

CONSUMER CREDIT CONTRACT - TERMS, CONDITIONS & GUARANTEE

CREDIT TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 The provisions contained in these Consumer Credit Contract - Terms, Conditions and Guarantee, issued (06/15) (**Terms and Conditions**) and the disclosure statement provided to you with these terms and conditions (**Disclosure Statement**) are together incorporated in and form a part of a contract between you and the Lender (**Contract**).
- 1.2 In this Contract the following terms shall have the meanings specified:
- (a) **Borrower** means the person named as such in the Disclosure Statement.
 - (b) **CCCFA** means the Credit Contracts and Consumer Finance Act 2003.
 - (c) **Daimler Group** any of the Lender's associated entities, related companies, affiliates or subsidiaries.
 - (d) **Guarantor** means a person specified in the Disclosure Statement as giving a guarantee to secure obligations under this Contract.
 - (e) **PPSA** means the Personal Property Securities Act 1999.
 - (f) **Related Agreement** means any agreement relating to the provision of loans or other financial accommodation by the Lender to you and/or a Guarantor (if any) (whether alone or jointly or together with another person) before, at the same time as, or after execution of this Contract and includes any security agreement.
 - (g) **Working Day** means a day of the week other than:
 - (i) Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Auckland Anniversary Day, and if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
 - (ii) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
 - (iii) if 1 January falls on a Friday, the following Monday; and
 - (iv) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday.
 - (h) The terms **accession, at risk, proceeds, financing statement, financing change statement, personal property, verification statement and security interest** have the meanings given to them under the PPSA.

1.3 Unless otherwise specified in this Contract:

- (a) references to the parties include their respective executors, administrators, successors and permitted assigns;
- (b) references to persons include individuals, partnerships, firms, associations, corporations and unincorporated bodies of persons, government or semi-government or local body or municipal bodies, and agencies or political subdivisions of them in any case whether having separate legal personality or not; and
- (c) where the Borrower or the Guarantor comprises more than one person, the obligations of each Borrower and each Guarantor shall be joint and several.

2. AGREEMENT

- 2.1 Your obligations under this Contract, including but not limited to your payment obligations under clause 9, shall commence on the Commencement Date and continue for the Term notwithstanding:
- (a) any damage to, or defect in, the Vehicle or that at any time, the Vehicle is not serviceable, does not operate or is not in your possession; or
 - (b) the Vehicle being lost, stolen or destroyed.

3. REGISTRATION AND WARRANT OF FITNESS

3.1 You will ensure, at your cost, that the Vehicle is registered and holds a current warrant of fitness at all times during the term of the Contract specified in the Disclosure Statement (**Term**).

4. COMPREHENSIVE INSURANCE

4.1 You will during the Term:

- (a) at your cost, take out and maintain third party insurance on the Vehicle with an insurer acceptable to the Lender;
- (b) at your cost, insure the Vehicle at all times comprehensively against fire, theft and accident up to the replacement value of the Vehicle with an insurer acceptable to the Lender; and
- (c) ensure that the Lender's interest as first security holder is recorded on all insurance policies relating to the Vehicle;
- (d) provide the Lender with written confirmation that all insurance policies are in place; and
- (e) immediately repair any accident damage to the Vehicle.

4.2 You acknowledge that, if the Lender requires you to obtain insurance from a particular insurer, the cost of any insurance will form part of the credit fees and charges specified in the Disclosure Statement (**Credit Fees and Charges**).

4.3 If the Vehicle is lost, stolen, destroyed or damaged, you will advise the Lender immediately in writing.

4.4 You appoint the Lender and each of the Lender's authorised representatives as your attorney for the purposes of recovering any insurance monies and settling any claims pursuant to any insurance policy relating to the Vehicle. You understand that the lender may elect to retain any insurance monies and at the Lender's discretion, either:

- (a) repair the Vehicle; or
- (b) pay the monies to the credit of any monies you owe the Lender.

If the cost of repairs exceeds the insurance monies received by the Lender from the relevant insurer, you will immediately pay to the Lender the balance of such repair costs.

5. OPERATION

5.1 You will during the Term:

- (a) ensure that the Vehicle is properly maintained and serviced by qualified personnel approved by the Lender according to the manufacturer's statement;
- (b) allow the Lender to inspect the Vehicle at any reasonable time. You authorise the Lender to enter any premises where the Vehicle is located for that purpose; and
- (c) pay all fines, infringement notices and charges relating to the Vehicle and/or its use.

5.2 You will not use or let anyone else use the Vehicle in any way that breaches the law, or the terms of any insurance policy relating to the Vehicle or the terms of this Contract.

6. SECURITY

6.1 Security Interest

You acknowledge that the Vehicle, and all of your present and future rights in relation to the Vehicle and any proceeds, are subject to a continuing security interest in favour of the Lender for the payment of all amounts owing under this Contract and any Related Agreement and the performance of all your obligations under this Contract and any Related Agreement.

6.2 Financing Statement

You acknowledge that the Lender may, at your cost, register its security interest in the Vehicle, and all of your present and future rights in relation to the Vehicle and any proceeds, on the Personal Property Securities Register.

6.3 Information

You will do all things and provide all information as the Lender may require for the purpose of securing to the Lender the Vehicle, the payment of all amounts you owe the Lender, and the performance of all your obligations to the Lender, and for ensuring the Lender has a perfected first ranking security interest in the Vehicle and any proceeds.

6.4 Change of Name

You will not change your name or other details without first notifying the Lender in writing at least 14 days before such change takes effect.

6.5 Protection of Interest

You shall protect the interests of the Lender in the Vehicle. In particular, you shall:

- (a) put in place appropriate security precautions to protect the Vehicle from theft and damage;
- (b) not permit any charge, assignment, mortgage, encumbrance, lien or security interest (other than the Lender's security interest) to attach to, nor shall you sell, offer for sale, pledge, lend or otherwise deal with or part with possession or control of, the Vehicle or any part of the Vehicle;
- (c) not change the physical appearance of the Vehicle's body and interior without the Lender's prior written consent;
- (d) not replace the Vehicle, or replace or modify any part of the Vehicle (including the replacement of the engine situated in the Vehicle on the date you executed this Contract), or allow any accession to be installed in or affixed to the Vehicle without the Lender's prior written consent;
- (e) not permit any charge, assignment, mortgage, encumbrance, lien or security interest to attach to any accession(s) that may become installed in, or affixed to the Vehicle; and
- (f) not permit any charge, assignment, mortgage, encumbrance or security interest to attach to this Contract.

6.6 Rights Waived

You agree:

- (a) that nothing in sections 114(1)(a) (to receive notice of sale of goods), 116 (to receive a statement of account), 120(2) (to receive notice of proposal to take goods), 133 (to reinstate security agreement) and 134 (limit on reinstatement) of the PPSA will apply to this Contract or security interest under this Contract;

- (b) to waive all of your rights under sections 121 (to object to proposal), 125 (damage to goods on removing accession), 129 (notice of removal of accession), and 131 (court order preventing removal of accession) of the PPSA; and
- (c) to waive your right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this Contract.

7. EVENTS OF DEFAULT

7.1 You shall pay all amounts owing by you under this Contract to the Lender which are outstanding (including interest, enforcement costs and any default interest charges referred to in the Disclosure Statement)) on the happening of any of the following events:

- (a) you default in payment of any amounts payable by you under this Contract on the due date for payment, time being of the essence; or
- (b) you fail to perform or comply with any of your other obligations under this Contract in any respect which the Lender considers material and, where that failure is capable of remedy, it is not remedied to the satisfaction of the Lender within 10 Working Days of its occurrence; or
- (c) you apply any monies advanced by the Lender under this Contract to any purpose other than the purpose specified in this Contract; or
- (d) you:
 - (i) become insolvent, commit an act of bankruptcy, you make an application for entry into the no asset procedure under the Insolvency Act 2006, or are unable to pay your indebtedness as it falls due; or
 - (ii) stop or suspend, or threaten to stop or suspend payment of any of your indebtedness, or begin negotiation or take any proceedings to reschedule any of your indebtedness other than any negotiations arising pursuant to sections 55-59 of CCCFA; or
- (e) the Lender's security interest in the Vehicle becomes enforceable; or
- (f) any statement made by you, or any information provided by or on behalf of you to the Lender, is found to be untrue, inaccurate or misleading (including by omission) in any material respect; or
- (g) you grant a security to a third party without the consent of the Lender over the Vehicle or any accession installed in or affixed to such Vehicle; or
- (h) without the prior written consent of the Lender, you sell, assign, lease, transfer or exchange, or agree to sell, assign, transfer or exchange, the whole or any part of the Vehicle (including any accession that may become installed in or affixed to the Vehicle), or attempt to do so; or
- (i) any insurance policy in relation to the Vehicle is cancelled without the prior written consent of the Lender; or
- (j) an event occurs which, in the reasonable opinion of the Lender, might materially affect the value of the Vehicle; or
- (k) you or a Guarantor (if any) is, in the Lender's opinion, in default under a Related Agreement;
- (l) the Lender considers, in its sole opinion that the Vehicle is at risk.

7.2 If any of the events in clauses 7.1(a) to 7.1(l) occur, the Lender may at any time repossess the Vehicle subject to its obligations under the CCCFA, and shall have the right as your agent to enter into any premises where the Vehicle is located and remove it.

7.3 You shall pay to the Lender all costs and expenses, including all legal costs and expenses incurred on a solicitor/own client basis, and all disbursements (including any duties or taxes), sustained or incurred by the Lender in relation to the preparation, negotiation of, and entry into this Contract, each waiver or consent in of, and each amendment to this Contract, the registration and discharge of any security in relation to this Contract and the exercise, protection or enforcement by the Lender of its rights under this Contract or in suing for or recovering any amounts owing by you under this Contract.

8. INDEMNITY

8.1 You shall indemnify and hold the Lender harmless against all costs, losses (including consequential loss), expenses (including all taxes and all costs and expenses incurred on a solicitor/own client basis) and liabilities incurred by the Lender and any claims made or proceeding brought against the Lender as a result of the occurrence or continuation of any of the events listed in clauses 7.1(a) to 7.1(l), or breach of any warranty given by you or a Guarantor (if any), or any act or omission by you or a Guarantor (if any).

8.2 You shall pay to the Lender any amount the Lender certifies is required to indemnify the Lender under clause 8.1 on demand.

8.3 This indemnity is unconditional and irrevocable, and survives the termination of this Contract.

9. PAYMENT

9.1 You will pay to the Lender:

- (a) the repayments in accordance with the schedule of payments in the Disclosure Statement (**Repayments**). All Repayments received from you will be credited by the Lender in accordance with that schedule of payments; and

(b) the Credit Fees and Charges; and

(c) the administrative costs of the Lender in the sum of \$50.

(d) A fee to compensate the Lender for any loss suffered by the Lender, should you decide to fully repay all monies owing under this Contract before the final Repayment is due. The estimate of loss suffered by the Lender will be calculated using the formula prescribed in regulation 9 of the Credit Contracts and Consumer Finance Regulations 2004 with such amendments as may be required to enable the Lender to calculate reasonable fees charged by it. When departing from regulation 9 for this purpose the Lender will apply the same principals applicable to the formula under that regulation; and any other amounts payable by you to the Lender pursuant to this Contract.

9.2 All amounts payable to the Lender other than the Repayments, will be paid upon demand by the Lender.

9.3 Interest on overdue payments

If you do not pay any amount under this Contract when it is due, the Lender may charge you default interest on that amount until you pay it. Default interest is calculated as the total of the annual interest rate referred to in the Disclosure Statement plus 10%, and will be charged at the end of each day on the amount in default (which includes accrued Interest and other Credit Fees and Charges). Default interest is payable to the Lender on demand.

9.4 Where and how payments must be made

You must make all payments under this Contract to the Lender at the address specified in the Disclosure Statement or as the Lender otherwise directs. All payments must be made by cash, cheque, direct debit or as the Lender otherwise directs.

9.5 Payments in full

Your obligations to pay the amounts payable under this Contract and to perform your obligations under this Contract will continue regardless of any defect in, or lack of performance of, the Vehicle or any breakdown, damage to, or loss or destruction of the Vehicle, or any delay in delivery of the Vehicle. You agree not to exercise or seek to exercise any right or claim to withhold payment of any amounts payable under this Contract or other monies or any right or claim to any set off against the Lender.

9.6 Prepayments in part

The Lender may in its sole discretion decline to accept a part prepayment from you.

If the Lender accepts part payments the part payment will be credited in accordance with clause 9.1(a).

9.7 Days for payment

If a date for payment of money under this Contract is a day other than a Working Day, then the money must be paid on the immediately preceding Working Day.

9.8 Block, delay or refuse a payment

You and each Guarantor (if any) agree the Lender may delay, block or refuse to process any payment or other transaction without incurring any liability if the Lender suspects that:

- (a) the transaction or payment may breach, or cause the Lender to breach, any law in New Zealand or overseas, or does not comply with any of the Lender's policies; or
- (b) the transaction or payment may directly or indirectly involve the proceeds of, or be applied for the purposes of, a criminal or unlawful activity including money laundering, financing of terrorism or fraud.

10. EXCLUSIONS

No condition or warranty is implied whether by law or otherwise in this contract, that is, other than those implied by statute and which cannot be excluded.

11. ASSIGNMENT

The Lender may assign or transfer all or any part of its rights or obligations under this Contract without your consent or the consent of each Guarantor. You cannot assign or transfer all or any part of your rights or obligations under this Contract. Following such assignment you will have no greater obligations than prior to the assignment.

12. POWER OF ATTORNEY

You irrevocably appoint the Lender and each of its officers from time to time (each an "Attorney") severally, to be your attorney to do and execute on your behalf all acts and documents which you agree to do under this Contract and do not do or which the Attorney considers necessary to fully exercise any of its rights and remedies under this Contract or granted by law.

13. ERRORS AND OMISSIONS

13.1 For the purposes of enabling the Lender to obtain the full benefit of this Contract and to acquire a valid and enforceable security interest over the Vehicle, you authorise and consent to the Lender correcting any details about you, a Guarantor, or the Vehicle, or and adding any missing information in the Disclosure Statement. Where required, the Lender will give you, or a Guarantor (as applicable) notice of any change in accordance with the CCCFA.

14. ADDRESS

You and each Guarantor (if any) shall notify the Lender of any change in your respective addresses.

15. RIGHTS WHEN THE CONTRACT TERMINATES

The termination of this Contract, for whatever reason, will not affect the Lender's rights, powers and remedies with respect to any prior breach by you under this Contract.

16. GIVING NOTICE UNDER THIS CONTRACT

Any party may give another a notice or any other document regarding this Contract by handing it to the addressee personally or by leaving it at, or by sending it by post, facsimile, email or similar facility to the address of the addressee's place of residence or business last known to the person giving notice. The Borrower and each Guarantor also consent to the Lender sending statements, notices, documents and communications through the Lender's website in accordance with the provisions of the CCCFA.

17. COMMISSION

You consent to the Lender paying the commission(s) referred to in the Disclosure Statement.

18. LEGAL COMPLIANCE

You acknowledge that the Lender may change the terms of this Contract if it is required to do so by the CCCFA or any other law. You will be informed of any such changes by the provision of written notice by the Lender or newspaper advertisement.

19. PRIVACY ACT 1993

19.1 The Borrower and each Guarantor authorise the Lender to make enquiries with, collect, use and disclose commercial, personal or credit information (including credit default information, ongoing credit account information and repayment history information) about you and/or a Guarantor (if any) (Information) to and from, a third party (including the Daimler Group, credit reporters, debt collectors, accountants, lawyers, data hosting providers, the Police and any government agency), which the Lender considers necessary to:

- (a) source any required insurances or confirm valid insurance is in place on the Vehicle;
- (b) make a credit decision about you or a Guarantor (if any) in relation to this Contract, including monitoring the performance of your or a Guarantor's (if any) obligations to the Lender, or to better service you or a Guarantor (if any);
- (c) recover any amount you or a Guarantor (if any) owes the Lender or any of the Daimler Group, and to take enforcement action against you or a Guarantor (if any);
- (d) comply with any laws in New Zealand and overseas, including the Lender's obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
- (e) utilise the services provided by those third parties in connection with this Contract and the other purposes listed in this clause 19.1;
- (f) monitor and screen you and a Guarantor (if any) for anti-money laundering, countering financing of terrorism, fraud or crime detection purposes; and
- (g) provide you and a Guarantor (if any) information about products and services the Lender, any of the Daimler Group, or any other organisation with which the Lender does business, can provide to you or the Guarantor (if any), or for other marketing purposes, unless you or a Guarantor (if any) tell the Lender not to.

19.2 You, and each Guarantor (if any), agree that Information disclosed by the Lender to credit reporters may be listed on their systems, used by them to provide their credit reporting services, and supplied to their customers who use their services to make credit decisions about you and a Guarantor (if any). You and each Guarantor (if any) authorise those parties to hold and disclose such information for the purposes set out in this clause 19.2.

19.3 You, and each Guarantor (if any), must provide all information the Lender believes it requires to comply with the Anti-Money Laundering and Countering of Financing of Terrorism Act 2009 or any other laws in New Zealand or overseas.

19.4 You, and each Guarantor (if any), warrant all information provided to the Lender is accurate, up-to-date and complete, and you, and a Guarantor (if any), will update and inform the Lender of any changes to that information.

20. DISPUTES

20.1 If you wish to dispute a payment or anything else about this Contract, you are encouraged to contact the Lender's internal dispute resolution area. If you are dissatisfied with the outcome, you have a right to take your dispute to the Lender's external dispute resolution scheme specified in the Disclosure Statement or to a court.

21. SIGNING IN COUNTERPART

21.1 This Contract may be signed in counterparts. All signed counterparts will together constitute one document. Any copy of this Contract signed by a party which is received by facsimile, email or other reproduction format may be relied on by each other party as though it were an original copy of this Contract. This Contract may be entered into on the basis of an exchange of facsimile or email copies of it.

22. GUARANTEE

22.1 Guarantee and indemnity

In consideration of the Lender entering into this Contract at the request of the Borrower and each Guarantor, each Guarantor jointly and severally:

- (a) guarantees the payment of all amounts payable by the Borrower and the performance of all the Borrower's obligations to the Lender, under this Contract now, or at any time (Guaranteed Amount);
- (b) agrees to pay the Lender any amount payable by the Borrower under this Contract as soon as the Lender demands it; and
- (c) indemnifies the Lender against all costs and expenses (including legal costs incurred on a solicitor/own client basis), losses and liabilities incurred by the Lender, and all claims made and proceedings brought against the Lender because the Lender cannot enforce the above guarantee for whatever reason. This may include a situation where the Lender has no legal right to recover an amount payable under this Contract from the Borrower,

(together this **Guarantee and Indemnity**)

The above indemnity is a principal obligation and is separate to the Borrower's obligations to the Lender under this Contract and a guarantee and indemnity given by another Guarantor. The Lender can require any Guarantor to pay any Guaranteed Amount before or instead of requiring the Borrower or another Guarantor to pay it.

If a Guarantor does not pay any of the Guaranteed Amount when the Lender demands it, the Lender may, among other things:

- (d) sue the Guarantor, or if the Guarantor has given a security interest which secures this Guarantee and Indemnity, the Lender can enforce it; and
- (e) require the Guarantor to pay all its reasonable costs and expenses of enforcing this Guarantee and Indemnity, including legal fees and costs incurred on a solicitor/own client basis.

22.2 Obligations are unconditional

The obligations of each Guarantor under this Guarantee and Indemnity are unconditional, which means each Guarantor will continue to be liable even if:

- (a) The Lender does not exercise any of its rights against the Borrower or another person;
- (b) The Lender gives the Borrower more time to pay any amount payable under this Contract or any Related Agreement or any other concession;
- (c) The Lender makes a different arrangement or makes a compromise with the Borrower;
- (d) The Lender gives the Borrower or another person a discharge or release or limits the Lender's rights;
- (e) The Lender does not take security even if that security was mentioned to the Guarantor; or
- (f) The Borrower or anyone else has any claim against the Lender.

22.3 Contract can be changed

The Lender and the Borrower may change this Contract at any time without the consent of the Guarantors. This includes a change that increases the liability or obligations of a Guarantor under this Guarantee and Indemnity provided where required, the Lender discloses that change in accordance with the CCCFA.

22.4 Guarantors still liable after Borrower makes payment

The obligations of each Guarantor under this Guarantee and Indemnity are continuing, which means they apply to all amounts payable under this Contract, even if some of it has been paid by the Borrower or another person, and even if there is any limit on the total amount the Lender may be able to recover from the Borrower under this Contract or any Related Agreement.

22.5 How the Lender will apply money it receives

If the Lender receives or recovers any money in respect of any amount payable by the Borrower, the Lender may use it to pay off whichever part of the Borrower's debt it chooses. The Lender does not have to apply the money for a Guarantor's benefit.

22.6 Refunding of payments

If the Lender is required to refund any amount which the Borrower or anyone else has paid to the Lender, or which the Lender has recovered in any way (including in an administration, liquidation or receivership), each Guarantor will owe the Lender all amounts they would have owed if the amount refunded had never been paid or recovered.

This obligation continues even after this Contract is terminated or this Guarantee and Indemnity is discharged.

22.7 Other payments

If the Lender is required to deduct any tax from any payment:

- (a) each Guarantor promises to pay that amount to the appropriate authority; and
- (b) the amount payable to the Lender will be increased so that after deducting that tax the Lender receives the same amount it would have received had no deduction been made.

22.8 Release in writing

No discharge or release of a Guarantor from its liabilities under this Guarantee and Indemnity shall be effective unless it is in writing and signed by the Lender or one of its officers.

22.9 Liability to continue

The liability of each Guarantor shall continue even if the Lender has taken possession of the Vehicle pursuant to this Contract.