

## TERMS AND CONDITIONS:

### Background

- (A) The Agent has supplied the Goods and labour (such as repair work and maintenance) to the Customer in respect of the invoice for the total cash price listed in Schedule 1 ("the Total Cash Price").
- (B) SCF has agreed to pay consideration to the Agent (subject to the Customer signing this contract) and the Agent has agreed to release the Customer from the Customer's obligation to pay the Total Cash Price to the Agent.
- (C) The Customer agrees to be bound by the terms and conditions of this contract

### General Terms and Conditions

#### 1. Interpretation

- 1.1 In this contract unless a contrary intention appears:
  - a. a reference to a person includes any other entity or association recognised by law and the reverse;
  - b. any reference to any of the parties includes that party's executors, administrators or permitted assigns, or if a company, its successors or permitted assigns or both; and
  - c. everything expressed or implied in this contract which involves more than one person binds and benefits those persons jointly and severally.

In this contract, unless inconsistent with the context, all defined terms given a meaning in Schedule 1 and Schedule 2 have that meaning and:

"Full Prepayment" means the payment of the Unpaid Balance before the last amount to be paid under this contract becomes payable:

"Part Prepayment" means the payment of an amount that is less than the Unpaid Balance before that amount is payable under this contract;

"Specified Schedule of Payments" means the specified schedule of payments listed under the Disclosure Statement;

"Unpaid Balance" means the amount owing under this contract at a particular time, being the difference between all amounts credited and all amounts debited to the Customer at that time; and

"Working Day" means a day of the week other than:

- a. a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
- b. a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- c. if 1 January falls on a Friday, the following Monday; and
- d. if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday.

#### 2. Interest

- 2.1 SCF has agreed to pay consideration to the Agent on the Advance Date and the Agent has agreed to release the Customer from its obligations to pay the Total Cash Price to the Agent.
- 2.2 The Customer must pay interest on the loan at the Annual Interest Rate.
- 2.3 Interest charges will be calculated and accrue on a daily basis commencing on the Commencement Date by applying the daily interest rate to that day's Unpaid Balance. The daily interest rate is the Annual Interest Rate divided by 365.
- 2.4 Interest charges will be debited to the Customer, and are payable by the Customer, on the last day of each month.
- 2.5 When the Customer makes a Full Prepayment of the loan, interest charges will be debited to the Customer, and are payable by the Customer, on the day of Full Prepayment.

#### 3. Payment of loan and interest

- 3.1 The Customer shall make each Payment of the amounts specified and on the dates specified in the Specified Schedule of Payments to SCF.
- 3.2 The Payments have been calculated on the following assumptions:
  - a. no fees and charges are payable by the Customer;
  - b. that SCF will elect to credit all Part Prepayments it accepts in accordance with the Specified Schedule of Payments, as clause 5.4 allows it to do;
  - c. that the Customer will not default in payment of any amount payable under this contract or otherwise breach this contract.
- 3.3 If any of these assumptions are untrue, then the amount of the remaining payments shall be adjusted so that the date of the final payment will remain the same.
- 3.4 Notwithstanding any other clause in this contract, if SCF exercises its power under clause 7.1 to require the Customer to pay the entire Unpaid Balance immediately, the remaining Payments shall be adjusted so that the only remaining payment is a payment of the entire Unpaid Balance on the date that SCF exercises its power.

#### 4. Method of payment

- 4.1 All payments under this contract must be made through a direct debit facility. Any other payment arrangements must be agreed upon in writing with SCF.
- 4.2 If a direct debit payment from the Customer to SCF is cancelled, dishonoured or otherwise not completed due through no fault of SCF a \$35 non-payment fee will apply and be charged to the Customer.

#### 5. Prepayment

- 5.1 The Customer may make a Full Prepayment of the loan at any time.
- 5.2 The amount required for the Full Prepayment of the loan is:
  - a. the Unpaid Balance at the time of the Full Prepayment; and
  - b. any administrative costs incurred by SCF arising from the Full Prepayment; and
  - c. an additional amount equal to a reasonable estimate of SCF's loss arising from a full prepayment, calculated in accordance with regulation 9 or 11 (as appropriate) of the Credit Contracts and Consumer Finance Regulations 2004.

- 5.3 SCF may, at its sole discretion, decline to accept any Part Prepayment made by the Customer. If SCF declines to accept a Part Prepayment it must refund that Part Prepayment to the Customer as soon as practicable.

- 5.4 SCF may, at its sole discretion, credit any Part Prepayment it accepts in accordance with the Specified Schedule of Payments. If SCF does not elect to credit a Part Prepayment it accepts in accordance with the Specified Schedule of Payments a prepayment fee of \$25 will be debited to the Customer, and is payable by the Customer, when the Part Prepayment is credited to the Customer

#### 6. Other things we can do relating to payments

- 6.1 If you are in default, we can apply any payment we receive from you in any way that we determine, this means we can apply it to fees and charges rather than an instalment and if several instalments are overdue, we can apply it to whichever instalment we choose.
- 6.2 *If we choose, we can capitalise any overdue payment.* This means that we can add the unpaid amount to the outstanding balance. We can also choose to extend the term and change one or all of the payment amounts. However, this is entirely at our option and you cannot force us to do this
- 6.3 If you have a claim against us, we may set off your claim against any debt that you owe us.
- 6.4 If we receive any money following the sale of land or any collateral, we may apply that money to reduce any debt that you owe us in whatever manner we decide – even if the debt due from you is not yet due and despite any claims you or any person claiming from you (for example, a subsequent charge holder) may make in respect of the money we have received.

#### 7. Default interest

- 7.1 In the event of the Customer defaulting in payment of an amount payable under this contract, interest charges will accrue on the Overdue Balance at the Default Interest Rate (instead of the Annual Interest Rate) while the default continues.
- 7.2 Interest must still be paid at the Default Interest Rate after any judgment in favour of SCF for payments due under this contract until the judgment is satisfied.

#### 8. Default

- 8.1 In the event of:
  - a. the Customer defaulting in payment;
  - b. the Customer failing to comply with any of its obligations under this contract;
  - c. SCF being entitled to enforce its interest in the Security for payment of any amount due under this contract;
  - d. the Customer dies, ceases to be of full legal capacity or commits an act of bankruptcy;
  - e. any representation or undertaking made by the Customer to SCF or to an agent of SCF is untrue, misleading or deceptive;
  - f. an event, or a series of events (whether related or not), occurs which, in SCF's opinion, may cause a material adverse change in the ability of the Customer to meet its obligations under this contract;
  - g. if at any time any judgment of any court against the Customer remains unsatisfied for more than 7 days;
  - h. any insurance policy in relation to the Security is cancelled without the prior written consent of SCF;
  - i. Where the Customer is not a listed company, if there is a sale, transfer, or other disposition of any of the shares in capital of the Customer which has the effect of altering the effective control of the Customer without the prior written consent of SCF;
  - j. If the Customer commits or suffers any act of bankruptcy or (if a company) becomes insolvent;
  - k. If a receiver is appointed in respect of any assets of the Customer;
  - l. If a resolution is passed for the winding up of the Customer or a petition is presented to the high court seeking an order for the winding up of the Customer;
  - m. If the Customer makes an assignment or composition with its creditors;
  - n. If in the opinion of SCF the Customer is unable to pay or does not pay its debts as they become due and payable; and
  - o. If distress or execution is levied or issued against the Goods; (each a "Default Event"), then SCF may take any one or more of the following actions (after giving the Customer prior written notice of the Default Event or any other notice required by law):
    - a. require the Customer to pay the Unpaid Balance immediately;
    - b. exercise any rights that SCF has under the Security; or
    - c. exercise any rights that SCF has under this contract or that are available to SCF at law.
  - d. Repossess the Security and for that purpose its officers or agents may enter on any property occupied by the Customer.
- 8.2 This clause does not affect any other legal or equitable right of SCF.
- 8.3 If SCF exercises either or both of its rights under this clause, the contract is deemed cancelled by the Customer and the Customer agrees to pay a cancellation fee and all other payments due to SCF under the contract.

#### 9. Costs

- 9.1 The Customer shall pay SCF's legal fees and disbursements of the costs of recovering or attempting to recover any payments due under this contract by the Customer.

## 10. Notices, demands and enforcement

- 10.1 For the purposes of this contract (but subject to the Credit Contracts and Consumer Finance Act 2003, the Credit (Repossession) Act 1997 (if applicable) and any other applicable laws) notices and demands must be served or given as follows:
- a notice or demand must be in writing signed by or on behalf of SCF.
  - the notice or demand may be sent by post to the Customer or given by personal delivery.
  - if by post, the notice or demand must be posted in an envelope addressed to the Customer at the Customer's postal address listed in Schedule 1.
  - if by personal delivery the notice or demand must be either left at the Customer's home address listed in Schedule 1 or given to any officer of the Customer personally.
  - a notice or demand if posted will be deemed to have been received by the Customer on the third working day after the date of posting.
- 10.2 The Customer must immediately give notice in writing to SCF of any change to their contact details as listed in Schedule 1 or circumstances.
- 10.3 The Customer will not have any right of action, claim or demand against SCF for any error or omission in a notice or because of the exercise or enforcement by SCF of its rights (expressed or implied) under this contract.
- 10.4 SCF's statements will be prima facie evidence of the amount then owing or unpaid by the Customer to SCF.
- 10.5 SCF will not be liable for any loss caused by the rightful exercise by SCF of any of its rights, expressed or implied, under this contract.

## 11. Set-off

- 11.1 The Customer must make all payments due under this contract without deduction or set-off.
- 11.2 SCF may set-off any amounts it owes or holds on behalf of the Customer against any amounts due by the Customer under this contract.

## 12. Customer's acknowledgment and warranty

- 12.1 The Customer acknowledges:
- no representation or warranties in relation to the loan have been made by or on behalf of SCF except those in this contract;
  - the Customer has not relied on any advice given by or on behalf of SCF when deciding to enter into this contract;
  - the Customer warrants that all statements and representations made by or on behalf of the Customer to SCF in relation to the advance of the loan are correct in every material respect; and
  - the Customer will repay on demand all money then owing by the Customer to SCF if the Customer is in breach of this warranty.

## 13. Further special conditions

- 13.1 To qualify for this contract the Customer must own the Vehicle and meet SCF's customer financial criteria as set from time to time by SCF.

## 14. Cancellation Charges

- 14.1 The Customer agrees to pay a cancellation fee if the Customer cancels this contract pursuant to the Credit Contracts and Consumer Finance Act 2003.

## 15. Charging clause

- 15.1 As security for the performance by the Customer of all the Customer's obligations to SCF under the contract, the Customer grants to SCF a security interest over the Security.
- 15.2 The Customer acknowledges that clause 15.1 creates a security interest ("Security Interest") (as that term is defined in the Personal Property Securities Act 1999 ("PPSA")) in the charged property. The Customer will at SCF's request promptly execute any documents, provide all necessary information and do anything else required by SCF to ensure that the Security Interest constitutes a [first ranking] Perfected Security Interest (as that term is defined in the PPSA) including executing any variations to this agreement reasonably requested by SCF. The Customer waives its right under the PPSA to receive a copy of any Verification Statement (as that term is defined in the PPSA).
- 15.3 The Customer agrees that despite Section 109 of the PPSA and in addition to any other rights contained in that section, in the event of a Default Event then SCF may repossess the Security. If at any time SCF has reasonable grounds to believe that the Security has been or will be destroyed, damaged or removed contrary to this contract, then SCF can repossess the Security without notice.
- 15.4 The Customer agrees that nothing in sections 114(l)(a), 116, 117(l)(c), 119, 120(2), 126, 127, 133 and 134 of the PPSA will apply to this contract or the security under this contract and the Customer waives all of their rights under sections 121, 125, 129, 131, 132 of the PPSA.
- 15.5 The Customer will pay all legal and other costs associated with the enforcement and attempted enforcement of all documents necessary to give full effect to the Security.

## 16. No waiver

- If SCF delays or does not exercise any right or remedy under this contract, it is not a waiver of that right or remedy.
- The single or partial exercise of any right or remedy under this contract does not preclude the exercise of any other right or remedy or its further exercise.
- The rights and remedies provided in this contract are cumulative. They do not exclude any rights or remedies provided by law.
- Any waiver or consent given by SCF must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.

## 17. What the Customer must do in relation to the Security

- 17.1 The Customer must:
- at its own expense keep the Security in good condition and repair for the Term and protect it from loss or damage and without limiting the generality of the foregoing the Customer must replace any defective or worn parts of the Security
  - The Customer must replace any defective or worn out parts of the Goods with new parts and any such replacement parts or accessories associated shall upon attachment become the property of SCF and part of the Goods; and
  - The Customer shall ensure that the Goods at all times are used solely for the purposes intended by the manufacturer, and will have regard to the design capabilities and limitations thereof and in accordance with the manufacturer's instructions and within the capacity of the Goods.
  - keep the Security in its possession and may not sell, assign, part with possession, hire or deal with the Security until all payments due under this contract by the Customer have been paid;
  - comply with all terms contained or implied in other contract which may affect the Security;
  - ensure the Security for its full replacement value against all risks that are prudent to insure against and all other risks which SCF may require, with an approved insurer, and deliver to SCF, at the times specified by SCF, all details of its insurance required by SCF;
  - ensure that each insurance policy relating to the Security notes SCF's interest in the Security and names SCF as a loss payee under that policy;
  - pay all proceeds of any Security towards the Unpaid Balance owing to SCF;
  - allow SCF and any person on behalf of SCF to inspect the Security at any reasonable time;
  - if SCF requests, do all things which SCF thinks desirable to assist SCF in exercising any of its rights or powers under this contract, whether on enforcement of the security interest or charge (including, but not limited to the sale of any of the Security).
  - if the Security is removed, seized or taken out of the possession of or withheld from the Customer, immediately give written notice to SCF of the address of the place where the Security may be and of the name of the person who has possession of the Security; and
  - deliver to SCF written notice of the present location of the Security, when asked to do so by SCF.

## 18. Ownership of Goods

- 18.1 SCF retains ownership of the Goods until the Term has expired and the Customer has performed all of its obligations under this contract.

## 19. Miscellaneous Provisions

- 19.1 Assignment: The Customer may not assign or transfer any of its rights or obligations under the contract to any person or organisation without the prior written consent of SCF. SCF may, in the ordinary course of its business and in accordance with applicable law, at any time and from time to time assign, novate or transfer to person organisation its rights and obligations under the contract.
- 19.2 Governing Law: The contract is governed by and construed in accordance with the laws of New Zealand and is under the exclusive jurisdiction of the New Zealand Court.
- 19.3 Entire Contract: This Contract constitutes the entire contract between the parties and supersedes all previous terms and conditions of credit and any other arrangements whether oral or written in relation to credit between the Customer and SCF.
- 19.4 Severability: In the event that any one or more of the provisions contained in this contract will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions of this contract or any other such instrument.
- 19.5 Warranty: The Customer warrants that all statements made by the Customer to SCF and all documents provided in connection with the Customer's application to SCF are true and correct. The Customer acknowledges that SCF has relied on the correctness of those statements, documents and representations in entering into the Contract and will continue to do so in dealing with the Customer.
- 19.6 Use of Information: The Customer agrees that SCF may obtain information about the Customer and the Customer's financial affairs from the Customer or any other person including obtaining a credit assessment and/or debt collection report and the Customer consents to any person or agency providing SCF with such information. The Customer agrees that SCF may use the information SCF has about the Customer relating to the Customer's creditor worthiness for its own reference purposes.