

Dispute Resolution

Name of dispute resolution scheme: The Insurance and Savings Ombudsman

It is free to make a complaint to this independent dispute resolution scheme. This scheme can help you to resolve any disagreement you have with the Lender. Contact details of the dispute resolution scheme are:

Phone: 0800 888202 or 04 4997612

Website: www.iombudsman.org.nz

Level 11, Classic House, 15-17 Murphy St, PO Box 10845 Wellington

Registration on Financial Services Providers Register

Lender's Registration Name: Mutual Credit Finance Limited

Registration number: FSP31821

What to do if you suffer unforeseen hardship

If you are unable to reasonably keep up your payments or other obligations because of illness, injury, loss of employment, the end of a relationship or other reasonable cause, you may be able to apply to the Lender for a hardship variation. To apply for a hardship variation, you need to:

- a) Make an application in writing; and
- b) Explain your reasons for the application; and
- c) Request one of the following:
 - An extension of the term of the contract (which will reduce the amount of each payment due under the contract and increase the number of payments to be made); or
 - A postponement of the dates on which payments are due under the contract (specify the period for which you want this to apply); or
 - Both of the above – that is postpone some payments and pay smaller amounts over a longer period; and
- d) Give the application to the Lender.

You are welcome to contact us to discuss your application but we will ask you to confirm the application in writing by letter, fax or email. Do this as soon as possible, if you leave it too long the Lender may not consider your application.

Terms and Conditions

1. Definitions and Interpretation: Terms defined in the Financial Details, Payments Schedule, Disclosure Statement and these Terms and Conditions have the same meaning and:

- (a) **Act** means the Credit Contracts and Consumer Finance Act 2003;
- (b) **Collateral** means the Goods described overleaf or any part of them and all proceeds of those Goods, licences and documents of title and accessories relating to those Goods;
- (c) **Full Prepayment Amount** means the sum of the unpaid balance of the Loan Amount less any Premium Rebate. If you wish to fully prepay the Loan Amount you will also have to pay the Lender's administration costs payable under clause 3 (d) (i);
- (d) **Loan Amount** is the amount set out opposite "Loan Amount" in the Financial Details box above, less any Part Prepayment Amount you have paid to the Lender;
- (e) **Part Prepayment Amount** means the amount of a repayment of part of the unpaid balance of the Loan Amount. If you wish to partially prepay the Loan Amount you will also have to pay the Lender's administration costs payable under clause 3 (d) (ii) (E) ;
- (f) **Payment Date** means the weekly, fortnightly or monthly date upon which the Borrower is to make Term Payments, all of which are set out in the Payments Schedule, or any new dates agreed to in writing by the Borrower and the Lender following agreed changes to the payment terms of the Loan;
- (g) **Premium Rebate** means an amount equal to a proportionate rebate of any premium paid by you to the Lender under any consumer credit insurance (as defined in the Act) arranged by the Lender and financed under this Agreement;
- (h) **Receiver** means the person appointed by the Lender under clause 8 as a receiver of the Collateral and/or Land;
- (i) **Security Interest** means the security interest granted under this Agreement;
- (j) **Term Payments** means the payments required under the Payments Schedule, but adjusted if the Lender is entitled to do so under this Agreement (for example, if there is a change in the Annual Interest Rate);
- (k) the expressions **accession, at risk, attach, motor vehicle, proceeds** and **security interest** have the respective meanings given to them under, or in the context of, the Personal Property Securities Act 1999 (PPSA);
- (l) if the Borrower comprises of more than one person, then each such person is jointly and severally liable for all the liabilities and obligations arising in this Agreement. If the Guarantor comprises of more than one person, then each such person is jointly and severally liable for all the liabilities and obligations of a Guarantor under clause 15; and
- (m) a reference to a statute, includes any amendments to the statute. For example, a reference to the Credit Contracts and Consumer Finance Act 2003 includes the Credit Contracts and Consumer Finance Amendment Act 2014.

2. Your Obligations: You must:

- (a) pay or satisfy, when due, all your obligations relating to the payment of money under this Agreement;
- (b) generally keep the Collateral at your address stated overleaf, unless you have given written notice of a new address to the Lender;
- (c) comply with all legislation and other governmental requirements affecting your possession and use of the Collateral or the Land, or the Lender's Security Interest;
- (d) keep the Collateral and the Land in good condition and protect it from loss or damage;
- (e) maintain with a reputable insurer approved by the Lender insurance for the Collateral's and Land's full replacement value, or at an agreed sum for insurance purposes acceptable to the Lender, against all risks that it is prudent to insure against and ensure that each insurance policy notes the Lender's interest in the Collateral and the Land and names the Lender as loss payee under that policy (and for the avoidance of doubt the policy shall not be third party only);
- (f) promptly notify the Lender of any matter adversely affecting the Collateral or the Land, and any default by you under this Agreement;

- (g) promptly notify the Lender if any information you supplied the Lender becomes inaccurate, for example, if any person named as a Borrower or Guarantor loses his or her job or if any other lender takes any action to repossess any of the Goods; and
- (h) do all other things which the Lender requires to enable the Lender to:
 - (i) ensure that the Collateral and the Land is subject to an effective security interest having the priority required by the Lender; and/or
 - (ii) assist the Lender in exercising any of the Lender's rights under this Agreement, whether on enforcement of the Lender's Security Interest or otherwise.

3. Payments

(a) Loan Amount, Interest and Fees:

- (i) You will pay the Lender the Loan Amount without any set off or deduction, together with interest calculated at the applicable Annual Interest Rate, by payment of the Term Payments on each Payment Date commencing on the First Payment Date and ending on the Final Payment Date and otherwise according to the Payments Schedule in this Agreement. Your obligation to make the Term Payments will not be affected by any defect in, or damage to, the Goods.
- (ii) Interest accrues daily but is payable in arrears on each Payment Date.
- (iii) You will pay to the Lender a monthly administration fee of \$5.00 to be paid on each Payment Date, or such other amount advised by the Lender. When a payment date is not monthly a proportion of the fee is payable on the relevant Payment Date. The relevant amount or proportion is included in the payment information in the Payments Schedule under the headings "Amount of Term Payments" and "Total Payments".

(b) **Default Interest:** If you fail to make any payment when due you will pay interest at the Default Interest Rate (being 7% per annum above the applicable Annual Interest Rate if not set out in the Financial Details above) on the amount due and unpaid.

(c) **Alteration of Rates of Interest and Term Payments:** The Lender may change:

- (i) The applicable Annual Interest Rate;
- (ii) the Default Interest Rate;
- (iii) any Term Payment(s) due; or
- (iv) any fee or charge payable by you,

at any time. Notice to you of any such change will be made within 5 business days of the change taking effect by letter or email to you at your address specified in this Agreement or, in the case of a change to the applicable Annual Interest Rate, the Default Interest Rate, or a fee or charge, by advertisement on the Lender's website, in newspapers in regions specified by regulations made under the Act and at the Lender's places of business.

(d) Prepayment:

- (i) **Full Prepayment:** You may prepay the Loan Amount at any time by payment to the Lender of the Full Prepayment Amount. The Lender may charge you its administration costs arising from the full prepayment.
- (ii) **Part Prepayment:** You may prepay part of the Loan Amount at any time by payment to the Lender of the relevant Part Prepayment Amount. The following shall apply for any part prepayment:
 - A. the Part Prepayment Amount will be held by the Lender and applied against the Term Payment due on the next Payment Date, according to the Payments Schedule in this Agreement (which, for the purposes of section 46 of the Act, is the specified schedule of payments);
 - B. any residual amount of the Part Prepayment Amount remaining after making the payment in sub-paragraph A above shall be applied against the Term Payment due on the following Payment Date. This process shall be repeated on each successive Payment Date until the Part Prepayment Amount has been applied in full;
 - C. each Part Prepayment Amount received shall be dealt with in accordance with sub-paragraphs A and B above, in order of receipt;
 - D. if, on a Payment Date, a Part Prepayment Amount is to be applied and a Term Payment is also made, then the Part Prepayment Amount shall be applied first, and the surplus Term Payment shall be retained by the Lender and treated as a Part Prepayment Amount and refunded or applied on subsequent Payment Dates in accordance with this clause; and
 - E. The Lender may charge you its administration costs arising from the part prepayment.

All Part Prepayment Amounts (including any Term Payments treated as Part Prepayment Amounts) made and not applied on Payment Dates will accrue until such time as the total amount of all unapplied Part Prepayment Amounts equals the Full Prepayment Amount, at which time the unapplied Part Prepayment Amounts and Term Payments will be applied by the Lender in full prepayment of the Loan Amount.

No interest will accrue to you on amounts of Part Prepayment Amounts (including any Term Payments treated as Part Prepayment Amounts) held by the Lender pending their application in accordance with this clause.

4. Restrictions: You must not:

- (a) sell, lease or otherwise dispose of, or permit the disposal of, any Collateral or Land or permit any security interest to attach to any Collateral or Land other than the Lender's Security Interest;
- (b) change your name without first notifying the Lender of your new name at least 21 days before the change takes effect;
- (c) relocate your principal place of business outside New Zealand or (if you are a company) change your registered office;
- (d) move any Collateral outside New Zealand;
- (e) do, or omit to do, or allow to be done or omitted to be done, anything which could adversely affect any Collateral or the Land or the Lender's Security Interest; or
- (f) make any deduction or withholding from (whether by way of set-off, counterclaim or otherwise), or attach any restrictions or conditions to, any amount payable to the Lender.

5. **Lender's Rights:** The Lender can do all things that the Lender thinks necessary or desirable to remedy any default by you or otherwise protect the Collateral or the Land or the Lender's Security Interest, including (but not limited to) entering any premises or buildings occupied by you to remove, repossess or inspect the Collateral or the Land at any time after any default, provided the Lender complies with all its legal obligations when entering the premises including, without limitation, producing any documents required to be produced and only entering the premises at the times permitted by law. The Lender's rights under this Agreement are without prejudice, and in addition, to any other rights the Lender may have at any time.

6. **Agent:** You irrevocably appoint the Lender your agent to do (at your expense) any act which ought to be done by you or which the Lender considers necessary to protect the Lender's Security Interest in the Collateral or the Land or the Lender's rights under this Agreement, and you ratify anything which the Lender does as your agent under this clause.

7. **Default Fees:** If you fail to pay any amount payable under this Agreement when due or fail to comply with any obligation under this Agreement the

Lender shall be entitled to charge a default fee in relation to remedying or attempting to remedy the default.

8. Enforcement: If:

- (a) you breach any term of this Agreement, which includes failing to make any payment when due or failing to comply with any of your obligations or restrictions. The Payments Schedule on the front page sets out what payments you must make and when you must make the payments (but subject to changes in the Annual Interest Rate);
- (b) any representation made, or information provided, by you to the Lender is untrue in any material respect;
- (c) the Collateral or the Land is at risk; or
- (d) you or any Guarantor go into liquidation or bankruptcy, or a receiver is appointed in respect of you or any Guarantor,

then all amounts owing, or to become owing, under this Agreement shall become immediately due and payable and the Lender may enforce the Lender's Security Interest and appoint a receiver over the Collateral and the Land. In addition to and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise) the Receiver has the power to do all things in relation to the Collateral or the Land as if the Receiver had absolute ownership of the Collateral or the Land. The appointment of a receiver by the Lender means that another person (that is, the Receiver) can control, manage and sell the Collateral or Land as your agent.

9. Indemnity: You indemnify the Lender against:

- (a) all costs, losses and expenses incurred by the Lender in relation to this Agreement, and in exercising any of the Lender's rights or recovering any amounts owed by you to the Lender;
- (b) any claim by any person relating to the Collateral or the Land, or the Lender's exercise of any right under this Agreement; and
- (c) any claim made under the provisions of the Privacy Act 1993.

This indemnity extends to fees for compliance with a demand which is given under section 162 of the PPSA.

10. No Waiver: Any indulgence the Lender grants, or concession the Lender makes, to you does not waive any of the Lender's rights under this Agreement, and you will not be released from any of your obligations under this Agreement until the Lender expressly grants such a release to you in writing.

11. Consumer Guarantees Act: If you acquired, or held yourself out as acquiring, the Collateral for the purposes of a business, nothing in the Consumer Guarantees Act 1993 applies to the Collateral or this Agreement.

12. Disclosure: You and the Guarantor (if any) authorise the Lender to obtain and disclose information about this Agreement, your payment history and any default to any person to whom the Lender thinks fit to make disclosure. You agree that the Lender may use any information provided in, or in connection with, this Agreement to assist the Lender to carry out the Lender's usual business activities.

13. Payments on Demand/by Direct Debit: Except as provided in this Agreement, all amounts payable by you to the Lender under this Agreement (including, but not limited to, all costs and all amounts payable under any indemnity) are payable on demand and are secured by the Lender's Security Interest. If the Lender agrees to you making payments by direct debit and a payment is not made by you when due, you agree that the Lender can, without prejudice to the Lender's other rights under this Agreement, action that direct debit from time to time at later dates.

14. Certificates: The Lender's certificate as to any amount or fact which might reasonably be expected to be within the Lender's knowledge shall be prima facie evidence of that amount or fact.

15. Guarantee and Indemnity: The Guarantor unconditionally and irrevocably guarantees to the Lender, and indemnifies the Lender in respect of, the punctual payment of all moneys from time to time payable by the Borrower under this Agreement and the performance by the Borrower of all other obligations under this Agreement. The Guarantor's liability under this guarantee shall constitute principal obligations and such liability shall not be relieved, or in any way affected in a manner prejudicial to the Lender, by anything which, but for this provision might operate to affect or discharge the liability of, or otherwise provide a defence to the Guarantor. In particular this guarantee will remain in full force and effect despite (i) any variations to this Agreement that are agreed between the Borrower and Lender; and (ii) anything done by the Lender in its administration of the Loan in its dealings with the Borrower, including if the Lender agrees to accept a lesser amount from the Borrower than is payable under this Agreement. The Guarantor acknowledges having had the full consequences of being a guarantor explained to him, her or them by an independent professional adviser or, having had ample opportunity to do so, choosing not to take such independent advice, and acknowledges having received, before signing this Agreement, a full and complete copy of this Agreement (including the Terms and Conditions) and the Disclosure Statement relating to this Agreement.

16. PPSA: The Borrower and Guarantor who have given the Lender security over the Collateral:

- (a) waive your rights under sections 114(1)(a) (which relates to certain notices the Lender must give before it sells the Collateral) and 121 (1 (which relates to rights of other persons to object to the Lender's proposals to take the Collateral to recover what is owed) of the PPSA and agree that none of these sections shall apply to this Agreement. The PPSA (Personal Property Securities Act 1999) may be read at <http://www.legislation.govt.nz/>;
- (b) waive the right to receive a copy of the verification statement required under section 148 of the PPSA; and
- (c) acknowledge that any accessions (including replacements and accessories) which are attached to the Collateral or the Land shall become part of the Collateral or the Land (as the case may be).

17. Notices: Each notice to be given by one party to another under this Agreement may be given to each other at the respective addresses set out on the front page of this Agreement and, for notices given by the Lender to you or a Guarantor, to the address of the Borrower or Guarantor that the Lender has in its records, including an email address.

18. Assignment: You acknowledge that the Lender may, at any time, assign the Lender's rights, title and interest in the Collateral, or the Land under this Agreement and/or under the guarantee without affecting your liability or that of any Guarantor.

19. Set-off: You acknowledge that the Lender can, at any time and without any notice, set-off any amounts the Lender owes to you against any of your present and future indebtedness and obligations to the Lender.

20. Further Security: If you enter into any other security arrangement with the Lender to secure the payment and performance of all of your obligations to the Lender under this Agreement, that other arrangement will be collateral to this Agreement (**Collateral Security**), it will capture and encompass any relevant provisions from this Agreement, and a breach of such other arrangement will also constitute a breach of this Agreement and vice versa.

21. Further Assurance: On the request of the Lender, you must, at your own cost, promptly execute and deliver to the Lender all documents (including, a mortgage over the Land), and do anything that the Lender deems appropriate, to secure to the Lender the full benefit of its intended rights under this Agreement or any Collateral Security (as defined in clause 20).

22. Caveat: The Lender may at any time during the term of this Agreement, whether or not an event of default has occurred, register a caveat against the Land in support of your agreement to mortgage the Land.

23. Unenforceability: If any provision of this Agreement, or any part of a provision of this Agreement, is found to be illegal, invalid or unenforceable the remaining provisions, or part of the relevant provision concerned, shall continue in effect.