

TERMS OF LOAN

1. **Interpretation:** In this Agreement:
 - (a) words importing one gender include the other genders, words importing the singular include the plural and vice versa, references to a party include the representatives, successors and permitted assigns of that party, and where that party includes more than one person, each person is jointly and severally liable under this Agreement;
 - (b) the Loan Schedule at the beginning of this Agreement forms part of this Agreement and where applicable defined terms in the Loan Schedule apply to these Terms of Loan;
 - (c) "Moneys Owed" means all moneys of whatever nature owed or payable by the Borrower to the Lender under this Agreement and the Security Documents;
 - (d) "business day" means a day on which registered banks are generally open for business in New Zealand;
 - (e) "Security Documents" means those security documents specified in the Loan Schedule.
2. **Loan:** The Lender agrees to advance the Loan to the Borrower on the terms and subject to the conditions of this Agreement. Subject to the conditions precedent of the Lender to advancing the Loan (as determined by the Lender at its discretion) being satisfied, the Borrower may draw down the Loan in one amount on the Commencement Date or in multiples, as selected under "Availability" in the Loan Details specified in the Loan Schedule.
3. **Interest:**
 - (a) The Borrower shall pay to the Lender on each payment date (as specified in the Loan Schedule) interest in arrears at the Interest Rate on the Moneys Owed for the time being outstanding during the preceding Interest Period. The term "Interest Period" shall mean the applicable payment period set out in the Loan Schedule (i.e. weekly, fortnightly, monthly) commencing from the Commencement Date, but shall not in any case exceed the Repayment Date.
 - (b) Interest shall accrue and be calculated on a daily basis over a three hundred and sixty five (365) day year, and be capitalised if not paid on the due date. The certificate of the Lender as to the rate or amount of interest payable pursuant to this Agreement shall be conclusive and binding upon the Borrower except in the case of manifest error or fraud.
 - (c) The Borrower shall pay to the Lender upon demand interest calculated on a daily basis at the Default Rate on all moneys (including interest) payable under this Agreement which may from time to time be overdue, such interest to accrue after as well as before judgment and up to and including the date of actual payment. If the Borrower does not comply with the terms of this Agreement specified in paragraphs (i) and (ii) below and that failure is not remedied on the date on which compliance was due, then the Interest Rate may be increased at the Lender's discretion to the Default Rate on the Moneys Owed. Such interest shall be calculated from the date compliance was due and terminate on the date the failure to comply has been remedied.
 - (d) if the Interest Rate is specified as reviewable in the Loan Schedule, the Lender may by 30 days' prior notice in writing to the Borrower (at its discretion) review the Interest Rate. The notice to the Borrower shall specify the new rate payable, the date it is effective from and the amounts of the new instalments then payable under this Agreement.
4. **Repayment and Prepayment:**
 - (a) The Borrower shall repay in full to the Lender on the Repayment Date the Moneys Owed then outstanding. The Borrower may prepay to the Lender the whole of the Loan at any time on paying to the Lender a prepayment penalty of an amount of up to two months interest (at the Lender's discretion) at the Interest Rate in addition to interest payable under clause 3.
 - (b) The Borrower shall pay to the Lender in reduction of the Loan outstanding the principal reductions as required by the payments specified in the Loan Details specified in the Loan Schedule.
5. **Covenants:** The Borrower and Guarantor each represent and warrant to the Lender that each of them have the power to enter into and perform their respective rights and obligations under this Agreement and the Security Documents and that no event of default (as specified in clause 7) has occurred or will occur as a result of making the Loan and except as otherwise approved in writing by the Lender, no charge of any nature exists on or over the property the subject of the Security Documents. The Borrower and Guarantor each undertake to the Lender that they shall comply with all laws applicable to them, provide to the Lender all financial information in relation to them as reasonably requested by the Lender during the term of this Agreement and insure and keep insured in the name of the Lender (and any prior mortgagee) with an insurer approved by the Lender all assets and property the subject of the Security Documents for their full replacement value (or if replacement value is not available, then for the full insurable value of the Property).
6. **Security Documents:** The Borrower and Guarantor each covenant to grant or procure the granting of the Security Documents as specified in the Loan Schedule in favour of the Lender as security for the payment of the Moneys Owed and the performance of the obligations of the Borrower and Guarantor under this Agreement and the Security Documents.
7. **Events of Default:** An event of default shall occur if:
 - (a) the Borrower fails to pay any amount or sum due under this Agreement on its due date (or within two (2) business days of its due date where non-payment on its due date has arisen solely by reason of a bank, technical, computer or similar error outside the control of the Borrower); or
 - (b) the Borrower commits any breach of or omits to observe or perform any of its obligations or undertakings under this Agreement and the Security Documents on its due date; or
 - (c) an application or an order is made for the dissolution or liquidation of the Borrower or the Borrower is placed in receivership; or
 - (d) any other indebtedness for borrowed money of the Borrower is not paid when due or shall become due and payable prior to its stated maturity; or
 - (e) the Borrower is unable to pay its debts when due, or is deemed to be unable to pay its debts when due, or otherwise is insolvent; or
 - (f) any prior security or charge over any property the subject of the Security Documents becomes enforceable or is enforced; or
 - (g) if any event should occur which if the references in clauses 7(a) to 7(f) (both inclusive) to the Borrower were replaced with the word "Guarantor" would constitute an event of default.
8. **Remedies on Default:** Upon or at any time after the occurrence of an event of default specified in clause 7, the Lender may at its discretion and without prejudice to its other rights and remedies by notice in writing to the Borrower take all or any of the following actions:
 - (a) demand immediate repayment of the Moneys Owed. If so demanded the Borrower shall immediately repay the Moneys Owed to the Lender; or
 - (b) enforce, or procure the enforcement of, its rights and remedies under this Agreement and the Security Documents or any of them in such order as it thinks fit; or
 - (c) cancel any undrawn portion of the Loan.
9. **Set-Off:** The Borrower and Guarantor each irrevocably authorise the Lender (without prior notice or demand and despite any settlement of account or other matter) at any time after the occurrence of an event of default under clause 7 to set-off against any debt or liability of the Lender to the Borrower or Guarantor any part of the Moneys Owed, and to apply any credit balance held with the Lender in satisfaction of any debt or liability of the Borrower or Guarantor to the Lender under this Agreement.
10. **Attorney:** The Borrower and Guarantor each irrevocably appoint the Lender and every director, officer or duly appointed agent for the time being of the Lender severally the lawful attorney of the Borrower and Guarantor in the Borrower's and Guarantor's name and on the Borrower's and Guarantor's behalf at any time from time to time and in such manner as the Lender in its absolute discretion shall think fit, to take all steps and proceedings and to do all acts, matters and things as the Lender shall think proper to remedy any default or breach of the terms and provisions of this Agreement and the Security Documents, exercise any of the rights, powers and remedies of the Lender contained in this Agreement and the Security Documents, and execute any deed, instrument or document necessary for the Lender to perfect its security conferred under the Security Documents. The Lender as attorney shall have power from time to time to appoint a substitute or substitutes and to remove that substitute or those substitutes at its pleasure and the Borrower and Guarantor agree to ratify and confirm whatever the Lender or its substitutes may lawfully do or cause to be done by virtue of this clause.
11. **Indemnities:** The Borrower and Guarantor each indemnify, and agree to save harmless, the Lender from and against all losses, claims, demands, liabilities, payments, charges and expenses which may be made against or incurred by the Lender arising from or relating to this Agreement and the Security Documents. This clause shall survive the termination of this Agreement.
12. **Payments:** All payments to be made to the Lender under this Agreement shall be made without set off, counterclaim or deduction and prior to 3.00pm on the day on which payment is due and shall be made to a bank account nominated by the Lender in writing, or if the Lender fails to nominate a bank account then payment shall be made to the address of the Lender specified at the beginning of this Agreement. Payments received after 3.00pm shall be deemed to have been received on the following business day. The Lender may apply any payment received by under this Agreement, to the repayment of the principal, interest, or any other amount due under this Agreement in the order and manner as the Lender may determine from time to time.
13. **Notices:** All notices, requests, demands or other communications to or upon the parties in connection with this Agreement shall be given or made in writing, signed by the party or an authorised person for the party giving such notice, and served upon or delivered to the recipient personally, or sent by post or facsimile to the recipient at the appropriate address specified on the front page of this Agreement. A notice, request, demand or other communication shall be deemed to have been received, in the case of personal delivery on a business day, on the date of that delivery, in the case of a letter posted by mail, on the second business day after posting, and in the case of a facsimile sent on a business day, during normal business hours in the place of receipt, upon successful transmission.
14. **Further Assurance:** The Borrower and Guarantor shall when required by the Lender at the Borrower's and Guarantor's cost make, execute, do and perform all such further assurances, instruments, acts or things as the Lender may from time to time reasonably require to perfect this Agreement and the security conferred under the Security Documents or the guarantee of the Guarantor under clause 22.
15. **Costs:** The Borrower shall pay to the Lender on demand the amount of all reasonable costs, charges and expenses (including legal fees and disbursements calculated on a solicitor and own client basis) incurred by the Lender in connection with the negotiation, preparation, execution, enforcement and administration of this Agreement and the Security Documents.
16. **Waiver:** The failure or delay by the Lender in exercising, or single or partial exercise, of any right, power, discretion, remedy or privilege in connection with this Agreement shall not operate as a waiver of that right, power, discretion or remedy.
17. **Conflict:** Where any conflict or inconsistency shall arise between any of the terms, conditions and provisions, whether express or implied, of this Agreement and those of any loan offer or correspondence from the Lender, the terms, conditions and provisions of this Agreement shall prevail.

18. **Amendment:** This Agreement shall not be amended or varied except in writing signed by the Borrower, any Guarantor and the Lender.

19. **Assignment:** Neither the Borrower or the Guarantor shall assign or transfer any of their respective rights or obligations under this Agreement. The Lender may assign all or part of its rights and benefits under this Agreement without the consent of the Borrower or Guarantor.

20. **Privacy Act 1993:** The Borrower and Guarantor each consent to the Lender obtaining such information and making such enquiries about either of them from any source, including credit reference agencies and companies related to the Lender, in relation to the Loan and the disclosing of information about either of them to credit reference agencies, companies related to the Lender sureties or assignees or anyone who is considering becoming a surety or assignee. A person has the right to access personal information (within the meaning of the Privacy Act 1993) held by the Lender and request correction of any errors in that information.

21. **Law:** This Agreement shall be governed by and construed in accordance with New Zealand law.

22. **Guarantee:** In consideration of the advance of the Loan by the Lender to the Borrower, the Guarantor guarantees to the Lender, and indemnifies the Lender against loss incurred by the Lender from a breach in the due and punctual payment of the Moneys Owed and the observance and performance of the Borrower's obligations under this Agreement and the Security Documents granted in favour of the Lender for the payment of the Moneys Owed. The Guarantor is liable under this guarantee and this Agreement as if it were the sole principal Borrower and not merely a surety. The Guarantor agrees that no indulgence, granting of time, waiver or forbearance to sue or any other thing whereby the Guarantor would be released as a surety or otherwise shall in any way release the liability of the Guarantor under this Agreement. The guarantee under this clause 22 is in addition to and not in substitution for or in replacement of any guarantee and indemnity granted by the Guarantor forming part of the Security Documents.

WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS:

Security interest:

The creditor has an interest in the property listed below or on the dealer / vendor invoice attached to secure performance of your obligations under the contract, or the payment of money payable under the contract, or both. **If you fail to meet your commitments under the contract, then to the extent of the security interest, the creditor may be entitled to repossess and sell this property.**

Default interest charges and default fees:

In the event of a default in payment and while the default continues you must pay the default interest charges. In the event of a breach of the contract or on the enforcement of the contract, the default fees specified below are payable. Your credit contract may allow the creditor to vary these fees and charges. The following credit fee(s) and charge(s) (which are not included in the initial unpaid balance) are, or may become, payable under, or in connection with, the contract. (Please also refer to Clause 3 of the Terms and Conditions)
Default interest is 30%. Default interest becomes payable from overdue date.

Schedule of Fees:

Default Fees:

- Overdue Account Reminder Letter Fee:	\$1.00
- Overdue Account 2nd Reminder Letter Fee:	\$5.00
- Overdue Account 3rd Reminder Letter Fee:	\$5.00
- Dishonoured Payment Fee: (Per Dishonour)	\$20.00
- Repossession Authorisation Fee:	\$40.00
- Termination of Account Fee:	\$50.00

In the Event of Repossession, the following charges may apply:

- Statement of Account After Sale Fee:	\$50.00
- Post Repossession Letter Fee:	\$40.00
- Notice of Demand Letter Fee:	\$25.00
- Administration Default Fee:	\$25.00
- Storage Fee:	\$37.50
- Trace Fee:	\$120.00

FULL REPAYMENT

If you pay the unpaid balance in full before the final payment is due (**full prepayment**), you may be required to pay a fee or charge to compensate the creditor for any loss resulting from the full prepayment. The creditor may have suffered a loss if the creditor's current interest rate is lower than the interest rate applying to your original consumer credit contract. You may also have to pay the creditor's administrative costs relating to the full prepayment.

Administrative costs/fees: \$25.00 closure administration fee. (Waived if balance outstanding less than \$500.00 or Term remaining less than 12 months)

RIGHT TO CANCEL:

Statement of Right to Cancel

The Credit Contracts and Consumer Finance Act 2003 gives you a right for a short time after the terms of this contract have been disclosed to you

How to cancel:

If you want to cancel this contract you must give written notice to the creditor.

*You must also-

return to the creditor any advance and any other property received by you under the contract (but you cannot do this if you have taken possession of any goods or if you bought any property at an auction or if the contract is for the sale of services that have been performed); or

pay the cash price of the property or services within 15 working days of the day you give notice.

You must also return to the creditor any advance and any other property received by you under the contract.

Time limits for cancellation:

If the disclosure documents are handed to you directly you must give notice that you intend to cancel within 3 working days after you receive the documents.

If the disclosure documents are sent to you by electronic means (for example, email) you must give notice that you intend to cancel within 5 working days after the electronic communication is sent.

If the documents are mailed to you, you must give the notice within 7 working days after they were posted.

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

What you may have to pay if you cancel:

If you cancel the contract the creditor can change you –

the amount of any reasonable expenses the creditor had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc); and interest for the period from the day you received the property or services until the day you either pay the cash price for the property or services or return the property to the creditor.

Interest for the period from the day you received the advance until the day you repay the advance.

This statement only contains a summary of your rights and obligations in connection with the right to cancel. If there is anything about your rights or obligations under the Credit Contracts and Consumer Finance Act 2003.

Credit Reporting Privacy Code 2004

I understand that Gilrose Finance Company Ltd have asked me for personal information about me so as to use Baycorp Advantage's credit reporting service to credit check me. I understand that:

- Baycorp Advantage will give you information about me for that purpose.
- You will give my personal information to Baycorp Advantage, and that Baycorp Advantage will hold that information on their systems and use it to provide their credit reporting service.
- When other Baycorp Advantage customers use the Baycorp Advantage credit reporting service, Baycorp Advantage may give the information to those customers.
- If I default in my payment obligations to you, information about that default may be given to Baycorp Advantage, and Baycorp Advantage may give information about my default to other Baycorp Advantage customers.