

## Auto Finance Direct - LOAN TERMS

### 1. HOW WORDS ARE DEFINED

**“Act”** means the Credit Contracts and Consumer Finance Act 2003 and any amendments to that Act and any regulations, orders or notices made under that Act.

**“Agreement”** means the Disclosure Statement, these Loan Terms, and the Waiver Terms (if applicable).

**“Borrower”** means the person or persons specified as Borrower in the Disclosure Statement, and referred to in these Loan Terms as **“You”**, **“Your”** or **“Yours”**.

**“Default Interest Rate”** means the interest rate specified as the Default Interest Rate in the Disclosure Statement.

**“Disclosure Statement”** means the Disclosure Statement attached to these Loan Terms setting out the specific terms that apply to this Loan.

**“Event of Default”** means any of the events specified in clause 12.1 of these Loan Terms.

**“Expiry Date”** means the final payment date specified in the Disclosure Statement.

**“Extra Repayment”** means any additional payments you make towards Your Loan other than a full prepayment pursuant to clause 2.8.

**“Fees”** means the fees specified as Fees in the Disclosure Statement and includes credit fees, default fees, and prepayment fees.

**“Interest Commencement Date”** means the date that the Loan is advanced to You by the Lender.

**“Interest Rate”** means the rate of interest applicable to the Loan specified as the Interest Rate in the Disclosure Statement.

**“Lender”**, **“Our”**, **“Us”**, and **“We”** refers to Auto Finance Direct Limited or its assignees.

**“Lifestyle and Retail Waiver”** means any Lifestyle Waiver and/or Retail Waiver You purchased at the time You entered into this Loan (if applicable) as described in the Waiver Terms forming part of this Agreement (if applicable).

**“Loan”** means the principal loan advance, interest, Fees and costs specified in the Disclosure Statement.

**“Loan Terms”** means these Loan Terms.

**“Potential Event of Default”** means any event which, with the passing of time or the giving of notice, would constitute an Event of Default.

**“PPSA”** means the Personal Property Security Act 1999 as amended or replaced from time to time.

**“Security”** means the vehicle(s) specified as security for the Loan in the Disclosure Statement.

**“Waiver Terms”** means the terms and conditions of any Lifestyle and Retail Waiver (if applicable).

**“Working Day”** has the meaning given to that term in section 4 of the Property Law Act 2007.

### 2. LOAN

2.1 We agree to make the Loan available to You on the terms contained in this Agreement.

2.2 You will make the Loan payments detailed in the Disclosure Statement to Us by the instalments and in the manner set out in this Agreement.

2.3 For the avoidance of doubt, You acknowledge that the Loan payments and Fees and interest charges recorded in the Disclosure Statement are based on the Loan being advanced to You on the date of the Disclosure Statement. Should the date of the Loan advance change, We will disclose the updated Loan payments and Fees and interest charges to You.

#### 2.4 GST

For the purposes of the Goods and Services Tax Act 1985 (**“GST Act”**), You covenant with Us that any Security has been acquired for private or domestic use only and will not be used in the course or furtherance of any taxable activity. You further covenant that any supply of the Security if the Security was sold by You would not be a taxable supply, and You acknowledge that We may rely on this covenant for the purposes of section 5(2) of the GST Act.

## 2.5 **Agreement to Repay**

You agree that You will repay the Loan to Us together with interest, Fees, any default interest and all enforcement expenses and costs and other charges which We are entitled to receive and/or make under this Agreement and the Security, at the times and in the manner set out in this Agreement.

## 2.6 **Conditions**

Before We make the Loan available to You:

- (a) This Agreement and the Security must have been properly signed by all required parties; and
- (b) No Event of Default has occurred or is likely to occur.

## 2.7 **Payment of the Loan and Interest**

- (a) You shall repay the Loan to Us in full on or before the Expiry Date;
- (b) You shall pay interest on the Loan, calculated on a daily basis by applying the Interest Rate to the drawn down balance of Your Loan;
- (c) Interest accrued on the Loan in the preceding month is payable on the last day of each month;
- (d) Payments made to Us under this Agreement shall be applied to reduce any amounts outstanding under this Agreement in whatever manner and order We decide.

## 2.8 **Right to Prepay the Loan**

You may repay the Loan in full at any time prior to the Expiry Date upon payment of:

- (a) The full amount of the Loan then outstanding, calculated in accordance with section 51(2) of the Act;
- (b) Interest at the Interest Rate up to the date of prepayment;
- (c) All discharge fees and other fees payable to Us or Our lawyers relating to the discharge of any of the Security;
- (d) All other moneys then owing to Us under this Agreement; and
- (e) The amount determined by Us to be a reasonable estimate of Our loss arising from the prepayment (including costs relating to movements in interest rates during the term of the Loan and any administration costs).

## 2.9 **Right to make Extra Repayments**

Should You make any Extra Repayments at any time prior to the Expiry Date, then We may elect at Our discretion to do any one of the following:

- (a) Decline to accept the Extra Repayment and refund the Extra Repayment to You, less any amounts owing by You including Fees; or
- (b) Prepare a variation pursuant to clause 15.2, to Your outstanding Loan account to take account of the Extra Repayment; or
- (c) Hold the Extra Repayment amount in credit for You, to be applied to Your final Loan payments in reverse order from the Expiry Date. At any time prior to the Extra Repayment being applied to the final Loan payments, You may request that the Extra Repayment be refunded to You, less any amounts owing by You including Fees.

2.10 For the avoidance of doubt, We have the express right to decline any Extra Repayments or partial prepayments of the Loan.

## 2.11 **Time and Place for Payment**

- (a) Unless otherwise agreed in writing, all payments towards the Loan, interest, and any other costs advised by Us shall be made by direct debit to the bank account specified in the Disclosure Statement.

You agree to fill out a direct debit form as part of this Agreement accordingly.

## 2.12 **Deduction**

All payments that You make to Us must be:

- (a) Without any conditions; and
- (b) Without any deductions except as agreed by Us.

If there are any deductions required by law from Your payment, then You will increase the amount You pay Us so that We receive the full amount of the payment that We require.

### **3. DEFAULT INTEREST**

3.1 If You fail to pay any amount due to Us under this Agreement on its due date, interest will accrue on the unpaid amount at the Default Interest Rate from its due date up to the date of actual payment of the amount. Any interest accruing under this clause will be immediately due and payable by You without the need for Us to demand payment.

### **4. CREDIT FEES AND CHARGES**

4.1 You will pay Us the Fees, at the rates and at the times set out in the Disclosure Statement.

4.2 We may at Our discretion from time to time alter any of the Fees upon written notice to You or introduce new Fees. Any such changes will take effect from the time stipulated by Us which shall not be before the date of the notice.

#### **4.3 Legal Costs**

You must pay to Us, upon demand, Our legal costs (as between lawyer and client) for:

- (a) The registration of any security interest taken in conjunction with the Security and any variation or discharge or transfer of any security interest;
- (b) Legal services arising from or relating to any default under this Agreement and/or the Security and the enforcement or exercise or contemplated or attempted enforcement or exercise of any of Our rights;
- (c) Dealing with any of Your requests for a variation, waiver, change, demand or other concession; and
- (d) Legal services deemed necessary or desirable by Us relating to the Loan or Security.

### **5. SECURITY**

#### **5.1 Fitness for Purpose**

If applicable to this Loan, You agree that You did not rely on Our skill or judgement when deciding whether to purchase the Security and in regard to the fitness of the Security for any purpose and that You have inspected the Security and have not made known to Us or to any of Our employees or agents any particular purpose for which the Security is required.

#### **5.2 Title and Risk**

If applicable to this Loan, title in the Security will not pass to You until all money payable by You pursuant to this Agreement has been paid and all of Your other obligations pursuant to this Agreement have been satisfied in full. All risk in the Security is to pass to You on signing this Agreement.

#### **5.3 All Obligations Secured**

All money that You owe under this Agreement and under any other agreement with Us will be secured by the Security.

#### **5.4 Signing Security**

To secure Your obligations to Us, each Borrower shall sign this Agreement and the Security and this clause shall constitute an agreement by each Borrower to enter into, sign and deliver to Us the Security.

#### **5.5 Further Assurance**

You will do (or ensure that it is done), immediately at Your own cost, anything that We request in order to secure any property which secures or is intended to secure any money You receive from Us, including signing and delivering documents (including new security documents) and anything else that We require to ensure that We have effective security with the priority We require.

## 5.6 **Location of Security**

If the Security or any part of the Security is removed, seized, or taken out of Your possession, You will immediately give Us written notice of the address of the place where the Security may be and of the name and contact details of the person who has possession of the Security.

5.7 You will not take or permit the Security to be taken out of New Zealand without first obtaining Our written consent. You will, whenever requested to do so by Us, notify Us in writing of the place where the Security may be, within 24 hours of Our request.

## 6. **MAINTENANCE**

6.1 You will, at Your expense:

- (a) Maintain the Security in good operating repair and condition;
- (b) Operate and use the Security properly in accordance with manufacturer's instructions and/or only for the purpose intended by the manufacturer and having regard to the design capabilities and limitations of the Security;
- (c) Advise Us immediately of any loss or damage to the Security;
- (d) Allow Us and Our employees or agents to inspect and test the Security at any time, on being given reasonable verbal or written notice;
- (e) Comply with all laws affecting the Security or its possession or use including, if applicable, due to the nature of the Security:
  - (i) Keeping the Security licensed and registered if required;
  - (ii) Maintaining a current warrant or certificate of fitness; and
  - (iii) Not permitting an unlicensed or disqualified driver to drive it.
- (f) Replace all defective or worn out parts of the Security. All accessories and replacement parts and any additional thing or material which is now or at any time during the term of this Agreement attached to the Security shall form part of the Security.
- (g) Pay all fines, payments for licenses, taxes and other charges payable in respect of any Security and not alter, deface or conceal any name plate or number plate.

6.2 You will not make any alterations to or modify the Security without Our prior written consent.

## 7. **PERSONAL PROPERTY SECURITY ACT 1999**

### 7.1 **Registration of Financing Statements**

You accept and agree that We may register a financing statement at Your cost to perfect Our Security in accordance with the PPSA.

### 7.2 **Rights**

You waive any rights to receive a copy of a verification statement under the PPSA and agree, to the extent permitted by law, that in respect of any arrangement between You and Us:

- (a) Sections 114(1) and 133 of the PPSA shall not apply;
- (b) You waive Your right to receive a statement of account on sale of any collateral in terms of section 116 of the PPSA;
- (c) You waive Your right to object to Our proposed retention of any collateral in terms of section 121 of the PPSA;
- (d) You waive Your right to any claim for damage to goods in terms of section 125 of the PPSA when We remove an accession;
- (e) You waive Your right to receive notice of an intention to remove an accession in terms of section 129 of the PPSA;
- (f) You waive Your right to seek an order of the Court concerning the removal of an accession in terms of section 131 of the PPSA;

- (g) The provisions of Part 9 of the PPSA which are for Your benefit, or place obligations on Us, shall apply only to the extent that either they are mandatory or We have agreed in writing to their application; and
- (h) Where We have rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.

## **8. METHODS OF DISCLOSURE AND SERVICE OF NOTICES**

### **8.1 Consumer Credit Contract**

You consent to disclosure of the information set out in section 19 of the Act being made, at Our discretion, either by way of a website in accordance with section 21(1)(b) of the Act or in accordance with the methods described in section 35 of the Act.

### **8.2 Electronic Disclosure**

Without limiting the methods of disclosure permitted under section 35 of the Act, You consent to all forms of disclosure and any notice from Us being made, if We so choose, in electronic form by means of an electronic communication.

8.3 You acknowledge that, in respect of such disclosure, We have imposed no conditions regarding the form of the information or the means by which the information is produced, sent, received, processed or stored. You agree that disclosure may be made by Us sending You an electronic communication that allows the disclosure statement to be accessed from a website or by means of the internet.

8.4 Notices (other than those related to disclosure under the Act) under this Agreement may, without prejudice to any other means of service, be served in accordance with section 83ZQ of the Act.

## **9. INDEMNITY**

9.1 Each Borrower will indemnify Us against each loss (including loss of profit), expense and liability We incur as a result of:

- (a) The occurrence or continuation of an Event of Default;
- (b) Any amount payable to Us under this Agreement not being paid on its due date;
- (c) Any payment being avoided by law;
- (d) Anything done or omitted to be done by Us or a receiver in the exercise of Our or its rights under this Agreement or any Security or at law,

by payment to Us of the amount We certify is required to indemnify Us for that loss, expense or other liability.

## **10. REPRESENTATIONS AND WARRANTIES**

10.1 Each Borrower represents and warrants to Us as follows:

### **(a) Binding Obligations**

Its obligations under this Agreement and the Security are legal, valid, binding and enforceable against it in accordance with its terms.

### **(b) Information True**

All information provided to Us by it or any of its employees or agents in connection with this Agreement and the Security is true, complete and accurate in all material respects, and it is not aware of any facts or circumstances which would or might, if disclosed, materially and adversely affect the decision of a lender considering whether or not to provide finance to the Borrower.

### **(c) Solvency**

No action has been taken or threatened against it for its dissolution or bankruptcy or for the appointment of a receiver, manager, liquidator, trustee, official assignee, statutory manager, administrator or similar person. It is able to pay its debts when they become due in the

ordinary course of business and the value of its assets is greater than its liabilities (including contingent liabilities).

(d) **Event of Default**

No Event of Default or Potential Event of Default has occurred or is continuing.

(e) **Ownership**

As at the date of registration of any Security, the giver of that Security will be the sole legal and beneficial owner of the Security, free of any other security interest (other than in favour of Us or as disclosed to and accepted by Us in writing).

10.2 **Our Reliance on Warranties**

Each Borrower acknowledges that We have decided to lend money to the Borrower in reliance on the representations contained in clause 10.1.

10.3 **Continuation of Warranties**

Each representation and warranty in this Agreement is deemed to be continually repeated for as long as this Agreement is in effect or any amount owing to Us under this Agreement remains outstanding.

**11. UNDERTAKINGS**

11.1 **Supply of Information**

You will supply to Us promptly and fully (and in any event within five (5) Working Days after Our request) any information regarding Your financial circumstances, personal address, location of the Security and details of assets or any other information as We may reasonably request.

11.2 **Notification of Default**

You will notify Us of any Event of Default or any Potential Event of Default and the steps, if any, being taken to remedy the relevant default promptly upon becoming aware of its occurrence.

11.3 **Insurance**

You will insure and keep insured the Security:

- (a) Against loss or damage by fire, earthquake, theft, burglary, weather damage and other risks;
- (b) In Your name as well as Ours (as co-insured and secured party) for Our respective rights and interests as loss payee for all claims in respect of any insurance policy;
- (c) With an insurer acceptable to Us and on terms acceptable to Us.

11.4 Any amount payable under any insurance policy will be paid to Us, to be applied as We think fit, either in making good any damage to the Security or towards the payments set out in the Disclosure Statement and any other amounts outstanding under this Agreement, as if the amount paid under the insurance policy were a full prepayment under clause 2.8 or an Extra Repayment under clause 2.9 (as applicable) by You.

11.5 Where You have purchased a Lifestyle and Retail Waiver then You agree to be bound by the Waiver Terms which You signed at the same time as this Agreement.

11.6 **Ranking**

You will ensure that (unless We agree otherwise in writing) the Security is at all times first ranking and has priority over all other secured parties.

11.7 **Creation of Security Interest**

You will not without Our prior written consent create or grant any security interest over the Security or any part of the Security.

11.8 **Disposal of the Security**

You will not without Our prior written consent dispose of, sell or otherwise transfer Your interest in the Security.

**12. DEFAULT**

12.1 **When Default Occurs**

An Event of Default will occur if:

- (a) Any Borrower fails to pay any moneys due to Us under this Agreement;
- (b) Any Borrower fails to comply with any of its other obligations set out in this Agreement or the Security and, where such failure is capable of remedy, its failure continues for a period of five (5) Working Days after We have served a notice on it requiring it to remedy such failure;
- (c) A default (however described or defined) occurs under the Security;
- (d) A Borrower is a natural person and it dies or becomes legally incapacitated, changes its name without Our prior written consent, becomes bankrupt or in Our opinion it appears that it is insolvent or has committed an act of bankruptcy;
- (e) A Borrower has a receiver, administrator, manager, liquidator, trustee, official assignee, statutory manager, administrator or other similar person appointed or any application is made for such appointment to control its assets, or in Our opinion it appears that it is insolvent;
- (f) A third party takes possession of or otherwise exercises rights over the Security;
- (g) A material change occurs or any other circumstance arises which in Our opinion is likely to have an adverse effect on a Borrower's ability to perform the obligations in this Agreement;
- (h) A Borrower cancels or terminates its obligations under this Agreement or a Security (other than a permitted prepayment) without Our prior written consent;
- (i) It is unlawful for a Borrower to perform any of its obligations under this Agreement or a Security, or any part of this Agreement or a Security is claimed to be invalid, ineffective or unenforceable; or
- (j) Any other event similar to those described above occurs.

#### 12.2 **Our Rights and Powers on Default**

If an Event of Default occurs, We may at any time, in addition to any rights, remedies or powers otherwise conferred upon Us by law, exercise all or any of Our following rights and powers:

- (a) Cancel the Loan;
- (b) Call up the balance of all of the money that You owe Us under this Agreement;
- (c) Exercise Our rights under this Agreement and any of the Security and at law;
- (d) Obtain judgment and enforce such judgment against You (and if more than one of You, all or any one or more of You) for all of the moneys owing or, if the amount realised from the exercise of any of Our rights and powers in the Security is not sufficient to pay the moneys owed to Us, then the amount of the shortfall;
- (e) Enter the premises where the Security is held and repossess and sell the Security in accordance with the provisions of the Act, subject to the Borrower's right to reinstate the Agreement and the Borrower's right to settle the Agreement, as conferred by sections 83ZB and 83ZE of the Act;
- (f) Lodge notice of such default with all credit reference agencies operating in New Zealand.

#### 12.3 **Repossession**

Subject to the Act, upon the occurrence of any one or more of the events listed in clause 12.1, or where We have reasonable grounds to believe that the Security has been or will be destroyed, damaged, endangered, disassembled, removed or concealed contrary to the provisions of this Agreement, We may do either or both of the following:

- (a) Without any prior notice repossess the Security and for that purpose, We may by Our officers or agents, enter any property occupied by You and any other property which You might enter where the Security may be or is supposed to be;
- (b) By notice in writing to You, terminate this Agreement as at the date of the notice or any later date specified in the notice.

#### 12.4 **No Implied Waiver**

Our rights under this Agreement and the Security will not be affected by any delay in exercising them (whether or not We know that they have become exercisable). We may only be held to have waived Our rights if We expressly waive Our rights in writing to the relevant Borrower.

#### 12.5 **No Prior Notice**

Except as required by law or this Agreement, We are not required to give any notice before exercising any of Our rights and powers following an Event of Default.

#### 12.6 **Costs**

All money that We spend in the exercise of Our rights following an Event of Default or in exercising or enforcing or attempting to exercise or enforce any of Our rights against any Borrower under this Agreement or the Security is payable by You. Any money that is spent by Us will be added to the Loan and interest will accrue on the amount We have paid at the Default Interest Rate.

#### 12.7 **Payment of moneys by Us**

If any Borrower fails to do any thing or pay any sum which it has agreed to do or pay, We may (but We are not obliged to) do such thing or pay such sum, in whole or in part which, in Our opinion, is necessary or expedient to correct or avoid the consequences of that default. Any payments We make on the relevant Borrower's behalf will be added to the Loan and interest will accrue on the amount We pay at the Default Interest Rate.

#### 12.8 **Acceleration**

If an Event of Default occurs, the Loan then outstanding will become due and payable upon demand, or to the extent any notice is required to be given by law, the Loan shall become due and payable immediately on expiry of the relevant notice period without the need for any further notice or demand.

### 13. **CANCELLATION BY YOU**

You may cancel this Agreement in accordance with those parts of sections 27-31 of the Act that apply to this Agreement. You acknowledge, for the avoidance of doubt, that upon cancellation You will be liable to pay Us the expenses and costs referred to in section 30(1)(e) of the Act which are applicable.

### 14. **COLLECTION, USE AND DISCLOSURE OF INFORMATION**

14.1 From time to time We may collect and securely hold information about You. We will make every effort to keep personal details about You up to date. You may access and correct this information under the Privacy Act 1993.

14.2 We may use this information to:

- (a) Consider Your application for a Loan;
- (b) Administer, manage and monitor any facilities, products or services provided to You;
- (c) Conduct market research, data processing and statistical analysis; and
- (d) Unless You disagree, provide You with information about other facilities, products or services including selected third party products or services.

14.3 We may disclose information about You to Our related companies (as defined by the Companies Act 1993), its agents or its contractors for the above purposes.

14.4 We may obtain information and make such enquiries about You as We consider is warranted from any source including Our related companies, credit reference agencies, or any other third party for the above purposes.

14.5 We may disclose information about You to credit reference agencies or any other third party for the purpose of obtaining credit reports or other relevant information about You. Those credit reference agencies may retain that information and provide it to their customers who use their credit reporting services.

14.6 We may disclose information about You and Your Loan payments to credit reference agencies or debit recovery agencies and it may be retained by them. Those agencies may provide that information to their customers who use their credit reporting services.



## 15. GENERAL

### 15.1 Assignment

- (a) No Borrower may transfer or assign any of its rights or obligations under this Agreement or the Security without Our prior written consent.
- (b) We may:
  - (i) Transfer or assign any of Our rights or obligations under this Agreement or the Security or grant a security interest in this Agreement or the Security without any Borrower's consent; and
  - (ii) Disclose to any potential assignee or transferee such information about any Borrower, the Loan and the Security We consider appropriate and each Borrower irrevocably authorises Us for this purpose.
- (c) If We transfer or assign any of Our rights or obligations under this Agreement or the Security, each Borrower agrees that the assignee or transferee will have all the rights and remedies available to them that We do. Each Borrower also agrees that it will not assert any right of set-off or enter a claim which it has or it has acquired against Us and it will pay the money owing as it comes due to the assignee or transferee.

### 15.2 Variations

You may request a variation of this Agreement verbally or in writing. Upon acceptance of the request by Us, a variation fee, as detailed in the Disclosure Statement, will be payable by You to Us. We may vary this Agreement (including all Fees and charges payable) at any time upon written notice to You.

### 15.3 Partial invalidity

The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision.

### 15.4 Amendment

No amendment to this Agreement or any Security will be effective unless agreed to in writing by Us.

### 15.5 Continuance

The obligations of each Borrower under this Agreement and the Security will continue until We release it from liability, or (except in relation to payment and indemnity obligations) the Loan and all other moneys due to Us under this Agreement are paid to Us.

### 15.6 Governing Law

- (a) This Agreement is governed by the laws of New Zealand.
- (b) We and each Borrower irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.

### 15.7 Conflict

If there is any conflict between the provisions of this Agreement and any Security or other agreement, We will determine which provisions will prevail.

### 15.8 Two or More Borrowers – Joint and Several

Where a Borrower consists of more than one person:

- (a) The terms of this Agreement binds and refers to each of them (as applicable) jointly and severally;
- (b) Each Borrower agrees that we may act on instructions received from any one of the Borrowers as if those instructions had been given by all of the Borrowers, unless we receive written notice from any one of the Borrowers to the contrary.
- (c) We may release any one or more of the Borrowers from the Borrower's obligations under this Agreement in writing, which shall not affect any other Borrower's obligations under this Agreement and we shall have no obligation to any other Borrower whose rights may be affected by such release.