

These Terms & Conditions form part of your Loan Agreement with Cyclone Finance Limited (the Creditor) in relation to the Disclosure Statement for Consumer Credit Contract (“the disclosure statement”).

The disclosure statement and these Terms and Conditions set out the basis on which the Purchaser records that the Creditor agrees to sell to the Purchaser the Goods (as defined in the disclosure statement) and the Purchaser agrees to pay the Creditor the total balance to be paid set out in the disclosure statement and these Terms and Conditions.

## GENERAL TERMS AND CONDITIONS

### 1. Grant to Security Interest in Goods

You Give A Security Interest In The Goods

- a) You grant to us a security interest over the Goods (and any proceeds of the Goods) as security for due and punctual payment of the unpaid balance.
- b) The security interests are to secure payment to us of the unpaid balance and also to secure your performance of all other terms of this agreement. If you default in making payments when they are due we may recover the Goods and sell it to pay the unpaid balance or overdue amount.
- c) You promise to us that nobody else has the right to recover and sell the Goods and nobody else owns it unless you have told us in writing before you signed this agreement.
- d) If any provision of this Agreement is inconsistent with any non-mandatory provisions of Part 9 of the Personal Properties Securities Act 1999 (“PPSA”), then those provisions of PPSA shall not apply to the extent of that inconsistency.
- e) Sections 121, 127, 129, 131, 133 and 134 of the PPSA do not apply in respect of this Agreement or the Purchasers rights in respect of the Goods.
- f) You waive your right to receive a verification statement following registration of any security interest. This means that when we register our security interest against the Goods we do not need to provide you with a copy of the statement that the Personal Property Securities Registry then sends us about the registration.
- g) The Creditor retains title to the Goods until the Creditor is paid by the Purchaser in full.

### 2. Acknowledgements

- a) The Purchaser acknowledges that this Agreement may be subject to the Terms and Conditions of a Third Party Finance Provider, including, but not limited to, Hewlett Packard Financial Services, IBM Financial Services and Equico (“collectively referred to as a “Third Party Finance Provider”)
- b) All rights that a Third Party Finance Provider has or may have in the goods or generally under and pursuant to their agreement with the Creditor also apply to this agreement
- c) The Creditor will provide to the Purchaser, upon request, a copy of the relevant Third Party Finance Providers Terms and Conditions, as applicable.
- d) Pursuant to the applicable Third Party Finance Provider Agreement, the Third Party Finance Provider retains title to the goods until they are paid by the Creditor in full. This arrangement is acknowledged by the Purchaser. Therefore, the Purchaser does not obtain title to the goods until the business day following the occurrence of both of the following events:
  - (i) the Creditor has obtained title to the goods pursuant to the Third Party Finance Provider Agreement; and
  - (ii) the Purchaser has paid the Creditor in full.

### 3. Purchasers Obligations

1. The Purchaser will duly and punctually and without demand pay and satisfy to the Creditor the payments mentioned in the Disclosure Statement by:

(a) paying the Deposit mentioned in the Disclosure Statement to the Creditor at the time the Purchaser signs this Agreement (unless The School is paying the Deposit on behalf of the Purchaser) and

(b) paying the instalment payments as set out below and specified in the Disclosure Statement You must make all payments without any deduction or withholding for any purpose whether by way of set-off counterclaim or otherwise and in such manner as we require. That means if you believe we owe you a debt of money or if you have any sort of claim against us, you must not take off any part of that debt or any of the amount you claim we owe you from your payment of any amount due under this agreement.

2. You acknowledge that notwithstanding the finance is to be made available by the Creditor, that DebitSuccess has been appointed by the Creditor to collect the payments on an agreed schedule from the Purchaser on behalf of the Creditor. You must establish a Direct Debit Request (DDR) with DebitSuccess authorizing them to make deductions as required for the term of the finance agreement

3. You acknowledge that this Agreement is entered into and is subject to:

- i) The Disclosure Statement for Consumer Credit Contract between the Creditor and the Purchaser, and these associated terms and conditions.
- ii) The DebitSuccess Contract – Terms and Conditions, and the DDR Service Agreement. You must sign this up online directly with DebitSuccess.
- iii) Crown Insurance Material Damage and / or Extended Warranty terms and conditions. A copy of

this is available on our website.

- iv) The **Third Party Finance Provider** and all rights that **they** have or may have in the Goods or generally under and pursuant to the **Third Party Finance Provider Agreement**. Copies of these will be provided on request.

**4. You Must Pay The Creditor All Interest And Credit Fees (Including default interest and default fees) and other costs.**

You must pay to us as soon as we ask or when they are otherwise due and in any event we may charge against your account with us:

- a) Interest and depending on the type of loan we have provided you this will be shown in the **"INTEREST"** section of the disclosure statement or advised to you at the time of your purchase of Goods; and
- b) The credit fees shown in the **"CREDIT FEES AND CHARGES"** section of the disclosure statement; and
- c) The default fees and default interest shown in the **"DEFAULT INTEREST CHARGES"** and the **"DEFAULT FEES"** sections of the disclosure statement; and
- d) All of our costs which we may suffer or have to pay in connection with:
  - i) Any further loan application, credit and security checks and the work we do to consider that application. If you apply for a further loan from us we may charge you the cost of dealing with your application.
  - ii) Any variation and release of this agreement or any PPSA registration or financing statement in relation to this agreement not provided for in the disclosure.
  - iii) Any dealing we have with any other person who has (or claims to have) any interest (whether registered or not) in the Goods.
  - iv) Any dealing with you about the agreement. That will include any loan settlement or proposed prepayment (repaying all or some of the unpaid balance in advance) that does not proceed and if you are in default, it will also include the cost of any dispute.
  - v) If you are in default the transfer of the security interest of any other secured party to us or our security interest to another secured party.
  - vi) Anything we decide to do in order to enforce this agreement in any way or to protect our rights under it. That may include (but not limited to) our going to court or the Dispute Tribunal and our instructing solicitors and debt-collectors.
  - vii) Anything we have to do because you have not done something you are required to do.
  - viii) If you (or any person on your behalf) make a demand under section 162 of the PPSA without justification or obtaining of an order under section 167 of that Act. Section 162 allows you to demand that we change or remove the financing statement that shows we have a registered security interest in the Goods. If you wrongly demand that we change or remove the statement, we will charge you the cost of going to court to protect it,

And you agree that amounts referred to in this paragraph will become part of the unpaid balance and that they are contractual damages if they become chargeable to you as a result of your default under this agreement. This means that you agree to pay them and you may not argue about them as long as the Creditor proves the amounts.

**5. Our Costs Referred To In Paragraph 3 Above Include:**

- a) Our own internal administration fees; and
- b) Any external administration fees for any agency that we appoint to collect the payments; and
- c) Expenses and any other liabilities we do not now know about. These include legal expenses on a solicitor and own client and on a full indemnity basis. That means that we may recover from you the full costs which our own lawyers charge to us if we instruct a lawyer as part of enforcing this agreement against you.

**6. Default Interest And Default Fees.**

If you are in financial default you must pay us default interest on any unpaid payment or other overdue amount and if you are in any default at all you must pay default fees. You must pay default interest from the date you fall into financial default until you are no longer in financial default. You must pay default fees from when you fall into any default until you cease that default. We may debit (charge to you) all default interest and default fees as set out in the **"DEFAULT INTEREST CHARGES"** and **"DEFAULT FEES"** sections of the disclosure statement and they will become part of the unpaid balance. You must pay default interest on the unpaid balance but only if payment of the unpaid balance falls due for a reason other than your financial default.

**7. You Are Not Released From Liability Just Because Somebody Else Is.**

Somebody else may be a Purchaser under this agreement as well as you. If that person is found not to be liable for any reason, that reason does not release you from being liable to pay or perform your obligations. That means that even if we cannot enforce this agreement against somebody else, we may still enforce it against you.

**8. It Is Your Job To Know What You Owe The Creditor From Time To Time.**

We must disclose (give) information to you at the frequency set out in the **"CONTINUING DISCLOSURE"** section of the disclosure statement. In spite of that, it is your responsibility to find out from us the amount of any default interest and default fees or credit fees you may have to pay from time to time and to pay them. For example, if you miss a payment that is due or if you do not pay some other money when it is due, default interest or default fees may be debited. It is your job to find out what the default interest and fees are and to pay them.

**9. You May Repay Your Loan Early.**

You may repay the unpaid balance of your loan in full before it is due at any time without any additional fees or charges.

**10. You Must Always Be Able To Pay Your Debts When They Fall Due.**

You will breach this agreement and we may call up the unpaid balance if you commit any act of bankruptcy, enter into the No Asset Procedure or without our consent become subject to a summary instalment order.

**11. You May Not Impose Any Part Payment Settlement On Us.**

If you send us a cheque or in any way pay us money that is less than the unpaid balance and you claim or wish to claim that our banking the cheque or accepting the money settles payment of the unpaid balance in full, we will not be bound by your claim unless we have agreed to that settlement in writing before you sent the cheque or paid the money.

**12. Everything You Have Told The Creditor Must Be True.**

You promise that all information provided by you or on your behalf to enable us to decide whether or not to lend to you is true and correct and if it is not true and correct we may demand payment of the then unpaid balance of the loan and you must pay forthwith (straight away) on such demand.

**13. All Your Obligations Are Joint And Several.**

If another Purchaser signs this agreement, we may recover money due and payable from any of you or from all of you. We may enforce this agreement in other ways against any of you or against all of you.

**CREDITOR'S RIGHTS AND OBLIGATIONS**

**14. Creditor May Set-Off Any Debt To You.**

If you have a claim against us or if we owe you money, we may set-off that claim or debt against any claim we have against you or any debt you may owe to us. This means we may reduce any amount we owe you by any amount that you owe us.

**15. The Creditor May Vary Fees.**

We may from time to time vary (change) the credit fees and default fees payable under this agreement so they go up or down. You must pay such changed fees.

- a) In each case, we will give you not less than a month's notice of any such change and any increase or decrease in your periodic payment and the date when any increased or decreased payments begin.
- b) From that date you must pay the changed amount and if you are in financial default or default generally, you must also pay any changed default fees.
- c) No increase will be backdated.
- d) Any fee increase shall be proportional to the increase in our cost of funds or the cost basis of the fee. For example, if our costs go up by 5% we would not increase credit fees by more than 5%.

**16. Creditor May Remedy Your Default At Your Cost.**

If you fail to do anything which you must do or if you do anything you must not do, we may do or pay anything to remedy the default (to make it right). If we do so we may add the cost of the doing or paying to the unpaid balance.

**17. Acceleration And Call Up Of Loan.**

Subject to section 128 of the Property Law Act 2007 (which in some cases requires a legal document about the Goods which are not consumer goods to be sent) the Creditor may accelerate repayment of the loan and require you to pay the unpaid balance to the Creditor straight away (forthwith) if:

- a) Any Goods are at risk (see paragraph 20 below).
- b) You breach paragraph 10 above.
- c) You breach paragraphs 21a) to 21d) below.
- d) You fail to pay any money for 5 working days after it is due or if you continue any other default for 9 working days after the posting of any notice of that default to you (or 5 working days if such notice is sent by electronic means).
- e) The student nominated on the Disclosure Statement leaves the school, and your account is currently in default, or at some time since the start of the contract, has been in default

The Creditor may call up that money even although the time for payment has not yet been reached.

**THE GOODS**

**18. How You Must Store And Care For And Use The Goods And Protect The Creditor's Interest In Them.**

- a) The Purchaser will keep at the Purchaser's expense the goods in good order and repair.
- b) If the Purchaser or any other person alters the goods, or adds any item to them, the alterations and additions will belong to the Creditor or the Third Party Finance Provider (as appropriate), until the Purchaser has title to the goods pursuant to clause 2.
- c) You must obey any laws about owning and using the Goods and you must not use them in any dangerous or illegal activity nor for any purpose for which they are not intended. You must not:
  - i) Do anything or allow anything which may damage, weaken or challenge our security interest in the Goods or any registration of the Goods on the Personal Property Securities Register.
  - ii) Grant any other security interest over the Goods nor dispose of nor allow the disposal of the Goods by sale or gift or lease or in any other way or cause or allow the Goods to be taken out of the possession of the Purchaser who owns it, nor destroyed, damaged, endangered, disassembled, removed from the place where you are required to keep it nor concealed from the Creditor.
  - iii) Change or remove the Goods part number or serial number unless we first agree in writing. In any event, if any of these acts or omissions occur, you must immediately advise us in writing.
- d) Purchaser to Notify Change of Address, Status and Serial Number  
The Purchaser will notify the Creditor in writing at once of any change of:

- (a) the Purchaser's address;
- (b) any registration or serial numbers for the goods.

**19. Creditor May Inspect The Goods.**

The Purchaser will allow the Creditor, the Third Party Finance Provider or their agents to inspect the goods at all reasonable times.

**20. The Creditor will insure the Goods.**

- a) The Goods will continue to be insured by the Purchaser for the duration of the loan under the disclosure statement.
- b) The terms of the insurance are as set out in the "Crown Insurance" schedule which is available on request, or viewable at [www.cyclone.co.nz/finance](http://www.cyclone.co.nz/finance)

**21. The Creditor May Recover And Sell the Goods On Default.**

If you default under this agreement:

- a) Subject to any requirement to give you notice, we may recover the Goods. When we have the right to recover:
  - i) We may enter any premises (any land) to look for and recover the Goods.
  - ii) You must not do anything to prevent or hinder us from recovering the Goods. You must keep out of the way when we are recovering the Goods.
  - iii) We may sell the Goods by auction or by private sale or otherwise. Subject to any law, we may buy the Goods ourselves, give credit and allow payment over time as if we were the owner and nobody else had any rights.
  - iv) You must do everything necessary to help with the sale and that includes signing any documents needed or desirable.
- b) When we sell the Goods:
  - i) Any buyer of the Goods need show only our receipt to prove the buyer has paid the sale price and
  - ii) The buyer need not investigate or question the propriety or regularity of the sale to the buyer and the buyer is not to be affected by any notice express or constructive that such sale is improper or irregular.
  - iii) Subject to section 83ZI of the CCCFA we are not obliged to account for the proceeds of sale of the Goods and until we have received the proceeds. That means we do not have to account to you about the sale until we have the cash.
- c) We may terminate this agreement

If this agreement is terminated, all unpaid amounts will become immediately payable, even if not otherwise yet due.

**22. You Must Compensate The Creditor If Anyone Makes A Claim Against the Goods.**

If we lose any money or have to spend any money in relation to the Goods because you have:

- a) done something; or
- b) you have allowed something to happen; or
- c) you have neglected or failed to do something,

then you must pay the amount of that money to us and we may add it to the unpaid balance.

**COMMUNICATIONS AND NOTICES**

**23. You Must Always Keep Us Up To Date With Your Home And Email Address And Phone Numbers.**

You must not change your physical residential (home) address or email address, or your landline or cellular telephone number without first giving us 2 working days written notice of your intention to do so. You must at the same time provide us with the replacement home or email address or landline or cellular telephone number. We may write to you at the address last notified to it.

**24. How We Will Give You Disclosure/Documents And Tell You Anything.**

- a) For any disclosure in accordance with the CCCFA in relation to this agreement you agree that disclosure information can be sent to you by email to the last email address you have provided to us or we can provide you a link to our website.
- b) If we wish to serve any legal paper on you the legal paper will be sufficiently served or given if
  - i) We deliver it to you; or
  - ii) We leave it at your usual or last known home address, place of business or of work or at a service address you give us in this agreement so we can give legal paper to you; or
  - iii) We post it to you in a letter addressed to you by name at your home, place of business or of work, or service address; or
  - iv) We send it to you by an electronic communication (such as email, fax, Facebook, Skype) although we cannot give you a recovery warning notice or a post-rerecovery notice in this manner.
- c) Our six monthly disclosure statements will be sent out in May and November of each year.
- d) If you are dead, the legal paper may be served on or given to your personal representatives — the people in charge of your estate when you die.
- e) If the legal paper is sent to you —
  - i) By post, it is to be treated as if you received it (got it) on the fourth working day after the day on which the letter is posted (and to prove delivery all we need to do is prove that the letter was properly addressed and posted):
  - ii) By electronic communication, it is to be treated as if you received it (got it) on the second working day after the day on which the legal paper is sent.

f) Despite anything in this paragraph 30, the court may in any case make an order saying how any legal paper is to be served on or given to you. The court may also order that we do not need to give you the legal paper. If we go to court for an order about how you are to be given a legal papers or how we are to tell you about them, you agree that legal papers may be served on you at the last address that the Creditor has for you as notified by you.

g) In addition, a legal paper will be sufficiently served or given if it is

- i) Handed to any person who appears to live at any home address of any borrower; or
- ii) Attached to an outside door at either address.

h) Further, if your address is a flat or apartment or room (your flat) in a building and if we are unable to get into the building or get to your flat because of the security system of the building or for some other reason, then a legal paper will be sufficiently served or given to you if it is posted at an outside letterbox for your flat.

i) If there is no such letterbox, a legal paper will be sufficiently served or given to you if it is clearly addressed to you and attached to what appears to be the main outside door to the building for your flat or if the legal paper is given to any building manager or receptionist for the building and the manager or receptionist is asked to give it to you.

j) Further, if you have given an email address or a facsimile number or a mobile phone number at any time and that address or number shall be an information system specified by you for the purpose of service and general communication. That means we may communicate with you in any way that we can on the Internet.

## 25. **Statements Issued Via Email**

You agree that we will issue disclosure statements by email to your email address

## **OTHER**

### 26. **Privacy Consents.**

You authorise us to collect, hold, use and disclose your personal information that you give us, or any personal information we gather from third parties for the purposes of administration, monitoring, debt collection or enforcement of this agreement or complying with our legal obligations. Without limiting the preceding, you consent to us:

- a) Verifying what you tell us about yourself with third parties such as government agencies.
- b) Referring any debt or account to a third party including (but not limited to) debt collection agencies, and/or credit reporters.
- c) You have the right under the Privacy Act 1993 to access and correct any personal information we hold on you.
- d) Where your child leaves the school that they attended when we first provided credit under the disclosure statement, you agree that your contact details, and last known address information can be provided to the Creditor from that school, or any other school the child attends, the Ministry of Education, or the Ministry of Social Welfare.

### When Student Ceases to be Enrolled At School

The Purchaser will immediately notify the Creditor if the Student named in the Disclosure Statement ceases to be enrolled at the School as detailed in the Application for Finance. Upon the Student leaving the School the Purchaser may be requested to:

- (a) make full repayment in accordance with clause 17 at which time ownership of the goods will pass to the Purchaser; or
- (b) return the goods to the Creditor and pay to the Creditor. Upon the return of the goods in accordance with this clause, the Creditor will attempt to resell the goods. On sale, the Creditor will apply the Purchaser's obligations under clause 3 the amount realised by sale less any costs incurred by the Creditor; or
- (c) allow the contract to continue as normal

### 27. **New Zealand Law Applies.**

This agreement is governed by New Zealand law and you and we agree that the New Zealand courts may rule on any disputes.

### 28. **Only Written Changes To This Agreement Are Binding.**

We are not bound by any change to this agreement unless it is in writing and signed by one of our staff.

### 29. **This Agreement May Be Enforced By An Assignee.**

We may give or assign our rights under this agreement to somebody else ("assignee"). If we do that, this agreement will apply to the assignee as if the assignee were the Creditor. The assignee may enforce this agreement against you. You have no right to assign rights under this agreement.

## **DEFINITIONS**

In these terms and conditions the expression:-

- "Purchaser" or "you" means the person(s) shown in the Purchaser Details section of the disclosure statement and includes their/your executors, administrators and successors in title;
- "CCCFA" means the Credit Contracts and Consumer Finance Act 2003;
- "the Goods" means the goods and any other personal property described in the disclosure statement
- "default" means that you do something you have agreed not to do or you fail to do something you have agreed are required to do;
- "financial default" means that you have failed to make a payment or other amount when due or demanded as the case may be;
- "legal paper" means a document or a notice or other written paperwork about this agreement;
- "PPSA" means Personal Property Securities Act 1999;
- "we" or "us" or "Creditor" means Cyclone Finance Limited and its successors and assigns;
- Any expression not described or defined in this agreement shall have the meaning given to it in the CCCFA unless the context requires otherwise. Unless the context prevents it, the singular shall include the plural and vice versa.