



Family Finance Contract Terms

A 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 to cancel the contract.

How to cancel

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

*You must also—

- (a) 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
- (b) pay the cash price of the property or services within 15 working days of the day you give notice.

Time limits for cancellation

If the disclosure documents are handed to you directly you must give notice that you intend to cancel within 5 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 charge you—

- (a) 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 (b) 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.

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 that you do not understand, if there is a dispute about your rights, or if you think that the creditor is being unreasonable in any way, **you should seek legal advice immediately**

YOU the borrower(s) and/or Guarantor(s) acknowledge the debt to the lender of the INITIAL UNPAID BALANCE and agree:

1 Meaning

- 1.1 The expression “borrowers” or “you” includes their/your executors, administrators and successors in title.
- 1.2 The expression “Lender” or “we” includes Family Finance Limited, its executors, administrators and successors.
- 1.3 “Collateral” means the goods and/or other personal property described in the disclosure statement in the box headed WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS, Security Interest and includes an interest in such goods or other personal property.
- 1.4 “Default under this agreement means that the borrower or the guarantor does something he is required not to do or fails to do something he is required to do.
- 1.5 “Default Fees” are listed under that heading in the disclosure statement. “Default interest is interest payable at 10% per annum above the interest rate, compounded weekly at the rate of one 365th of the annual interest rate charged on the account balance from the time that you fall into financial default until you are no longer in financial default.
- 1.6 “Financial Default” is the failure to make any payment due under this agreement on or before the due date;
- 1.7 “Guarantor” means the person shown as guarantor in this agreement and the attached guarantee and includes his or her executors, administrators and successors in title “Land” includes an interest in land.
- 1.8 “Land to be mortgaged” means the land shown in the disclosure statement in the box headed WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS Security Interest Real Property – Land to be Mortgaged”.
- 1.9 “The money secured” means all money, including the initial unpaid balance and default or other interest, and default and other fees and charges, and disbursements and other money, which you must pay to the lender under this agreement or under any collateral or subsequent loan agreement.
- 1.10 “Own” includes “having an interest in” and “owner” is interpreted accordingly. “Person” includes an organisation as defined in the PPSA.
- 1.11 “PPSA” means the Personal Property Securities Act 1999.
- 1.12 “Working day” means any day but a Saturday, Sunday or a national public holiday.
- 1.13 Each gender shall include other genders. . All obligations on your part are joint and several. Any expression not described or defined in this agreement shall have the meaning ascribed to it in the PPSA 1999 unless the context requires otherwise. Unless the context prevents it, the singular shall include the plural and the plural include the singular.
- 1.14 The expression “Lender” or “we” includes Family Finance Limited, its executors, administrators and successors.

2 The Guarantor

- 2.1 The guarantor shall be liable for the payment of the guaranteed money and for the performance of the terms of the loan agreement as if he were a principal debtor to the lender (save that any statutory clauses for the benefit of a principal debtor only shall not be interpreted for the benefit of the guarantor) and shall be liable to pay and perform upon demand by the lender and as a separate obligation shall indemnify the lender in respect of any failure by the Borrower to pay or perform.
- 2.2 The lender may demand payment from the guarantor without first enforcing payment against the borrower.
- 2.3 If there are two or more guarantors each guarantor shall be liable hereunder notwithstanding the failure of any other guarantor to sign or if for any reason any other guarantor is not liable and each guarantor shall be jointly and severally liable hereunder.
- 2.4 The guarantor shall not be released from his obligations under this deed nor have his liability reduced by any lack of legal capacity or other reason which would result in the loan agreement not being enforceable against or any moneys not being recoverable from the borrowers or (if there is more than one guarantor) another guarantor.
- 2.5 No waiver, giving of time, indulgence, compromise, failure or delay in exercising remedies, variation of security or other dealings by the lender with the borrowers or (if there are two or more guarantors) with any other guarantor nor any failure to maximise value on realisation of any security shall release the guarantor from any obligation or affect his liability to pay any sum and the guarantor waives all defenses which might be available to a guarantor or a surety.
- 2.6 The guarantor’s rights of subrogation and indemnity against the Borrower and (if there are two or more guarantors) contribution against any other guarantor shall not arise until the lender has received payment in full of the guaranteed money and all the borrower’s obligations under the loan agreement have been performed.

This guarantee is for the benefit of and may be enforced by any person for the time being entitled to payments of the guaranteed money and an assignment of the lender’s rights under the loan agreement shall not release the guarantor from liability.

The guarantor shall pay the guaranteed money to the lender money upon demand. Demand may be made and shall be deemed to have been made in writing and served personally or posted by prepaid post to the last known address of the guarantor and such demand shall be deemed to have been delivered 4 working days after having been posted.

3 Power of Attorney

- 3.1 In exchange for the loan of the amount of credit and to enable the lender more effectively to obtain the benefits under this agreement, each borrower jointly and severally irrevocably appoints the lender and any one director of the lender severally to be the attorney of each borrower to do anything which the borrowers agree to do and to do anything and to sign any document which the attorney thinks desirable to ensure the lender is paid the money secured and otherwise to protect the interests of the lender under this agreement.
- 3.2 Without in any way limiting the generality of the power, the attorney may execute any document for the purposes of registration of any interest under the Land Transfer Act 1952 (including, where applicable, an interest in land in which any borrower has no interest at the date of this deed or for the purpose of creating a security interest under the PPSA or causing one to attach or may make a request under clause 9 hereof. This power shall inure until the money secured has been paid to the lender in full.
- 3.3 The borrowers ratify anything done by an attorney under this clause and further indemnify any person acting in reliance upon the power.
- 3.4 If the lender assigns the benefit of this agreement the assignee shall have the same rights and powers under this clause as does the lender and each of you named as borrower irrevocably appoints the assignee his attorney accordingly.
- 3.5 Subject to any other clause of this agreement any notice, demand, letter or document for service on you shall be deemed to be properly served, in any court proceeding or otherwise, if served in accordance with the wording of Section 38 of the Credit (Repossession) Act 1997 (excluding subsection 38(7)). This applies although that Act may not apply to the collateral and although the notice or demand is not one required or authorised under that Act.

4 General

- 4.1 In addition, service on you or any of you shall be deemed to have been effected if such notice demand letter or document is handed to any person in apparent occupation of the address of any of you or of the property shown in this agreement as being the land to be mortgaged or by attaching the document to an external door at such address. In addition if your address is a flat or apartment or room in a building and if the lender or its agents are unable to obtain access to such flat, apartment or room by virtue of the security system of the building or for some other reason, then service will be deemed to have been effected on you
- 4.2 If the document is posted at the letterbox corresponding to such flat, apartment or room. If there is no such letterbox, service
- 4.3 will be deemed to have been effected on you if the document is affixed to what appears to be the principal external entry to the building for the purposes of obtaining access to the address provided by you or if the document is given to any building manager or receptionist for the building and directed to be given to you.
- 4.4 Despite sections 188 & 189 of the PPSA and Part 2 of the Electronic Transactions Act 2002, service of any statutory or court notice or document by facsimile or by electronic mail upon the lender shall not be deemed to be proper service. Any such notice to be given to or served on the lender by the borrowers shall be posted or shall be delivered personally to its address as shown in the disclosure statement.
- 4.5 You shall not be released from your obligations under this Agreement or have your liability reduced by any lack of legal capacity or other reason which would result in the Agreement not being enforceable against or any moneys not being recoverable from any other person nor by virtue of any security becoming all or partly void or unenforceable for any reason whatsoever.
- 4.6 You irrevocably authorise any person to provide the lender with such information as the lender may request as part of its administration and enforcement of the loan secured under this agreement and further irrevocably authorise the lender to provide to any third party details of the loan or any associated loan application or any financial dealings that the lender may have with the borrowers for such purposes as the lender shall see fit with respect to the lender's business and advertising to the borrower or guarantor.
- 4.7 You must provide the lender with ongoing information and any associated document requested by the lender relating to your financial status or to the land to be mortgaged.
- 4.8 You further promise that all information provided by you or on your behalf to enable the lender to decide whether or not to lend to you is true and correct and if is not true and correct, the lender may demand payment of the then outstanding balance of the loan and you will pay forthwith on such demand.
- 4.9 The law applicable to this agreement shall be the law of New Zealand.

5 Payments

- 5.1 You must make all payments as shown in the PAYMENTS section of the disclosure statement when due without any deduction or set-off or counter-claim and in such manner as the lender requires.
- 5.2 If you make any payment which is not in accordance with the schedule of payments in the "PAYMENTS" section of the disclosure statement the lender may credit the payments in accordance with the schedule.
- 5.3 The lender may also decline to accept any part prepayment but if it accepts it, the lender may charge you administrative costs associated with the prepayment.
- 5.4 You must pay to the lender forthwith upon demand or when otherwise due
 - (i) the lender's credit fees shown in the "CREDIT FEES AND CHARGES" section of the disclosure statement and
 - (ii) the lenders default fees and default interest shown in the "WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS - default interest charges and default fees" section of the disclosure statement and
 - (iii) all of the lender's costs, expenses and any other liabilities not now known to the lender (which include legal expenses on a solicitor and own client and on a full indemnity basis) which may be incurred or suffered by the lender in connection with:
 - a The preparation, signing, registration, administration, variation and release of this security agreement or any financing statement in relation to this security interest and the negotiation and grant of any consent or waiver
 - b The exercise or enforcement or protection or the attempted exercise enforcement or protection of any right or remedy of the lender under this agreement or what the lender believes to be a right or remedy to which it is entitled including the conduct of any Court proceedings
 - c Any dispute negotiation or communication with any other secured party or party claiming to be a secured party with respect to the collateral and or the priority of the security interest granted by this agreement and
 - d The transfer of the security interest of any other secured party to the lender or the security interest of the lender to that secured party and
 - e Any dispute negotiation or communication with any of you or with any guarantor in default
 - f The lender's doing anything you should have done but which you have not done.
- 5.5 And you agree that such amounts are and are deemed to be contractual damages if they are incurred by you with the lender or suffered or incurred by the lender while you are in default hereunder and in any event if not paid shall incur default interest until paid in full. The lender may exercise all or any right, power or remedy at any time and failure to do or delay in doing so shall not constitute a waiver unless the vendor grants it in writing.
- 5.6 The lender may from time to time increase the interest rate payable under this agreement and you must pay such increased interest rate. Where applicable, you must increase your periodic payments to the lender so as to reflect the increased interest rate from the -date of notification of the increase
- 5.7 If you fail to pay one or more instalments in full so that you are in default but otherwise are paying on time, the lender, at its absolute discretion may add the unpaid amount to the loan thus extending the term and varying the final payment or payments. The lender may but is not bound to do this more than once.

- 5.8 Subject to the terms of the Credit (Repossession) Act 1997, if you default under this agreement the lender may accelerate repayment of the loan and require you to pay the unpaid balance to the lender forthwith. The lender may call up that money even although the time for payment has not yet been reached. In addition, save for the purposes of enforcement, the lender may terminate this agreement.
- 5.9 If you fail to pay any instalment or other money (including any amount for which payment has been accelerated) due on the due date or on demand as the case may be you shall pay to the lender default interest on the unpaid balance from the due date of such instalment or from the date of receipt or deemed receipt of demand for the money as the case may be until actual payment of the instalment or amount.

6 Default interest

- 6.1 All default interest shall continue to be payable after and notwithstanding judgment against you.
- 6.2 To the extent allowed by law, the lender may from time to time without notice set off against any claim or demand which you may have any debt owed by you or your claim or demand which the lender may have against you.
- 6.3 The lender may receive commission on any insurance included in this agreement or subsequently required.
- 6.4 The lender may appropriate any payment received from you or money which is proceeds of the sale of collateral or of any land to be mortgaged against any debt owed by you in any manner that the lender may decide, notwithstanding any appropriation you claim to have made or the fact that the time for payment of the amount has not arrived.

7 Future Advances

This agreement secures future advances. This will apply even although any sum has been paid from time to time to the lender or any account between the borrowers and the lender may be or have been in credit or settled.

8 Full Repayment

In accordance with section 50 of the Credit Contracts and Consumer Finance Act 1993 you may repay the outstanding balance of your loan in full before it is due. However, you must also pay the lender the administrative costs arising from the full prepayment or a charge equal to its average administrative costs so arising. The lender may also charge you a fee representing a reasonable estimate of its loss arising from the full prepayment. The lender's method of calculating its loss is set out in the FULL PREPAYMENT section of the disclosure statement.

9 Obligations

- 9.1 You must maintain a landline telephone connection.
- 9.2 You consent to the lender's leaving the name of the lender with any person who answers that telephone number or any number provided by you and with any person shown as a contact person for you
- 9.3 You must not change your name or address or the place where collateral which is chattels is stored or your landline telephone number without first giving the lender five working days written notice of your intention to do so.
- 9.4 You must not commit any act of bankruptcy.
- 9.5 If the lender accepts any payment or banks any cheque, which you have made or forwarded in purported full satisfaction or in terms connoting accord and satisfaction, the lender will not be deemed by such acceptance or banking to have accepted the terms upon which the payment is made or the cheque is forwarded unless the lender has, before it receives the payment or cheque, agreed in writing to accept the amount in full satisfaction or otherwise as accord and satisfaction.

10 Security Interest

- 10.1 You must store any collateral which is goods at the address shown as that of its owner in the disclosure statement.
- 10.2 You must not allow any collateral to be taken out of New Zealand.
- 10.3 You must also care for and maintain collateral and comply with any laws relating to its ownership and use and you must not use it in any dangerous or illegal activity or for any purpose for which it was not intended.
- 10.5 You may not use any collateral motor vehicle for motor sport activity such as (without limitation) racing, rallying, speed or time trials.
- 10.6 The lender may inspect any collateral on giving 24 hours written notice and you shall make such collateral available for inspection at the address that you have provided as the place where the owner lives.
- 10.7 The lender need not give notice if the collateral is are at risk and it may enter any place where it believes the goods may be to look for and inspect them. If you have granted security over after-acquired property and if you obtain consumer goods in future, you must appropriate those goods to the lender's security interest.
- 10.8 You must not do anything or allow anything to happen which may impair or undermine any borrower's ownership of collateral or the lender's security interest in collateral.
- 10.9 You must not grant any other security interest over collateral nor allow any lien to be created over it nor dispose of nor allow the disposal of collateral by sale or gift or lease or in any other way nor cause nor allow collateral to be taken out of the possession of the borrower who owns it, nor destroyed, damaged, endangered, disassembled, removed from the place where you are required to keep it (see clauses 9.1 and 9.3 above) or concealed from the lender.
- 10.10 You must not obtain any personalised registration plate on any motor vehicle which is collateral nor otherwise alter or remove any serial number unless you first obtain the lender's consent in writing.
- 10.11 Any accessions (including replacements and accessories) which are attached to collateral which is goods shall become part of the collateral. The lender may take possession of the collateral for the purposes of perfecting its security interest under the PPSA

11 Insurance

- 11.1 You must insure or procure the insurance of the collateral which is goods and any buildings or improvements on the land to be mortgaged (in the case of such buildings or improvements for full replacement value if possible) and keep them insured against fire, accident, theft, flood and storm and all other risks as the lender may require both in the names of the lender and in your names for the lender's and your respective interests, all payments, in the event of a claim, to be made to the lender. You must not do or allow any act or omission which causes the insurance be invalidated or cancelled.
- 11.2 You must provide receipts and an insurance company certificate of the insurance if required by the lender.
- 11.3 If you fail to do anything which you must do or do anything you must not do, the lender may do or pay anything to remedy the default and may add that sum to the unpaid balance and if you do not pay the cost of such remedy on demand the lender may charge you default interest.
- 11.4 You indemnify the lender and will keep it indemnified against any claim from any person relating to the collateral or the land to be mortgaged or the use thereof. If the lender incurs any loss, liability or expense in respect of the collateral or the land to be mortgaged or this agreement as a result of any act or omission of yours then the amount of such loss, liability or expense plus goods and services tax if any shall be payable by you to the lender and shall become part of the money secured and the lender may charge default interest thereon.
- 11.5 The lender may assign its right, title and interest in the collateral or in the land to be mortgaged or its right, title and interest in this agreement or any of them at any time.

12 Default

- 12.1 If you default under this agreement the lender may, without notice save that required under the Credit (Repossession) Act 1997, seize the collateral and for such purposes you irrevocably give to the lender the right and license for its agents to enter any premises and if necessary to break into any building where the collateral may be situated or where you are for the purpose of searching for and seizing the collateral. The lender shall not be liable in any way to you or to any third party for any damage or loss which occurs in the process of entry into any premises or during or as a result of the seizure and subsequent sale of the collateral and you will indemnify the lender against such damage or loss.
- 12.2 On seizure, the lender may sell the collateral by auction or otherwise in any manner and in all respects (including, without restricting the generality of the power, the right to buy in, give credit and allow payment over time) as if the lender were the

unencumbered owner subject to any applicable obligations under the Personal Property Securities Act 1999 and under the Credit (Repossession) Act 1997 and the Credit Contracts and Consumer Finance Amendment Act 2014.

- 12.3 On such sale the receipt of the lender or its agent will be sufficient discharge to the purchaser for the purchase money and no purchaser shall be bound to investigate the propriety or regularity of any such sale or be affected by any notice express or constructive that such sale is improper or irregular.
- 12.4 If the land to be mortgaged is sold by the holder of any prior mortgage or other charge those of you who own the land to be mortgaged hereby irrevocably expressly authorise and request such prior mortgagee or holder to pay any funds remaining after making payments under sections 104 (1)(a), 104(1) (b) and 104(1)(c) of the Land Transfer Act 1952 to the lender up to the amount stated by the lender to be owing.
- 12.5 You will and must indemnify the prior mortgagee or holder against any liability for making such payment and section 4 of the Contracts (Privity) Act 1982 shall apply to such indemnity. Those of you who own the land irrevocably authorise the lender to pay any registered mortgagee or charge-holder from the proceeds of sale of the land to be mortgaged if the lender sells the land to be mortgaged.
- 12.6 In the event that, contrary to your obligations hereunder, another security interest has priority over that of the lender with respect to the collateral, and if the lender takes a transfer of that security interest to itself then any money owing under this agreement shall be deemed to be owing under the security agreement providing for the security interest with priority and default under this agreement shall be deemed to be default under the other security agreement.
- 11.7 The Consumer Guarantees Act 1993 shall not apply if the collateral is acquired for business purposes
- 12.7 The lender shall not be obliged to marshal in your favour or in favour of any other person
- 12.8 If the lender does not at any time have priority over all other secured parties in relation to any collateral then pursuant to section 107(1) of the PPSA, for the purposes of dealing with that collateral you and the lender contract out of section 109 to the extent that the words "with priority over all other secured parties" in section 109(1) shall not apply so as to restrict the lender's ability to seize and to sell the collateral.. In addition you irrevocably authorises the lender to pay any secured party over whom the lender does not have priority.

13 Security Interest

- 13.1 You waive your right to receive a verification statement following registration of any security interest.
- 13.2 If you are borrowing money from the lender in order to purchase any property to be used as security for your debt to the lender, you must apply that money to the purchase and the lender may pay the loan money directly to the seller of the property. In addition, you authorise and request the lender to pay or apply any advance to you to the person named or for the purposes set out in this agreement or any separate writing provided to the lender by you. The lender may impose such conditions on the payment or on the application of the money as it sees necessary to protect any security interest it may have.

14 Hardship Relief

- 14.1 You can apply for a hardship relief if you have been in default for less than 2 months and you have not missed 4 consecutive payments. Applications must be in writing to Hardship Applications, Family Finance PO Box 250 Kaitaia 0441. Or by emailing a letter to apply@familyfinance.co.nz

Agreement to grant security interest

In exchange for the lender lending to the borrowers the amount of credit the guarantor who is owner of collateral shown as owned by the guarantor in the "**what could happen if you fail to meet your commitments**" section of the disclosure statement in the loan agreement grant to the lender a security interest over that collateral. The security interest is to secure payment to the lender of the money secured and also to secure the performance of all other terms of this agreement and of any collateral loan agreement. The guarantor promises to the lender that there is no security interest in the collateral other than that granted by this agreement. The guarantor waives the right to receive a verification statement following registration of any security interest.

Agreement to mortgage land

In exchange for the lender lending to the borrowers the amount of credit the guarantor(s) who own the land to be mortgaged shown as owned by the guarantor in the "**what could happen if you fail to meet your commitments**" section of the disclosure statement in the loan agreement shall execute in favour of the lender and at the cost of the borrowers a registrable mortgage over that land. Such a mortgage shall be in an all obligations form published by the Auckland District Law Society under number 2002/2103 or, at the option of the lender, any replacement or similar form reasonably required by the lender and the priority figure for the purposes of section 80A(2) of the Property Law Act 1952 shall be the initial unpaid balance plus \$50,000 or such lesser amount as the lender may decide. The mortgage will secure payment of the guaranteed money and the performance of all other terms of this agreement and of any collateral loan agreement and the guarantor(s) who own the land to be mortgaged hereby charge that land accordingly. If the land to be mortgaged is subject to any prior mortgage or charge, the guarantor(s) who own the land to be mortgaged will in all respects comply with and perform the obligations in that prior mortgage or charge. If there is a reference to any other land which the guarantor may own now or may own in future in the "**what could happen if you fail to meet your commitments**" section of the disclosure statement the land to be mortgaged shall also include the interest of the guarantor in such other land and the guarantor hereby charges or, as the case may be, will charge such other land accordingly.

The lender's rights and powers and the obligations of the borrowers in the loan agreement are implied into this guarantee as if the guarantor were the borrower.

In exchange for lender's loan to the borrowers and to enable the lender more effectively to obtain the benefits under this agreement, the guarantor (and if more than one jointly and severally) irrevocably appoints the lender and any one director of the lender severally to be the attorney of each guarantor to do anything which the guarantor agrees to do and to do anything and to sign any document which the attorney thinks desirable to ensure the lender is paid the money secured and otherwise to protect the interests of the lender under this agreement. Without in any way limiting the generality of the power, the attorney may execute any document for the purposes of registration of any interest under the Land Transfer Act 1952 (including, where applicable, an interest in land in which the guarantor has no interest at the date of this deed) or for the purpose of creating a security interest under the PPSA or causing one to attach or may make a request under clause 30 of the attached agreement.. This power shall inure until the money secured has been paid to the lender in full. The guarantor ratifies anything done by an attorney under this clause and further indemnifies any person acting in reliance upon the power. If the lender assigns the benefit of this agreement the assignee shall have the same rights and powers under this clause as does the lender and each person named as guarantor irrevocably appoints the assignee his attorney accordingly.

Feedback Procedure

Family Finance welcomes feedback as a way of improving as refining the services they provide. Complimentary feedback can be made in writing to feedback@familyfinance.co.nz.

All complaints must be first made to Family Finance in writing on a **Complaints Form (FF01)** which can be mailed to feedback@familyfinance.co.nz or by requesting a form from the office. All complaints must be made within 5 working days of the incident. The Manager of Family Finance will then give the complaint a reference number and acknowledge the complaint within 10 working days. (FF02)

Within the following 20 working days, Family Finance will work with the complainant to resolve the dispute. If no resolution is found, Family Finance will then refer to the Financial Disputes Resolution, an independent agency.