



# Terms and Conditions of Extended Credit NZ



## 1. Definitions

1.1. In these Conditions, unless the contrary intention appears:

*'Agreement'* means the Offer and these Conditions together and as may be amended or supplemented from time to time;

*'Authorised Purchaser Agreement'* means the agreement between Capricorn and the Member by which Capricorn extends credit to the Member to purchase goods and services generally in connection with (but not limited to) the automotive trade from suppliers designated by Capricorn as Capricorn Preferred Suppliers and contains less generous repayment terms than contained in this Agreement;

*'Business day'* means, in respect of each payment or other transaction or calculation which needs to be made or done under these Conditions, a day on which business by and between banks may be carried on in Western Australia and in New Zealand other than a Saturday or Sunday;

*'Capricorn'* means Capricorn Society Limited (ACN 008 347 313);

*'Commencement Date'* is the last day of the month in which the conditions provided in clause 4 are satisfied;

*'Default Charge'* means the charge detailed as such in the Financing Schedule;

*'Early Repayment Fee'* means the fee of \$150.00 (plus GST) as applicable under clause 8 of these Conditions;

*'Event of Default'* means any of the events, omissions or occurrences specified in clause 13.4;

*'Extended Credit Amount'* means the amount detailed as such in the Financing Schedule or, where the context requires, to be provided under these Conditions by Capricorn to the Preferred Supplier or, as applicable, the outstanding balance of the sum initially paid by Capricorn to the Preferred Supplier of the Goods on behalf of the Member;

*'Financing Schedule'* means the *Capezifinance*<sup>®</sup> Financing Schedule contained in the Offer which details the particulars of the Extended Credit Amount;

*'Fixed Charge'* means (if applicable) the charge on the Extended Credit Amount detailed as such in the Financing Schedule;

*'Goods'* means the goods detailed as such in the Financing Schedule;

*'Invoice'* means an invoice, in a format satisfactory to Capricorn, raised by the Preferred Supplier described in the Financing Schedule for the supply or proposed supply (subject only to payment) of the Goods to the Member;

*'Member'* means the person or entity named as the Member in the Offer;

*'Offer'* means the *Capezifinance*<sup>®</sup> offer to which these Conditions apply

*'Other Charges'* means any other fees or charges applicable the provision of the Extended Credit Amount detailed in the Offer or Financing Schedule (if any) being fees or charges other than (and not including) the Fixed Charge and the Early Repayment Fee and not including costs and expenses incurred pursuant to Clause 7 of these Conditions;

*'Payment Date(s)'* means the last Business day of each

month, during the Term, commencing on the month following the Commencement Date;

*'Preferred Supplier'* means the supplier of the Goods as described in the Financing Schedule with whom Capricorn;

*'Repayment'* means a repayment to be made to Capricorn by the Member as detailed in the Financing Schedule;

*'Repayment Date'* means the last Payment Date, referred to in the Financing Schedule, of the Term calculated from the Commencement Date or such other date as Capricorn and the Member agree in writing, subject to the provisions of these Conditions and any accelerated repayment of the Total Extended Credit Amount or any part thereof;

*'Security Interest'* means any mortgage, charge, lien, pledge, deed (except as provided for under this Agreement), title retention arrangement, trust or power, as or in effect as security for the payment of a monetary obligation or observance of any other obligation;

*'Serial Number'* means the serial and other numbers by which the Goods are described;

*'Term'* means the term of Credit specified in the Financing Schedule, commencing on the Commencement Date; and

*'Total Extended Credit Amount'* means the Extended Credit Amount plus the Fixed Charge (and Other Charges, if applicable) as specified in the Financing Schedule.

*'Trade Account'* means the account established by Capricorn on or through which the Member may purchase goods and services pursuant to an Authorised Purchaser Agreement;

## 2. Interpretation

2.1. This Agreement, unless the contrary intention appears, must be interpreted as if:

2.1.1. words importing the singular number include the plural and vice versa. Any gender includes the other genders. Any reference to a person includes a reference to an individual, partnership, trust, corporation, firm, authority, government or governmental agency or any entity or structure recognised at law;

2.1.2. a reference to legislation or to a legislative provision includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments, modifications or re-enactments of that legislation or legislative provision and any legislation or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;

2.1.3. a reference to any deed, agreement, licence, document or other instrument (including this Agreement) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time;

2.1.4. a reference to any party to the Agreement or to any other agreement, document or other instrument required under these Conditions or for the purposes

of these Conditions includes that party's executors, administrators, substitutes, successors, permitted assigns and, where applicable, the parties' legal personal representatives;

- 2.1.5. where under or pursuant to the Agreement or anything to be done under the Agreement the day on or by which any act, matter or thing is to be done is a weekend or a public holiday then the act, matter or thing must be done on the immediately succeeding Business day;
  - 2.1.6. a reference to clauses is a reference to clauses of this Agreement;
  - 2.1.7. headings and captions are for convenience only and do not affect the interpretation of this Agreement;
  - 2.1.8. other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
  - 2.1.9. the Agreement binds the parties together with their respective successors in business and permitted transferees and assigns;
  - 2.1.10. a reference to "\$", "NZ\$" or "dollars" in words is a reference to the New Zealand Dollar;
  - 2.1.11. writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and e-mail correspondence with proven receipt of delivery;
  - 2.1.12. unless the context otherwise requires, a reference to clauses, recitals paragraphs, annexures and schedules are references to the clauses of, recitals to, paragraphs of and annexures and schedules to this Agreement;
  - 2.1.13. mentioning anything after *includes*, *including*, *for example*, or similar expressions does not limit what else might be included; and
  - 2.1.14. a group of persons includes any one or more of them.
- 2.2. The Agreement must not be construed adversely to a party solely because that party was responsible for preparing it.

### 3. Agreement

Subject to clause 13.2, this Agreement exclusively and completely states the rights of the Member with respect to and concerning the provision of the Extended Credit Amount. This Agreement is formed on the acceptance of the Offer by the Member and supersedes all negotiations, representations, statements, warranties and prior agreements, whether written or oral, in respect of and concerning the provision of the Extended Credit Amount. Subject to clause 13.2, if there is any conflict or inconsistency between this Agreement and any other agreement or security, this Agreement will prevail.

### 4. Conditions precedent to Capricorn's obligation to provide Extended Credit Amount upon Approval

- 4.1. Capricorn's obligation to provide the Extended Credit Amount to, or at the direction of, the Member after acceptance of the Offer is subject to and conditional upon (without limiting any other pre-condition that may be imposed by Capricorn at the relevant time before the Extended Credit Amount is provided to the Member) the following: -
  - 4.1.1. *Delivery of Invoice*: The Member or the Preferred Supplier delivering to Capricorn a copy of the Invoice which is dated within 1 month of the Application;
  - 4.1.2. *Confirmation of delivery*: Unless otherwise notified prior to the Extended Credit Amount (or any part thereof) being paid by Capricorn to the Preferred Supplier, delivery of Goods being deemed to have been effected by the date of and prior to payment of the Extended Credit Amount (or any part thereof) by Capricorn to the Preferred Supplier;
  - 4.1.3. *Completion of Direct Debit Authority*: The Member completing and delivering to Capricorn an executed authority to direct debit from the Member's account in the terms required by Capricorn in its absolute and unfettered discretion;
  - 4.1.4. *Legal Requirements*: The Member providing all necessary information and documentation required for Capricorn to: (i) satisfy the legal obligations imposed on it or arising out of or concerning this Agreement; and (ii) register the security interest provided by the Member in clause 10 in a form that is satisfactory to Capricorn, acting reasonably;
  - 4.1.5. *Execution of Authorised Purchaser Agreement*: The Member executing the current Authorised Purchaser Agreement as required by Capricorn in its absolute and unfettered discretion including any supplementary version or revision thereof;
  - 4.1.6. *Execution of this Agreement*: The Member executing and delivering to Capricorn this Agreement; and
  - 4.1.7. *Representations and Warranties*: All representations and warranties by the Member being true and correct.
- 4.2. If any of the conditions precedent set out in clause 4.1 and all and any of its parts have not been fulfilled and fully satisfied, deemed to have been fulfilled and fully satisfied or waived by Capricorn, Capricorn will not be under any obligation to provide the Extended Credit Amount for the benefit of the Member.

### 5. Provision of Extended Credit Amount

- 5.1. Subject to the satisfaction of the conditions precedent in clause 4.1 and all and any of its parts, Capricorn will provide the Extended Credit Amount to the Member by paying the Preferred Supplier an amount equal to the Extended Credit Amount against the amount of the Invoice at the request and direction of

the Member subject to the terms and conditions of this Agreement.

- 5.2. The Extended Credit Amount will be deemed to have been given or made on the Commencement Date.

## 6. Payment of the Total Extended Credit Amount including the Fixed Charge and Other Charges

- 6.1. The Fixed Charge (if applicable) is payable to Capricorn by the Member on the Extended Credit Amount and included in the Repayment.
- 6.2. The Member agrees to pay and discharge all Other Charges (if applicable) as detailed in the Financing Schedule and otherwise required under the Agreement by the Repayment Date or otherwise as agreed with Capricorn.
- 6.3. The Member agrees to pay and discharge the Total Extended Credit Amount by the Repayment Date.

## 7. Other charges

- 7.1. Whether or not the Member satisfies any or all of the conditions precedent set out in clause 4.1, the Member must, on demand by Capricorn, pay to, or as directed by, Capricorn, and indemnify Capricorn against, all costs, losses, charges, expenses, liabilities, damages, fees and disbursements (including but not limited to all reasonable legal costs on a solicitor and own client basis) paid or incurred by Capricorn of whatever nature of or incidental to, in respect of or concerning: -
- 7.1.1. stamp duty on the Extended Credit Amount (if applicable);
- 7.1.2. any breach of, or default under, the Agreement or any security provided by the Member (which would include but not be limited to the fees of all professional consultants, solicitors and agents properly incurred by Capricorn in consequence of or in connection with, any such breach or default);
- 7.1.3. the exercise or attempted exercise of any right, power, privilege, authority or remedy of Capricorn under or by virtue of the Agreement, provision of the Extended Credit Amount and any security; and
- 7.1.4. without limiting clause 7.1.1, all taxes (excluding any income tax payable by Capricorn), outgoing, penalties, fines, demands, charges or costs, stamp and other duties and assessments imposed by any court or by any federal, state or municipal, statutory or other authority or otherwise (which would include but not be limited to any related bank charges, financial institutions duties and debits taxes) directly or indirectly upon this Agreement, the registration of this Agreement and security interest pursuant to the Personal Property and Securities Act 1999 with any authority, government, body or agency whatsoever or any receipt or payment of the Extended Credit Amount or any security.

## 8. Repayment and Discharge of Total Extended Credit Amount

- 8.1. The Member agrees to:

- 8.1.1. repay and make the Repayments in accordance with the agreed amounts, frequency and dates detailed or ultimately completed in the Financing Schedule including but not limited to as amended under clause 8.2;
- 8.1.2. repay and discharge the Total Extended Credit Amount on the Repayment Date; and
- 8.1.3. pay any other amounts payable under the Agreement to Capricorn on or before the Repayment Date or other date specified herein or under the Member's Authorised Purchaser Agreement (as applicable).

- 8.2. Capricorn reserves the right to amend and complete the payment amount (consistently within the Total Extended Credit Amount agreed), frequency and/or Payment Dates detailed or not stated in the Financing Schedule (or otherwise confirmed to the Member in writing), together with the description of the Goods contained in the Financing Schedule to include: (a) a reference to an Invoice; and/or (b) the applicable Serial Number corresponding to the Goods, and the Member agrees to repay or make the Repayment(s) in accordance with all amendments, completions and instructions accordingly. The Member fully authorises Capricorn to amend and complete the Financing Schedule in the manner permitted by this clause.
- 8.3. If the Member requests to pay the Total Extended Credit Amount prior to the Repayment Date and Capricorn agrees to this request, Capricorn will charge the Member the Early Repayment Fee. The Early Repayment Fee is payable by the Member in lieu of payment of the remainder of the Fixed Charge but in addition to the Extended Credit Amount and Other Charges (if applicable) payable under this Agreement,
- 8.4. If at the time of the request to make early repayment the remainder of the Fixed Charge payable over the Term is less than the amount of the Early Repayment Fee, clause 8.3 will not apply and the Member must pay to Capricorn the Total Extended Credit Amount that remains owing at this time.

## 9. Method of payment

- 9.1. *Time of payment:* All payments to be made under the Agreement by the Member to, or at the direction of, Capricorn must be made in immediately available funds not later than five o'clock in the afternoon (5:00pm) New Zealand Standard Time on each Payment Date and the Repayment Date.
- 9.2. *Direct Debit:* As a condition of the provision of the Extended Credit Amount the Member authorises and directs Capricorn to debit directly from the Member's nominated bank account for all purchases, including normal trading purchases and Repayments:
- 9.2.1. all and any amounts payable under clause 8;
- 9.2.2. costs and expenses and any other amount payable under clause 7; and

9.2.3. all other trading purchases,

pursuant to the authority to direct debit required by Capricorn as a condition precedent to provision of the Extended Credit Amount, further or alternatively pursuant to this clause.

9.3. *Place of payment:* All other payments to be made under this Agreement by the Member to Capricorn must be paid to Capricorn at Capricorn's registered office, 28 Troode Street, West Perth, WA 6005 or at such other place as Capricorn may from time to time direct in writing. Any

payment made in any other way will be at the Member's risk until received by Capricorn.

9.4. *No set-off or counterclaim:* Notwithstanding any term, whether express or implied, in the Agreement or any rule of law or equity or course of conduct to the contrary, payments in respect of or concerning the Extended Credit Amount must be made by the Member without set-off or counterclaim.

## 10. Security Interest

10.1. The Member grants a security interest in the Goods to Capricorn as security for payment of the Goods, and for any other amounts from time to time owing by the Member to Capricorn, and for the performance by the Member of all the Member's other obligations to Capricorn.

10.2. The Member agrees to promptly do anything that Capricorn reasonably requires to:

10.2.1. ensure that Capricorn has a first ranking perfected security interest in all of the Goods (and any sale proceeds); and

10.2.2. enable registration of a financing statement or financing change statement under the PPSA.

10.3. The Member acknowledges having received valuable consideration from Capricorn for the giving of the security interest under clause 10.1.

10.4. *Contracting Out of the Personal Property and Securities Act 1999 (the "PPSA"):* The Member waives the 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 these Conditions

10.5. The Member:

10.5.1. shall not register a financing statement or a change demand without the prior written consent of Capricorn;

10.5.2. agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Conditions or the security interest under these Conditions; and

10.5.3. contracts out of the rights referred to in section 107(2) of the PPSA.

## 11. Goods

11.1. The Member warrants that the Goods will be used only for business purposes and for the purpose for which they

were designed for by appropriately qualified and competent individuals.

11.2. The Member agrees to:

11.2.1. keep the Goods in good working order and condition (reasonable wear and tear excepted) and immediately pay all amounts due to any repairer for the maintenance or repair of the Goods;

11.2.2. notify Capricorn immediately if the Goods are lost, stolen or damaged in any material respect, regardless of the cause;

11.2.3. promptly notify Capricorn of any change in the details of the Goods or any significant further acquisition of Goods;

11.2.4. protect the Goods from theft, loss or damage;

11.2.5. at Capricorn's request, promptly rectify defects in the Goods;

11.2.6. maintain and use the Goods in accordance with any law or obligation with respect to the Goods, including maintaining any licence required to use or keep the Goods; and

11.2.7. execute all documents and do all things reasonably stipulated by Capricorn to provide effective security over the Goods for the payment of the Total Extended Credit Amount or any other amount owed to Capricorn by the Member and to enable Capricorn to exercise its rights in connection with the Goods (including the consent of any landlord or registered proprietor of land or buildings on or in which the Goods are located).

11.3. The Member will not:

11.3.1. do or omit to do anything or knowingly permit or cause anything to be done or omitted which could mean in the reasonable opinion of Capricorn that the Goods are or are likely to become materially lessened in value or prejudicially affected;

11.3.2. remove any fittings or machinery forming part of the Goods without Capricorn's consent (such consent not to be unreasonably withheld), unless in the course of maintaining the Goods;

11.3.3. affix the Goods to any land or other goods or chattels without the consent of Capricorn or as reasonably necessary to operate or otherwise use the Goods in the course of the Member's day to day trading activities;

11.3.4. dispose of, sell, hire, sublet, charge, deal with or part with possession of the Goods or any interest therein or agree or attempt to do so or authorise any person to do so;

11.3.5. create or allow to come into existence any Security Interest which affects the Goods, except pursuant to this Agreement;

11.3.6. alter, deface or conceal any identifying nameplates, words, markings or numbers (such as a Serial Number) relating to the Goods;

11.3.7. permanently remove the Goods from New Zealand; or

- 11.3.8. use the Goods or any part of the Goods in any way which might endanger the safety and condition of the Goods or prejudice Capricorn's interest in the Goods.
- 11.4. The Member agrees to permit Capricorn, Capricorn's personnel or authorised agents to inspect the Goods at any reasonable time for the purposes of assessing compliance with this Agreement.

## 12. Insurance

### 12.1. The Member must:

- 12.1.1. keep the Goods insured or protected by a mutual arrangement to Capricorn's reasonable satisfaction to the full extent they are insurable or protectable with insurers or mutuals approved by Capricorn (which approval will not be unreasonably withheld) in the name(s) of the Member and Capricorn for their respective rights and interests, for their full insurable or protectable value against fire, theft and all other usual risks against which a prudent owner of property of a similar type to the Goods would insure or protect, and any other risks reasonably specified by Capricorn;
- 12.1.2. deposit with Capricorn all insurance policies and certificates of insurance or schedule or certificate of mutual risk protection in connection with the Goods;
- 12.1.3. pay each insurance premium or mutual risk protection contribution at least 3 Business days before the due date and, on request from Capricorn, produce receipts for the payment;
- 12.1.4. not do or permit anything to be done which prejudices any insurance policy or mutual risk protection;
- 12.1.5. immediately rectify anything which might prejudice any insurance policy or mutual risk protection in connection with the Goods and reinstate the insurance policy or mutual risk protection if it lapses;
- 12.1.6. not, without Capricorn's consent, vary, cancel or allow to lapse the insurance policy or mutual risk protection in connection with the Goods;
- 12.1.7. not, without Capricorn's consent, insure or otherwise protect the Goods in the Member's name alone;
- 12.1.8. notify Capricorn immediately when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance or mutual risk protection required by this Agreement; and
- 12.1.9. notify Capricorn immediately when any policy of insurance or mutual risk protection required by this clause is cancelled.
- 12.2. The Member agrees to hold the proceeds of any insurance policy or mutual risk protection over the Goods (even if in the name of the Member alone in contravention of clause 12.1.7) in trust for, and paid to, Capricorn.

- 12.3. Capricorn may, but the Member may not without Capricorn's consent, enforce, conduct, settle or compromise claims under any insurance policy or mutual risk protection required under clause 12.1 of these Conditions, whether or not that insurance policy or mutual risk protection covers other property.
- 12.4. The proceeds of any insurance policy or mutual risk protection over the Goods may, at the sole discretion of Capricorn, be applied towards satisfaction of the Total Extended Credit Amount or in replacing, repairing or reinstating the Goods.

## 13. Default and termination

- 13.1. *Consequences of default:* If any of the events described in clause 13.4 occur, the Total Extended Credit Amount, together with all interest accrued on the Total Extended Credit Amount and all other amounts payable under the Agreement or otherwise to Capricorn will, at the option of Capricorn and notwithstanding any delay or previous waiver of the right to exercise that option, immediately become due and payable without the necessity for any demand or notice to the Member and Capricorn may in its absolute and unfettered discretion do any or all of the following in any order whatsoever:
- 13.1.1. Transfer the total outstanding debt under this Agreement to the Member's Trade Account with Capricorn (as applicable) and apply the Default Charge detailed in the Financing Schedule to the relevant outstanding payment amount due under the Agreement;
- 13.1.2. Transfer the Total Extended Credit Amount, together with all interest accrued on the Total Extended Credit Amount and all other amounts payable under the Agreement or otherwise to Capricorn to the Member's Trade Account with Capricorn (as applicable); and
- 13.1.3. Decide without further notice to institute legal proceedings for recovery of the moneys owed to the Capricorn on any basis whatsoever or terminate this Agreement or do any or all such things in any order.
- 13.2. If the outstanding debt is transferred to the Member's Trade Account, the terms of the Member's Authorised Purchaser Agreement will apply to the outstanding debt, and take precedence over this Agreement and for all purposes the outstanding debt transferred will be treated and considered in exactly the same manner as any other amount payable under the terms and conditions of the Member's Authorised Purchaser Agreement with Capricorn, including in respect of the liability and obligations of any covenantors under the Authorised Purchaser Agreement for all outstanding debts of the Member.
- 13.3. The Member agrees Capricorn may institute recovery proceedings without notice for the full balance outstanding on any basis whatsoever including but not limited to under this Agreement as at the date of commencement of recovery proceedings and the Member agrees to pay on demand such amount outstanding on any basis whatsoever including but not limited to under this Agreement and without limiting the foregoing, in addition to the Fixed Charge, Other Charges and/or the Default Charge, to pay interest accrued at the rate of 15% per annum calculated daily

on the amount outstanding to Capricorn on any basis whatsoever including but not limited to under this Agreement for each and every day during which amounts owed by the Member remain unpaid together with, without limiting clause 7.1 and its parts, all reasonable legal costs on a solicitor and own client basis incurred by Capricorn and any other debt collection expenses incurred by Capricorn on a full indemnity basis in instituting recovery proceedings or taking any other action to recover amounts not paid by the Applicant. This clause 13 survives termination of this Agreement howsoever caused.

13.4. *Events of default:* Each of the following events is an event of default:

13.4.1. *Payment default:* If the Member fails to repay the Total Extended Credit Amount on the Repayment Date or fails to make or pay any Repayment in full on the relevant Payment Date or fails to pay any other money payable under the Agreement in full on the due date for payment;

13.4.2. *Other default:* If the Member fails to perform or observe any or provision of the Agreement on the part of the Member to be performed or observed (other than a failure of the type contemplated by clause 13.4.1) and (if capable of remedy) such default continues for more than 5 Business days (or such longer period as Capricorn in its absolute discretion permits) after notice from Capricorn requiring the Member to remedy the default;

13.4.3. *Default under Authorised Purchaser Agreement:* If the Member fails to perform or observe any of the provisions of its Authorised Purchaser Agreement with Capricorn, or has its credit under such agreement stopped or withdrawn by reason of any default or otherwise;

13.4.4. *False or misleading statement:* If Capricorn ascertains that the Member has made any false, inaccurate or misleading statement having, in Capricorn's absolute and unfettered opinion, a material effect on or causing the provision by Capricorn of the Extended Credit Amount or in relation to any related or collateral document, including any false statement as to the business purposes declaration forming part of the Offer;

13.4.5. *Other Security Interest Without Capricorn's prior written consent,* the Member or another person creates or attempts to create, or allow to exist, a Security Interest in the Goods with might rank in priority to or equally with the security interest created by, or arising under, this Agreement;

13.4.6. *Execution or distress:* An execution or distress is issued or levied against the Member or the Goods, and is not stayed on terms acceptable to Capricorn or satisfied within 5 Business days; or

13.4.7. *Winding up:* If an application for the winding up or bankruptcy of the Member is presented and the Member or related company (as understood by reference to the Companies Act 1993) cannot within 10 Business days reasonably satisfy Capricorn that the application is frivolous or vexatious or an order is made for the winding up or bankruptcy, or any resolution is passed for the winding up, of the Member or any related body corporate or the

Member seeks to make an arrangement or composition with their creditors under a law dealing with bankruptcy or insolvency, except that it will not be an event of default where the winding up of the Member or the related body corporate (as the case may be) is for the purpose of genuine reconstruction or amalgamation and has Capricorn's prior written consent (which consent will not be unreasonably withheld).

## 14. Additional Powers on Default

14.1. If at any time the security interest under this Agreement becomes enforceable, the Member agrees that Capricorn may (in addition to exercising any other powers conferred by law or this Agreement):

14.1.1. enter onto land owned, leased and/or otherwise occupied by the Member or any other party for the purposes of exercising the rights contained in the Agreement including recovering, including severing the Goods to the extent required, or repossessing the Goods and removing the Goods. The Member hereby fully indemnifies Capricorn against any claim, action, damages, costs or expense arising out of or concerning Capricorn's exercise of the power contained in this clause and all and any of its parts;

14.1.2. seize or take possession of the Goods or any part of the Goods;

14.1.3. receive rents, profits and any other payments which may be derived from the Goods;

14.1.4. exercise any of the Member's rights, powers or remedies over or in connection with the Goods;

14.1.5. either with or without seizing the Goods, sell or concur in selling any part of the Goods:

(a) either at an auction, private treaty, option or by tender;

(b) for cash or on credit;

(c) with power to allow the whole or any part of the purchase money to remain owing with or without security; and

(d) subject to any conditions that Capricorn chooses;

14.1.6. execute any transfer, assignment or other instrument which Capricorn may consider necessary to give effect to any sale or disposal of the Goods; and

14.1.7. do anything incidental to any of the powers conferred on Capricorn under this clause 14.

## 15. Application of money

15.1. All money received by Capricorn under or by virtue of the Agreement will be applied in the following order and manner unless Capricorn in its absolute and unfettered discretion determines otherwise:

15.1.1. first, in payment of all costs, charges and expenses properly incurred in, or incidental to, the exercise or performance, or attempted exercise or performance, of any of the powers or authorities conferred on Capricorn by the Agreement or otherwise arising in relation to the Agreement;

- 15.1.2. secondly, in or towards payment of such other properly incurred costs, charges and expenses in relation to the enforcement of this Agreement as Capricorn thinks fit to pay;
- 15.1.3. thirdly, in or towards payment to Capricorn of interest on the Extended Credit Amount, then the Fixed Charge and then the Other Charges and then the Default Charge;
- 15.1.4. fourthly, in or towards repayment of the Extended Credit Amount;
- 15.1.5. fifthly, in or towards payment to, or at the direction of, Capricorn of any other amount or amounts payable by the Member under this Agreement or any other agreement or account with Capricorn; and
- 15.1.6. the surplus, if any, will not carry interest and will be refunded to the Member.

## 16. Discharge

- 16.1. Capricorn will, at the request and cost of the Member, reconvey, surrender or release any remaining Goods (as appropriate) to the Member and the security interest granted by the Member to Capricorn under this Agreement will then be discharged when Capricorn is satisfied that:
- 16.1.1. the Total Extended Credit Amount and any other amounts payable or which may be payable by the Member to Capricorn under or with respect to this Agreement have been irrevocably repaid and discharged in full or satisfied in accordance with this Agreement;
- 16.1.2. no amount remains contingently payable or may become payable under or with respect to this Agreement or on the Security Interest granted under this Agreement; and
- 16.1.3. any obligations of the Member under this Agreement have been satisfied in full.
- 16.2. Any discharge or Financing Change Statement required under the PPSA will be prepared by Capricorn, at the request and expense of the Member.

## 17. Entire Agreement

The Member by executing this document agrees to be bound by the terms and conditions of the entire Agreement and acknowledges they have read and understood the contents of this and do by executing the Agreement confirm provision of the consents recorded herein. The Agreement represents the entire agreement between the Member and Capricorn and supersedes and replaces any previous representations, contracts, agreements, understanding or arrangement concerning its subject matter. No other terms and conditions sought to be imposed by the Member upon Capricorn apply. This clause survives termination of this Agreement, howsoever caused.

## 18. Certificate

The Member agree that in any legal proceedings commenced by Capricorn to recover amounts due by the Member under this Agreement or otherwise, a certificate which purports to be signed by an authorised officer of Capricorn, which includes but is not limited to its Credit Services Manager or

person holding an equivalent position, stating the amount of the Member's indebtedness, is proof of the matters set out in the certificate. This clause survives termination of this Agreement.

## 19. Warranty

The Member agrees that in completing the Financing Schedule and entering into this Agreement it continually represents from the date of completing the Application and until the Total Extended Credit Amount is repaid that it is solvent and able to pay all of its debts when they fall due and the Member agrees that before applying for the Extended Credit Amount from Capricorn or making any purchase requiring the Extended Credit Amount it will inform Capricorn of any facts, including the Member's capacity to pay amounts which will become due under this Agreement, which might reasonably affect Capricorn's decision to provide the Extended Credit Amount to the Member and any failure to do so will constitute a material breach of this Agreement giving rise to a right to terminate this Agreement forthwith and be considered misleading and deceptive conduct.

## 20. Trust

- 20.1. The Member warrant and agree that where they are, at the time of executing this document or at any time the Member has credit with Capricorn, a trustee of any trust (the "Trust"), that:
- 20.1.1. they shall produce a stamped copy of the Trust deed (with all amendments) if and when requested by Capricorn;
- 20.1.2. they have full power and authority to execute, or continue with their obligations under, this Agreement on behalf of the Trust as they are doing so in their individual capacity and in their several capacity as trustee;
- 20.1.3. they are bound by terms and conditions in this Agreement in their individual capacity, or further or alternatively, in their several capacity as trustee; and
- 20.1.4. the assets of the Trust shall be available to meet payment of their obligations to Capricorn.

## 21. Consent to use personal information

By entering this Agreement you are consenting to Capricorn collecting, using and disclosing your information in accordance with the previously provided notifications of collection of personal information, in particular as provided in connection with your Authorised Purchaser Agreement, and Capricorn's Privacy Policy. Our Privacy Policy is available at [www.capricorn.coop](http://www.capricorn.coop). For more information email [privacy@capricorn.coop](mailto:privacy@capricorn.coop) or phone 0800 401 444 and ask to speak to our Privacy Officer.

## 22. Consent to obtain, exchange and disclose credit information

To the extent permitted by the Privacy Act 1993 and any other applicable legislation whatsoever:

- 22.1. The Member irrevocably agree to and authorise Capricorn and its servants, delegates and agents to



conduct such enquiries from time to time as Capricorn may deem necessary to obtain information (and to obtain such information from any relevant person) or to investigate the creditworthiness of the Member and to Capricorn obtaining from a credit reporting agency a credit report containing information about the Member in relation to commercial credit provided by Capricorn.

22.2. The Member irrevocably agree and authorise any person referred to in this clause who is capable of providing to Capricorn the credit information of the type described herein to provide the same to Capricorn.

22.3. The Member agree Capricorn may give to and seek from any trade references or credit providers named in the Application and any providers of credit that may be named in a credit report issued by a credit reporting agency or any other person referred to in this clause as a person from whom Capricorn may obtain credit information or to any of Capricorn's Preferred Suppliers, information about the Member's arrangements.

22.4. The Member understand that this information can include any information about their credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other.

22.5. The Member agree that Capricorn may continue to seek or give a credit reporter or any other person commercial/consumer credit information relating to the Member's credit worthiness and relating to the collection of overdue amounts.

### 23. Release and Discharge

To the fullest extent permitted by law Capricorn and any of its officers, employees, delegates or agents are not liable for any kind of loss, claim or damages including but not limited to for personal injury, any damage to property and/or any contingent, consequential, direct (including direct loss of profits), indirect, special or punitive damages whether due to negligence or otherwise including but not limited to in respect of or concerning the purchase of the Goods or provision of the Extended Credit Amount and the Member acknowledges this limit of liability and agree to limit any claim accordingly. This clause survives termination of this Agreement and these Conditions may be pleaded in bar by Capricorn to any claim, action, proceeding or suit brought by a Member against Capricorn for any matter, circumstance or thing arising out of, concerning or in any way relating to the provision of the Extended Credit.

### 24. Charge and Mortgage

In addition to the rights conferred to Capricorn in clause 10 above, the Member agrees that for the purposes of securing their obligations and liabilities hereunder or their obligations and liabilities on any other basis whatsoever to Capricorn to hereby charge and mortgage with the due and punctual payment and complete performance of all their liabilities and obligations hereunder or on any other basis whatsoever to Capricorn all their legal and equitable interests of whatever nature held in any real property both present and future and the Member hereby consents to Capricorn lodging a caveat or noting its proprietary interest hereunder. The Member agrees to execute any documents or do all such things as may be required by Capricorn to effect such security upon demand by Capricorn. For the purposes of giving effect to the

obligations under this clause and any other obligation under this Agreement, the Member hereby irrevocably appoint Capricorn's Credit Services Manager or successor or equivalent thereto as the attorney for the Member.

### 25. Compliance with Capricorn's Constitution

The Member agrees to be bound by and fully comply with Capricorn's Constitution including agreeing to be bound by and fully complying with Capricorn's Constitution as and when Capricorn's Constitution is amended from time to time.

### 26. Jurisdiction

This Agreement is governed by and will be construed in accordance with the laws of New Zealand. In any action or other legal process with respect to any matter or thing in connection with this Agreement the Member irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand. This clause survives termination of this Agreement howsoever caused.

### 27. Express Agreement not to Breach

The Member must not act in any way which breaches this Agreement as currently recorded herein or as amended, varied or supplemented from time to time.

### 28. Severability

To the extent that any section, clause, sub-clause or portion of this Agreement is rendered unenforceable or are prohibited then that section, clause, sub-clause or portion will be severed with the remainder continuing in full force and effect between the parties as if the severed section, clause, sub-clause or portion rendered unenforceable or prohibited had not been included in the Agreement.

### 29. Variation

Capricorn reserves the right to make any changes (whether material or otherwise) to the terms and conditions of this Agreement. Capricorn will advise the Member of material changes to the terms and conditions of this Agreement by 5 Business days' written notice. Without limiting this clause or this Agreement in any way, the Member will be taken to have received the notice referred to in this clause if the Capricorn notifies the Member of the change by providing notice at the address of the Member detailed in the Offer.

### 30. Waiver

Capricorn's failure to take advantage of any default or breach on behalf of the Member will not be or be construed as a waiver thereof, nor will any custom or practice which may grow up between the parties to this Agreement in the course of administering this Agreement be construed to waive or reduce the right of Capricorn to insist upon the performance or observance by the Member of any of the Member's obligations. The acceptance by Capricorn of money under this Agreement will not be nor deemed to be a waiver of any default or breach by the Members.

### 31. No Merger

The Member's obligations under this Agreement are supplementary to, and not in substitution for, any present or future Security Interest, right, guarantee, agreement, judgment or order held or obtained by Capricorn and they are not to be merged in, or prejudiced by, any such Security Interest, right, guarantee, agreement, judgment or order.

### **32. Further Assurances**

The parties to this Agreement must make, execute and do or cause to be made, executed or done all things, agreements, instruments and acts which are reasonable and necessary or desirable to implement and give full effect to the provisions and purpose of this Agreement.

### **33. Lawful Termination**

Lawful termination under this Agreement does not prejudice or affect any right of action or remedy which accrued to any party at the time of termination and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

