



COMMERCIAL LOAN  
CONTRACT &  
MORTGAGE  
TERMS & CONDITIONS

[www.afs.com.au](http://www.afs.com.au)

Automotive Financial Services Pty Limited  
ABN 73 003 622 375  
Australian credit licence 383762

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**SCHEDULE TO BE ATTACHED  
TO THIS PAGE**

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# AFS COMMERCIAL LOAN CONTRACT AND MORTGAGE TERMS AND CONDITIONS

## Acceptance of offer

You agree that:

- (a) Automotive Financial Services Pty Limited ABN 73 003 622 375 (“AFS” or the “Credit Provider”) may accept your offer by an authorised officer of AFS signing the Memorandum of Acceptance on the Commercial Loan Contract and Mortgage Schedule and communicating that acceptance to you or by AFS paying any of the amounts listed in the schedule to the payees named in the schedule, whichever is the earlier;
- (b) such acceptance will immediately create a valid and binding contract; and
- (c) this contract will be governed by the law of the State or Territory you were living in when you signed it.

If AFS accepts your offer, you and AFS agree as follows:

## 1 Provision of loan and mortgage

- 1.1 Subject to clause 2, AFS will, provide the amount of credit to you by paying the amounts listed in the schedule to the payees named in the schedule. AFS can debit all or any part of the amount of credit to your loan account. AFS can debit it (so that interest charges will start to accrue) on the day AFS lends you the amount.
- 1.2 You may terminate this contract before you have obtained any credit under it. If you do, however, AFS may retain or require payment of fees or charges incurred before the termination.
- 1.3 In consideration of AFS agreeing to provide the amount of credit under clause 1.1 and to secure the due and punctual payment by you of the loan account balance and other liabilities under this contract, you agree to give AFS a mortgage over the whole of your right, title and interest in and to the goods. You convey your interest as beneficial owner of the goods to AFS:-
  - (i) in respect of goods which you are financing in whole or part under this contract, by taking possession of that item or by AFS paying any part of the purchase price for that item, whichever occurs first; and/or
  - (ii) in respect of goods in which you have existing legal title, by signing this offer.
- 1.4 You agree with AFS that AFS' security interest in the goods is a legal interest and a security interest for the purposes of the PPSA.

## 2 Conditions precedent

AFS' obligation to provide any part of the amount of credit to you or to do anything else under this contract is subject to and conditional upon AFS being reasonably satisfied that:

- (a) any mortgage and any guarantee has been given and is valid and binding on you and the guarantor; and
- (b) no event of default under clause 8.1 has occurred and is continuing, subject to the application of clause 8.2.

AFS may at its option, terminate this contract if the conditions in this clause 2 have not been satisfied within two months from the date AFS accepts this contract.

## 3 Repayment of the loan, payment of interest and credit fees and charges

- 3.1 Once AFS debits an amount to your loan account (if it is not already owed), in accordance with this agreement, you owe AFS that amount.
- 3.2 You must pay the repayments AFS reasonably determines at the time AFS reasonably determines. As at the disclosure date the repayments are those set out in the schedule and they must be paid at the times set out in the schedule. AFS may not vary the repayment amounts in a manner that requires the repayment of the loan earlier than the final day of the term of the loan and may only vary the repayments where it is reasonably necessary to protect AFS's legitimate interests.
- 3.3 You also agree to pay:
  - (a) any credit fees and charges set out in the schedule to AFS or the specified third parties at the times shown in the schedule and any government charges and duties on receipts and withdrawals that are charged in respect of the loan or the repayments; and
  - (b) all reasonable enforcement expenses AFS reasonably incurs, and you authorise AFS to debit these to the loan account when they become payable or are incurred by AFS.Where a fee or charge is for an amount payable to a government instrumentality (eg a tax or duty), and the amount is not disclosed in the schedule, the amount is determined by the relevant legislation and regulations applicable from time to time.
- 3.4 You agree to pay the total amount of interest charges payable as set out in the schedule; and if you payout the loan prior to the expiration of the term of the loan, AFS will rebate the unpaid portion of the total amount of interest charges payable in accordance with the method set out in the definition of interest rebate in clause 15.1.

- 3.5 You must pay AFS the loan account balance plus any amounts charged, accrued or payable but not yet debited to your loan account at the expiration of the term of the loan if they have not become due and payable any earlier. You are not relieved of this liability just because a mortgage or guarantee is given.
- 3.6 Repayments must be made to AFS by cheque, direct debit, credit transfer or other method acceptable to AFS (acting reasonably) at its address in the State or the Territory in which this contract is signed or such other places acceptable to AFS. Repayments made in any other way will constitute the person receiving them to be your agent and the payment will not be taken to have been received until received by AFS. A repayment will not be considered to have been made by you if it is dishonoured, charged back to AFS or otherwise not completed and a dishonour fee as described in the schedule will be payable each time this occurs.
- 3.7 Repayments will be credited by AFS when received. You must ensure that repayments are made by the time they are due under this agreement.
- 3.8 You may payout this contract at any time, by paying to AFS the loan account balance, plus any amounts charged, accrued or payable but not yet debited to your loan account.
- 3.9 Your obligations to make the repayments under this contract will not, except to the extent prohibited by law, be affected by any defect in the goods or the condition, operation or fitness for use of the goods or any damage to or loss of the goods or any lien or other encumbrance over or with respect to the goods or any prohibition, interruption or other restriction of or against the customer's use, operation or possession of the goods for any reason whatsoever, except to the extent such matters arise as a result of negligence, mistake, fraud or wilful misconduct of AFS or AFS' employees, contractors or agents.

#### **4 Warranties**

You warrant:

- (a) the truth of all statements made by you or on your behalf to AFS or any of its agents or the supplier before acceptance of your offer by AFS; and
- (b) that the goods are free of all mortgages, charges, liens and other encumbrances for the benefit of any person, other than the mortgage to AFS which is contained in clause 1.3 of this contract.

#### **5 Your insurance obligations**

5.1 You must:

- (a) insure the goods at your own expense with an insurance company approved by AFS (acting reasonably) and keep them insured with such a company until the loan account balance has been paid on the following basis:
  - (i) the policy must contain such terms, conditions, exclusions and exceptions as are reasonably required by AFS, be taken out in your name and AFS' interest as mortgagee must be noted on the policy;
  - (ii) the goods must be insured for not less than their full insurable value or any other amount reasonably agreed by AFS against fire, accident, theft and such other risks as AFS may reasonably require if it were arranging and paying for the insurance itself; and
  - (iii) the policy must be enforceable and not subject to being defeated or avoided or having liability under it declined by reason of any non-disclosure, misrepresentation or breach of warranty;
- (b) pay all insurance premiums when they fall due for payment and when requested, hand to AFS all insurance policies and proof of payment of the premiums and currency of the cover;
- (c) not do or fail to do anything which might allow the insurer to refuse a claim under any insurance policy of the goods;
- (d) notify AFS in writing as soon as reasonably practicable if the goods are lost, damaged or destroyed or if an event occurs which gives rise to a claim under any insurance policy or to the cancellation, change or rejection of the insurance policy; and
- (e) pay any "excess" or similar amount payable when a claim is made under any such insurance policy.

- 5.2 If the schedule indicates that the cost of any insurance premium is financed by AFS:
- (a) despite clause 5.1(a), you do not have to take out that insurance at your expense for the period in which the cost of the insurance premium is financed by AFS;
  - (b) AFS under the Power of Attorney contained in Clause 13 may cancel that insurance if you are in default under this contract and the loan account balance plus any amounts charged, accrued or payable but not yet debited to your loan account has become due and payable under clause 8.5; and
  - (c) the amount of any rebate or refund of the premium allowed by the insurer upon any early termination of any insurance contract, including, without limitation any total or substantial loss or destruction of the goods, may be applied by AFS to any amounts due and payable under this contract at the time the rebate or refund is paid.
- 5.3 If you fail to take out or maintain insurance over the goods or pay any excess as required by this clause 5, AFS may arrange the insurance or pay the excess. AFS will recover its reasonable costs in doing so, from you, as part of its enforcement expenses under this contract and debit them to the loan account in accordance with clause 3.3 (b).
- 5.4 If there is any damage to or loss of the goods, to the extent permitted by the law, AFS is entitled to receive money payable under the insurance policy financed by AFS under this contract in respect of that damage or loss which is not used to repair or reinstate the goods to apply to amounts due and payable under this contract at that time. Any such money received by AFS will be applied in accordance with clause 12.
- 5.5 If an amount for security shortfall insurance (which generally provides cover against the difference between the loan account balance and the amount paid by the insurer of the goods where the goods are stolen or totally destroyed) is included in the amount of credit in the schedule, you acknowledge that all money payable under the policy will be paid to AFS to apply to any amounts due and payable under this contract at that time. Any such money received by AFS will be applied in accordance with clause 12. We recommend that you review the Product Disclosure Statement and other product documentation for any security shortfall insurance

## **6 Looking after the goods**

### **6.1 You agree:**

- (a) at your expense (both as to material and labour) to keep the goods in good order and repair so that at all times the goods are in good condition for goods of that description and to ensure that the goods are regularly serviced in accordance with the manufacturer's instructions;
- (b) to use the care of a cautious and prudent owner to prevent damage to the goods or their loss or destruction and to indemnify AFS in respect of any loss or damage to the goods (however it is caused but excluding fair wear and tear) and, except to the extent prohibited by law, against all claims and costs (however they may arise) resulting from the use, operation and keeping of the goods except to the extent that such loss, damage, costs or claims are caused or contributed to by negligence, mistake, fraud or wilful misconduct of AFS or of AFS' employees, contractors or agents;
- (c) if the goods are damaged or require repair, maintenance or servicing, to have the goods repaired, maintained or serviced on terms which do not create a lien over the goods and to pay for all repair, maintenance and servicing to the goods promptly except to the extent that such damage, is caused or contributed to by negligence, mistake, fraud or wilful misconduct of AFS or of AFS' employees, contractors or agents;
- (d) to keep the goods properly stored when not in use and, on request, to notify AFS of the location of the goods and to produce the goods for inspection;
- (e) to keep the goods registered and to pay all premiums for third party insurances and any other fees and charges required by law and if the registration number of the goods is changed notify AFS in writing as soon as reasonably practicable;
- (f) not to use, or permit the use of the goods, for any illegal purpose or in breach of any Act relating to their use or keeping or modify the goods in any way which might affect the value or insurance of the goods;
- (g) not to conceal the goods or part with possession of the goods or to create any lien, charge or mortgage over the goods or purport to do so or pledge, let, assign, sell or part with the goods or any interest or benefit under this contract or attempt or purport to do so;
- (h) not to permanently remove the goods from the State or Territory where they are first registered or to re-register the goods in any other State or Territory without first obtaining AFS' written consent (not to be unreasonably withheld) and procuring registration of AFS' security interest in the goods under any legislation in force in that State or Territory permitting or requiring registration of security interests of mortgagees in goods;

- (i) not to detach the goods from any vehicle or other machine of which they form part or to which they are ancillary unless you first obtain AFS' consent in writing (not to be unreasonably withheld) and where AFS' consent is given, it may be given subject to whatever conditions AFS reasonably requires;
  - (j) that all accessories now or in the future supplied with or attached to the goods will be or will become a part of the goods;
  - (k) not to alter the goods or any identifying mark or number in any way including, without limitation, by adding or removing any accessories without the prior written consent of AFS (not to be unreasonably withheld); and
  - (l) not to cause or permit the goods to be affixed to any land or building without the prior written consent of AFS (not to be unreasonably withheld) and where AFS' consent is given you permit AFS to enter onto the land or into the building to which the goods are affixed. Where at any time the goods are affixed to any land or building you will be responsible for any damage caused to the land or building by the affixing or removal of the goods.
- 6.2 Without limitation to AFS' rights, if you fail to do anything required of you under clause 6.1, AFS (acting reasonably) may do such thing and may recover any reasonable expense it reasonably incurs in doing so from you as part of its enforcement expenses under this contract.
- 6.3 If AFS asks you in writing to do so, you must inform AFS within 7 days where the goods are and, if they are not in your possession, give AFS all information in your possession that might assist AFS to trace the goods.

## **7 Your other rights and obligations**

- 7.1 You must notify AFS in writing within 7 days of any change in your or your guarantor's residential or work address, the address of your registered office or the address of the premises where the goods are stored.
- 7.2 You must notify AFS in writing within 7 days of any change in your or your guarantor's employment details including any change of company or business name or change to Australian Business Number.
- 7.3 You agree that, if the schedule indicates that the cost of any service and maintenance agreement or any extended warranty agreement is financed by AFS, the amount of any rebate paid by the provider of the service and maintenance services or the extended warranty services upon the early termination of the agreement is to be paid to AFS if the loan account balance plus any amounts charged accrued or payable but not yet debited to your loan account is unpaid and you are in default under this contract.
- 7.4 If you ask AFS in writing to sell the goods for you and deliver them to AFS so that it can do so, the loan account balance plus any amounts charged accrued or payable but not yet debited to your loan account will become immediately due and payable by you on sale of the goods by AFS. You must deliver the goods to AFS at its address in the State or Territory in which this contract is signed or such other place as AFS may advise you for the purposes of this clause. AFS will sell the goods for you promptly.
- 7.5 If you pay out the loan before the expiration of the term of the loan you will have to pay AFS an early termination fee as set out in the schedule. The early termination fee will be payable at the time the loan account balance plus any amounts charged, accrued or payable but not yet debited to your loan account is repaid in full and will be added to the loan account balance. AFS may in its absolute discretion waive all or any part of the early termination fee.
- 7.6 You agree that in the circumstances contemplated in clauses 5.2, 5.4, 5.5 and 7.3 you hold all rights to rebates, refunds or money paid or payable under relevant insurance policies, extended warranty agreements or service and maintenance agreements on trust for AFS to apply in accordance with those clauses.

## **8 Default**

- 8.1 You are in default if whilst the loan account balance is unpaid any of the following events occur:
- (a) you do not pay a repayment amount under this contract by the due date (for any reason);
  - (b) you breach any other obligation under this contract or mortgage;
  - (c) you commit any one of the following breaches in respect of any other contract between you and AFS:
    - (i) you do not pay on time any amount payable under the contract; or
    - (ii) in AFS' reasonable opinion, you made a false representation which affected AFS' decision to accept your offer and to enter into the contract;
  - (d) in AFS' reasonable opinion, you are in breach of a warranty in clause 4 or any guarantor made any false representation which affected AFS' decision to accept your offer and to enter into this contract, or both;
  - (e) a trustee in bankruptcy, guardian, controller, administrator, receiver, receiver and manager, liquidator or provisional liquidator is appointed to you or to any guarantor or both to administer your affairs or any guarantor's affairs or both or proceedings are commenced or a resolution proposed or passed to do so;
  - (f) you or any guarantor or both die or become of unsound mind or are arrested and charged with any offence carrying a maximum period of imprisonment exceeding 3 months;
  - (g) you are a partnership and a change occurs in the constitution of the partnership which could reasonably be considered to have a material impact on the exercise of AFS' rights under the contract, without AFS' consent (not to be unreasonably withheld);

- (h) you are a trustee of a trust and you without AFS' written consent (not to be unreasonably withheld) cease to be the sole trustee, you do or omit to do anything in breach of the terms of the trust which could reasonably be considered to adversely impact the exercise of AFS' rights under the contract, any capital of the trust is distributed, the trust is wound up or terminated or steps are taken to do so or an application is made to, or an order sought from, any court concerning the trust assets or administration of the trust;
  - (i) the goods are totally or substantially lost or destroyed;
  - (j) the goods are used for the commission of any offence which might result in their confiscation or forfeiture to the Crown or attachment, execution or distress is levied against you or any of the goods or property; or
  - (k) any guarantee required by AFS has been withdrawn.
- 8.2 We can only act on an event specified in clauses 8.1(b) to 8.1(k) if the event by its nature is material, or we reasonably consider that the event has had, or is likely to have, a material impact on:
- (a) you or your guarantor's ability to meet your or their financial obligations to us (or our ability to assess this);
  - (b) our security risk (or our ability to assess this); or
  - (c) our legal or reputation risk where paragraph 8.1(d), 8.1(f) and 8.1(j) applies.
- 8.3 Subject to clause 8.2, if you are in default we will:
- (a) give you a notice specifying the grounds on which we consider there is a default; and
  - (b) allow you a period of at least 30 days to remedy the default where the default is able to be remedied.
- 8.4 However, AFS may give you a shorter notice period or no notice period, if:
- a) the default is unable to be remedied; or
  - b) it is reasonable for us to do so to manage a material and immediate risk relating to the nature of the relevant default, your particular circumstances, or the value of the security; or
  - c) we have already given you a period to remedy the default under a previous notice, and you have not remedied that default.
- 8.5 The loan account balance plus any amounts charged, accrued or payable but not yet debited to your loan account automatically become due and payable and AFS may commence enforcement proceedings against you:
- (a) if you do not remedy the default within the period specified in the default notice; or
  - (b) if clause 8.4 applies:
    - (i) if the default is not capable of being remedied or AFS exercises its right to give no notice period, on the date of the default notice provided to you;
    - (ii) if AFS exercises its right to give a shorter notice period, if the default has not been remedied within the notice period specified in the default notice.

8.6 Enforcement expenses may become payable under this contract and mortgage in the event of a breach.

## **9 Taking possession of, and selling, the goods**

- 9.1 Where AFS is permitted by clause 8.5 to commence enforcement proceedings, AFS may, without limitation to its rights to seek and obtain any judgment or other court or tribunal order, take possession of the goods without further notice to you, subject to any applicable restrictions on its right to do so under the law.
- 9.2 If AFS takes possession of the goods, AFS will give you a notice setting out the estimated value of the goods. AFS will not sell the goods for at least 21 days after the date of the notice unless authorised by a court or tribunal.
- Within that time, unless you commit a further default, you can get the goods back by:
- (a) paying AFS the loan account balance, plus any amounts charged, accrued or payable but not yet debited to your loan account; or
  - (b) remedying the default (the amount in arrears less any accelerated amount) and paying AFS' reasonable enforcement expenses and all other amounts which are due and payable at that time.
- 9.3 Where AFS has taken possession of the goods, AFS may:
- (a) sell the goods at the best price reasonably available by way of private sale, auction, or tender to a dealer in goods of the same kind and for cash or on terms, as AFS sees fit;
  - (b) exercise all other rights permitted by this contract or authorised or permitted by any Act;
  - (c) exercise all rights able to be exercised by a mortgagee under a mortgage by deed;
  - (d) execute any transfer, assignment, discharge or other instrument which AFS reasonably considers necessary for the enforcement or protection of its rights. For that purpose, you irrevocably authorise AFS to sign all such transfers, assignments, discharges and other instruments in your name; and



- (e) give valid discharges for any amounts payable in relation to the sale of the goods.

## **10 Personal Property Securities Act**

10.1 In respect of the mortgage referred to in clause 1 and any other security interest arising under this contract, you agree to promptly do anything (including amending the loan contract, executing any new document, obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which AFS may at any time reasonably require for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective, or for providing more effective security over the collateral the subject of the security interest; or
- (b) ensuring the security interest is:
  - (i) continuously perfected and/or;
  - (ii) perfected by control; and/or
  - (iii) perfected in a way that will reduce as far as reasonably possible the risk of a third party acquiring an interest in any collateral the subject of the security interest (including providing AFS with all serial numbers for personal property that may or must be described by a serial number in accordance with the regulations under the PPSA), to the extent possible under the PPSA; or
- (c) enabling AFS to apply for registration, or give any notification, in connection with the security interest so that the security interest has the priority required by AFS; or
- (d) enabling AFS to exercise any right or power in connection with the security interest.

You agree you will bear all costs and expenses that you incur in complying with this clause

10.1 and any costs incurred by AFS for the purposes set out in 10.1 except to the extent the costs or expenses are caused by any fraud, mistake, wilful misconduct or negligence by AFS or AFS' employees, contractors or agents.

10.2 If any goods that are subject to a security interest in favour of AFS are or become serial numbered property, the following provisions apply:

- (a) when requested by AFS but in any event as soon as possible after the settlement date, you must provide AFS or ensure AFS is provided with both the serial numbers and a copy of the registration certificate for the goods that AFS would require to make an effective registration (with the priority required by AFS) against that serial numbered property in accordance with the PPSA and its regulations. AFS is relying on this information and you must make sure it remains true at all times. You must tell AFS, if at any time, this information is no longer correct. You will compensate AFS for any loss it suffers as a consequence of you providing incorrect information, including providing an incorrect serial number;
- (b) you must:
  - (i) notify AFS as soon as possible in writing of any serial number when it is allocated if a serial number has not been allocated to a vehicle; and
  - (ii) you must not change or remove the serial number of any goods which are serial numbered property without the consent of AFS.

10.3 To the extent permitted by law, and in respect of each security interest created by the contract:

- (a) if the collateral is not used predominantly for personal, domestic or household purposes the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA);
- (b) if the collateral is commercial property (as defined in section 10 of the PPSA) you irrevocably and unconditionally waive your right to receive any verification statement in respect of any financing statement or financing change statement relating to a security interest;
- (c) you irrevocably and unconditionally waive your right to receive any other notice required under the PPSA unless the provision of such notice cannot be excluded; and
- (d) the parties contract out of the application of subsection 116(2) of the PPSA to any provision of Part 4.3 of the PPSA in relation to a vehicle.

10.4 The parties agree, to the full extent permitted by law, not to disclose information of the kind mentioned in section 275(1) of the PPSA. You agree that you will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), if AFS approves.

10.5 You warrant that -

- (a) all information or documentation provided to AFS under this clause 10 is accurate and complete; and
- (b) except where it is specifically agreed to the contrary, you do not and will not hold any vehicle as inventory (within the meaning given to that expression in any section of the PPSA).

10.6 If any collateral that is subject to a security interest created by the contract gives rise to any proceeds (including any proceeds within the definition of that term in the PPSA) derived directly or indirectly from any sale or dealing with the collateral or otherwise arising out of or relating to that collateral whether or not the sale or dealing is permitted under the security interest, AFS' security interest continues in the collateral and attaches to the proceeds whether or not the contract remains in force.

## **11 Commission**

11.1 You acknowledge that a commission for introducing credit business or other business financed under the loan contract may be payable by and/or to AFS and to and/or from the supplier or a broker, their agent or employee or a related corporation of AFS. You consent to the payment of this commission.

## **12 Application of repayments**

You agree that all repayments or other moneys received by AFS under this contract shall be applied by AFS in repayment of the unpaid balance of the loan.

## **13 Power of attorney**

For valuable consideration and to secure the performance of your obligations under this contract, for as long as any money remains secured by the mortgage contained in clause 1.3 you irrevocably appoint AFS your attorney (with the power to appoint substitutes and to remove those substitutes and appoint other substitutes) subject to the requirements of any law to (acting reasonably and in good faith):

- (a) do anything or sign anything necessary to give AFS a valid first ranking security interest in the goods;
- (b) do any thing or things you are required to do under this contract;
- (c) conduct and settle any dispute or legal action affecting the goods or any insurance policy in respect of the goods and give effectual receipts and releases in respect of same;
- (d) cancel any insurance policy or service and maintenance agreement financed under this contract;
- (e) do anything AFS may require to protect its interest in the goods or to secure repayment of the unpaid balance of the loan including, without limitation, to give effect to clause 7.5 of this contract; and
- (f) do all acts including executing any document which AFS is of the opinion is necessary in respect of this contract.

## **14 Miscellaneous**

14.1 After this contract is made AFS may, acting reasonably and to the extent reasonably necessary to protect AFS's legitimate interests, unilaterally vary or change the terms of the contract at any time but it cannot vary the annual percentage rate or increase or change the method of calculation of a fee or charge so as to increase a fee or charge payable by you on early termination of this contract or payable on prepayment of an amount under the credit contract. Some of the changes we can make acting reasonably and to the extent reasonably necessary to protect our legitimate interests, include changing the amount or frequency of repayments or when they are due and changing credit fees and charges or imposing new credit fees and charges. If any law regulates a change, we may only change to the extent permitted by, and subject to, the requirements of that law. We will give you 20 days prior notice in writing of any such changes and, in the case of changes in the amount of a credit fee or charge (including the imposition of a new credit fee or charge) this notice can be by newspaper advertisement. If the change consists of either an increase to the amount or frequency of repayments payable under the contract, or the imposition of a new fee or charge, and you do not like the change, you may terminate the contract. Upon such termination, you must immediately pay to us the loan account balance, plus any amounts charged, accrued or payable but not yet debited to your loan account.

14.2 Any provisions in this contract which are prohibited or are void or invalid by law will be ineffective to the extent of the prohibition or will be void or invalid without invalidating the remaining provisions of this contract.

14.3 AFS may give or serve any notice or document on you by giving it to you in person or by sending it to you at the address nominated by you to AFS in writing, or if you do not nominate an address, by post to your last known place of residence or by facsimile transmission or any form of electronic communication which you have indicated gives you the capability to receive communications (for example, you provide an e-mail address to AFS).

You may give or serve any notice or document on AFS by:

- (a) prepaid post to AFS' registered office;
- (b) sending it by any form of electronic communication which AFS has indicated it has the technical capability of receiving;
- (c) delivering it personally to the place you are required to make the payment.

- 14.4 A guarantee will be or has been taken by AFS from each guarantor named in the schedule.
- 14.5 You authorise AFS, acting reasonably and in good faith, to rectify any error made in processing or calculating any payment, debit or credit made under this contract.
- 14.6
- (a) AFS may at any time assign, transfer or novate this loan contract or the mortgage or any interest or right it has under the loan contract or mortgage for the purposes of a securitisation or other funding arrangements or otherwise where reasonably necessary to protect our legitimate interests without your consent free from any equity, set-off or counterclaim except to the extent any equity, set-off or counterclaim cannot be excluded at law.
  - (b) AFS may otherwise not assign, transfer or novate this loan contract or the mortgage or any interest or right it has under the loan contract or mortgage without your prior written consent (not to be unreasonably withheld).
  - (c) You cannot assign this loan contract or the mortgage or any interest you have in them without the prior written consent of AFS (not to be unreasonably withheld).
- 14.7 Before or after AFS has become entitled to exercise its powers in clause 8.5, AFS may at any time and from time to time in writing waive or waive on condition its rights including the right to require immediate payment of moneys immediately payable but no waiver or any indulgence shall be a waiver of any continuing or recurring default or breach and no waiver shall amount to a contract or variation of this contract unless stated in writing by AFS.
- 14.8 If you are a trustee of any trust you are liable under this contract both personally and as trustee of each trust.
- 14.9 You irrevocably agree that:
- (a) if AFS has assigned, transferred or novated this loan contract or the mortgage or any interest or right AFS has under the loan contract or mortgage, for the purposes of a securitisation or other similar funding arrangement or it is otherwise reasonably necessary to protect our legitimate interests, all moneys payable to AFS by you shall be paid in full and, to the extent permitted by law, free of any right of set-off or counterclaim of any kind and free and clear of, and without deduction or withholding of any kind; and
  - (b) AFS may (in addition to any general or banker's lien, right of set-off, right to combine accounts or any other right to which AFS may be entitled), without notice to you or any other person, set-off and apply any money AFS owes you on any account against any money you owe AFS on any account.
  - (c) Upon request, we will indicate whether there has been an assignment of the nature referred to in this clause.

## 15 Defined terms

15.1 The following terms have the following meanings:

“**AFS**” means Automotive Financial Services Pty Limited ABN 73 003 622 375 Australian credit licence 383762 the credit provider under this contract;

“**amount of credit**” means the amount AFS agrees to lend you from time to time. As at the disclosure date it is the amount set out in the schedule;

“**Business Day**” means a day on which trading banks are open for business in New South Wales and that is not a Saturday, Sunday or public holiday.

“**[the] Credit Provider**” means Automotive Financial Services Pty. Limited ABN 73 003 622 375 Australian credit licence 383762 (AFS) its principals, nominees and assigns;

“**disclosure date**” is the date described as that in the schedule;

“**enforcement expenses**” means all reasonable expenses reasonably incurred by AFS in protecting its rights under this contract or in protecting the goods and includes amounts incurred or expended by AFS in issuing and delivering default notices, locating the goods for the purpose of inspecting or repossessing them, restoring the goods to saleable condition, discharging any lien or other encumbrance claimed by any person over the goods and otherwise in preserving or maintaining the goods after a breach occurs under this contract and where appropriate the fees charged by a duly qualified legal practitioner;

“**event of default**” means an event or occurrence set out in clause 8.1;

“**goods**” means the goods described and identified in Part A of Section 2 of the schedule; being the goods over which you have given a mortgage to AFS under clause 1.3 and which may consist of one or more items of property that you will acquire in whole or part from credit provided under this contract or that you already own and includes all accessories and any replacement parts fitted to the goods and any goods acquired by you in replacement of the goods;

“**GST**” means a goods and services tax or similar tax imposed in Australia;

“**guarantee**” means any guarantee or guarantee and indemnity given by a guarantor in respect of your obligations set out in the schedule and these terms and conditions;

“**interest rebate**” means the amount derived by multiplying the total amount of interest charges payable, specified in the schedule by the sum of all the whole numbers from 1 to the number which is the number of complete months in the term of this contract still to go (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from 1 to the number which is the total number of complete months in the term of this contract (both inclusive);

“**loan**” means the finance provided to you under this contract by AFS providing the amount of credit in accordance with clause 1.1;

“**loan account**” means the account or accounts we establish in your name for the purposes of this contract;

“**loan account balance**” means the difference between all amounts credited and all amounts debited to your loan account;

“**PPSA**” means the Personal Property Securities Act 2009 (Cth) and includes any regulations connected or issued in conjunction with that Act and any amendments or replacements thereto, from time to time;

“**security interest**” has the meaning given to that term in the PPSA;

“**settlement date**” means the date we first provide you with all or any part of the amount of credit;

“**serial number**” has the meaning given to that term in the PPSA;

“**serial numbered property**” means any personal property which may or must be described by serial number in accordance with the regulations for registration in accordance with the PPSA;

“**supplier**” means the supplier who supplies or has agreed to supply or procure the supply of that part of the goods which is to be financed under this contract and every related corporation of the supplier and, if there is more than one supplier, includes each person who did this;

“**term of the loan**” means the period commencing on the settlement date and ending on the due date for the last repayment that is set out in the schedule;

“**the schedule**” is the separate document which forms part of the contract titled "Commercial Loan Contract and Mortgage Schedule" which, with these terms and conditions, contain all the information the debtor may be required to be given by law before making an offer to borrow from AFS;

“**this contract**” and “**the contract**” means the contract comprising your offer to AFS to enter into a loan and mortgage transaction on the terms and subject to the conditions set out in the schedule and in this separate booklet entitled "Commercial Loan Contract and Mortgage Terms and Conditions";

“**unpaid daily balance of the loan**” means the sum of:

- (i) the total amount repayable as set out in the schedule; and
- (ii) all fees and charges, not included in the total amount repayable, which are payable by you to AFS up to that time;

- (iii) the amount of any default interest, if applicable; and
  - (iv) any enforcement expenses that are payable,
- less any repayments paid or moneys received under this contract and the amount of the interest rebate;

“**you**” and “**your**” means the person or persons described in, and signing the schedule as, the "debtor";  
“**your offer**” means your offer to AFS to enter into a loan agreement and mortgage on the terms and subject to the conditions set out in the schedule and in this separate booklet entitled "Commercial Loan Contract and Mortgage Terms and Conditions".

15.2 If the debtor is more than one person, this contract binds those people jointly and each of them severally; the singular includes the plural and vice versa; "debtor" includes the legal personal representatives and successors of the debtor; "AFS" includes AFS, its principals, nominees and assigns.

15.3 In this contract, unless the context otherwise requires,:

- (a) “**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);
- (b) a document includes any variation or replacement of it;
- (c) any thing includes the whole and each part of it; and
- (d) "including" (or any form of this word) or "such as", are not words of limitation.

## HOW TO CONTACT AFS

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