

Please read these terms and conditions carefully. They contain, amongst other matters, provisions which grant East Bay Finance Limited security in your property (both land and personal). **We strongly advise you to obtain independent legal advice prior to signing this Agreement. These terms and conditions are applicable from 6 June 2015.**

TERMS AND CONDITIONS

EAST BAY FINANCE LIMITED (“EBFL”)

1. Responsible Lending

1. EBFL takes its responsibilities under the Responsible Lending Code seriously. A copy of the Code is available at www.consumeraffairs.govt.nz

2. Withdrawal of Facility

1. EBFL may at any time prior to the Borrower drawing on the Advance and after consulting and advising the Borrower, cancel this Agreement immediately if EBFL consider that:
 - (a) there has been a material delay in the Borrower drawing on the Advance;
 - (b) information EBFL relied upon when assessing the Borrower’s application is incorrect in a material respect; or
 - (c) there has been a material change in the financial market conditions on which EBFL relied when EBFL offered the Advance to the Borrower.

3. What EBFL agree to do

1. EBFL agrees to provide the Advance to the Borrower upon the terms and subject to the conditions set out in the following documents:
 - (a) EBFL’s Disclosure Statement (“the Schedule”);
 - (b) EBFL’s Overview Schedule of the Credit Facility Standard Terms, Conditions, Fees and Right to Cancel (“Overview Schedule”) if applicable;
 - (c) these Terms and Conditions; and
 - (d) EBFL’s Schedule of Standard Fees and Charges (“Fees Schedule”),
 together referred to as “the Agreement”. Defined terms in these Terms and Conditions will apply to all documents in (a) to (d) above.

2. Where the Collateral is to be purchased by the Borrower EBFL may pay the Advance directly to the seller of the Collateral.

4. Payments

1. The Borrower agrees to the following:

The Borrower agrees to pay EBFL as and when due:

- (a) all payments due to EBFL pursuant to the payment schedule; and
- (b) any other amounts owing pursuant to this Agreement.

2. Payments shall be made to EBFL by way of:

- (a) Direct debit, automatic payment, Wage deduction: these can arranged by contacting EBFL’s customer service department on 0800 432 742 or by emailing EBFL info@eastbayfinance.co.nz
- (b) Internet/telephone banking: internet or telephone banking payments can be made from the Borrower’s nominated bank account in payment of the Borrower’s credit facility; or Cheque: the Borrower can make a payment by mailing it to East Bay Finance Ltd, 109 Lyndon Road, East Hastings, 4122.

3. All payments must be referenced by the Borrower’s name or account number. If they are not they may be deemed as having not been paid.

4. EBFL shall credit each payment made under this Agreement in accordance with the Payments Schedule.

5. Interest

1. Interest is charged to the Borrower’s account as set out in the Schedule.

6. Fees

1. Fees are payable by the Borrower in accordance with the Fees Schedule.

7. Default Interest

1. If the Borrower fails to make a payment on the due date, or any moneys payable by the Borrower in accordance with clause 4.1 EBFL may charge the Borrower Default Interest (also known as Penalty Interest) at the rate of the Annual Interest Rate plus

- 10% in respect of the amount of the default and while the default continues.
2. Default Interest is charged to the account at the end of each Interest Period.
- 8. Prepayment**
1. The Borrower may repay part of the Advance early provided that the Borrower also pays:
 - (a) interest to the date of repayment at the interest rate for the Advance;
 - (b) a fee equal to the reasonable estimate of EBFL's loss arising from the part prepayment; and
 - (c) A fee for the administrative costs arising from the part prepayment.
 2. The Borrower may repay the full amount of the Advance early provided that the Borrower also pays:
 - (a) the current unpaid balance plus any interest charges (including Default Interest charges, and other fees and charges applicable at the time of the full prepayment); and
 - (b) a fee for the administrative costs arising from the full prepayment; and
 - (c) a fee equal to the reasonable estimate of EBFL's loss arising from the full prepayment as per formula detailed in the Full prepayment section of the Disclosure Statement.
 - (d) less a proportionate rebate of any insurance/waiver premium financed under the Advance calculated in accordance with the CCCFA.
- 9. Disclosure**
1. EBFL takes its disclosure obligations to the Borrower under the CCCFA seriously. The latest version of EBFL's standard terms and conditions and costs of borrowing are available:
 - (a) On EBFL's website; www.eastbayfinance.co.nz
 - (b) At the Borrower's request from EBFL; and
 - (c) At EBFL's premises.
 2. EBFL will send a statement as provided for in the Schedule (except in circumstances set out in clause 9.3 below) which shows payments made by the Borrower and Subsequent Advances (if any). Where the facility is a Revolving Credit Facility the Borrower agrees to make payment in accordance with EBFL's statement.
- 3.** EBFL will issue statements unless:
- (a) EBFL cannot reasonably locate the Borrower;
 - (b) There have been no transactions during the period and the total closing balance is nil;
 - (c) The Borrower has breached this Agreement and EBFL have commenced enforcement proceedings; or
 - (d) The Borrower has been declared bankrupt or has died and EBFL have not received further requests for statements.
4. If the Agreement is varied pursuant to the terms of this Agreement, EBFL will provide variation disclosure to the Borrower in accordance with the CCCFA.
 5. EBFL will provide any disclosure to the Borrower which is requested pursuant to the CCCFA.
- 10. Changes to Agreement**
1. EBFL may:
 - (a) Change the Annual Interest Rate if you have a variable Annual Interest Rate;
 - (b) Change the fees payable in the Fees Schedule and the frequency and time for payment of such fees as reasonably required;
 - (c) Impose a new fee if reasonable;
 - (d) If any law regulates a change, EBFL may only change to the extent permitted by and subject to the requirements of that law.
 2. If EBFL changes this Agreement pursuant to clause 10.1 EBFL will give you notice of the changes in writing no later than 30 days before the change takes effect.
- 11. No deductions**
1. Except to the extent that the Borrower has a right of set off granted by law, the Borrower agrees to make all payments due under this Agreement without set-off or deduction.
- 12. Collateral and Security**
1. The Borrower grants EBFL a first registered security interest in the

Collateral as security for the repayment of the Advance and all other moneys payable under this Agreement and the performance of all other terms and obligations in this Agreement.

2. The Borrower agrees that (where applicable) this Agreement creates a Security Interest in the Collateral as security to EBFL and that EBFL may register a Financing Statement to perfect such interest pursuant to the PPSA and do all acts necessary to maintain such Financing Statement.
3. The Borrower authorises EBFL to search the Personal Property Securities Register at any time in respect of the Borrower.
4. **The Borrower agrees:**
 - (a) **To keep the Collateral** at the Premises and not to move or permit the removal of the Collateral without EBFL's written consent and in the case of a vehicle, to keep the vehicle at the Premises when not in use.
 - (b) **Not to allow the Collateral** to become an Accession (as defined in the PPSA) or attached to land or buildings in such a way as to become a fixture.
 - (c) **Not to part with possession** of the Collateral or sell or attempt to sell, pledge or create a Security Interest or permit a lien in the Collateral.
 - (d) **To immediately notify EBFL** if the Collateral is taken out of the Borrower's possession and advise as to where it has been removed.
 - (e) **To ensure the Collateral is used only** in a reasonable and lawful manner and to keep the Collateral registered and licensed if applicable and in the case of a vehicle to maintain a current Warrant of Fitness.
 - (f) **To keep the Collateral** in good condition and protect it from loss or damage.
 - (g) **To service or repair** the Collateral at the Borrower's cost in a proper and workman like manner.
 - (h) **Not to alter** the Collateral without EBFL's prior approval.

- (i) **To notify EBFL immediately** of any loss of or damage to, defect or fault in the Collateral.
- (j) **That any accessories or goods** (including replacement parts) supplied with or for any Collateral during the term of this Agreement shall become part of the Collateral for all purposes and shall be subject to the Security Interest contained in this Agreement.
- (k) **In the case of a vehicle**, to promptly pay all traffic and parking fines, penalties, levies, fees and tax (including road user charges) imposed by any Law or any government agency in relation to the vehicle.
- (l) **To allow EBFL to inspect** the Collateral at any time between the hours of 8.00 a.m. and 5.00 p.m. on any week day and at any other time the Collateral is being used, on reasonable notice.

13. Insurance

1. The Borrower agrees to keep the Collateral fully insured throughout the term of the Agreement for full replacement value not being less than the amount, if any, specified by EBFL, for loss or damage by accident, fire, theft (and in the case of a motor vehicle, liability to third parties for bodily injury, death or damage to property) and any other risk required by EBFL. The insurer must be approved by EBFL and the interests of EBFL noted on the policy accordingly.
2. Where EBFL requires the Borrower to hold life insurance or other insurance/waiver such insurance must be maintained throughout the term of the Agreement for not less than the amount specified by EBFL and with an insurer approved by EBFL with EBFL's interests noted accordingly.
3. The Borrower must not do or omit to do anything which could result in the insurer declining any claim. The Borrower agrees to make an insurance claim in respect of the Collateral when requested to by EBFL. The Borrower agrees that any amount payable under any insurance policy will be paid to EBFL and applied towards payment of all amounts outstanding under this Agreement whether or not the time for payment has arrived or towards the

- damage to any Collateral, as EBFL sees fit.
4. The Borrower agrees that where the Borrower has requested loan repayment waiver such in waiver is optional and not required as a condition of finance being approved.
- 14. Security Documents**
1. This Agreement shall be read together with all other deeds, securities, documents and agreements given to EBFL by any person to secure the Advance and any other monies payable under this Agreement so that a default under one shall constitute a default under all. EBFL may exercise its rights, powers and remedies under any of the documentation in such order as EBFL think fit.
- 15. Information**
1. The Borrower confirms that the information provided by the Borrower is true and correct. The Borrower will promptly notify EBFL of any changes in the information, and in the case of the change of name, address or email of the Borrower, 7 days prior to such change taking effect. Upon request the Borrower will provide to EBFL such information about the Borrower's financial position or operations as EBFL may reasonably require.
- 16. Agreement to mortgage**
1. That the Borrower acknowledges that the Personal Property Collateral may not be sufficient security to protect EBFL's interests and accordingly the Borrower agrees to mortgage all of the Borrower's present and future right, title and interest in the Land Collateral (or any property purchased in substitution of the Land Collateral) in favour of EBFL to the intent that a caveatable interest is created in the Land Collateral as security for payment of all moneys payable by the Borrower under this Agreement. The Borrower agrees that on request from EBFL the Borrower will execute a registerable mortgage in a form required by EBFL over the Land Collateral for this purpose.
- 17. Attorney**
- The Borrower irrevocably appoints EBFL and each of EBFL's officers severally as the Borrower's attorney to do anything the Borrower is required to do under this Agreement to the extent permitted by law including, without limitation, to execute any mortgage pursuant to clause 16.1 or any insurance claim. For the avoidance of doubt EBFL are unable, as the Borrower's attorney, to take a security interest in consumer goods which the Borrower has acquired after this Agreement has been signed.
- 18. Financial Difficulty and Unforeseen Hardship**
1. If the Borrower is in financial difficulty and believes that the Borrower will not be able to meet its obligations to EBFL, the Borrower should contact EBFL immediately on 0800 432 742.
2. Any application in respect of unforeseen hardship pursuant to the CCCFA must be made by the Borrower to EBFL in writing and specify the Borrower's reasonable cause for the Borrower's inability to meet the Borrower's obligations under this Agreement.
3. A Borrower is not able to make another unforeseen hardship application in respect of the same agreement less than four months after their previous application except where:
- (a) The reasonable cause is materially different; or
EBFL agrees to consider the application.
4. On receiving an unforeseen hardship application EBFL will:
- (a) Acknowledge receipt in writing to the Borrower within 5 working days;
- (b) Request further information from the Borrower if required within 10 working days;
- (c) Give written notice of their decision to the Borrower within 20 working days (or if further information has been requested pursuant to 18.4(b), the later of 10 working days after receiving such information or 20 working days after the request for such information).
- 19. Breach by the Borrower**
- If any Enforcement Event occurs, then, subject to the relevant Legislation:
1. all moneys owing and unpaid under this Agreement will be immediately payable even if the time for payment has not arrived.

2. EBFL may repossess the Collateral and take possession of the Collateral.
 3. EBFL or its agents may enter the Premises or enter any other premises (including, where necessary, when the occupier is not present) where the Collateral is located as the Borrower's agent for the purpose of repossessing the Collateral and take possession of the Collateral.
 4. EBFL or its agents may sell the Collateral or any part of it in such manner as EBFL or its agents consider expedient EBFL and may do anything necessary to give effect to any sale.
- 20. General**
1. **Conflict:** In the event of conflict between the terms of this Agreement and the terms of any collateral security the terms of this Agreement will prevail.
 2. **Severance:** The Borrower agrees that if any provision of this Agreement is illegal, that provision will be severed from this Agreement without affecting the remaining provisions.
 3. **Rights at law:** The rights in this Agreement (or related documents) do not affect the rights of either party at law.
 4. **Reinstatement:** If any payment made by the Borrower under this Agreement is required to be repaid by EBFL by any law, that payment will be deemed not to have affected or discharged the Borrower's liability.
 5. **Indemnity:** The Borrower agrees to indemnify EBFL against the following:
 - (a) Any liability arising in connection with the possession or use or operation of the Collateral by the Borrower;
 - (b) Any loss or, damage to or destruction of the Collateral; and
 - (c) Any liability, loss or expense EBFL incurs as a result of the Borrower's default under this Agreement or the exercise of any right power and remedy under this Agreement.
 6. **Costs:** The Borrower agrees to reimburse EBFL for all costs as set out in the Schedule of Standard Fees and Charges applied to Consumer Contracts attached to this Agreement.
 7. **Performance by EBFL:** If the Borrower fails to observe or perform any of the Borrower's obligations in this Agreement then EBFL may perform such obligations and any moneys paid or expenses incurred will be payable by the Borrower to EBFL.
 8. **No waiver:** EBFL will not be prevented from enforcing any of EBFL's rights under this Agreement because on an earlier occasion EBFL did not enforce those rights or delayed enforcing those rights.
 9. **Notices:** All notices to be given pursuant to this Agreement shall be given in accordance with the relevant Legislation. Without limitation, the Borrower consents to disclosure under the CCCFA being made in electronic form including via EBFL's website (if relevant) and by means of electronic communication.
 10. **Variation:** Subject to any variations permitted by this Agreement, this Agreement may only be varied or modified as agreed between the parties.
 11. **Set Off:** In addition to any other rights EBFL may have, EBFL has the following rights:
 - (a) EBFL may debit any account the Borrower may have with EBFL any amount the Borrower is liable for under this Agreement. EBFL.
 - (b) EBFL may set off sums the Borrower has with EBFL towards satisfying any liability that the Borrower has with EBFL under this Agreement without prior notice to the Borrower.
 12. **Governing Law:** This Agreement shall be governed by New Zealand law.
 13. **Commission:** The Borrower acknowledges that EBFL or any broker, agent, dealer or other person who introduces the Borrower to EBFL may receive commission, fees or other remuneration for providing such introduction.
 14. **Counterparts:** This Agreement may be signed in any number of counterparts (including by facsimile or scanned copy), all of which together

shall constitute one and the same document. Any Party may enter into this Agreement by signing any such counterpart. Such document or documents may be relied on by any party and presented in legal proceedings as though it were an original.

21. Assignment

1. EBFL may assign its rights under this Agreement provided that the Borrower has and may exercise the same rights under the Agreement against the assignee as the Borrower has against EBFL.

22. Interpretation

In this Agreement the following terms and expressions have the following meanings:

1. **"Advance"** means the Initial Total Advances, any Subsequent Advances and all other moneys advanced or amounts payable under this Agreement;
- "Annual Interest Rate"** means the annual interest rate described in:
 - (a) the Schedule; or
 - (b) the Overview Schedule,
 and as amended by EBFL by notice in accordance with clause 10 from time to time.
- "CCCFA"** means the Credit Contracts and Consumer Finance Act 2003;
- "Collateral"** means the property described as the Collateral in the Schedule and includes both Personal Property Collateral and Land Collateral and any proceeds of that property;
- "CRA"** means the Credit (Repossession) Act 1997;
- "Debtor"** and **"Borrower"** are references to the party named as Debtor in the Schedule;
- "EBFL"** and **"Creditor"** are references to Oxford Finance Limited;
- "Enforcement Event"** means the occurrence of any of the following events:
 - (a) the Borrower does not pay any money payable under this Agreement when due or a payment is dishonoured or reversed;
 - (b) the Borrower does not perform or comply with any other obligation the Borrower has under this Agreement;
 - (c) the Borrower dies, ceases to be of full capacity or commits and act of bankruptcy;
 - (d) any insurance policy in respect of the Collateral is cancelled by the insurer;

- (e) if EBFL believe the Collateral is "at risk" (as defined in section 7 of the CRA and section 83E(2) of the CCCFA);
- (f) the Borrower stops payment to or enters into any composition or other arrangement with the Borrower's creditors generally;
- (g) any distress or execution is levied upon or against any of the Borrower's assets or any of the Borrower's property or assets are seized or appropriated by any person or a security over any of the Borrower's assets becomes enforceable; or
- (h) any judgment is obtained against the Borrower and remains unsatisfied for more than 14 days.

"Financing Statement" has the same meaning as that term is defined in the PPSA.

"Interest Date" means the interest date set out in the Schedule;

"Interest Period" means the period from (and including) the Interest Date (or in the case of the first Interest Period, from the Interest Commencement Date) to (but excluding) the next Interest Date;

"Land Collateral" means Collateral being any right, title or interest in land;

"Laws" means Acts of Parliament, regulations and by-laws;

"Personal Property Collateral" means all Collateral which is not Land Collateral;

"PPSA" means the Personal Property Securities Act 1999;

"Premises" means the premises described in the Schedule at which the Personal Property Collateral is to be kept;

"Repossession Legislation" means the CRA for agreements entered into prior to 6 June 2015 and the CCCFA for agreements entered into, amended or renewed from 6 June 2015;

"Schedule" means the disclosure statement provided in accordance with section 17 of the CCCFA (together with EBFL's loan approval letter, if applicable) forming part of this Agreement to which these terms and conditions are attached.

"Security Interest" has the meaning given to that term in the PPSA;

"Subsequent Advance" means any subsequent advance described in the Schedule;

"Term" means the period commencing on the date of this Agreement and ending on the date all moneys payable

under this Agreement have been paid in full.

2. **Other terms:** All other capitalised terms have the meaning set out in the Schedule.
3. **Headings:** Headings are for guidance only and do not affect the interpretation of this Agreement.
4. **Plural and singular:** References to the plural include the singular and vice versa.
5. **Successors:** References to a person include (as applicable) that person's successors, executors and permitted assigns.
6. **Joint and several:** If more than one person executes this Agreement as Debtor, references to the Debtor in this Agreement shall include each such person and any two or more of them and shall bind each such person under this Agreement jointly and severally.