

# **Avanti Finance**

## **General Terms - Property**

Version 2312

## Finding your way around the small print

These General Terms are incorporated into and to be read in conjunction with either the Property Loan Agreement – Consumer or the Property Loan Agreement – Non-Consumer (as applicable).

To help you find your way around this document we have divided it into parts. Some clauses and some parts may not apply to your specific loan. For example:

- If your loan agreement is headed Property Loan Agreement – Non-Consumer, then the sections headed “Your Right to Cancel” and “Hardship Variation” in Part A - Key Information and Disclosures do not apply to your loan.
- If your loan agreement is not secured by personal property (e.g. cars or other assets – we call these ‘assets’) the clauses about security in personal property in these *General Terms* do not apply to your loan.

**If you are a Guarantor** part B – Loan Terms does not apply to you. If as a guarantor, you have provided *security* (this means you gave a mortgage over property or a security in an asset you own) to support the *loan* then Part C - Security Terms applies to you. Clauses in Part D – Default and Part E – General Matters apply to you as context permits.

Part F sets out the text of the memorandum of mortgage terms 2017/4341, these terms are incorporated (along with the terms implied by law) in every mortgage given in support of the *loan*.

Words in *italics* are defined terms. The dictionary of defined terms is contained in clause 33 in part E of these General Terms

It's important to us that you understand the nature and extent of your obligations to us when we lend money to you. It is tempting to overlook the small print but we encourage you not to.

If you have any concerns or do not understand any of these terms or if you feel you are being pressured into signing the *Loan Agreement*, then you should obtain legal advice before you sign.

# Contents

- PART A: KEY INFORMATION AND DISCLOSURES ..... 5**
- PART B: CUSTOMER COMMUNICATION LIFECYCLE ..... 7**
  - 1. What must happen before we lend ..... 7
  - 2. Accounts ..... 8
  - 3. What you must pay ..... 8
  - 4. When and how to pay ..... 8
  - 5. Other amounts – fees, charges and taxes ..... 9
  - 6. Default interest ..... 10
  - 7. Redrawing amounts ..... 11
  - 8. Statements for your accounts ..... 11
  - 9. You must use the loan for the loan purpose ..... 11
  - 10. Instructions from one borrower ..... 11
  - 11. Lending to Trustees ..... 12
- PART C: SECURITY TERMS ..... 13**
  - 12. Mortgage over Real Property ..... 13
  - 13. Security Interest in Personal Property ..... 14
  - 14. You grant us a power of attorney ..... 15
  - 15. Insurance over all secured property ..... 15
  - 16. Our rights to protect our interests ..... 16
  - 17. Your GST position ..... 16
- PART D: DEFAULT ..... 17**
  - 18. When you are in default ..... 17
  - 19. What can happen if you default ..... 17
  - 20. Rights over personal property on default ..... 18
- PART E: GENERAL MATTERS ..... 19**
  - 21. Credit law ..... 19
  - 22. Financial information and valuations ..... 19
  - 23. How we may exercise our rights ..... 19
  - 24. Blanks ..... 19
  - 25. Our certificates ..... 19
  - 26. Assignment and disclosure ..... 19
  - 27. Notices, other communications and service of documents ..... 20
  - 28. Variations ..... 20
  - 29. Your promises to us ..... 21
  - 30. Information and Privacy ..... 21

31. Appointment of agent for service in New Zealand.....23

32. Applicable law and Conflict between terms .....23

33. Meaning of words.....23

**PART F: TEXT OF MEMORANDUM 2017/4341.....27**

## Part A: Key Information and Disclosures

### Your Right to Cancel

*(only applies to consumer loans)*

You are entitled to cancel the consumer credit contract by giving us notice.

#### Time limits for cancellation

If the disclosure documents are handed to you directly you must give notice to us that you intend to cancel within 5 working days after you receive the documents.

If the disclosure documents are sent to you by electronic means (for example, by e-mail) you must give notice to us that you intend to cancel within 7 working days after the electronic communication was sent.

If the disclosure documents are mailed to you, you must give notice to us within 9 working days after they were posted.

Please note that Saturdays, Sundays and national public holidays are not counted as working days.

#### How to cancel

To cancel, you must give us written notice that you intend to cancel the contract by:

1. handing notice to us or one of our employees; or
2. posting the notice to us or our agent; or
3. emailing the notice to our email address specified on the front page of this agreement.

You must also, within the same time, return to us any advances received by you under this contract.

#### What you may have to pay if you cancel

If you cancel this contract, we can charge you:

- (a) the amount of any reasonable expenses we have had to pay in connection with this Contract and its cancellation (including legal fees and fees for credit reports, etc); and
- (b) interest for the period from the day you received any advances until the day you repay the advance to us.

### Hardship Variation

*(only applies to consumer loans)*

#### What to do if you suffer an unforeseen hardship

If you are unable reasonably to keep up your scheduled payments or other obligations because of illness, injury or loss of employment, the end of a relationship, or other reasonable cause, you may be able to apply to us for a hardship variation.

To apply for a hardship variation, you need to:

- (a) make an application in writing; and
- (b) explain your reason(s) for the application; and
- (c) request one of the following:
  - an extension of the term of the contract (which will reduce the amount of each payment due under the contract); or
  - a postponement of the dates on which the payments are due under the contract (specify the period for which you want this to apply); or
  - both of the above; and

(d) give the application to us.

Do this as soon as possible. If you leave it too long, we may not have to consider your application.

**Registration on Financial Service Provider Register:**

Avanti Finance Limited is registered under that name on the Financial Service Providers Register, registration number FSP41821.

**Internal Complaints Procedure:**

Our complaints procedure may be initiated by telephone, email, via our website or in writing. If we can't resolve your issue immediately, here is how it will be dealt with:

1. If you have made your complaint verbally or via our website, we will acknowledge your complaint immediately. If you have made your complaint in writing we will acknowledge it within 5 working days of receiving it.
2. We aim to have your complaint resolved within 5 days and will email or write to you outlining the resolution. If we are unable to resolve your complaint within 5 working days we aim to resolve it within 20 working days.
3. In the event that we can't resolve your complaint within 20 working days, we will write to you advising you why we require more time to resolve your complaint.

**Dispute Resolution:**

We are a member of Financial Services Complaints Limited ('FSCL'), which is an approved dispute resolution scheme.

FSCL's contact details are:

Financial Services Complaints Limited  
 PO Box 5967  
 Wellington 6145

Ph: 0800 347 257 or 04 472 3725

Email: [info@fscl.org.nz](mailto:info@fscl.org.nz)

## Part B: Customer Communication Lifecycle

### 1. What must happen before we lend

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1.1 We only have to lend to you if:

- (a) the title to each *property* is satisfactory to us;
- (b) all searches, certificates (including certificates from trustees and company directors and solicitors), valuations, reports and consents we request relating to a *property*, an *asset* or any *security* have been provided and are satisfactory to us;
- (c) you are eligible to buy the *property* under the Overseas Investment Act 2005, where the *property* is a sensitive asset (as defined in the Overseas Investment Act 2005),
- (d) we have received:
  - evidence that council rates, body corporate levies (if any), any other government or local government taxes or charges and the insurance premiums for each *property* are paid up to date;
  - each *security* and its related documents confirming registration and enforceability or are satisfied that immediately after settlement each *security* will be registered;
  - all applicable documentation, including but not limited to the documentation that makes up this *agreement*;
  - if any *property* is a Unit Title, a copy of a pre-settlement disclosure statement under section 147 of the Unit Titles Act 2010;
  - evidence of the insurance over *secured property* that meets our requirements; and
  - a direct debit authority is signed or such other payment method that we accept is in place, and this information is satisfactory to us;
- (e) you have complied with any other conditions that we have reasonably requested that you satisfy;
- (f) you are not in default under *this agreement* or in default in respect of any other obligation to us and no-one who provides a *security* is in default under that *security* or has withdrawn from it;
- (g) nothing has happened since you applied for the *loan* which has led or could lead to a deterioration in your financial circumstances;
- (h) nothing has happened since you applied for the *loan* which has led or could lead to a material deterioration in the market for finance (whether global or local) that we consider changes our risk for this *loan*;
- (i) nothing has happened since you applied for the *loan* which has led or could lead us to reasonably believe that the information supplied in connection with this loan is fraudulent, misleading, deceptive or incorrect; and
- (j) when a *Guarantee* is being given:
  - a solicitor has confirmed or we are satisfied that each guarantor has received a copy of each part of *this agreement* and the *Guarantee*; and we have received either:
    - a certificate of independent legal advice satisfactory to us for each guarantor from a solicitor who does not work for the firm of solicitors acting for the borrower; or
    - a declaration satisfactory to us by each guarantor that prior to signing the *Guarantee* has read and understood the *Guarantee* and has elected not to receive independent legal advice.

**Time Limit for first advance**

- 1.2 Even if our requirements in clause 1.1 are met, our obligation to lend you the *loan amount* ends if the *settlement date* does not occur within the 'key time limit' specified in the 'Your Loan' section of the *Loan Agreement*.

**2. Accounts**

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**Loan accounts**

- 2.1 We may lend money to you in one or more *account*. The specific loan amount, type of interest rate, amount of the interest rate, payment amount, number of payments and payment frequency for each *account* are set out in the *financial table(s)* in the *Loan Agreement*.

**How we assign debits and credits to an account**

- 2.2 Interest charges applicable to each *account* are debited to that *account*.
- 2.3 We decide to which *account* credit fees and other amounts (such as rates that you have failed to pay) are debited.

**3. What you must pay**

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- 3.1 You must repay all amounts you borrow from us and you must pay us interest, credit fee and charges, and other amounts under clause 5.
- 3.2 You must make *scheduled payments* for each *account* at the frequency indicated in the *loan details* (unless you change the frequency under clause 4).
- 3.3 On or before the last day of the *loan term*, you must pay the *total amount owing*.

**Changing repayment amounts**

- 1.2 We may change the amount of the *scheduled payments* for an *account* in line with changes to the *annual interest rate* for that *account* or as a result of debiting fees, charges or other payments made by us.

We will notify you in writing of a change within 5 working days of the day on which the change takes effect.

**4. When and how to pay**

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**When payments are due**

- 4.1 Your first *scheduled payment* is due one month after the *settlement date* if your *payment frequency* is monthly; and fourteen days (14) after the *settlement date* if your payment frequency is fortnightly or 7 days after the *settlement date* if your *payment frequency* is weekly;

If you ask, we may agree to vary the first payment date to coincide with a date which coincides with your receipt of salary or wages or other regular income.

All subsequent *scheduled payments* are due monthly, fortnightly or weekly according to the *payment frequency* in the *loan details*

**Monthly** payments are due on the same date in each following month as the first payment.

**Fortnightly** payments are due every 14 days following the first payment.

**Weekly** payments are due every 7 days following the first payment.

If a payment is due on the 29th, 30th or 31st of a month, and a particular month does not have that date, that payment is due on the last day of that month.

Please note that the amount of the *scheduled payments* disclosed in the *loan details* may differ if the *settlement date* is different from the anticipated settlement date.



**Payments due on a non-working day**

- 4.2 If a payment is due on a day which is not a *working day*, you may make the payment on the next *working day* unless that payment is due on the last day of the month then you must make that payment on the last *working day* of that month.

**Switching payment frequencies and payment date**

- 4.3 **Variable rate accounts:** You may switch between monthly, fortnightly and weekly payments for any *account* that is a *variable rate account*.

**Fixed rate accounts:** After the *settlement date*, you may not switch between monthly, fortnightly and weekly payments in relation to any *fixed rate account* unless:

- (a) the *fixed rate period* has expired; or
  - (b) the *fixed rate period* is broken – please refer to the ‘prepayment’ section of the Loan Agreement for information about breaking an account with a fixed rate.
- 4.4 You may only switch the payment frequency for the *loan* or any *account* once each month.
- 4.5 You may not switch the payment frequency for the *loan* or any *account* if you are in default.

**How payments are to be made**

- 4.6 One of the documents you sign and give to us at the start of the *loan* is a direct debit authority. This permits us to debit amounts directly from your nominated bank account.

You must not cancel any direct debit authorisation you give us or close the bank account referred to in any direct debit authorisation unless you first give us another direct debit authorisation acceptable to us. You must also ensure there is enough money in the bank account to meet each debit.

- 4.7 It is your obligation to make all payments to us on time. If a direct debit fails or is reversed for any reason then you must pay us by direct credit to the bank account we tell you to pay.
- 4.8 A payment is not made until it has been received by us and credited to your *account*. It is important that you quote your loan number or name when making the payment.
- 4.9 Each payment by you to us under this agreement is to be made:
- (a) free of any restriction or condition; and
  - (b) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of tax or on any other account, whether by way of set-off, counterclaim or otherwise.

**Interest payments**

- 4.10 If in respect of an *account*, we refer to your *scheduled payments* as ‘interest payments’ we calculate those payments as follows:

$$(\text{Yearly interest} + (12 \times \text{monthly account fee})) \div \text{payment frequency}$$

We calculate the interest due on that *account* over a year and add 12 monthly account fees (being the monthly account fees due each month of a year) and then we divide that figure by 52 weeks, 26 fortnights or 12 months (depending on the *payment frequency* that applies to that *account*).

- 4.11 If in respect of an *account*, we refer to your *scheduled payments* as ‘partial interest payments’, these payments represent some of the interest due and the monthly account fees. The remaining interest charged will be *capitalised* to the loan and is due on the last *payment date* for this *account*.

**5. Other amounts – fees, charges and taxes**

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- 5.1 You must pay us all fees and charges when they are due. The fees and charges current at the *disclosure date* are set out in the *Fees Brochure* and in the *Loan Agreement*.
- 5.2 We will debit a fee to an *account* when it is due or as specified in the *Fees Brochure*.
- 5.3 We will debit a charge or expense to an *account* when we pay it or the date it becomes due (whichever is earlier). If you have more than one *account*, we will debit a *variable rate account* if you have one.

**Other amounts to pay**

5.4 You must pay us:

- (a) Any government charges and duties on receipts or withdrawals under *this agreement*, if any.
- (b) Any expenses we reasonably incur in enforcing *this agreement* or a *security* after you are in default including but not limited to:
  - in the case of a mortgage, expenses incurred in insuring, preserving and maintaining the *property*; and
  - the use of our staff and facilities;
  - any government or local authority taxes that are payable upon sale of a *property* including GST (if any) on the sale price.
- (c) Any costs or expenses we reasonably incur in doing anything that you are required to do under *this agreement* but have failed to do.

These payments are due and payable on the dates specified in the *loan details* and if no such dates are specified, they are due and payable when we incur them whether or not demand has been made for them.

These payments include any amount which we pay because we reasonably believe it is or may be payable, even if we subsequently discover that it was not necessary to pay the amount (for example, if you renew your insurance over the *property* but fail to tell us that you have done so, and we then take out insurance over the same *property*).

**How to pay other amounts**

5.5 You authorise us to debit to your bank account using the direct debit authorisation you have given us with any fee when it is due or with any other amount, when we pay that amount under clause 5.4(a) – (c).

**Interest on other amounts**

5.6 If we make a payment under clause 5.4 and you fail to pay us that amount when it is due, the interest rate used to calculate the *default rate* payable on that overdue amount is the highest *annual interest rate* that is payable on any *account* under *this agreement*. If there is no such rate, then the interest rate is such *variable rate* as we may select.

**Changes to interest rates, fees and charges**

5.7 We may change an *annual interest rate*, any *named interest rate*, the amount of any fee or charge, when a fee is charged, or impose a new one. We will publish or disclose the change in accordance with the requirements of *credit law*.

**6. Default interest**

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**Default interest**

- 6.1 If you do not make a payment on time, interest at the *default rate* (we call this default interest) will accrue on the amount in default from the day the payment was due until the day the amount outstanding is received by us.
- 6.2 Default interest is calculated by multiplying the amount in default by the daily default rate, which is the *default rate* divided by 365.
- 6.3 The default interest is charged to the *account* on each date that interest is debited to your *accounts* and monthly after the end of the *loan term* and immediately due.

**Capitalising default interest**

6.4 If you do not pay default interest charges when we debit them to the *account*, the default interest charges form part of the overdue amount (this is known as “capitalising”). Default interest then accrues on the new amount overdue.

## 7. Redrawing amounts

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### When redraw may be available

- 7.1 If you have prepaid amounts under *this agreement* you may ask to *redraw* (or re-borrow) any amount prepaid.
- 7.2 The *loan amount* reduces over time as you make the *scheduled payments*. We can calculate at any time what your *loan amount* should be assuming all *scheduled payments* have been made on time. We call this amount the *scheduled balance*.
- 7.3 You may only *redraw* an amount prepaid if the *balance owing* after the *redraw* does not exceed the *scheduled balance*.

### Conditions to redraw

- 7.4 We may agree to allow you to *redraw* if:
- (a) you pay us the then current redraw fee (if applicable); and
  - (b) you are not in default when we receive your request and you have not been in default during the previous period of 12 months; and
  - (c) the *redraw* amount does not result in the *total amount owing* after the *redraw* exceeding the *scheduled balance*; and
  - (d) we have found satisfactory any further information regarding your financial position or regarding any *property* that we may have asked you to give us.

### Declarations you make

- 7.5 Each time you request a *redraw*, you declare to us that:
- (a) your financial position has not been adversely affected by any changes since you last provided us with financial information about you; and
  - (b) you have not broken any of the promises you have made to us in *this agreement* or in any *security*.

## 8. Statements for your accounts

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- 8.1 We give you a statement for your *account* every 6 months until there is no *balance owing* on the *account*. These statements provide you with the continuing disclosure information required by *credit law*.
- 8.2 If you have consented to receiving statements electronically then we may send those statements to you in an electronic form and/or in an electronic communication.

## 9. You must use the loan for the loan purpose

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- 9.1 You promise to use the loan for the loan purpose stated in the *Loan Agreement*.
- 9.2 If you are borrowing money from us to purchase any *secured property*, then:
- (a) You must apply that money to that purchase and we may pay the loan money directly to the seller of that property.
  - (b) You authorise and request us to pay or apply any advance to you, to the person named in any special condition or for the purposes set out in *this agreement* or otherwise in writing by you.
  - (c) We may impose such conditions on the payment or on the application of the advance as we see necessary to protect any *mortgage* or *security interest* we may have.

## 10. Instructions from one borrower

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- 10.1 Where there are two or more of you we are authorised to act on the instructions of any one of you without the need to obtain confirmation or instructions from the others. Each of you is bound by instructions given to us by the others.

## 11. Lending to Trustees

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### Trustees' acknowledgement

11.1 If you enter into *this agreement* as trustee of any trust, you acknowledge:

- (a) that the trustees have unanimously resolved to enter into this agreement;
- (b) *this agreement* is for the benefit of the trust; and
- (c) you have the right to be fully indemnified out of trust property for obligations incurred under *this agreement*.

### Loans to trustees

11.2 If you have entered into *this agreement* as a trustee of any trust, you are liable under this contract in your own right and as trustee of the trust. This means that we can recover against your personal assets as well as the trust assets (but see 11.4 below).

### Change of trustees requires consent

11.3 You must not change a trustee, terminate the trust, or change any terms of the trust without our prior written consent.

### Limited liability trustees

11.4 If any one of you is named in *this agreement* as a limited liability trustee then, despite what we say in clause 11.2 we agree that the liability of the limited liability trustee under *this agreement* and under any *security* is not personal and unlimited but will be limited to the amount that may be satisfied by the indemnity given to us by section 86 of the Trusts Act 2019, or from your indemnity, in each case from trust property (other than trust property over which we have security) at the time of enforcement.

11.5 If:

- (a) the right of the limited liability trustee to be indemnified from the assets of the trust has been lost or we are unable to recover from trust property because the trust has not received a benefit for the transaction between us and the trustee; and
- (b) as a result, we are unable to recover the amount from the indemnity against trust property,

then the limitation of liability under clause 11.4 does not apply and the limited liability trustee is liable personally for the amount which, but for the loss of indemnity, we would have been able to recover from the trust property.

## Part C: Security Terms

This section applies to your *Loan Agreement* if the *loan* is secured by a mortgage over *property* or a *security interest* over *assets*, or both. When we refer to *property* and *assets* together use the defined term, *secured property*.

### 12. Mortgage over Real Property

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#### Agreement to mortgage

- 12.1 Each of you that are the owner of the *property* grants a mortgage on the terms specified in the *Loan Agreement* (or any *Loan Variation Statement*) over the *property* on the following terms and conditions:
- (a) Where next to the heading “Mortgage” in the Security Details section of the *Loan Agreement* it specifies that “a registered first mortgage” or “a registered second mortgage” is required, you will authorise and instruct a lawyer of your choice to register an “All Obligations” mortgage, on the terms as set out in the Security Details section of the *Loan Agreement*, over the *property* to us.
  - (b) Where next to the heading “Mortgage” in the Security Details section of the *Loan Agreement* it specifies that an “agreement to mortgage” is required, we may request that you authorise and instruct a lawyer of our choice to register an “All Obligations” mortgage over the *property* to us.
  - (c) We may include in the priority sum a reference to a specified principal amount being the balance advanced to you as at the date of the registration of the mortgage or the balance agreed to be advanced to you as at that date.
  - (d) In addition, you irrevocably authorise us as your attorney, appointed under clause 14 of *this agreement*, to authorise and instruct a lawyer to register a mortgage on the terms set out in the *Loan Agreement* or a *Loan Variation Statement* (if applicable) at any time and without the need to first request you to do so.
- 12.2 We may lodge a caveat against any land that you own and have mortgaged in accordance with clause 12.1 to give notice of our interest under the agreement to mortgage specified in that clause.

#### All obligations mortgage

- 12.3 The mortgage you grant under clause 12.1 is given as security for all your financial obligations to us whether as borrower or as a guarantor, both now and in the future. The covenants, conditions and powers that apply to each mortgage that you give or agree to give us are those:
- (a) implied in mortgages of land by Part 1 of Schedule 2 of the Property Law Act 2007 (the “implied covenants”); and
  - (b) set out in memorandum 2017/4341, the text of which is set out in the schedule to these General Terms.
- 12.4 If there is any conflict between any of the provisions of *this agreement* and memorandum 2017/4341 and the implied covenants, the provisions of *this agreement* and Memorandum 2017/4341 shall take precedence and the implied covenants are deemed to be varied, amended or negated accordingly.

#### Prior and subsequent mortgages

- 12.5 Each person agreeing to grant a mortgage under clause 12.1 promises us that there are no other mortgages over the *property* to any other person, or if there are, that these have been disclosed to us.
- 12.6 If we consent to any other mortgage having priority over the *mortgage*, you must comply in all respects and perform all your obligations under the prior mortgage.

#### Negative pledge

- 12.7 You agree not to grant any mortgage or charge having priority after the *mortgage* without our prior written consent. If we consent to any mortgage or charge having priority behind the mortgage you agree to give us and to procure the subsequent mortgagee to enter into that we retain priority on the terms that we require.

### 13. Security Interest in Personal Property

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#### Security interest in Assets

- 13.1 If you are the owner of any *asset* (as detailed in the Security Details section of the *Loan Agreement* or in any *Loan Variation Statement*) this clause 13 applies to you.
- 13.2 You **must**:
- (a) store all goods that are part of the *asset* at the address of the owner shown in the *Loan Agreement*;
  - (b) care for and maintain the *asset*;
  - (c) repair any damage to the *asset*;
  - (d) replace with other goods of a similar nature and value any of the *asset* that may be destroyed or lost or may cease to exist;
  - (e) comply with all laws relating to its ownership and use; and
  - (f) if the *asset* is a motor vehicle, keep the vehicle registered and ensure it has current warrant of fitness.
- 13.3 You must not:
- (a) do anything that could adversely affect your rights of ownership in the *asset*;
  - (b) dispose of the *asset* by way of sale, or gift or lease;
  - (c) allow someone else to have possession of the *asset*;
  - (d) destroy, damage, endanger or disassemble the *asset*;
  - (e) conceal or hide the *asset* from us;
  - (f) grant any other security of the *asset* or allow any lien to be created over it;
  - (g) take the *asset* out of New Zealand; and
  - (h) use the *asset* for any dangerous or illegal activity or for any purpose for which it was not intended.
- 13.4 If the *asset* is a motor vehicle then, in addition to the above, **you must not**:
- (a) use it in any race or competitive activity;
  - (b) change the registration (including to obtain any personalised registration plate) or remove or alter any serial number without our permission.
- 13.5 The *security interest* granted by *this agreement* includes a *security interest* over all goods acquired by you under clause 13.2(d) and extends to any personalised registration plate on any *asset* that is a motor vehicle;
- 13.6 If you install or fix anything to the *asset* then that thing becomes part of the *asset* and subject to the *security interest*.
- 13.7 We have the right to take possession of any *asset* if this is required to enable us to perfect our *security interest*.
- 13.8 If any *asset* has been acquired for business purposes, the Consumer Guarantees Act 1993 does not apply.
- 13.9 You waive your right to receive a verification statement following registration of any *security interest*.
- 13.10 We may, at all reasonable times, either personally or by agents, enter upon your premises to inspect the *asset*.
- 13.11 If you fail to do anything that you agree to do under *this agreement* then we may, but are not required to, do that act or thing.
- 13.12 If we incur any cost or make a payment as a result of our actions under clause 13.9, that cost or the amount of that payment is repayable to us on demand and is secured under any *security interest* you give to us.

#### Prior and subsequent security interests

- 13.13 Each person agreeing to grant a *security interest* in the *asset* promises us that there are no other *security interests* over the *asset* to any other person, or if there are, that these have been disclosed to us.

**Negative pledge**

13.14 You agree not to grant a *security interest* in the *asset* to another party.

**14. You grant us a power of attorney**

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**Our power of attorney**

- 14.1 Each borrower and each guarantor, jointly and severally, irrevocably appoints us and any one of our directors severally to be their attorney to:
- (a) do anything which a borrower or a guarantor agrees to do;
  - (b) do anything and to sign any document which the attorney thinks desirable to protect the interests of the lender under *this agreement* or a *Guarantee* or any *security*.
- 14.2 Without limiting the powers in 14.1, an attorney may:
- (a) execute any document:
    - for the purposes of registration of any interest under the Land Transfer Act 2017; or
    - perfect title in any *asset*; or
    - perfect any *security interest* created under *this agreement*; or
    - vest, or enable to vest, an *asset* in us or our nominee or any purchaser; or
    - facilitate the realisation of any *asset* to secure the full benefit of our rights under *this agreement*; and do all things and sign all further instruments that may be required to assure us of valid and binding legal interests in the land or any *asset*.
  - (b) act on behalf of each borrower or guarantor to notify any insurance company of the lender's interest in any insurance policy and make, discuss, deal with or settle any claims or any other party in connection with any damage or destruction to the *property* or *asset* and receive any payments from any insurance company on behalf of the insured.
  - (c) communicate with the IRD relating to your GST status and any GST that may have been claimed by you or may be or become payable in respect of any *property*.
  - (d) communicate with a local authority in respect of any rating account and information relating to the *property*.
  - (e) communicate, sign any document or take any action with respect to the registration of the any *asset* that is a vehicle.
- 14.3 This power of attorney will remain until the *total amount owing* has been paid to us in full.
- 14.4 Each borrower and each guarantor ratifies anything done by an attorney under this clause and further indemnifies any person acting in reliance upon the power.
- 14.5 If we assign the benefit of *this agreement* the assignee will have the same rights and powers under this clause as we have and each borrower and each guarantor irrevocably appoints the assignee his or her attorney accordingly.

**15. Insurance over all secured property**

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- 15.1 All *secured property* must be insured at all times against fire, accident, theft, vandalism, flood, storm and earthquake and any other thing that we may require to protect our interest in the *secured property*.
- 15.2 In the case of buildings on any *secured property* this insurance must be for full replacement value if this is possible or for a sum insured amount that is acceptable to us in all respects and adjusted annually in accordance with construction inflation. In the case of *assets*, this insurance will be for the full insurable value of the *assets*. We may (but do not need to) agree in writing to another insurance value.
- 15.3 The insurance records us as an interested party.
- 15.4 Our *security* extends to the proceeds of any insurance claim made in respect of the *secured property*. In the event of any claim, all payments under the policy (including any rebates of premium) are to be paid to us and you hereby authorise any insurance company to make all payments to us and confirm that receipt by us is receipt by the insured under the policy.

- 15.5 You must pay all premiums when they are due and you must not do anything that would result in the insurance being cancelled or invalidated.
- 15.6 We can require you to use the proceeds of any insurance claim to repay all principal, interest, fees and other amounts owing to us under *this agreement* and we can ask the insurance company to pay out any claim directly to us.
- 15.7 If any part of the *property* or an *asset* is destroyed or damaged, all money we receive under an insurance policy will be applied at our option either in or towards (a) replacing or repairing the *property* or the *asset*, or (b) paying any amount due to us under *this agreement* even if the time for payment has not yet arrived.

## 16. Our rights to protect our interests

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- 16.1 If any payment is required to be made in relation to any *secured property*, either because you have not done something or because you have done something you must not do, then we may, but are not obliged to, make that payment.
- 16.2 You indemnify us against any expense we might incur or any loss we may suffer because you do something you say you won't or you don't do something you say you will in relation to any *secured property*. This indemnity includes paying us any GST we might incur and all costs on a full indemnity basis.
- 16.3 Any amount that you owe us under this clause 16 may be added to the outstanding balance and will accrue interest.

## 17. Your GST position

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### Assumption that property not liable for GST on sale

- 17.1 Unless you have provided us with information to the contrary, we are lending on the basis that no borrower or guarantor is a "registered person" for the purposes of the Goods and Services Tax Act 1985.
- 17.2 If you are a registered person for the purposes of the Goods and Services Tax Act 1985, then unless you have provided us with information to the contrary, you warrant that no borrower or guarantor is using any *secured property* for a "taxable activity" under that Act.

### Actions if assumption incorrect or GST status changes

- 17.3 If the warranty in clause 17.2 is incorrect or if your GST status in respect of any *secured property* changes then:
  - (a) you must advise us of the change immediately when it occurs;
  - (b) we may revalue the *secured property* to determine its value net of GST;
  - (c) if, following a revaluation, the *total amount owing* exceeds the amount we would otherwise have lent against the value of the *secured property*, you must repay immediately an amount sufficient to reduce the *total amount owing* to such amount as we require; and
  - (d) if you don't pay the amount we require above, default will occur under *this agreement*.
- 17.4 If you apply to the Inland Revenue Department (IRD) for an input tax credit in respect of any *secured property* then immediately that application is made and without the need for any demand:
  - (a) the *total amount owing* is reduced by an amount equal to the input tax credit claimed; and
  - (b) the amount of the reduction becomes due and payable and must be repaid to us; and
  - (c) if you don't pay the amount we require above, default will occur under *this agreement*.



## Part D: Default

### 18. When you are in default

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18.1 You are in default if:

- (a) you do (or do not do) something that you have promised us in *this agreement* or a *Guarantee* that you would not do (or that you would do); or
- (b) for example, you do not pay on time any amount due under *this agreement*, any other agreement you have with us or *Guarantee* you have with us; or
- (c) our direct debit instruction for your *account* is subsequently reversed by the bank or financial institution to whom it is given; or
- (d) you give (or we discover you have given) or another person acting with your knowledge or permission gives (or we discover has given) us false or misleading information in connection with *this agreement*, a *security* or any other loan that you have with us; or
- (e) we reasonably believe you or another person acting with your knowledge or permission has acted fraudulently in connection with *this agreement* or a *security*; or
- (f) an *adverse credit event* occurs that affects you; or
- (g) you are in default under a *security*, you withdraw from it, materially breach its terms or it is or may be unenforceable, or
- (h) anything you have told us is untrue or you have misled us in any way.

### 19. What can happen if you default

---

#### Steps we can take

19.1 If you are in default, we may:

- (a) Give you a notice stating that you are in default and giving you a specified period to remedy the default (if it can be remedied).
  - (i) This notice may be a notice issued pursuant to a *mortgage* and in accordance with the requirements of the Property Law Act 2007; or
  - (ii) This notice may be a demand to you in respect of the default. If the default is incapable of being remedied (for example because a default has occurred pursuant to clause 18.1(d), (e) or (h)) then subject to any restriction at law, the notice may specify that all amounts due under *this agreement* are immediately due for payment.
- (b) Take steps to enforce any *mortgage* in accordance with the requirements of the Property Law Act 2007, in addition to any step taken in clause 19.1(a).
- (c) Take steps to enforce our *security* against any *assets* in accordance with the requirements of the Credit Contracts and Consumer Finance Act 2003 or the Personal Property Securities Act 1999, as applicable.
- (d) Cancel any undrawn advances, which means that you will not be able to request a drawdown of any part of the remaining undrawn advances.

#### Total amount owing becomes payable

19.2 If the default is not remedied within the period given in the notice given under 19.1(a) then (subject to any restriction at law), at the end of that period, the *total amount owing* becomes immediately due for payment (to the extent it is not already due for payment). The *loan* and each *account* are also immediately cancelled.

#### Enforcement of Security and judgment

19.3 We may then sue you to recover the *total amount owing*, or we may enforce any *security* (to the extent that we haven't already) or we may do both.

## 20. Rights over personal property on default

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### How we enforce our security interest in Assets

- 20.1 If you default under *this agreement* we may, without giving you any notice, unless we are required to do so by statute, seize the *asset* and then sell the *asset*.
- 20.2 We may sell by auction or otherwise in any manner as if we were the unencumbered owner subject to any applicable obligations under the Personal Property Securities Act 1999 and under Part 3A of the Credit Contracts and Consumer Finance Act 2003.
- 20.3 Without restricting the generality of the power to sell, we also have the right to buy in, give credit and allow payment over time.
- 20.4 Our receipt, or the receipt of our agent will be sufficient discharge to any 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.
- 20.5 To enable us to sell, you irrevocably give us the right and licence for our agents to enter any premises and if necessary to break into any building where the *asset* may be situated or where you are for the purpose of searching for and seizing the *asset*.
- 20.6 We are not 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 *asset* and you indemnify us against such damage or loss.

## Part E: General matters

### 21. Credit law

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21.1 This clause applies to the extent that any *credit law* applies to *this agreement*.

If:

- (a) a *credit law* would otherwise make a provision of *this agreement* illegal, void or unenforceable; or
- (b) a provision of *this agreement* would otherwise contravene a requirement of that *credit law* or impose an obligation or liability which is prohibited by that *credit law*,

*this agreement* is to be read as if that provision were varied to the extent necessary to comply with that *credit law* or, if necessary, omitted.

### 22. Financial information and valuations

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#### Obligation to provide valuation / other financial information

22.1 We may require you to provide information at any time about your financial position and we may require a valuation to be completed by a registered valuer of any *secured property* at any time.

22.2 The cost of any reasonably requested valuation is payable by you.

22.3 Any valuation of *secured property* is for our use only.

### 23. How we may exercise our rights

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23.1 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate including by imposing conditions.

23.2 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.

23.3 Our rights and remedies under *this agreement* are in addition to other rights and remedies provided by law independently of it.

23.4 Our rights and remedies may be exercised on our behalf by any of our employees or by any other person we authorise.

23.5 We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.

### 24. Blanks

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24.1 You agree that we may fill in any blanks for the purpose of completeness or to comply with formalities in any document related to *this agreement* (such as completing a date that has been omitted in a certificate or an acknowledgment).

### 25. Our certificates

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25.1 We may give you a certificate or formal statement about a matter or about an amount (including *break costs*) payable in connection with *this agreement*. This is sufficient evidence of the matter or amount, unless it is proved to be incorrect.

### 26. Assignment and disclosure

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26.1 We may assign, transfer or otherwise deal with our rights and obligations under *this agreement* in any way we consider appropriate. You agree that we may disclose any information or documents we consider desirable to help us exercise this right.

26.2 You also agree that we may disclose information or documents at any time on a confidential basis to any potential assignee, transferee or other person with whom we anticipate entering into contractual relations in connection with *this agreement* or any third party who has or may have in the future a financial interest in this loan. This includes any information about you whether or not that information was obtained in confidence and whether or not that information is publicly available.

- 26.3 You agree that we may disclose information to a third party about this agreement or any associated loan application or financial dealings we may have with you as long as we are acting in accordance with our privacy statement (available at [www.avantifinance.co.nz/privacy-policy](http://www.avantifinance.co.nz/privacy-policy)) when we disclose this information.
- 26.4 Your rights are personal to you and may not be assigned without our written consent.

## **27. Notices, other communications and service of documents**

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- 27.1 Notices, certificates, consents, approvals and other communications in connection with *this agreement* must be in writing or in any other form permitted by it.
- 27.2 Disclosure of any disclosure statement required to be given to you by the *credit law*, however, will be given to you in accordance with the *credit law*.
- 27.3 Communications from us may be signed by any employee or any other person we authorise. If you are a company, communications from you must be signed by a director.
- 27.4 Communications to you may be:
- (a) given personally (if you are a company, to one of your directors) at; or
  - (b) left at; or
  - (c) sent by post to; or
  - (d) if you have consented to receiving electronic communications, sent by electronic communication to,
    - the address or, in the case of electronic communications, the information system you tell us for that purpose or your address last known to us; or
    - given in any other way permitted by law.
- 27.5 Communications for us must be:
- (a) given personally to one of our employees at:
    - its address stated in *this agreement*; or
    - any other address we tell you; or
    - our registered office; or
  - (b) sent by prepaid post or electronically (such as by fax or email) to any of those places; or
  - (c) given in any other way permitted by law.
- 27.6 A communication is taken to be given:
- (a) in the case of a disclosure statement under the *credit law* in accordance with section 35 of the *credit law*.
  - (b) in the case of a communication given personally – on the date it bears or the date it is received by the person to whom it is addressed, whichever is the later; or
  - (c) in the case of a communication sent by post – on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later; or
  - (d) in the case of a communication sent by fax or some other form of electronic transmission – on the date it bears or the date on which the machine from which it was sent produces a report indicating that the communication was sent to the fax (or other) number of the person to whom it is addressed, whichever is the later; or
  - (e) in the case of a communication given by newspaper advertisement – the date it is first published
- 27.7 We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you by delivering it to your residential address in *this agreement* (or any changed residential address notified to us) or by leaving it there. This does not prevent any other method of service.

## **28. Variations**

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- 28.1 We may vary any term of *this agreement* for one or more of the following reasons (without seeking your consent):

- (a) to comply with any change or anticipated change in any relevant law, code of practice, guidance or general banking practice;
- (b) to reflect any decision of a court, ombudsman or regulator;
- (c) to reflect a change in our systems or procedures, including for security reasons;
- (d) as a result of changed circumstances (including by adding benefits or new features);
- (e) to respond proportionately to changes in the cost of providing the *loan* (including by changing *annual interest rates*); or
- (f) to make them clearer.

We will publish or disclose the change in accordance with the requirements of *credit law*.

## 29. Your promises to us

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### All information is correct

- 29.1 You promise us that all representations you make or have made and all information and documents you, or another person acting with your knowledge or permission, has or will give to us in connection with *this agreement* are or will be true and correct.
- 29.2 For the purposes of the *AML/CFT* and unless you have advised us otherwise and we have accepted, you warrant and undertake:
- (a) that you are entering into this agreement in your own right as the sole persons with a beneficial interest in the agreement and in all *secured property*; and
  - (b) no information has been withheld and all information you have given us is correct to enable us to determine your status under *AML/CFT*.
- 29.3 You acknowledge that we have relied upon the accuracy of those representations, information and documents in entering into *this agreement* and will continue to do so in dealing with you.
- 29.4 If any information is incorrect; if you fail to provide information *AML* when requested; or if we determine on reasonable grounds that your status under *AML/CFT* has changed and as a result your ability to meet your obligations under this agreement is impaired then you will be deemed to have given us incorrect or misleading or deceptive information and default will have occurred under *this agreement*.

### Future actions

- 29.5 You undertake and agree:
- 29.6 that you will provide such further information as we may reasonably request during the term of this loan to enable us to comply with our obligations under *AML/CFT*;
- 29.7 that you will not default under, withdraw from, or breach the terms of any *security* or take any action that may result in any *security* being unenforceable;
- 29.8 that you must not become *insolvent* and that steps will not be taken to make you *insolvent*;
- 29.9 that, if you have entered into *this agreement* as a trustee of a trust, you will not breach the terms of that trust and will ensure that no other trustee breaches the terms of that trust; and
- 29.10 to take all steps to prevent any event occurring which may materially adversely affect our rights under *this agreement* or a *security*.

## 30. Information and Privacy

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### You must tell us if your contact details change

- 30.1 You must tell us if your residential address, postal address, email address or other contact details change. To advise us of a change in your details you may call us or send us an email. Our contact details are set out in the Parties section of the *Loan Agreement* or available on our website, [avantifinance.co.nz](http://avantifinance.co.nz)

### Personal Information Collection

- 30.2 The following clauses (together with our privacy statement (available at [www.avantifinance.co.nz/privacy-policy](http://www.avantifinance.co.nz/privacy-policy))) set out the terms for our collection, retention and use of personal information about you. You will have already given us permissions in the loan application you made to us. The following clauses are in

addition to those permissions and provide you information on how we collect, use and store this information. We may update these terms from time to time in accordance with clause 28 of these *General Terms*.

- 30.3 Assessing a loan requires us to obtain a wide range of information about you. The personal information that we will collect may include:
- (c) Your contact details such as address, telephone number, email address.
  - (d) Identification information including your full name and date of birth.
  - (e) Financial information such as your income, expenses, banking history.
  - (f) Your credit record, including positive credit information from credit reporting agencies.
  - (g) Employment details including employer and type of work.
  - (h) Information about important life events and your family.
  - (i) Information you have shared on public websites, e.g. social media and information that is publicly available such as through public registers.
- 30.4 We collect this information from you directly and you authorise us to also request (and collect) this information from public sources or from third parties such as Government agencies, brokers, motor vehicle dealers or other introducers, banks, your past and current employers, service providers (such as your telecommunications providers), credit reporting agencies and other representatives such as legal advisers and accountants.

### Using and Sharing Personal Information

- 30.5 We collect, use and share personal information with others to:
- (a) Assess your loan application.
  - (b) Help us to administer any loan and/or security property you have with us.
  - (c) Manage arrears and defend our rights to collect money from you.
  - (d) Offer a service or market a product to you that is either our product or a product that we market or administer, including targeted marketing.
  - (e) Meet our internal operational requirements, such as for credit and risk management, product or system development and planning, insurance, audit and administration purposes.
  - (f) Facilitate the transfer or assignment of our rights.
  - (g) Comply with our legal obligations.
- 30.6 We may share your personal information with other parties for the purposes outlined in clause 30.5 above and as permitted by law. The third parties that we share your personal information with include:
- (a) Your referring broker, dealer or other introducer.
  - (b) Credit reporting agencies for the purposes of identity verification, standard and positive credit reporting (which includes repayment history information), monitoring services, and to provide them with updates, such as default information.
  - (c) Government agencies and regulators to comply with any laws, rules or regulatory requirements.
  - (d) The Ministry of Justice to obtain fines information.
  - (e) External dispute resolution schemes.
  - (f) Any third parties who provide services to us, including technology service providers, debt collection agencies and our professional advisers.
  - (g) Other entities in the Avanti Finance Group.
- 30.7 We also record all telephone calls for compliance, dispute resolution, training, and to assist us to improve our services to you.

### Storage of your Personal Information

- 30.8 Your personal information is stored electronically or in paper files. Generally, we hold your personal information in New Zealand. However, we may use cloud-based service providers in New Zealand or overseas to hold this data. When we do this, we take security measures to keep your personal information

safe against unauthorised use, access and disclosure. This includes the use of passwords and other identity controls.

**Right to correct personal information**

30.9 You have the right to access your personal information we hold about you and make corrections to it. If you make a correction request, we will follow the steps set out in Information Privacy Principle 7, section 22 of the Privacy Act 2020.

**31. Appointment of agent for service in New Zealand**

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31.1 If you do not live in New Zealand, you must appoint a person in New Zealand as your agent in New Zealand for service of notices under section 355 of the Property Law Act 2007 and any other notices served on you. This appointment must include granting that person an irrevocable power of attorney.

31.2 By signing *this agreement* each of you appoints each other borrower or guarantor be your agent for service for the purposes of section 355 of the Property Law Act 2007 and for the service of notices under *this agreement* during any period when you are out of New Zealand.

**32. Applicable law and Conflict between terms**

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32.1 *This agreement* is governed by the law in force in New Zealand. You and we submit to the non-exclusive jurisdiction of the courts of New Zealand.

32.2 Where terms in the *General Terms* conflict or are inconsistent with the *Loan Agreement*, the terms of the *Loan Agreement* prevail.

**33. Meaning of words**

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33.1 These meanings apply in *this agreement*:

**AML/CFT** means Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and associated regulations and guidance materials published by the Department of Internal Affairs or such other supervisor from time to time.

**account** means each *account* that we establish for recording all transactions relating to each portion of the *loan*. The details for each account are set out in the *financial table(s)*. If the *loan* is not split into portions then there is only one *account*.

**account term** means the total period over which the *loan amount* for that *account* must be repaid in full. You may have a different *account term* for each *account*.

**adverse credit event** means:

- a person becoming *insolvent*; or
- you default under any other credit agreement with us or with any other person; or
- an event occurs which materially and adversely affects our rights under *this agreement* or any *security* to recover the *balance owing*; or
- without limiting the previous statement an adverse credit event occurs if the value of any *property* given as security falls to such an extent that the *balance owing* under *this agreement* exceeds the value of the *property* and any other *security* we hold from you to secure the *balance owing*; or
- any of you die and as a result we believe on reasonable grounds that the ability of all parties bound by *this agreement* to meet all *scheduled payments* becomes materially impaired.

**annual interest rate** means a per annum rate of interest.

**balance owing** means at any time; for each *account* (or for all *accounts* if the context so requires), the difference between all amounts credited and all amounts debited to that *account* (or all *accounts*) up to that time. When this amount is to be calculated for the end of a day, it includes all debits and credits assigned to that day.

**break costs** and **break costs method**, if this cost applies to *this agreement*, the meaning of these words is set out in the Prepayment section of the *Loan Agreement*.

**asset** means personal property that is subject to any *security interest* described in the *Loan Agreement* under the heading “Security Details” or in any *Loan Variation Statement* and the asset includes all accessions to that asset.

**capitalised** means that the remaining interest charged will be added to the *balance owing* and will be subject to interest.

**credit law** means the Credit Contracts and Consumer Finance Act 2003 as amended or replaced, the Fair Trading Act 1986 and all regulations made under these Acts and any other law that governs or regulates the provision of credit or the terms of contracts relating to the provision of credit.

**default rate** means the interest rate that is described in the ‘Fees and Default Interest’ heading in the *Loan Agreement*.

**disclosure date** is the date stated on the first page of the *Loan Agreement*.

**Fees Brochure** means the brochure named “Avanti Finance Fees Brochure” that we publish from time to time setting out all of the fees and charges that are payable to us in connection with a *loan*.

**financial table(s)** means the table or tables that detail information relating to each *account* and that recorded in the Loan Accounts section of the *Loan Agreement*.

**fixed rate account** means an *account* that has a *fixed rate*.

**fixed rate** means the *annual interest rate* that applies to an *account* and does not change during a *fixed rate period*.

**fixed rate period** is the period specified in the Financial Table section of the *Loan Agreement* for an *account*.

**General Terms** means this document as updated, varied and replaced from time to time.

**GST** has the same meaning it has in the *Goods and Services Tax Act 1985*.

**Guarantee** means a Deed of Guarantee and Indemnity in the form prepared by us under which each person named a Guarantor in *this agreement*:

- guarantees the repayment of all moneys owing by the Borrower(s) to us under this agreement or any other agreement; and
- indemnifies us against any loss suffered as a result of default by the Borrower(s).

**insolvent** means:

- in respect of a company, any step taken for the liquidation, voluntary administration, receivership, reconstruction, winding up, dissolution, deregistration, or any arrangement or compromise proposed by the company to its creditors or the company being declared at risk pursuant to the Corporations (Investigations and Management) Act 1989, or a statutory manager being appointed or any step taken with a view to any such appointment in respect of the company under that Act or being otherwise unable to pay its debts as they fall due, and
- in respect of an individual, that person committing an act of bankruptcy as set out in sections 17-28 of the Insolvency Act 2006, being adjudicated bankrupt, or the debtor filing an application for bankruptcy with the Official Assignee (as defined in the Insolvency Act 2006).

**loan** means all of the money that we agree to lend you under *this agreement*.

**Loan Agreement** means, for a *loan*, an agreement called either ‘Property Loan Agreement – Consumer’ or ‘Property Loan Agreement – Non-Consumer’, that we provide to you when we offer you the *loan* and



which forms part of *this agreement* and where the context requires, includes any *Loan Variation Statement*.

**loan amount** means the amount we agree to lend you as set out in the *loan details*. If a *loan* is split into *accounts*, there is a *loan amount* for each *account* and, depending on the context, *loan amount* refers to the *loan amount* for an *account* or the *loan amount* for all *accounts*.

**loan details** means, for a *loan*, the section in the *Loan Agreement* named "Loan Details".

**loan term** means the number of years over which the *loan* is repayable and is represented by the longest term of an *account* as set out in the *loan details*.

**Loan Variation Statement** means in relation to each further advance and each agreement to vary the terms of *this agreement*, the document that we send you that records the terms of that further advance or variation. Each *Loan Variation Statement* becomes part of *this agreement*.

**margin** means the percentage amount that we add to the *named interest rate* to determine the *annual interest rate* payable on an *account*.

**mortgage** means each registered mortgage or agreement to mortgage described in the *Loan Agreement* under "Security Details" and any *Loan Variation Statement* or substitute or additional mortgage given in connection with *this agreement*. A mortgage enables *us* to recover any money or seek the performance of obligations from the proceeds of the sale of any real property.

**named interest rate** means the name given to the base rate for an *account* as disclosed in the financial tables.

**payment date** means each date for each *scheduled payment*.

**payment frequency** means the frequency at which you choose to make the *schedule payments* being any of weekly, fortnightly or monthly and as initially set out in the *financial table(s)* in the *Loan Agreement*.

**property** means the real property that is the subject to a *mortgage* and comprises all the mortgagor's estate and interest in that property and rights which may arise in connection with it including any land proceeds.

**redraw** means accessing any prepaid amounts available under an *account* of a *loan*.

**scheduled balance** means on any day the amount calculated to be the *balance owing* on that day on the basis that all *loan amounts* advanced to you and all *scheduled payments* have been made on time and no prepayments had been made.

**scheduled payments** mean the amounts specified in the *financial table(s)* (or a *Loan Variation Statement*) as the amount of the regular payments required for an *account* and as changed from time to time in accordance with *this agreement*.

**security** means each *mortgage* or *security interest* described in the *Loan Agreement* under the heading "Security Details" and any substitute or additional security given in connection with *this agreement*. It includes a mortgage, charge, lien, pledge, trust or power and any security agreement that gives us a *security interest*.

**security interest** means an interest personal or other property that secures payment or performance of an obligation without regard to the form of the transaction and the identity of the person who has title to the property and includes the meaning defined in section 17 of the Personal Property Securities Act 1999.

**secured property** means any *property* that is subject to a *mortgage* and any *asset* that is subject to a *security interest* to secure *this agreement*.

**settlement date** means the date we advance the *loan amount*, being a date which follows a request by you (or your lawyer) for the advance and is set at our convenience once we have sufficient comfort our pre-settlement conditions and our loan instructions are complied with.

**this agreement** means all the documents that make up the credit contract and include the *Loan Agreement*, these *General Terms*, each *security*, and any *Loan Variation Statement*.

**total amount owing** means, at any time, the *balance owing* under *this agreement* at that time, plus all accrued interest charges, default interest charges, costs, expenses, GST and all other amounts which you must pay under *this agreement*, but which have not been debited to your *account* or *accounts* at that time.

**variable rate account** means an *account* for which the *annual interest rate* is a *variable rate*.

**variable rate** means, for an *account*, the *named interest rate* plus the *margin* as set out in the *financial tables* as varied from time to time.

**we** and **us** means Avanti Finance Limited and includes its successors and assigns.

**working day** means a day other than a Saturday or Sunday or a national public holiday in New Zealand.

**you** means the person or persons named in the *Loan Agreement* as “Borrower” and in respect of parts C, D and E of these *General Terms* and where the context permits or requires includes the person or persons named as “Guarantor”. If there are more than one, **you** means each of them separately and every two or more of them jointly. **You** includes your successors and assigns.

A reference to:

- a thing includes the whole and each part of it.
- a document includes any variation or replacement of it.
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them).
- the words **including** or **such as** when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- the word **person** includes an individual, a firm, a body corporate, an unincorporated association or an authority.

The singular includes the plural and vice versa.

Headings are for convenience only and do not affect the interpretation of *this agreement*.

## Part F: Text of Memorandum 2017/4341

The covenants, conditions and powers implied in mortgages over land by Part 1 of Schedule 2 of the Property Law Act 2007 (the "implied covenants") are hereby varied, amended or negated as follows.

### 1. Extent of the Security

The party giving this mortgage mortgages to the mortgagee all of its right title and interest in the land and assigns to the mortgagee absolutely all of its right title and interest (present, future, legal and equitable) in the land proceeds.

### 2. Payment of principal amount and interest

- a. For the purposes of clause 1(1) of the implied covenants, the "principal amount" secured by the mortgage means and includes
  - i. all moneys which are now or at any time in the future owing by the borrower or the guarantor under each loan agreement, credit sale agreement, or guarantee (each a "secured agreement") between each borrower and each guarantor both existing at the time of the registration of the mortgage or at any time thereafter;
  - ii. all advances, reasonable costs incurred and expenditure made for the protection, maintenance, preservation or repair of any charged property or for the enforcement of any security interest under this mortgage and any other amounts contemplated by section 87 of the Property Law Act 2007; and
  - iii. each payment or performance of an obligation:
    1. by a party giving this mortgage or, if there is more than one, any one or more of them;
    2. by any accommodated person, in respect of any secured agreement.
- b. Despite the provisions of clause 2(a), moneys may be excluded from the expression "principal amount" if, and only if the secured agreement indicates that the moneys owing under that agreement are to be unsecured.
- c. In this mortgage the following expressions have the following meaning:
  - i. The expression "party giving this mortgage" includes each borrower or guarantor who owns the land the subject of this mortgage regardless of how they may be described in the mortgage or any other instrument and any person who accepts, subject to this mortgage, a transfer, assignment, or transmission of the land the subject of this mortgage and the covenants contained and implied in this mortgage will bind all such persons jointly and severally as the principal party giving this mortgage.
  - ii. an "accommodated person" means each person who acquires a benefit under a secured agreement being a person who has received financial accommodation from the mortgagee at the request of, at the direction of or on account of the party giving this mortgage.
  - iii. "land proceeds" means:
    1. all moneys payable to the party giving this mortgage arising:
      - a. from the cultivating, harvesting, selling or otherwise utilising of trees, timber, logs or crops to be grown or growing on the land now at any time in the future;
      - b. from any profit à prendre or forestry right;
      - c. out of the ownership, use or occupation of the land or any agreement relating to its ownership use or occupation including any sale proceeds, any rents, any damages and any proceeds of any insurance including insurance in respect of loss of earnings or income; and
    2. any resource consent issued in respect of the land pursuant to the Resource Management Act 1991.
- d. Without limiting the generality of the foregoing, includes all moneys owing in respect of:
  - i. loans, credits, advances or other financial services or facilities made or provided to the party giving this mortgage or to any one or more of them or any obligations owing by any one or more of them as guarantors;

- ii. any bailment, hire purchase instrument, conditional purchase instrument or similar instrument entered into by the mortgagee with the party giving this mortgage or with any one or more of them;
  - iii. any debt assigned (whether absolutely or by way of security) to the mortgagee;
  - iv. any guarantee, indemnity, bond, letter of credit or other obligation provided by the party giving this mortgage to or in favour of the mortgagee or provided by the mortgagee for or on account of the party giving this mortgage or any one or more of them;
  - v. any moneys owing prior to the date of this mortgage for which the mortgagee has agreed to forebear from suing.
- e. Moneys are to be regarded as being included in "the secured moneys":
- i. whether the liability for such moneys is matured or not matured, actual or contingent, or liquidated or not liquidated;
  - ii. whether such moneys are also secured by any other security;
  - iii. whether any instrument or arrangement relating to such moneys expressly refers to this mortgage;
  - iv. whether the liability for such moneys arises by instrument (express or implied), by operation of law or otherwise; and
  - v. whether such moneys are owing by any party giving this mortgage jointly with or otherwise in combination with any person who is not a party giving this mortgage.
- f. For the purposes of clause 1(3) of the implied covenants, the "agreed rate" means the highest rate payable to the mortgagee under all instruments recording any part of the principal amount.