received any medical advice or medical treatment prior to this Contract starting.
- Any aerial activity, unless it involves travelling as a ticket holding passenger or aircrew on a scheduled flight in a fixed wing aircraft owned and operated by a licensed airline or charter company.
- Engaging in competitive motor racing of any kind, parachuting, hang-gliding or any professional sporting activity.
- HIV or any other sexually transmitted disease. 'HIV' means the Human Immunodeficiency Virus, the causative agent for the Acquired Immunodeficiency Syndrome (AIDS) and its related syndromes Lymphadenopathy Syndrome (LAS) and AIDS Related Complex (ARC).
- Any psychiatric or psychological illness (including mental stress, anxiety and depression).
- Any act of declared or undeclared war, invasion or civil war.
- Nuclear weapons material, ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste.
- Any Act of Terrorism.
- An earthquake, volcanic eruption, hurricane, tornado, hydrothermal activity, subterranean fire or other convulsions of nature.

- 2.5 The Named Person must give notice of an entitlement to any **Waived Payments** to MTF or any other person nominated by MTF ('Creditor's agent') as soon as possible (but in any event within 90 days) after the **Event** occurs. If any notice of an entitlement or information provided by or on behalf of you or a Named Person relating to an **Event** is false, Creditor will have no obligation to waive any payment by you in respect of that or any other **Event**.
- 2.6 The Named Person must provide Creditor's agent with all proof and medical evidence Creditor's agent reasonably requires from time to time, and maintain contact with Creditor's agent during the waiver period. In particular:
- (a) For the **Event of Death**, Creditor's agent can require:
    - A post mortem examination at Creditor's expense, and
    - A certified copy of the death certificate, and
    - A copy of any Coroner's report.
  - (b) For the **Events of Disablement and Terminal Illness**:
    - The Named Person must obtain and follow the advice of a registered medical practitioner as soon as possible,
    - The Named Person must submit to examination by a registered medical practitioner appointed by Creditor's agent from time to time, at Creditor's expense,
    - The Named Person must provide to Creditor's agent all the Named Person's medical records of any kind in relation to the Named Person's medical condition,
    - For Terminal Illness, the Named Person must provide a report from a registered medical practitioner detailing the nature of the Named Person's illness and an estimate of the Named Person's life expectancy.
  - (c) For the **Event of Redundancy**:
    - The Named Person must provide written evidence from the Named Person's former employer of the Named Person's redundancy, and from Work & Income New Zealand of the Named Person's registration for new employment,
    - The Named Person must continue to provide written evidence from Work & Income New Zealand of the Named Person's registration for new employment from time to time until the Named Person obtains new employment or the Termination Date.
  - (d) For the **Event of Bankruptcy**:
    - The Named Person must provide a copy of the order adjudicating the Named Person bankrupt and any other information, documentation or statutory declaration Creditor's agent reasonably requires.
  - (e) For the **Event of Insurance Shortfall**:
    - The Named Person must provide written evidence from the Vehicle Insurer detailing the Total Loss event and the Total Loss Payment and any other information, documentation or statutory declaration Creditors' agent reasonably requires.
- 2.7 The following limitations apply to your Payment Waiver cover:
- (a) You are not entitled to the benefit of any **Waived Payments** until MTF (or anyone MTF has transferred its rights under this Contract to) has received an amount equal to those **Waived Payments** from Creditor or pursuant to the Payment Waiver Security Arrangements. The reason for this limitation is described in clause 2.3(c) above.
  - (b) If more than one of the **Events of: Death, Disablement, Terminal Illness, Redundancy or Bankruptcy** applies at the same time, you are only entitled to **Waived Payments** in respect of the first occurring **Event**.
  - (c) The **Waived Payments** only apply once, regardless of how many Customers there are.
  - (d) The **Event of Death** shall not be presumed by the Named Person's disappearance, unless there has been a total loss of the ship or aircraft in which the Named Person was travelling.
  - (e) The maximum aggregate amount of all **Waived Payments** must not exceed \$200,000.
- 2.8 The Named Person must comply with all the terms of this clause 2.0 before Creditor waives any payments under it.
- 2.9 You acknowledge that this clause 2.0 forms part of this Contract. You cannot cancel this clause 2.0 except in accordance with the early cancellation right set out in the 'Full prepayment' section of the Disclosure Statement. On early cancellation, the person named as Creditor on page 1 of this Contract will pay you a proportionate rebate of the amount which you paid for the Payment Waiver if you discharge your obligations in accordance with the 'Full prepayment' section and no waiver request has then been made under this clause 2.0. This rebate will be calculated in accordance with the formula set out in the Credit Contracts and Consumer Finance- Regulations 2014.
- 2.10 Creditor makes no representation about the tax status of the **Waived Payments** in the hands of the Customer. The Customer is recommended to seek tax advice about this.
- 2.11 In this clause 2.0:
- 'Accidental Injury' means the Named Person's bodily injury caused solely and directly by violent accidental external and visible means.
- 'Act of Terrorism' means an act, including the use of force or violence and threat of any person or group, whether acting alone or in connection with any organisation or government, that is done for political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and, or, to put the public or any part of the public in fear.
- 'Comprehensive Motor Vehicle Insurance Policy' means a comprehensive insurance policy that covers the Named Person against accidental loss or damage to the Motor Vehicle, and that is in force at the date of the Total Loss.
- 'Motor Vehicle' means the Goods described in the 'Goods' section of the Disclosure Statement.
- 'Named Person' means the person listed under 'Named Person' in the 'Credit details' section of the Disclosure Statement.
- 'Payment Waiver Security Arrangements' means certain arrangements entered into by Creditor and MTF from time to time to support the obligation of Creditor to make payments to MTF in circumstances where Creditor intends to waive payments due by Customer pursuant to this clause 2. These arrangements do not involve you or affect you in any way except as described in clause 2.3(c).
- 'Permanent Employment' means working for salary, wages, commission, compensation, fees or employment income and employed by an employer on a permanent basis for a minimum of 20 hours per week.
- 'Redundant' means an excess of manpower resulting from a decrease of business activity or changes to the way a business is carried on, including the closing down of an enterprise or re-organisation, requiring a permanent reduction in the number of workers employed and the remuneration from the Named Person's employer thereby ceasing.
- 'Self Employed' means a person who carries on a business in New Zealand other than as an employee.
- 'Threatened Redundancy' means when notice has been given by the Named Person's employer of an intention to make some or all employees Redundant.
- 'Termination Date' means the earlier of the following:
- The Goods being repossessed by Creditor,
  - The 'Total amount of payments' in the 'Payments' section of the Disclosure Statement being repaid,
  - This Contract being cancelled.
- 'Total Loss' means the Motor Vehicle is stolen and not recovered and/or damaged beyond economical repair.
- 'Total Loss Payment' means the payment under the Comprehensive Motor Vehicle Insurance Policy for a Total Loss.
- 'Vehicle Finance Payout' means the amount owing by you under this Contract at the date of payment of the Total Loss claim, less any arrears, any default interest, any late payments, any rebatable items, any additional interest and any amount of increased liability where there has been a variation to this Contract.
- 'Vehicle Insurer' means the insurance company named in the Comprehensive Motor Vehicle Insurance Policy.
- 'Waived Payments' means the amount described in the table above under the column headed '**Waived Payments**' that corresponds to the applicable **Event**. In the case of the **Events of Disablement, Bankruptcy and Redundancy**, the amount accrues as each payment under the Contract falls due.
- 3.0 Customer's obligations relating to Goods**
- You have possession of the Goods on the express condition that, until the 'Total amount of payments' in the 'Payments' section of the Disclosure Statement and any other money owing under this Contract, has been paid:
- 3.1 You must insure the Goods in your name. You must require that your insurer notes Creditor as an interested party. The Policy must be an annual comprehensive policy for the full insurable value of the Goods with an insurer approved by Creditor. The policy must cover any risks which Creditor may reasonably require. You must pay all insurance premiums on time and, if asked, give Creditor the policy and premium receipts. You must not do anything which would lead to the insurance policy being cancelled or adversely affected.
- 3.2 You must keep the Goods properly serviced in accordance with the manufacturer's instructions and in good repair. You must ensure that no other party is given rights over the Goods and you must advise Creditor if the Goods are damaged.

- 3.3 You must comply with all legislation or other requirements affecting your possession and use of the Goods including obtaining and keeping current all necessary registrations, licences, permits, warrants, certificates and authorisations relating to your possession or use of the Goods. You must not use the Goods for any prohibited activity or contrary to any terms of any insurance policy maintained in respect of the Goods. You must advise Creditor of any change of identifying detail of the Goods (such as chassis or registration number) set out in the Disclosure Statement.
- 3.4 You must not sell, lease, part with possession or otherwise dispose of any Goods or permit any security interest to attach to the Goods other than the Security Interest. You must not remove the Goods from New Zealand. If you lose possession of the Goods, you must immediately notify Creditor in writing and, if known, advise Creditor of the Goods' location.
- 3.5 If you, or any Guarantor, change address you or the relevant Guarantor must immediately advise Creditor and MTF, in writing, of the new address.
- 3.6 You must not modify the Goods.
- 3.7 You must not change your name without first notifying Creditor of your new name at least 21 days before the change takes effect.
- 3.8 You must not use the Goods for business purposes without the prior written consent of Creditor. You must not re-locate your principal business outside New Zealand or (if you are a company) change your place of incorporation.
- 3.9 You must not, without the prior written consent of Creditor, do, or fail to do anything which could adversely affect the Goods or the Security Interest.
- 3.10 You must do all other things which Creditor requires:
- to protect its interest in the Goods; and
  - to assist Creditor in exercising any of its rights under this Contract, whether on enforcement or otherwise.
- 3.11 If you do not do something which you are obliged to do, or do something which you are directed not to do, then (if it is possible to remedy the act or omission) Creditor may do so at your expense. However, Creditor is not bound to act.
- 3.12 Sums you receive in excess of \$1,000 from any insurance policy covering, or from any third party for damage to, the Goods, must be paid to Creditor. Creditor has complete discretion to use such sums to pay for repair to the Goods or to pay your obligations (present or future) under this Contract, or both.

#### 4.0 Acknowledgements by Customer and Guarantor

By signing this Contract you and the Guarantor acknowledge:

- 4.1 You have received a copy of this Contract, including the Disclosure Statement.
- 4.2 You are bound by all the terms of this Contract.
- 4.3 You inspected any Purchased Goods before signing this Contract. You agreed to purchase any Purchased Goods solely on the basis of that inspection and your own judgement.
- 4.4 That Creditor has transferred its right to receive all payments due under this contract to MTF and MTF has, in turn, transferred the right to receive payment to TEL. These arrangements are set out in section 2. As a result, you will make all payments to TEL. Only TEL (or such other person as TEL may direct) can give a valid receipt and discharge for payments under this Contract; and that payments must be made by post to TEL at c/- Motor Trade Finances Limited, PO Box 885, Dunedin 9054 (or such other address as TEL may direct) or by direct bank lodgement as TEL (or such other person as TEL may direct) may require.
- 4.5 You must continue to make the payments in the 'Payments' section of the Disclosure Statement even if the Goods are lost, stolen, destroyed or written off for insurance purposes.
- 4.6 If Creditor agrees to a change to this Contract that you request (and Creditor is not obliged to do so except as required by law), Creditor may require you and the Guarantor to sign a new document to record the change. That document will replace this Contract. Creditor may also require you to pay a fee in respect of that new document.
- 4.7 You and the Guarantor consent to notices and other communications relating to this Contract being made on-line or being sent by Creditor by email to the email address specified in this Contract. You and the Guarantor also consent to disclosures required by the CCCFA being made on-line or being made by Creditor sending an email to that email address. That email may incorporate an electronic file in Adobe PDF format or a link to a website where a disclosure statement can be accessed. If applicable, you also consent to Creditor making continuing disclosure relating to this Contract to you as required by the CCCFA by Creditor maintaining at all reasonable times a website that allows you to access that information for any reasonable statement period you specify. The address of that website is [www.mtf.co.nz](http://www.mtf.co.nz) or the website of Creditor, if any, detailed in the Disclosure Statement. You and the Guarantor consent to the electronic collection and storage of your and the Guarantor's respective signatures for the purpose of evidencing entry into this Contract, and agree that the electronic collection of your signature and any Guarantor's respective signature represents your and the Guarantor's approval of, and agreement to be bound by, the provisions of this Contract.

#### 5.0 Guarantee

- 5.1 The Guarantor acknowledges he or she requested Creditor to enter into this Contract.
- 5.2 The Guarantor guarantees to Creditor, as a principal obligation, payment of all money payable under this Contract by the Customer and the performance of all obligations of Customer under this Contract. This guarantee may be enforced by Creditor whenever Customer makes default.
- 5.3 The Guarantor's liability as guarantor shall not be affected by Creditor giving Customer additional time to pay or granting any other concession to Customer.
- 5.4 This guarantee is also an indemnity and in the event of legal disability on the part of any Customer the Guarantor will indemnify Creditor for any loss it suffers as a result. This means the Guarantor is personally liable for repayment of all money payable under the Contract even if for some technical reason Customer does not have to pay those amounts.
- 5.5 The Guarantor must not seek any payment in any bankruptcy or liquidation of Customer unless all money owed under this Contract is paid to Creditor.

#### 6.0 Warranties and exclusions

- 6.1 The Consumer Guarantees Act 1993 applies to this Contract, unless you have entered into it for the purposes of a business, in which case, to the extent permitted by law, all representations, warranties, promises or undertakings by Creditor relating to this Contract, the Goods or any services supplied by Creditor in connection with the Goods are excluded. If the Consumer Guarantees Act 1993 does apply to this Contract (notwithstanding the preceding sentence), Creditor does not purport to contract out of the provisions of that Act.
- 6.2 Without limiting any rights or remedies you may have under the Consumer Guarantees Act 1993, Creditor and its employees, contractors and agents have no other liability to you. Neither Creditor nor any of those persons is liable to you or has to pay you for anything that any of them does or fails to do. This exclusion applies no matter what you claim and however liability should occur.
- 6.3 Without limiting any rights or remedies you may have under the Consumer Guarantees Act 1993, if, for any reason, the exclusion of liability in clause 6.2 cannot be relied on, then, subject to any mandatory applicable law, the maximum liability of Creditor and each other person specified in clause 6.2 shall not exceed the first monthly Payment under this Contract.
- 6.4 Except as implied by law, this Contract contains all the terms of the contract between you and Creditor.

#### 7.0 MTF's loss on Full prepayment

- 7.1 You have an early cancellation right set out in the 'Full prepayment' section of the Disclosure Statement. If you repay early, Creditor has to repay the amounts it has borrowed from MTF to fund your loan. MTF has, in turn, incurred a funding cost on the agreement you will repay your loan at the agreed maturity date. If you choose to repay early, Creditor will then repay its loan from MTF early and MTF may suffer a loss if market rates have changed since your loan was made. Creditor agrees to indemnify MTF for this loss. The formula for calculating the amount payable to Creditor to compensate it for its loss if you repay in full before the due date of the final payment under this Contract is:

$$B = \max \left( \sum_{j=E}^T (P_j \times df_j) + \frac{S}{12} \sum_{j=E}^T (PO_{j-1} \times df_j) - \sum_{j=E}^T P_j, 0 \right)$$

where:

B = amount payable to Creditor

P<sub>j</sub> = principal payment that would be due at time j

df<sub>j</sub> = discount factor in respect of time j

PO<sub>j-1</sub> = opening principal that would be outstanding at time j

S = swap rate (interest rate for MTF's wholesale fixed funding arrangement)

E = number of months completed prior to early cancellation

T = term of the Contract

j = each scheduled payment date from the date of early full prepayment until the last scheduled payment date.

7.2 In very simple terms the formula is used to calculate a reasonable estimate of the loss suffered if you repay your loan early by comparing A and B below.

A is the expected amount:

This is equal to all of the scheduled payments (including interest) that would have been made over the remaining term of the loan calculated using the wholesale interest swap rate that applied when your loan was taken out. The wholesale interest swap rate is used because this best reflects the cost that is incurred to allow Creditor to make the loan to you at a fixed rate.

B is the replacement amount:

This is equal to all of the scheduled payments (including interest) that would have been made over the remaining term of the loan calculated using the wholesale interest swap rate that applies when the loan is repaid early.

The formula adjusts A and B to recognise that Creditor receives the money from you now rather than over the remaining term of the facility (this reduces the amount of the loss as it recognises that a dollar now is worth more than a dollar over time). A loss only arises if the expected amount is bigger than the replacement amount.

The formula only compensates Creditor for a reasonable estimate of the loss which arises but that amount could be significant. The formula is complex so Creditor has arranged with MTF that a full prepayment quote calculated using the formula above, may be obtained on a no cost, no obligation basis during normal business hours by contacting MTF by email [info@mtf.co.nz](mailto:info@mtf.co.nz), or phone 03 477 0530. We recommend you obtain this quote before making an early repayment.

#### **8.0 Events of default**

8.1 An event of default occurs and you are in breach of this Contract if: you breach any term of this Contract or any other contract between you and Creditor; any insurance policy for the Goods is cancelled; any person takes or threatens to take the goods under any legal process (or something happens which means a person may get a right to take such a step); any person lawfully claims to have a security interest in the Goods; you or any Guarantor go into liquidation or bankruptcy; a receiver is appointed for you or any Guarantor; or if Creditor reasonably believes the Goods are at risk of significant loss or damage.

8.2 If an event of default occurs, then (subject to the provisions of the CCCFA or the PPSA, as the case may be) all amounts owing, or to become owing, under this Contract, shall become immediately due and payable and Creditor may enforce the Security Interest; cancel this Contract; take possession of the Goods; sue immediately for payment of all money owing under this Contract; exercise any rights against Guarantor and may, in addition to all other remedies, appoint any person or persons to be a receiver of the Goods. In addition to, and without limiting or affecting, any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993, at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver had absolute ownership of the Goods. In particular, Creditor or a receiver may take possession of the Goods and sell them and use the proceeds to repay the loan. If a disabling device has been fitted to the Goods, Creditor may activate the device after an event of default occurs. Creditor will give you reasonable notice before exercising this right to activate a disabling device.

8.3 Cancellation is effected by written notice to you. If Creditor cancels this Contract under clause 8.2, all money owing under this Contract becomes immediately due and payable and you must deliver the Goods to Creditor.

8.4 To take possession of the Goods Creditor or its agent may (subject to the provisions of the CCCFA or the PPSA, as the case may be) enter, and where this is reasonably necessary, enter by force, any premises where the Goods may be expected to be held, without being liable to any proceedings by you or anyone claiming through you. You indemnify Creditor against any claims arising from the exercise of this right of entry (this means you will protect Creditor against any losses or costs it incurs).

#### **9.0 Obligation to pay expenses and additional interest**

9.1 You must pay as an amount immediately due: any sum of money paid by Creditor to remedy any default including money paid under clause 3.12; the costs of taking possession of the Goods or attempting to take possession of the Goods; the costs of tracing or attempting to trace you or any Guarantor; and all costs, charges, commissions, fees and expenses (including solicitor/client costs) which Creditor incurs or becomes liable for because of any default or breach by you.

#### **10.0 Privacy Act**

10.1 The information about you and the Guarantor contained in this Contract is collected by the person named as Creditor and will be used to assess your application for finance and the insurance required by this Contract, and for the ongoing administration of this Contract and that insurance. If it is not provided, your application may be declined. That information and any other information about you and the Guarantor obtained under this Contract or the contract relating to the insurance will be held by the person named as Creditor (whose address appears above) and by MTF (PO Box 885, Dunedin 9054) and by TEL (c/- Motor Trade Finances Limited, PO Box 885, Dunedin 9054). Under the Privacy Act 1993 you and the Guarantor have certain rights of access to, and correction of, personal information held by those parties.

10.2 You consent to the person named as Creditor using the information contained in this Contract to obtain reports on your creditworthiness from credit reporting agencies. You consent to the person named as Creditor, MTF, TEL and the persons providing the insurance required by this Contract disclosing information about this Contract, you, your payment history and any default to any person or company to whom they think fit to make disclosure. You agree that each of them may use any information provided in and relevant to this Contract to assist them to carry out usual business functions or activities and that each of them may obtain and use information about you from any other person (including government departments) or a search of any current or historic court files for those purposes. You also consent to MTF and TEL monitoring your creditworthiness on an ongoing basis with credit reporting agencies. The Guarantor consents to the same obtaining of credit reports and information, disclosure and use of information and credit monitoring in respect of them.

#### **11.0 Legal and general**

11.1 If Creditor makes any concession to you under this Contract that does not waive Creditor's rights, nor operate as a variation or modification of this Contract, which can only be varied in writing signed by both Creditor and you.

11.2 Creditor is permitted to accept commission from the insurer under any insurance policy arranged by Creditor on your behalf, or on Creditor's behalf.

11.3 You must permit Creditor and its servants and agents to inspect and test the Goods.

11.4 You agree to indemnify Creditor for any loss or cost it incurs under this Contract. This means you must reimburse Creditor for any loss or cost it incurs as a result of destruction or loss of the Goods (including legal forfeiture) and from all claims arising in any way out of your possession and the use of the Goods, or the exercise by Creditor or the receiver of any right under this Contract. This obligation extends to fees for updating Creditor's (or MTF's) registration on the PPSR.

11.5 You must not transfer your interest in the Goods or under this Contract. Creditor may transfer any of its rights or obligations in respect of the Goods and under this Contract to any person it reasonably believes is capable of performing its obligations under this Contract without your or any Guarantor's consent. Each transferee will have the same rights and powers against you and each Guarantor under this Contract as if it were named in this Contract as Creditor.

11.6 You irrevocably appoint Creditor and any transferee of Creditor as your attorney at your expense to do anything necessary to protect Creditor's interests in the Goods or under this Contract.

11.7 Payment of money to Creditor on any occasion is only completed by receipt of cleared funds. Creditor may deduct any money you owe it under this Contract (and any other contract between you and Creditor) from any money it owes you.

11.8 You acknowledge Creditor is not an agent of, and is not authorised to act for or bind, MTF or TEL unless expressly stated in this Contract or under written authority given by MTF or TEL and produced to you.

11.9 You agree that, unless MTF or TEL (as the case may be) otherwise elects, Dunedin shall be the place for filing of any proceedings which may be issued by any of the parties for the purpose of enforcing any rights under this Contract. You will not object to the fact that any proceedings have been filed in a court in Dunedin, and you will not make any application to transfer any proceedings from Dunedin.

11.10 You waive your right to receive a verification statement under section 148 of the PPSA.

11.11 Part 9 of the PPSA sets out some rules regarding the enforcement of security interests. If Part 9 applies, you waive your right to receive notice under section 114(1)(a). This means Creditor does not need to notify you if it intends to sell the Goods.

11.12 Creditor, MTF or TEL may disclose information relating to you and any Guarantor 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 any of them reasonably believes that the disclosure will assist in the investigation, detection and/or prevention of money laundering or the financing of terrorism. Neither Creditor, MTF nor TEL nor any related company of any of them will incur any liability to you or any Guarantor as a result of such disclosure of information. You and any Guarantor agree to provide to Creditor, MTF and TEL all information Creditor, MTF or TEL reasonably requires to comply with any government requirement under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. You and any Guarantor agree that Creditor, MTF or TEL may delay or block any transaction or refuse to pay any money in order to comply with any government requirement to which Creditor, MTF or TEL or any related company of Creditor, MTF or TEL is subject, and neither Creditor, MTF nor TEL nor any related company of Creditor, MTF or TEL will incur any liability to the Customer or any Guarantor as a result of any such delay, block or refusal.

## 12.0 Definitions

12.1 In this Section 1:

'CCCFCA' means the Credit Contracts and Consumer Finance Act 2003.

'Creditor' means each person or company named in the Disclosure Statement as Creditor and, as the context requires, includes any person they transfer their rights under this Contract to (which following assignment to MTF and TEL includes anyone MTF or TEL transfer their rights to).

'Disclosure Statement' means the disclosure statement attached to these Standard Terms and forming part of this Contract.

'Goods' means:

- (a) Any Owned Goods and any Purchased Goods; and
  - (b) Any other goods you agree with Creditor will be Goods for the purposes of this Contract; and
  - (c) All attachments, accessories, replacement or spare parts relating to the Goods described in paragraphs (a) and (b) above, and in the case of accessories, replacement and spare parts, whether or not attached to those Goods; and
  - (d) All proceeds of, licences relating to and documents of title to, the Goods described in paragraphs (a) - (c) above;
- and a reference to 'Goods' includes any part of it.

'Guarantor' means each person or company named in the Disclosure Statement as Guarantor. If more than one person is named as 'Guarantor' each of them is individually responsible for the obligations of Customer under this Contract and they are all jointly responsible for these obligations.

'MTF' means Motor Trade Finances Limited, its successors and anyone it transfers its rights under this Contract to.

'PPSA' means the Personal Property Securities Act 1999.

'PPSR' means the Personal Property Securities Register.

'proceeds' means any property that arises directly or indirectly from a dealing with the Goods.

'security interest' means an interest in personal property that in substance secures payment or performance of any obligation.

'signing this Contract' includes the electronic collection of your and the Guarantor's respective signatures (as the case may be).

'TEL' means Trustees Executors Limited (in its capacity as trustee) and anyone who it transfers its rights under this Contract to, including the person who from time to time holds the TEL Interest (as defined in Section 2).

'You' means each person or company named in the Disclosure Statement as 'Customer' and their respective personal representatives, and anyone who they transfer their rights under this contract to. If more than one person is named as 'Customer' then each of them is individually responsible for the obligations of Customer under this Contract and they are all jointly responsible for those obligations.

Capitalised expressions that are not defined in this Section 1 have the meanings given to them in the Disclosure Statement.

## Section 2 - Financial arrangements and transfers

**This section of the Contract sets out certain arrangements between Creditor, MTF and TEL. Under these arrangements, Creditor borrows money from MTF and uses the proceeds to fund your loan. MTF, in turn, funds its loan to Creditor under financing arrangements entered into with TEL and other third parties. The provisions of this Section 2 do not affect your obligations to Creditor apart from the direction in clause 4.0 below to make your payments to TEL. Creditor will advise you of how to make those payments.**

- 1.0 Creditor acknowledges receipt from Motor Trade Finances Limited ('MTF') of a loan ('MTF Loan') of an amount equal to 'Total advances' and, subject to clause 1.1 and 1.2 below, agrees that that MTF Loan, together with interest thereon calculated at the same rate and in the same manner as in respect of 'Total advances' is to be repaid by Creditor to MTF by the same payments on the same dates as payments are to be paid by Customer. Creditor will pay additional interest at the rate of 25% per annum on a daily basis on any amount due but unpaid, under the MTF Loan from its due date to the date of actual payment.
  - 1.1 If Creditor waives any payments due by Customer to Creditor pursuant to clause 2.0 of Section 1, this shall not affect Creditor's obligation to make the equivalent payment pursuant to clause 1.0 of this Section 2 which shall remain payable in full by Creditor.
  - 1.2 If the Customer Loan is a Subsidised Loan, Creditor shall, in respect of the MTF Loan, pay additional interest calculated at a rate equal to the difference between MTF Dealer Rate at the time the MTF Loan is made and the interest rate referred to in clause 1.0 of this Section. Payments of such additional interest will be made on the dates notified by MTF to Creditor.
- 2.0 As security for its MTF Loan obligations, Creditor transfers to MTF, as creditor, the specific chattel paper (the 'MTF Interest') evidenced by the Contract. For the sake of clarity, that transfer extends to include an assignment of all guarantees and indemnities, and all other rights (including the benefit of any insurances), given or held from time to time in relation to the Contract and the Goods. That transfer shall take effect as an absolute assignment (in terms of the Property Law Act 2007) and shall, for the avoidance of doubt, not be by way of charge only. Until all sums actually or contingently owing by Creditor under or in connection with these Financial arrangements and transfers and this Contract have been finally paid to the satisfaction of MTF, Creditor may not require MTF to reassign the MTF Interest to Creditor and Creditor may not exercise any right of subrogation in respect of these Financial arrangements and transfers and this Contract.
- 3.0 Pursuant to arrangements between them Creditor is appointed as MTF's agent, but only for the purpose of signing this Contract in relation to this Section 2 for and on behalf of MTF. By Creditor signing this Contract in relation to this Section 2 as agent for and on behalf of MTF, MTF transfers both the MTF Loan and the MTF Interest (together the 'TEL Interest') to TEL, as transferee and purchaser. For the sake of clarity, that transfer extends to include all MTF's:
  - 3.1 right, title and interest in and to the MTF Loan, together with all documentation, information and other rights relating to the MTF Loan and the MTF Interest; and
  - 3.2 rights against Creditor, and the benefit of all warranties, representations, covenants, guarantees, indemnities and undertakings given by Creditor or any other person to MTF, in each case so far as those rights and benefits extend or are referable to, or arise in connection with, the Contract or the Goods, and whether pursuant to any originator agreement or other agreement between them or otherwise and including all rights of MTF under the Payment Waiver Security Arrangements.That transfer shall take effect as an absolute assignment (in terms of the Property Law Act 2007). Creditor acknowledges, for the benefit of TEL, that, except to the extent that any may specifically be assumed in writing by TEL, or imposed by law, no obligation of MTF to Creditor is assumed by TEL, whether pursuant to the transfer effected by this clause or otherwise. For the avoidance of doubt, if TEL has any liability to Customer, Guarantor or Creditor such liability is (to the maximum extent permitted by law) limited to the extent of its indemnity rights out of the assets representing the TEL Interest held by TEL as trustee.
- 4.0 Customer is irrevocably directed to account directly to TEL (or as TEL directs) for all money payable under the Contract.
- 5.0 To the extent that TEL actually receives such payments (or part thereof) from Customer the obligation of Creditor to make the like payment (or corresponding part) on the same date pursuant to the MTF Loan is discharged. If Customer completes Customer's obligations under this Contract early, to the extent that TEL actually receives the entire amount due by Customer to so complete, Creditor's obligations in respect of the MTF Loan shall likewise be complete.
- 6.0 Creditor and MTF acknowledge, for the benefit of TEL, that these Financial arrangements and transfers, and the provisions of the preceding paragraphs, override and supersede any other arrangement or agreement (including any originator agreement or other agreement) between them to the extent of any inconsistency or conflict, and accordingly any such other arrangement or agreement between Creditor and MTF (including any such originator agreement or other such agreement) shall be read and given effect subject to the provisions of these Financial arrangements and transfers.
- 7.0 Creditor irrevocably appoints TEL (and each of its directors, managers and duly appointed delegates from time to time) as Creditor's agent to do all such things as Creditor agrees to do, or as TEL may require, for the purposes of this Contract and these Financial arrangements and transfers and to enable TEL to give full effect thereto.

8.0 Creditor agrees for the benefit of MTF and TEL:

- 8.1 to forward to MTF by ordinary post, within 48 hours of writing this Contract, the 'original' page of this Contract, together with insurance declarations and payment forms (if any);
- 8.2 not to make any registration on the PPSR in respect of any security interest arising under or in relation to this Contract and to notify MTF if it thinks any registration made by MTF or TEL on the PPSR in respect of any security interest arising under or in relation to this Contract requires amendment;
- 8.3 if and to the extent that the holder of the TEL Interest does not have all of the rights of Creditor under the MTF Interest unfettered by any equity then Creditor agrees that the holder of the TEL Interest shall have all of the rights provided to a secured party under Part 9 of the PPSA in respect of the MTF Interest; and
- 8.4 for the purposes of, and pursuant to, section 102(2) of the PPSA, Creditor will not assert defences (including a defence by way of set-off), or exercise any contractual rights having similar effect, to claims of TEL arising out of the TEL Interest, except that a payment received by TEL from the Customer discharges Creditor's obligations as contemplated by clause 5.0 of this Section 2.

9.0 In this Section 2:

'Creditor' means each person or company named in the Contract as Creditor and includes their respective personal representatives, successors or assigns (other than MTF or TEL).

'Customer', 'Goods', 'TEL' and 'PPSA' have the same meaning as in Section 1 of this Contract.

'Customer Loan' means the loan made by Creditor to the Customer in Section 1 of this Contract.

'MTF Dealer Rate' means the minimum recommended rate (expressed as a percentage per annum) notified by MTF to Creditor from time to time.

'Subsidised Loan' means a Customer Loan in respect of which the annual interest rate specified in Section 1 of this Contract is less than the MTF Dealer Rate at the time the Customer Loan is made.

The expressions 'chattel paper' and 'transfer' have the respective meanings given to them under, or in the context of, the PPSA, and the expression 'purchaser' has the meaning given to it under, or in the context of, the PPSA and, in particular, section 98 of the PPSA.

SAMPLE