

# Bank of China (New Zealand) Limited

## Home Loan Agreement General Terms & Conditions

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### IMPORTANT NOTE

This document does not contain all the terms of your loan agreement or all of the information *we* are required by law to give *you* before the loan agreement is made. *You* must read this document together with the information contained in the Loan Agreement – Details.

## About this loan agreement

This loan agreement is made up of the Loan Agreement - Details (**Details**), these General Terms & Conditions and any loan variation letters (if any). They should be read together. The meaning of words printed like this and some other key words is explained at the beginning of these General Terms & Conditions.

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# Home Loan Agreement

## General Terms & Conditions

### 1 MEANING OF WORDS

**application date** means the date on which your signed loan application is submitted to us as disclosed in the Details.

**balance owing on your loan account** means, at any time, the difference between all amounts credited and all amounts debited to you under this agreement at that time. When this amount is to be calculated for the end of a day, it includes all debits and credits assigned to that day.

**business day** means a day (other than a Saturday or Sunday) on which banks are open for general business in New Zealand.

**CCCFA** means the Credit Contracts and Consumer Finance Act 2003.

**default rate** means a per annum rate of interest described in the Details as the "Default Interest Rate" and payable under clause 29.

**direct debit authority** means a written authority (direct debit authority) in a form acceptable to us that you have given us to draw or obtain by direct debit from a nominated account, as required, the amounts that you must pay us under this agreement.

the **disclosure date** is stated in the Details.

**including** or **such as** when introducing an example does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

**insolvent** means, in relation to a party, where that party:

- (a) has a receiver or statutory manager appointed to or in respect of the whole or any substantial part of its undertaking, property or assets;
- (b) is deemed or presumed to be unable to pay its debts as they fall due, becomes or is deemed to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes a compromise, or an arrangement or composition with or for the benefit of its creditors or fails to comply with a statutory demand under section 289 of the Companies Act 1993 (or its equivalent under applicable legislation);
- (c) is removed from the register of companies (otherwise than as a consequence of an amalgamation) or an effective resolution is passed for its liquidation; or
- (d) in the case of a party that is acting as trustee of a trust, the trust is held not to be properly constituted or is terminated, the party ceases to be a trustee or all of the trustees of the trust, the party ceases to have a right indemnity out of the assets of that trust or that indemnity is restricted in any way, or any breach of trust occurs.

### **instalment loan -**

- (a) you have an instalment loan if your loan is described as being an Instalment loan in the Details under "Loan Type"; or
- (b) if the loan purpose in the Details is described as "Construction loan", you have an instalment loan from the day after the last day of the

term loan until the balance owing on your loan account is fully paid.

**interest only period** is set out in the Details and applies when your repayment method referred to in clause 16.2 is interest only repayment.

**interest only repayment** has the meaning specified in clause 16.2.

**interest rate** means a per annum rate of interest.

**lending date** means the first date we lend you any part of the loan amount.

the **loan amount** in respect of a tranche (as applicable) is set out in the Details.

**loan switch** means changing your existing loan product or loan feature to another loan product or loan feature (within the same loan type) as permitted by us from time to time and pursuant to clause 40.

the **loan term** is described in clause 17 and is stated in the Details as "Loan Term".

the **loan to valuation ratio** is stated in the Details.

**nominal amount outstanding** means, for a loan amount and a day, that part of the loan amount that would have been outstanding on that day if, from the lending date you had made all required payments in accordance with this agreement.

**nominated account** means a bank account held with us or another bank or financial institution in New Zealand that you nominate in your direct debit authority or in any other form of authorisation approved by us or any replacement of that account.

**payment date** means each date you make a repayment or are scheduled to make a repayment under this agreement.

**principal and interest repayment** has the meaning specified in clause 16.2.

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

**Rate Lock Agreement** means an agreement entered into between you and us before you drawdown your loan or any tranche of your loan, which sets your fixed rate for the specified fixed rate period of a loan or tranche of a loan (as applicable).

**Sale Property** is stated in the Details, if applicable.

**secured account property** means:

- (a) the term deposit (including all amounts deposited to the credit of the term deposit from time to time); and
- (b) all present and future rights in relation to the term deposit and its credit balance (including all interest on, and other accruals to, the credit balance of the term deposit).

**security** means each security interest described in the Details under "Security", including in the secured account property, and any substitute or additional security interest given in connection with this agreement.

The property the subject of any mortgage of real property described in the Details under "Security" comprises all the mortgagor's estate and interest in the property and rights which may arise in connection with it; and rights to personal goods left on the property if we take possession; and rights to set off any money we owe the mortgagor against the amount secured by that mortgage.

The property the subject of the mortgage contained in any authority to set off deposits referred to in the Details under "Security" comprises your rights to deposits described in the authority.

**security interest** means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power. Security interest also includes a guarantee or an indemnity.

**security provider** means each person (other than you) who gives a security.

**tranche** means, as the context requires, any tranche of a loan made available by us to you as stated in the Details and upon the terms and conditions set out in the Details and the General Terms & Conditions, up to the loan amount stated in the Details for each applicable tranche. References to 'loan' in this document are also references to a tranche of a loan.

**security substitution** means changing or adding to an existing security property that is mortgaged to us with a new security property without repaying your loan, pursuant to clause 41.

**term deposit** means the term deposit described in the Details as the "Term Deposit", including the account of that term deposit and the credit balance of that account from time to time.

### **term loan -**

- (a) you have a term loan if your loan is described as being a Term loan in the Details under "Loan Type"; or
- (b) if the loan purpose in the Details is described as "Construction loan", you have a term loan from the lending date until the date you make your final interest only repayment.

**total amount owing** means, at any time, the balance owing on your loan account at that time, plus all accrued interest charges, default interest charges and other amounts which you must pay under this agreement but which have not been debited to your loan account at that time.

**we, us, or our** means Bank of China (New Zealand) Limited, as the credit provider and its successors, and anyone to whom we have assigned or transferred our rights under this agreement.

**working day** has the meaning given in section 5 of the CCCFA.

**you** means the person or persons named in the Details as "Borrower". If there are more than one, **you** means each of them separately and every two or more of them jointly. **You** includes your successors and assigns.

A reference to:

- any thing includes the whole and each part of it.
- a document includes any variation or replacement of it.
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them).
- A statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations,
- ordinances and by-laws issued under that statute.

The singular includes the plural and vice versa.

## **How you obtain the loan amount**

### **2 HOW WE LEND THE LOAN AMOUNT**

We agree to lend you the loan amount at the time you request it. Except to the

extent that the Details indicate that the loan amount is to be paid to others, we pay the money to you or as directed by you or your agent. However, we must be satisfied that you are using the loan amount for the loan purpose set out in the Details.

### **3 WHAT MUST HAPPEN FIRST**

3.1 However, we only have to lend if:

- (a) The lending date occurs within 120 days of the disclosure date. If you do not borrow during this period, we may treat this agreement as ended without having to notify you. Alternatively, we may offer to treat the loan agreement as continuing - either on the same terms or on any changed terms we tell you (including a changed interest rate);
- (b) when any part of the loan amount is being used for building or construction work, we have received:
- copy of the fully signed building contract,
  - a copy of all relevant approvals (including approved plans and specifications - these should be given to our valuer),
  - an appropriate insurance policy in your name for the period of construction for the contract price of the building work (sometimes known as construction risk insurance or housing indemnity insurance),
  - a surveyor's certificate,
  - a consulting engineer's certificate, and
  - a certificate from our chief supervising architect certifying as to the completion of each stage of the building work and

the construction cost incurred in connection with each completed stage,

each in a form satisfactory to us; and

- (c) nothing has happened since you applied for the loan amount which has led to a significant adverse change in your financial circumstances or which we reasonably believe could lead to this; and
- (d) we have received a valuation of each security property satisfactory to us performed by our valuer and the results of our (or our mortgage preparers') enquiries and searches about each security property are satisfactory to us; and
- (e) we have received each security, related acknowledgment or acceptance and title documents, which are satisfactory to us; and
- (f) we have received evidence satisfactory to us that any insurance we require is current and that our interest is noted and that all rates, taxes and levies for any property which is or will be mortgaged are paid up to date; and
- (g) we have received a building inspection report for each security property satisfactory to us, if we (or our mortgage preparers) tell you that we require it; and
- (h) if you are a company, we have received certified true copies of your constitution (if any) and certificate of incorporation, and a director's certificate to enter into this agreement, all satisfactory to us; and
- (i) if you are entering into this loan agreement as trustee of a trust, or a security provider is a trustee of a trust, we have received a certified

true and complete copy of the trust deed, and a trustee's certificate to enter into the relevant documents (including confirmation you have been validly appointed as trustee or trustees, and comprise all of the trustees, of that trust, and you have a right of indemnity out of the assets of that trust with respect to your obligations and liabilities under the loan agreement which has not been restricted in any way the terms of that trust or any breach of trust or otherwise), all satisfactory to us; and

- (j) if a security provider is a company, we have received certified true copies of its constitution and certificate of incorporation, and a director's certificate to give the security being provided by it, all satisfactory to us; and
- (k) we have received any other document we reasonably require, satisfactory to us; and
- (l) you are not in default under this agreement (for example, you have paid all relevant fees and interest charges and have not given us any misleading financial or other information) or under any other agreement or security interest with us or with other financiers and no-one who provides a security is in default under or has withdrawn from that security; and
- (m) you have complied with all other reasonable requirements we set.

3.2 If the loan amount is to be lent by way of progress payments or progressive drawdowns, all these terms must be satisfied at the time each progress payment or drawdown is requested.

## **4 SECURITY FOR THE LOAN**

### **Security over Term deposit**

- 4.1 To secure the repayment of the loan amount and all other amounts owing to us under this agreement from time to time, you grant to us a security interest (the deposit security) in and over the secured account property.
- 4.2 The security is intended to be first ranking in priority, continues to apply even if payments are made during the term of the loan, and is not released unless the loan and all other amounts owing to us under this agreement from time to time have been finally repaid or we sign a formal release.
- 4.3 You must not attempt to withdraw any amount from the term deposit unless we provide our express written consent.
- 4.4 If the amount of the term deposit decreases below the initial amount of the term deposit as described in the Details (whether due to set-off in accordance with Details or for any other reason) then you must, within [5] working days, deposit additional amounts to increase the term deposit to at least that initial amount.
- 4.5 You acknowledge receipt of a copy of this agreement and waive any right you may have to receive a copy of any financing statement, financing change statement or verification statement (each as defined in the PPSA) that is registered, issued or received at any time by us in relation to this Agreement.
- 4.6 To the extent permitted by law and in respect of this agreement and the deposit security, you and us contract out of sections 114(1)(a), 133 and 134 of the PPSA, and you waive your rights to receive notice of any proposal to retain personal property under section 120(2) of the PPSA or object to any proposal to retain any personal property under section 121 of the PPSA.
- 4.7 Where we have rights in addition to, or existing separately from, those in the PPSA, those rights will continue to apply and are not limited or excluded (or

otherwise adversely affected) by any right provided by this agreement or by law.

## Security generally

- 4.8 Security for this loan may be recorded in your loan agreement or in a separate security agreement, which will include the nature of the security and the terms and conditions applying to that security.
- 4.9 You and any other person who gives us security in relation to the loan may not give the same security to someone else unless we agree in writing. If we had not agreed and the security was given to someone else, then this loan agreement (and any other document under which the security is provided) will be in breach and we may ask you to repay any money you owe us.
- 4.10 If we exercise our rights under the security and recover an amount of money from the security, then you will still be responsible for paying any shortfall to us.
- 4.11 All security you have provided us will secure all your loans with us, now or in the future. Any existing security you have already given us for other loans (if any) will now also secure this loan, and other future loans. We will hold any security we have for your loan until all money owing under any loans with us have been repaid.
- 4.12 When all money owing under any loans with us has been repaid in full you can ask us to discharge any security held by us and we may charge the discharge of security fee set out in the Details when discharging such security.
- 4.13 We may ask you to give new or extra security in certain circumstances where we need replacement security, additional security to match the amount of the loan (whether by the loan amount increasing or the security value decreasing or the guarantor terminating or withdrawing their guarantee).

- 4.14 You agree to us giving information about you, including the Details, the General Terms & Conditions and any loan variation letter, to anyone who has given us security for this loan. We may do so to help the person understand their responsibilities and obligations, and to comply with laws that apply (for example, the CCCFA).

## Your right to cancel or to request to change the Loan

### 5 YOU MAY CANCEL YOUR LOAN

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- 5.1 You can cancel your loan agreement with us by giving written notice of the cancellation to us within:
- 5 working days of receiving the Details, if the Details are given to you in person;
  - 7 working days after the electronic communication is sent, if the Details are sent to you by email or other electronic communication: or
  - 9 working days after the Details are posted to you, if the Details are sent to you by post.

You will also need to pay us back any advance or any other property received from us within the time limits referred to above.

- 5.2 If you cancel your loan agreement, we may charge you the amount of any reasonable expenses we necessarily incur in connection with this loan and the cancellation, and interest charges (at the rate otherwise applicable under this agreement) on any advance or other property provided to you for the period until it is repaid.

### 6 YOU MAY REQUEST TO CHANGE YOUR LOAN IN UNFORESEEN HARDSHIP

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6.1 If you are unable, because of illness, injury, loss of employment, the end of a relationship or other reasons, to meet your obligations under this loan, you can apply to change your loan by writing to us specifying the reason for your inability to meet your obligations under the loan agreement. There may be extra requirements you will need to meet if:

- you have already missed some of the loan repayments;
- we have already sent you a notice under the Property Law Act 2007 for payment; or
- you have sent us a similar application in the recent past.

6.2 We may only be able to change your loan agreement if we consider the changes you want are fair in light of the reason(s) you have provided to us. You will also need to pay us back any advance or any other property received from us within the time limits referred to above.

If you cancel your loan agreement, we may charge you the amount of any reasonable expenses we necessarily incur in connection with this loan and the cancellation, and interest charges (at the rate otherwise applicable under this agreement) on any advance or other property provided to you for the period until it is repaid.

## **7 YOU MAY ASK TO CHANGE YOUR LOAN IN OTHER CIRCUMSTANCES**

7.1 You can ask us to change the loan, including the payment date, the type of interest rate, the type of loan, the loan term or the loan amount.

7.2 We may change upon your request at our absolute discretion and may not agree to part or all of your requested changes. Making changes to your loan may incur fees, including break costs (see clause 25).

## **8 YOU MUST USE YOUR LOAN BY THE SET DATE IN THE RATE LOCK AGREEMENT**

8.1 If you have a rate lock agreement with us, you must draw on your loan by the date stated in that agreement, unless otherwise agreed by us.

8.2 We may charge you a non-utilisation fee if you do not use the loan by the date stated in the rate lock agreement. This fee reflects the loss we incur from you not using the interest rate agreed or from not using the loan by the date agreed and is set out in the rate lock agreement.

8.3 If you wish to postpone the lending date or vary the interest rate, you can contact us.

## **Loan purpose**

### **9 LOAN PURPOSE SHOWN IN DETAILS**

The terms which apply to you depend on your loan purpose, as indicated in the Details. Your loan may be for more than one purpose.

### **10 RESIDENTIAL PROPERTY PURCHASE**

This loan purpose covers those who borrow to purchase an established residential property.

### **11 CONSTRUCTION LOAN**

11.1 This loan purpose covers those who

- borrow to buy land and build a home on it; or
- borrow to cover the cost of building a home on land they already own; or
- borrow to renovate a home.

If the Details indicate that the purpose of your loan is "Construction loan" we treat you as having a term loan from the lending date until the date you make your final interest only repayment. From the day after that date we treat you as having an instalment loan until the balance owing on your account is fully paid.

## Terms applying to construction loans

### Before you begin work

11.2 You must not begin any demolition or building work until you receive our written consent. (Our consent is required separately from this loan agreement.)

### Standard of work

11.3 You must ensure that all building work on the property is carried out as we have approved and in accordance with all laws.

11.4 You are alone responsible for ensuring that all plans are followed and that materials and workmanship are satisfactory even if we also monitor the building work. (If we do so, it is only for our own purposes, and even if we make a progress payment, it does not mean the building work is necessarily satisfactory.) You must have our written consent or the written consent of our valuer before you change any plan we have approved in a way which increases or decreases the original total building cost by more than \$1000.

### Progress payments

11.5 We lend the loan amount by making progress payments. (However, if part of the loan amount is being used to buy land, the first payment is not treated as a progress payment and is applied towards the land purchase.)

11.6 Before we have to lend the first progress payment, we must receive evidence to our satisfaction that you have already spent

the funds which you are required to contribute to the building costs or the land purchase set out in the Details as "Your Contribution".

11.7 You must ensure that a building stage is complete and allow our valuer to inspect the work (see below) **before** requesting the progress payment for that stage.

11.8 You must give us at least 3 days' written notice in advance of each required progress payment date.

11.9 Despite clause 2, we reserve the right to pay progress payments directly to your builder (if any), to any person supervising the building work for you or any other contractor, and not to you. However, you remain responsible for paying these people in accordance with your arrangements with them, regardless of when we make your progress payments.

11.10 We must receive evidence satisfactory to us that there is building insurance for the property for the amount in the Details, and that our interest is noted on the policy, before we have to lend the first progress payment.

11.11 You must not sign a request for a progress payment before the work covered by that progress payment is completed (that is, you must not "pre-sign" any request forms).

## Inspections

11.12 You (or your builder) must contact us when each building stage is complete (whether or not a payment is due) so that building inspections can be carried out as appropriate.

## 12 REFINANCING LOAN

12.1 This loan purpose covers those who refinance an existing loan (or loans) they have from us or from another lender.

12.2 If the Details indicate that this loan is to refinance an existing loan (or loans) you

have from us and we already hold the security, the terms of each existing agreement specified in the Special Conditions in the Details are replaced by the terms of this agreement.

### **13 LAND ONLY**

This loan purpose covers those who borrow to buy land.

### **Loan category**

### **14 LOAN CATEGORY**

If "owner occupier" is indicated in the Details or if we convert the loan at your request from investment to owner occupier, you must not rent the home out or allow anyone to live in it without you, unless we have first agreed. If we agree, we may treat your loan as an investment loan and change your interest rate as a result.

### **What you must pay and when**

### **15 WHAT YOU MUST PAY**

You must repay all amounts you borrow from us and you must pay us interest charges, other amounts under clause 16 and any enforcement expenses.

### **16 REPAYMENTS**

16.1 You must make payments to us in the frequency and in the currency set out in the Details.

16.2 The repayment methods are as follows. The Details indicate the method or methods applicable to your loan.

#### **Principal and interest repayments**

16.3 We calculate principal and interest repayments so that, during the period they are payable

- the balance owing on your loan account at the start of the period, and
- all interest charges which accrue or become payable during the period;

are repaid during the period.

Under this method, the part of each repayment which repays the balance owing on your loan account at the start of the period gradually increases throughout the period but repayments are equal as long as the interest rate remain constant. However, the last repayment may be different as it equals the total amount owing on the last day of the loan term. Principal and interest repayments are rounded up to the nearest dollar.

#### **Interest only repayments**

16.4 During each interest only period, we calculate interest only repayments as follows:

- each repayment covers a period.
- the length of each period is indicated in the Details (for example, fortnightly or monthly).
- the first period starts on the first drawdown date of any part of the amount to be borrowed. Each period ends at midnight on the day before the start of the next period.
- interest for one period is debited to your loan account at the end of the last day of each period.
- interest for one period becomes due for payment on the last day of that period.
- each interest only repayment equals the sum of:
  - interest charges debited to your loan account during the preceding period,

rounded up to the nearest dollar.

## All repayment methods

- 16.5 If the **interest rate** at the lending date is different to the rate shown in the Details, your initial repayment amount also changes from the amount, if any, shown in the Details. We notify you in writing of your initial repayment amount before the first repayment date.
- 16.6 We may also change the amount of following repayments in line with changes to the interest rate or fees and charges or otherwise as necessary to ensure that the loan amount and all other amounts you must pay are repaid within the loan term (for example, to make up for any repayments you have made late). If the change increases the repayment amount, we will notify you in writing beforehand of the changed repayment amount and when it applies.

## 17 LOAN TERM

Unless otherwise indicated in the Details, the loan term begins on the lending date. The length, or the end date, of the loan term is specified in the Details. We may change the loan term under clause 21.4 or 22.7.

## 18 WHEN AND HOW TO PAY

- 18.1 Your first repayment is due as described in the Details.

Unless the Details indicate otherwise, all following repayments are then due at monthly intervals - for example, if the first repayment is due on the 15th October, each later repayment is due on the 15th of every month.

If your repayments are due on the 29th, 30th or 31st of a month, and a particular month does not have that date, you must pay your repayment on the last day of that month.

- 18.2 If a repayment is due on a day which is not a business day, you may pay on the next business day.
- 18.3 On or before the last day of the loan term, you must pay the total amount owing.
- 18.4 We may apply any repayment or other payment we receive from you to any other loan you have from us.
- 18.5 You must pay all amounts due under this agreement (and each security or other document you enter into in relation to this agreement) in full without setting off amounts you believe we owe you and without counterclaiming amounts from us unless this agreement is regulated by the CCCFA and you obtain an order against us which the CCCFA expressly permits may be set-off against amounts you owe us.

## 19 PAYMENT OF FEES AND CHARGES AND OTHER AMOUNTS

You may obtain information on current fees, charges and interest rates by telephoning us on +64 9 980 9000 or visiting our website at [www.bankofchina.com/nz](http://www.bankofchina.com/nz)

Enforcement expenses may become payable under this agreement or any mortgage or other security in the event of a breach.

- 19.1 You must pay us:
- (a) all fees and charges in the circumstances indicated in the Details and any changed or new fee or charge notified to you;
  - (b) an amount equal to any government charges and duties on receipts or withdrawals under this agreement, calculated in accordance with the relevant legislation. Without limiting this obligation, you must pay financial institutions duty, if any. These are payable whether or not you are primarily liable for such charges and duties; and

- (c) when we ask, any reasonable expenses we reasonably incur in performing or enforcing this agreement or a security after you are in default (including:
- (i) in the case of a mortgage, expenses incurred in preserving and maintaining the property - such as by paying insurance, rates and taxes for the property; and
  - (ii) the use of our staff and facilities).

19.2 You authorise us to debit any of your accounts with any amounts you owe to us. We may do so on or after the date we pay them or the date they become due or payable by you or us (whichever is earlier). You may also pay these amounts through other methods permitted by us from time to time. We may debit amounts you owe to us from an Account even if that causes that Account to become overdrawn or increase an existing overdraft on that Account.

19.3 To the extent they are known, the amounts of the fees and charges current at the disclosure date are shown in the Details.

19.4 By giving you advance notice (in writing or by newspaper advertisement), we may change the amount, or frequency of payment, of any fee or charge, or impose a new one. But some changes in government fees and charges are publicised by the government and not us.

Where this agreement is regulated by the CCCFA, we will comply with the notice requirements of the CCCFA.

19.5 We are not obliged to refund the application fee under any circumstance.

## **20 INTEREST CHARGES**

You may find out our current interest rates by telephoning us on +64 9 980 9000 or visiting our website at [www.bankofchina.com/nz](http://www.bankofchina.com/nz)

You must pay us interest charges for each day on the balance owing on your loan account for the end of that day. Interest charges are calculated daily at the interest rate set out in the Details on the basis of a 365 day year (including in a leap year).

The interest charges accrue daily from and including the lending date. They are debited to your loan account on:

- (a) each payment date; and
- (b) the last day of the loan term.

If you are in default, the interest charges are higher (see clauses 29.1 to 29.3).

## **21 VARIABLE INTEREST RATE**

21.1 Whenever your loan or a tranche of your loan has the variable interest rate, we may change the interest rate which applies to the loan or the applicable tranche of the loan at any time.

21.2 If your loan starts with a variable interest rate, the interest rate shown in the Details is the rate applying at the disclosure date and is only a guide - the actual rate may have changed by the lending date.

21.3 We will notify you in writing or by a newspaper advertisement on or before the date of any interest rate change.

21.4 We may change your repayment amount or your loan term, or both, to take account of any change to the interest rate (and otherwise as permitted under clause 16.6).

Where this agreement is regulated by the CCCFA, we will comply with the notice requirements of the CCCFA.

## **22 FIXED INTEREST RATE**

22.1 Whenever your loan or a tranche of your loan is a fixed interest rate loan, the interest rate is fixed for an agreed period or periods, each of which is called a "fixed

rate period". A fixed rate period ends on (but excludes) the same day in the month as the lending date.

22.2 The interest rate for any fixed rate period is the rate we tell you in writing on or before the start of that fixed rate period.

22.3 If your loan or a tranche of your loan starts as a fixed interest rate loan, the interest rate shown in the Details is the rate applying at the disclosure date and is only a guide - the actual rate may have changed by the lending date if we change the fixed rate we are offering.

22.4 Unless you tell us that you want to continue under a fixed interest rate in writing before the end of your fixed rate period pursuant to clause 16.5, we will treat you as having chosen to convert to a variable interest rate that we may change from time to time rather than continuing to another fixed rate period. Once your loan is changed from the fixed interest rate to the variable interest rate, you may not change back to the fixed interest rate, unless we agree otherwise.

22.5 At the end of each fixed rate period, you may choose to re-fix the interest rate which will apply for the next fixed rate period (this rate may be higher or lower than or the same as the rate which applied for the current fixed rate period). The re-fixed interest rate takes effect on the first day in the new fixed rate period. To do this, you must notify us in writing at least 7 days before the end of the current fixed rate period. We charge a rollover fee for this change.

22.6 We notify you in writing or by a newspaper advertisement on or before the date of any interest rate change.

22.7 We may change your repayment amount or your loan term, or both, to take account of any change to the interest rate (and otherwise as permitted under clause 16.6).

22.8 We tell you in writing in advance:

(a) the new interest rate; and

(b) your new repayment amount or the changed remaining period of your loan term; and

(c) when the new repayment amount is first due.

22.9 If your fixed rate period shown in the Details is the same length as your loan term, then the interest rate applying at the lending date is fixed for the whole loan term and there are no fixed rate periods after the first fixed rate period.

## **23 BRIDGING LOANS**

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23.1 This clause 23 applies where the loan type described in the Details is a Bridging Loan.

23.2 When the balance owing on your loan account as a percentage of the valuation of the Sale Property exceeds the loan to valuation ratio, you must within 5 business days of our asking for it, either prepay your loan or provide us with additional security acceptable to us so that the loan to valuation ratio is not exceeded.

23.3 If you have a Bridging Loan where interest is capitalised for the loan term, interest will be debited to your loan account at monthly intervals on the same day of the month that your loan account was opened and on the date you pay the total amount owing. Interest debited will then form part of the balance owing on your loan account and bear interest accordingly.

### **Early repayment**

## **24 REPAYING EARLY**

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### **Variable interest rate**

24.1 Whenever your loan has the variable interest rate, you may repay early as much as you choose, at any time. You can do this by paying one or more lump sums.

## Fixed interest rate

- 24.2 Whenever your loan has a fixed interest rate, you may repay early all or any part of the total amount owing **at the end of** a fixed rate period without charge (except normal charges applying when the loan is ended).
- 24.3 You may also repay early all or any part of the total amount owing **at any time during** a fixed rate period; however, you may have to pay break costs (see clause 25).
- 24.4 Once you have notified us, you cannot change your mind - you must repay.

## Either interest rate option

- 24.5 Once you have made an early repayment you may not re-borrow the amount paid unless you have a redraw option permitted by us.
- 24.6 We charge an early repayment administrative fee as set out in the Details for any early repayment by you.

## 25 BREAK COSTS

- 25.1 Unless the Details indicate otherwise, if your loan has the fixed interest rate, you are taken to have broken your fixed rate period:

by repaying all or any part of the total amount owing before the relevant scheduled loan repayment date during a fixed rate period; or

- if we agree to change the fixed interest rate applicable to the loan before the end of a fixed rate period; or
- if the total amount owing becomes repayable during a fixed rate period because you are in default.

You must then pay us an amount we call "break costs".

- 25.2 Break costs are payable on the date of early repayment and are an amount equal to our reasonable estimate of our loss arising as a result of you breaking your fixed rate period. This loss usually arises because of changes in market interest rates between the start of your fixed rate period and when you break.

- 25.3 This clause contains a short description of the mathematical formulas we use when calculating break costs on the amount of the total amount owing that is repaid before its scheduled loan repayment date (in this clause, the '**early repayment amount**'). We calculate the following amounts for the period from the date of the early repayment until the end of the fixed rate period (in this clause, '**remaining period**')

- (a) the interest charges which would have been due on the early repayment amount over the remaining period, using the wholesale rate which applied at the start of the fixed rate period for the fixed rate period; and
- (b) the interest charges which would have been due on the early repayment amount over the remaining period, using the wholesale rate which would have applied over the remaining period on the date of your early repayment.

We then compare:

- (c) the sum of the early repayment amount and the interest charges calculated in (a) above; and
- (d) the sum of the early repayment amount and the interest charges calculated in (b) above.

Adjustments are made to recognise that we receive the money now, rather than over the remaining period. This adjustment is based on the wholesale rate which would have applied over the

remaining period on the date of your early repayment

A break cost will be charged by us only if the amount in (c) is greater than the amount in (d) (as adjusted in each case), and (if charged) will be based on the difference between the two adjusted amounts. If the amount in (d) is greater than the amount in (c) (as adjusted in each case), then we will only charge you an early repayment administration fee set out in the Details.

- 25.4 The break costs (as calculated by us) are assessed as notional transactions to provide a reasonable estimate of our loss. These may not be the actual transactions entered into in any particular case.
- 25.5 Break costs will not be calculated by us using the formulas prescribed in the Credit Contracts and Consumer Finance Regulations 2004.

**Warning:** Break costs can be quite high. We suggest you ask us for an estimate of the break costs and seek independent financial advice before you repay early under the fixed interest rate option. A fixed rate loan may not be suitable for you if you plan on terminating the loan within the fixed rate period when break costs are applicable.

## 26 WHAT HAPPENS TO YOUR REPAYMENTS AFTER REPAYING EARLY?

If you repay early only part of the balance owing on your loan account, the calculation of your repayment amount and the number of repayments payable do not change unless we agree otherwise. However, it may reduce your loan term.

## Default

### 27 WHEN ARE YOU IN DEFAULT?

You are in default if:

- 27.1 you do not pay on time any amount due under this agreement you have with us; or
- 27.2 you do something you agree not to do, or you don't do something you agree to do under this agreement; or
- 27.3 you give, or another person gives, us incorrect or misleading information in connection with this agreement or a security; or
- 27.4 we reasonably believe you or another person has acted fraudulently in connection with this agreement or a security; or
- 27.5 you become or another person who provides a security becomes insolvent or steps are taken to make you or them so; or
- 27.6 you are, or another person who provides a security is, in default under that security or withdraws from it.

## 28 WHAT CAN HAPPEN THEN?

- 28.1 If you are in default, we may give you a notice stating that you are in default.

If you do not, or cannot, correct the default within any grace period given in the notice or required by law (or if you are in default again for a similar reason at the end of that period), then, at the end of that period and without further notice to you, the total amount owing becomes immediately due for payment (to the extent it is not already due for payment).

We may then sue you for that amount, or enforce any security, or do both.

- 28.2 In limited circumstances set down by law (such as if we are unable to locate you), we need not give the notice or wait until the end of any grace period given in a notice. Instead, if you are in default, the total amount owing becomes immediately due for payment without notice. We may then immediately sue you for that amount, or enforce any security, or do both.

28.3 If you are in default, we may use any money you have in another account with us towards repaying the total amount owing (this is known as "combining accounts"). We may combine accounts without giving you any notice but we will tell you afterwards.

## **29 HIGHER INTEREST CHARGES**

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29.1 This clause 29 sets out how we calculate higher interest charges if you are in default.

29.2 If you do not make a repayment due under clause 16 on time, then, from and including the day that repayment is due until but excluding the day it is paid in full, we calculate interest charges under clause 20 at the default rate set out in the Details.

29.3 Your obligation to pay on time is not cancelled by this clause.

## **General matters**

### **30 CCCFA**

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30.1 Clause 30.2 applies to the extent that the CCCFA applies to this agreement.

30.2 If:

the CCCFA would otherwise make a provision of this agreement illegal, void or unenforceable; or

- (a) a provision of this agreement would otherwise contravene a requirement of the CCCFA or impose an obligation or liability which is prohibited by the CCCFA,

this agreement is to be read as if that provision were varied to the extent necessary to comply with the CCCFA or, if necessary, omitted.

### **31 ESTABLISHING YOUR LOAN ACCOUNT AND ACCOUNTING FOR TRANSACTIONS**

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31.1 You authorise us to open a loan account in your name and to debit to it each part of the amount you borrow on the date we lend it and any amount which you must pay under this agreement on or after the date it becomes due, without first notifying you. Each such loan account will be subject to our general terms and conditions relating to such accounts from time to time, a copy of which will be provided to you when the account is opened.

31.2 We may assign any date we consider appropriate to a debit or credit to the loan account (except that, in the case of a debit, the date must not be earlier than the date on which the relevant transaction occurs).

However, we credit payments to your loan account as soon as practicable after we receive them. This is not necessarily the same day that you pay.

31.3 We may subsequently adjust debits and credits to the loan account, and the balance owing on your loan account, so as to accurately reflect the legal obligations of you and us (for example, because of an error or because a cheque is dishonoured). If we do this, we may make consequential changes (including to interest charges).

31.4 We may use any payment we receive in connection with this agreement to reduce the total amount owing in any order we choose.

31.5 We give you a statement for your loan account every 6 months.

### **32 CONSENTS AND PERFECTION OF SECURITY**

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32.1 You must comply with all conditions and requirements in any consent we give.

32.2 To the extent permitted by the CCCFA and any other applicable law, you must promptly execute any documents and do all things that we reasonably require:

- (a) to ensure that this agreement is not void, voidable or otherwise unenforceable by us in accordance with its terms; and
- (b) to effect, perfect or complete the provisions of this agreement or any transaction contemplated by it; and
- (c) (including obtaining consents and signing and producing documents) to effect registration of this agreement or any other document on any register established pursuant to the PPSA.

### **33 VALUATIONS ARE FOR OUR BENEFIT**

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- 33.1 Any property valuation is for our use only.
- 33.2 When the balance owing on your loan account as a percentage of all real property which we have security over exceeds the loan to valuation ratio, you must within 5 business days of our asking for it, either prepay your loan or provide us with additional security acceptable to us so that the loan to valuation ratio is not exceeded.

### **34 HOW WE MAY EXERCISE OUR RIGHTS**

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We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate including by imposing conditions.

- 34.1 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.
- 34.2 Our rights and remedies under this agreement are in addition to other rights and remedies provided by law independently of it.
- 34.3 Our rights and remedies may be exercised by any of our employees or any other person we authorise.
- 34.4 We are not liable for loss caused by the exercise or attempted exercise of, failure

to exercise, or delay in exercising, a right or remedy.

### **35 DISPUTE RESOLUTION PROCEDURE**

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#### **What to do if you have a dispute and complaint**

- 35.1 If you wish to dispute on any matter or make a complaint against us, please contact us. We have both internal and external dispute resolution processes aimed to resolve any dispute or complaint from you.

#### **Lodging your dispute or complaint**

- 35.2 You should gather all relevant supporting documents about the dispute or complaint. Once you have contacted us, we will begin the process of investigating and resolving your complaint or dispute, at no cost to you. Many complaints can normally be resolved within 5 business days. We aim to resolve your dispute or complaint within 14 business days. If the matter is more complex, it may take a longer time to resolve. If that is so, we will keep you informed of the progress of the matter.

#### **Next step if you are not happy with our proposed resolution**

If you are not satisfied with our proposed resolution or any extended time for resolution of your dispute or complaint, you can also contact the Banking Ombudsman, an independent external dispute resolution service.

- 35.3 We are a financial service provider, registered under FSP number FSP409486.

### **36 OUR CERTIFICATES**

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- 36.1 We may give you a certificate or formal statement about a matter or about an amount payable in connection with this agreement. This is sufficient evidence of the matter or amount, unless it is proved to be incorrect.

## **37 ASSIGNMENT**

- 37.1 We may assign or transfer any of our rights, powers and discretions and remedies (including the power to vary interest rates and fees, and our other powers and discretions) under this agreement without your consent.
- 37.2 You agree that we may disclose to any potential assignee or transferee any such information or documents we consider necessary to help us exercise this right.
- 37.3 You also agree that any assignee or transferee may use such information or documents for the purposes and in the same manner as us.
- 37.4 Your rights are personal to you and may not be assigned without our written consent.

## **38 NOTICES, OTHER COMMUNICATIONS AND SERVICE OF DOCUMENTS**

- 38.1 Notices, certificates, consents, approvals and other communications in connection with this agreement must be in writing or in any other form permitted by it.
- 38.2 Communications from us may be signed by any of our employees. If you are a company, communications from you must be signed by a director or a signatory authorised by us whose signature we have retained a copy.
- 38.3 You can give us a notice or a document by:
- (a) delivering it to us personally at our address stated in the Details or any new address we last notified you; or
  - (b) leaving it at, or sending it by post to us at our address stated in the Details or any new address we last notified you; or
  - (c) sending it by facsimile transmission to our facsimile number stated in the

Details or any new facsimile number we last notified you; or

- (d) electronically by sending the notice or document to our e-mail address disclosed in the Details.

38.4 We can give you a notice or a document:

- (a) by delivering it to you personally; or
- (b) by leaving it at, or sending it by post to your address you last notified us; or
- (c) electronically by sending the notice or document to any email address you have provided to us (whether as part of an account opening process or otherwise).

38.5 We may only give you a notice or document electronically if you have specifically agreed to it, and you have not withdrawn your consent. You acknowledge that by agreeing to receive notices or documents by electronic communication pursuant to clause 38.4(c) above:

- (a) paper notices and documents may no longer be given by us; and
- (b) electronic communications should be regularly checked for notices and documents; and

consent to the giving of notices and document by electronic communication may be withdrawn by you at any time by notice to us.

38.6 If a notice or document is sent by post, it is taken to be received on its date, or on the date it would have been delivered in the ordinary course of the post, whichever is the later (subject to the requirements of the CCCFA).

38.7 If the notice or document is given by us pursuant to clause 38.4(c) above, it is taken to be given at the time when the electronic communication enters into your information system (subject to the requirements of the CCCFA).

38.8 A notice or document takes effect from the time it is received unless another time is specified in it.

38.9 You must tell us as soon as possible if you change your name, address, phone number or email address.

38.10 We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you by delivering it to your address in the Details (or any changed address notified to us) or by leaving it there. This does not prevent any other method of service.

### **39 VARIATIONS**

In addition to other changes we may make, as detailed elsewhere in this agreement, we may vary any term of this agreement by giving you notice of the proposed change at least 14 days before. We may change this agreement at any time where we reasonably consider the change is necessary or prudent to enable us to comply with law, or with any mandatory director given by a regulator. We must give at least 14 days' notice before doing so. If CCCFA applies to this agreement, we may only vary this agreement in accordance with that Act, as applicable. For changes that are not referred to elsewhere in this agreement, we will notify you in writing of any variation before it takes effect. For other changes that are referred to elsewhere in this agreement, we will notify you as detailed elsewhere in this agreement.

### **40 LOAN SWITCHING**

You may request (in a form satisfactory to us) for a loan switch (for example, by choosing another interest only period upon expiry of an existing interest only period, by switching your existing loan repayment method to another loan repayment method or splitting your existing loan account to different loan accounts with different repayment

methods, by switching your loan to a different loan product of the same loan type) if:

- (a) your request satisfies the criteria for loan switch set by us at the time of your request ;
- (b) you are not in default;
- (c) you pay the applicable fee set out in the Details;
- (d) you sign any new documentation that is required by us; and
- (e) the loan amount does not change.

To obtain current information on the type of loan switch permitted by us and the applicable criteria, please contact us.

### **41 SECURITY SUBSTITUTION**

You may request (in a form satisfactory to us) for a security substitution if:

- (a) you are not in default;
- (b) you pay the applicable fee set out in the Details;
- (c) we are satisfied with the valuation and title to the new security property;
- (d) there is no change in the borrower or security provider;
- (e) you sign any new documentation that is required by us;
- (f) the loan amount does not change;
- (g) the settlement for the discharge of the existing security property occurs either simultaneously with or prior to the granting of the new security property.

### **42 CONSUMER GUARANTEES ACT**

Consumer Guarantees Act 1993 may apply to guarantees in this loan agreement to which we will comply. To the maximum extent the law allows it, you agree that we provide no other guarantees or warranties imposed on us by custom or law.

to any security provider, credit reporter, debt recovery agency, or a related company of us.

You have a right to access and correct any personal information about you under the Privacy Act 2020.

Please also refer to our general Privacy Policy available from our website.

#### **43 PRIVACY**

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Personal information provided by you in relation to a loan will be used by us to assess your application for a loan, to provide you with and manage any loan or other product offered by us, and to comply with applicable law. For these purposes, we may give such information

#### **44 APPLICABLE LAW**

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This agreement is governed by the law of New Zealand. You and we submit to the non-exclusive jurisdiction of the courts of New Zealand.