



# AZTEC FINANCE

## STANDARD TERMS AND CONDITIONS

### You The Debtors Acknowledge The Debt To The Creditor Of The Initial Unpaid Balance And Agree:

#### Meaning

The expression "debtors" or "you" includes their/your executors, administrators and successors in title. "Collateral" means the goods and/or other personal property described in the disclosure statement in the box headed WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS Security Interest. "Default under this agreement means that the debtor or the guarantor does something he is required not to do or fails to do something he is required to do. "Default interest is interest payable at the rate outlined under the heading **Default interest charges and default fees** in the disclosure statement described as **Default interest**, compounded daily at the rate of one 365<sup>th</sup> of the default interest rate, charged on the account balance from the time that you fall into financial default until you are no longer in financial default. "Guarantor" means the person shown as guarantor in this agreement and the attached guarantee and includes his or her executors, administrators and successors in title "Land" includes an interest in land. "Land to be mortgaged" means the land shown in the disclosure statement in the box headed WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS Security Interest Real Property – Land to be Mortgaged". "The money secured" means all money, including the initial unpaid balance and default or other interest, and default and other fees and charges, and disbursements and other money, which you must pay to the Creditor under this agreement or under any collateral or subsequent loan agreement. "Person" includes a limited liability company or other legal entity or an organisation as defined in the PPSA "PPSA" means the Personal Property Securities Act 1999. "Working day" means any day but a Saturday, Sunday or a public holiday in Wellington. Each gender shall include all other genders. All obligations on your part are joint and several. Any expression not described or defined in this agreement shall have the meaning ascribed to it in the Personal Property Securities Act 1999 unless the context requires otherwise. Unless the context prevents it, the singular shall include the plural and the plural include the singular.

#### Power of Attorney and General

1. In exchange for the loan of the amount of credit and to enable the Creditor more effectively to obtain the benefits under this agreement, each debtor jointly and severally irrevocably appoints the Creditor and any one director of the Creditor severally to be the attorney of each debtor to do anything which the debtors agree to do and to do anything and to sign any document which the attorney thinks desirable to ensure the Creditor is paid the money secured and otherwise to protect the interests of the Creditor under this agreement. Without in any way limiting the generality of the power, the attorney may execute any document for the purposes of

registration of any interest under the Land Transfer Act 1952 including an interest in land in which any debtor has no interest at the date of this deed or for the purpose of creating a security interest under the PPSA or causing one to attach or may make a request under clause hereof. This power shall inure until the money secured has been paid to the Creditor in full. The debtors ratify anything done by an attorney under this clause and further indemnify any person acting in reliance upon the power. If the Creditor assigns the benefit of this agreement the assignee shall have the same rights and powers under this clause as does the Creditor and each of you named as debtor irrevocably appoints the assignee his attorney accordingly.

2. Subject to any other clause of this agreement any notice, demand, letter or document for service on you shall be deemed to be properly served, in any court proceeding or otherwise, if served in accordance with the wording of Section 38 of the Credit (Repossession) Act 1997 (excluding subsection 38(7)). This applies although that Act may not apply to the collateral and although the notice or demand is not one required or authorised under that Act. In addition, service on you or any of you shall be deemed to have been effected if such notice demand letter or document is handed to any person in apparent occupation of the address of any of you or of the property shown in this agreement as being the land to be mortgaged or by attaching the document to an external door at such address. In addition if your address is a flat or apartment or room in a building and if the Creditor or its agents are unable to obtain access to such flat, apartment or room by virtue of the security system of the building or for some other reason, then service will be deemed to have been effected on you if the document is posted at the letterbox corresponding to such flat, apartment or room. If there is no such letterbox, service will be deemed to have been effected on you if the document is affixed to what appears to be the principal external entry to the building for the purposes of obtaining access to the address provided by you or if the document is given to any building manager or receptionist for the building and directed to be given to you.
3. Despite sections 188 & 189 of the PPSA, service of any notice or document by facsimile or by electronic mail upon the Creditor shall not be deemed to be proper service. Any document to be given to or served on the Creditor by the debtors shall be posted or shall be delivered personally to its address as shown in the schedule.
4. You shall not be released from your obligations under this Agreement or have your liability reduced by any lack of legal capacity or other reason which would result in the Agreement not being enforceable against or any moneys not being recoverable from any other person nor by virtue of any security becoming all or partly void or unenforceable for any reason whatsoever.
5. The law applicable to this agreement shall be the law of New Zealand.
6. You must make all payments as shown in the PAYMENTS section of the disclosure statement when due without any deduction or set-off or counter-claim and in such manner as the Creditor requires. If you make any payment which is not in accordance with the schedule of payments in the "PAYMENTS" section of the disclosure statement the Creditor may credit the payments in accordance with the schedule. The Creditor may also decline to accept any part prepayment but if it accepts it, the Creditor may charge you administrative costs associated with the prepayment.
7. You must pay to the Creditor forthwith upon demand or when otherwise due (i) the Creditor's credit fees shown in the "CREDIT

FEES AND CHARGES" section of the disclosure statement and (ii) the Creditors default fees and default interest shown in the "WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS - default interest charges and default fees" section of the disclosure statement and (iii) all of the Creditor's costs, expenses and any other liabilities not now known to the Creditor (which include legal expenses on a solicitor and own client and on a full indemnity basis) which may be incurred or suffered by the Creditor in connection with:

- a. The preparation, signing, registration, administration, variation and release of this security agreement or any financing statement in relation to this security interest and the negotiation and grant of any consent or waiver.
- b. The exercise or enforcement or protection or the attempted exercise enforcement or protection of any right or remedy of the Creditor under this agreement or what the Creditor believes to be a right or remedy to which it is entitled including the conduct of any Court proceedings.
- c. Any dispute negotiation or communication with any other secured party or party claiming to be a secured party with respect to the collateral and or the priority of the security interest granted by this agreement and
- d. The transfer of the security interest of any other secured party to the Creditor or the security interest of the Creditor to that secured party and
- e. Any dispute negotiation or communication with any of you or with any guarantor in default.
- f. The Creditor's doing anything you should have done but which you have not done.
- g. And you agree that such amounts are and are deemed to be contractual damages if they are incurred by you with the Creditor or suffered or incurred by the Creditor while you are in default hereunder and in any event if not paid shall incur default interest until paid in full. The Creditor may exercise all or any right, power or remedy at any time.
8. If you fail to pay one or more instalments in full so that you are in default but otherwise are paying on time, the Creditor, at its absolute discretion may add the unpaid amount to the loan thus extending the term and varying the final payment or payments. The Creditor may but is not bound to do this more than once.
9. Subject to the terms of the Credit (Repossession) Act 1997, if you default under this agreement the Creditor may accelerate repayment of the loan and require you to pay the unpaid balance to the Creditor forthwith. The Creditor may call up that money even although the time for payment has not yet been reached. In addition, save for the purposes of enforcement, the Creditor may terminate this agreement.
10. If you fail to pay any instalment or other money (including any amount for which payment has been accelerated) due on the due date or on demand as the case may be you shall pay to the Creditor default interest on the unpaid balance from the due date of such instalment or from the date of receipt or deemed receipt of demand for the money as the case may be until actual payment of the instalment or amount. All default interest shall continue to be payable after and notwithstanding judgment against you.
11. To the extent allowed by law, the Creditor may from time to time without notice set off against any claim or demand which you may have any debt owed by you or claim or demand which the Creditor may have against you.

12. The Creditor may receive commission on any insurance included in this agreement or subsequently required.
13. The Creditor may appropriate any payment received from you or money which is proceeds of the sale of collateral or of any land to be mortgaged against any debt owed by you in any manner that the Creditor may decide, notwithstanding any appropriation you claim to have made or the fact that the time for payment of the amount has not arrived.
14. This agreement secures future advances. This will apply even although any sum has been paid from time to time to the Creditor or any account between the debtors and the Creditor may be or have been in credit or settled.
15. In accordance with section 50 of the Credit Contracts and Consumer Finance Act 2003 you may repay the outstanding balance of your loan in full before it is due. However, you must also pay the Creditor the administrative costs arising from the full prepayment or a charge equal to its average administrative costs so arising. The Creditor may also charge you a fee representing a reasonable estimate of its loss arising from the full prepayment. The Creditor's method of calculating its loss is set out in the FULL PREPAYMENT section of the disclosure statement.
16. You must maintain a landline telephone connection. You consent to the Creditor's leaving the name of the Creditor with any person who answers that telephone number or any number provided by you and with any person shown as a contact person for you.
17. You must not change your name or address or the place where collateral which is chattels is stored or your landline telephone number without first giving the Creditor three working days notice of your intention to do so.
18. If the Creditor accepts any payment or banks any cheque, which you have made or forwarded in purported full satisfaction or in terms connoting accord and satisfaction, the Creditor will not be deemed by such acceptance or banking to have accepted the terms upon which the cheque is forwarded unless the Creditor has, before it receives the payment or cheque, agreed in writing to accept the amount in full satisfaction or otherwise as accord and satisfaction.

### **Security Interest**

19. You must store any collateral which is goods at the address shown as that of its owner in the disclosure statement. You must not allow any collateral to be taken out of New Zealand. You must also care for and maintain collateral and comply with any laws relating to its ownership and use and you must not use it in any dangerous or illegal activity or for any purpose for which it was not intended. You may not race any collateral which is a motor vehicle. The Creditor may inspect any collateral on giving 24 hours written notice and you shall make such collateral available for inspection at the address that you have provided as the place where the owner lives. If you have granted security over after-acquired property and if you obtain consumer goods in future, you must appropriate those goods to the Creditor's security interest.
20. You must not do anything or allow anything to happen which may impair or undermine any debtor's ownership of collateral or the Creditor's security interest in collateral. Further you must not grant any other security interest over collateral nor allow any lien to be created over it nor dispose of nor allow the disposal of collateral by sale or gift or lease or in any other way nor cause nor allow

collateral to be taken out of the possession of the debtor who owns it, nor destroyed, damaged, endangered, disassembled, removed from the place where you are required to keep it (see clauses and above) or concealed from the Creditor. You must not obtain any personalised registration plate on any motor vehicle which is collateral nor otherwise alter or remove any serial number unless you first and in writing provide the Creditor with three working days' notice.

21. Any accessions (including replacements and accessories) which are attached to collateral which is goods shall become part of the collateral.
22. The Creditor may take possession of the collateral for the purposes of perfecting its security interest under the PPSA.
23. From time to time if required by the Creditor you must provide security for the money secured in the form of a security interest in a motor vehicle to the value of 100% of the money secured at that time.
24. You must insure or procure the insurance of the collateral which is goods and any buildings or improvements on the land to be mortgaged (in the case of such buildings or improvements for full replacement value if possible) and keep them insured against fire, accident, theft and all other risks as the Creditor may require both in the names of the Creditor and in your names for the Creditor's and your respective interests, all payments, in the event of a claim to be made to the Creditor. You must not do or allow any act or omission which causes the insurance to be invalidated or cancelled.
25. If you fail to do anything which you must do or do anything you must not do, the Creditor may do or pay anything to remedy the default and may add that sum to the unpaid balance and if you do not pay the cost of such remedy on demand the Creditor may charge you default interest.
26. You indemnify the Creditor and will keep it indemnified against any claim from any person relating to the collateral or the land to be mortgaged or the use thereof. If the Creditor incurs any loss, liability or expense in respect of the collateral or the land to be mortgaged or this agreement as a result of any act or omission of yours then the amount of such loss, liability or expense plus goods and services tax if any shall be payable by you to the Creditor and shall become part of the money secured and the Creditor may charge default interest thereon.
27. The Creditor may assign its right, title and interest in the collateral or in the land to be mortgaged or its right, title and interest in this agreement or any of them at any time.
28. If you default under this agreement the Creditor may, without notice save that required under the Credit (Repossession) Act 1997, seize the collateral and for such purposes you irrevocably give to the Creditor the right and licence for its agents to enter any premises and if necessary to break into any building where the collateral may be situated or where you are for the purpose of searching for and seizing the collateral. The Creditor shall not be liable in any way to you or to any third party for any damage or loss which occurs in the process of entry into any premises or during or as a result of the seizure and subsequent sale of the collateral and you will indemnify the Creditor against such damage or loss. On seizure, the Creditor may sell the collateral by auction or otherwise in any manner and in all respects (including, without restricting the generality of the power, the right to buy in, give credit and allow payment over time) as if the Creditor were the

unencumbered owner subject to any applicable obligations under the Personal Property Securities Act 1999 and under the Credit (Repossession) Act 1997. On such sale the receipt of the Creditor or its agent will be sufficient discharge to the purchaser for the purchase money and no purchaser shall be bound to investigate the propriety or regularity of any such sale or be affected by any notice express or constructive that such sale is improper or irregular.

29. If the land to be mortgaged is sold by the holder of any prior mortgage or other charge those of you who own the land to be mortgaged hereby irrevocably expressly authorise and request such prior mortgagee or holder to pay any funds remaining after making payments under sections 104 (1) (a), 104(1) (b) and 104(1) (c) of the Land Transfer Act 1952 to the Creditor up to the amount stated by the Creditor to be owing. You will and must indemnify the prior mortgagee or holder against any liability for making such payment and section 4 of the Contracts (Privity) Act 1982 shall apply to such indemnity. Those of you who own the land irrevocably authorise the Creditor to pay any registered mortgagee or charge-holder from the proceeds of sale of the land to be mortgaged if the Creditor sells the land to be mortgaged.
30. In the event that, contrary to your obligations hereunder, another security interest has priority over that of the Creditor with respect to the collateral, and if the Creditor takes a transfer of that security interest to itself then any money owing under this agreement shall be deemed to be owing under the security agreement providing for the security interest with priority and default under this agreement shall be deemed to be default under the other security agreement.
31. The Consumer Guarantees Act 1993 shall not apply if the collateral is acquired for business purposes.
32. The Creditor shall not be obliged to marshal in your favour or in favour of any other person.
33. If the Creditor does not at any time have priority over all other secured parties in relation to any collateral then pursuant to section 107(1) of the PPSA, for the purposes of dealing with that collateral you and the Creditor contract out of sections 108 and 109 to the extent that the words "with priority over all other secured parties" in sections 108 and 109(1) shall not apply so as to restrict the Creditor's ability to seize and to sell the collateral. In addition you irrevocably authorises the Creditor to pay any secured party over whom the Creditor does not have priority.
34. You waive your right to receive a verification statement following registration of any security interest.
35. If you are borrowing money from the Creditor in order to purchase any property to be used as security for your debt to the Creditor, you must apply that money to the purchase and the Creditor may pay the loan money directly to the seller of the property. In addition, you authorise and request the Creditor to pay or apply any advance to you to the person named or for the purposes set out in this agreement or any separate writing provided to the Creditor by you. The Creditor may impose such conditions on the payment or on the application of the money as it sees necessary to protect any security interest it may have.