



# Bank of China (New Zealand) Limited

## Home Loan Agreement General Terms & Conditions

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### IMPORTANT NOTE

This document does not contain all the terms of your loan agreement or all of the information *we* are required by law to give *you* before the loan agreement is made. *You* must read this document together with the information contained in the Loan Agreement – Details.

**About this loan agreement**      This loan agreement is made up of the Loan Agreement - Details (*Details*), these General Terms & Conditions and any loan variation letters (if any). They should be read together. The meaning of words printed *like this* and some other key words is explained at the beginning of these General Terms & Conditions.

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# Home Loan Agreement

## General Terms & Conditions

### **1 MEANING OF WORDS**

***application date*** means the date on which your signed loan application is submitted to *us* as disclosed in the Details.

***balance owing on your loan account*** means, at any time, the difference between all amounts credited and all amounts debited to *you* under this agreement at 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.

***business day*** means a day (other than a Saturday or Sunday) on which banks are open for general business in New Zealand.

***CCCFA*** means the Credit Contracts and Consumer Finance Act 2003.

***default rate*** means a per annum rate of interest described in the Details as the "Default Interest Rate" and payable under clause 29.

***direct debit authority*** means a written authority (direct debit authority) in a form acceptable to *us* that you have given *us* to draw or obtain by direct debit from a *nominated account*, as required, the amounts that you must pay *us* under this agreement.

the ***disclosure date*** is stated in the Details.

***including*** or ***such as*** when introducing an example does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

***insolvent*** means, in relation to a party, where that party:

- (a) has a receiver or statutory manager appointed to or in respect of the whole or any substantial part of its undertaking, property or assets;
- (b) is deemed or presumed to be unable to pay its debts as they fall due, becomes or is deemed to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes a compromise, or an arrangement or composition with or for the benefit of its creditors or fails to comply with a statutory demand under section 289 of the Companies Act 1993 (or its equivalent under applicable legislation);
- (c) is removed from the register of companies (otherwise than as a consequence of an amalgamation) or an effective resolution is passed for its liquidation; or
- (d) in the case of a party that is acting as trustee of a trust, the trust is held not to be properly constituted or is terminated, the party ceases to be a trustee or all of the trustees of the trust, the party ceases to have a right indemnity out of the assets of that trust or that indemnity is restricted in any way, or any breach of trust occurs.

### ***instalment loan*** -

- (a) *you* have an *instalment loan* if your loan is described as being an *Instalment loan* in the Details under "Loan Type"; or
- (b) if the loan purpose in the Details is described as "Construction loan", *you* have an *instalment loan* from the day after the last day of the

*term loan until the balance owing on your loan account is fully paid.*

**interest only period** is set out in the Details and applies when your repayment method referred to in clause 16.2 is interest only repayment.

**interest only repayment** has the meaning specified in clause 16.2.

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

**lending date** means the first date we lend you any part of the loan amount.

the **loan amount** in respect of a tranche (as applicable) is set out in the Details.

**loan sw itch** means changing your existing loan product or loan feature to another loan product or loan feature (within the same loan type) as permitted by us from time to time and pursuant to clause 40.

the **loan term** is described in clause 17 and is stated in the Details as "Loan Term".

the **loan to valuation ratio** is stated in the Details.

**nominal amount outstanding** means, for a loan amount and a day, that part of the loan amount that would have been outstanding on that day if, from the lending date you had made all required payments in accordance with this agreement.

**nominated account** means a bank account held with us or another bank or financial institution in New Zealand that you nominate in your direct debit authority or in any other form of authorisation approved by us or any replacement of that account.

**payment date** means each date you make a repayment or are scheduled to make a repayment under this agreement.

**principal and interest repayment** has the meaning specified in clause 16.2.

**PPSA** means the Personal Property Securities Act 1999;

**Rate Lock Agreement** means an agreement entered into between you and us before you drawdown your loan or any tranche of your loan, which sets your fixed rate for the specified fixed rate period of a loan or tranche of a loan (as applicable).

**Sale Property** is stated in the Details, if applicable.

**secured account property** means:

- (a) the **term deposit** (including all amounts deposited to the credit of the **term deposit** from time to time); and
- (b) all present and future rights in relation to the **term deposit** and its credit balance (including all interest on, and other accruals to, the credit balance of the **term deposit**).

**security** means each **security interest** described in the Details under "Security", including in the **secured account property**, and any substitute or additional **security interest** given in connection with this agreement.

The property the subject of any mortgage of real property described in the Details under "Security" comprises all the mortgagor's estate and interest in the property and rights which may arise in connection with it; and rights to personal goods left on the property if *we* take possession; and rights to set off any money *we* owe the mortgagor against the amount secured by that mortgage.

The property the subject of the mortgage contained in any authority to set off deposits referred to in the Details under "Security" comprises your rights to deposits described in the authority.

**security interest** means any security for the payment of money or performance of obligations *including* a mortgage, charge, lien, pledge, trust or power. Security interest also includes a guarantee or an indemnity.

**security provider** means each person (other than *you*) who gives a *security*.

**tranche** means, as the context requires, any tranche of a loan made available by us to you as stated in the Details and upon the terms and conditions set out in the Details and the General Terms & Conditions, up to the loan amount stated in the Details for each applicable tranche. References to 'loan' in this document are also references to a tranche of a loan.

**security substitution** means changing or adding to an existing security property that is mortgaged to *us* with a new security property without repaying your loan, pursuant to clause 41.

**term deposit** means the term deposit described in the Details as the "Term Deposit", including the account of that term deposit and the credit balance of that account from time to time.

### **term loan -**

- (a) *you* have a *term loan* if your loan is described as being a *Term loan* in the Details under "Loan Type"; or
- (b) if the loan purpose in the Details is described as "Construction loan", *you* have a *term loan* from the *lending date* until the date *you* make your final *interest only repayment*.

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

**we, us, or our** means Bank of China (New Zealand) Limited, as the credit provider and its successors, and anyone to whom we have assigned or transferred our rights under this agreement.

**working day** has the meaning given in section 5 of the CCCFA.

**you** means the person or persons named in the Details as "Borrower". 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:

- any 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).
- A statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations,
- ordinances and by-laws issued under that statute.

The singular includes the plural and vice versa.

## **How you obtain the loan amount**

### **2 HOW WE LEND THE LOAN AMOUNT**

*We* agree to lend *you* the *loan amount* at the time *you* request it. Except to the

extent that the Details indicate that the *loan amount* is to be paid to others, *we* pay the money to *you* or as directed by *you* or your agent. However, *we* must be satisfied that *you* are using the *loan amount* for the loan purpose set out in the Details.

the construction cost incurred in connection with each completed stage,

each in a form satisfactory to *us*; and

### **3 WHAT MUST HAPPEN FIRST**

3.1 However, *we* only have to lend if:

(a) The *lending date* occurs within 120 days of the *disclosure date*. If *you* do not borrow during this period, *we* may treat this agreement as ended without having to notify *you*. Alternatively, *we* may offer to treat the loan agreement as continuing - either on the same terms or on any changed terms *we* tell *you* (including a changed *interest rate*);

(b) when any part of the *loan amount* is being used for building or construction work, *we* have received:

- copy of the fully signed building contract,
- a copy of all relevant approvals (including approved plans and specifications - these should be given to *our* valuer),
- an appropriate insurance policy in your name for the period of construction for the contract price of the building work (sometimes known as construction risk insurance or housing indemnity insurance),
- a surveyor's certificate,
- a consulting engineer's certificate, and
- a certificate from *our* chief supervising architect certifying as to the completion of each stage of the building work and

(c) nothing has happened since *you* applied for the *loan amount* which has led to a significant adverse change in your financial circumstances or which *we* reasonably believe could lead to this; and

(d) *we* have received a valuation of each security property satisfactory to *us* performed by *our* valuer and the results of *our* (or *our* mortgage preparers') enquiries and searches about each security property are satisfactory to *us*; and

(e) *we* have received each *security*, related acknowledgment or acceptance and title documents, which are satisfactory to *us*; and

(f) *we* have received evidence satisfactory to *us* that any insurance *we* require is current and that *our* interest is noted and that all rates, taxes and levies for any property which is or will be mortgaged are paid up to date; and

(g) *we* have received a building inspection report for each security property satisfactory to *us*, if *we* (or *our* mortgage preparers) tell *you* that *we* require it; and

(h) if *you* are a company, *we* have received certified true copies of your constitution (if any) and certificate of incorporation, and a director's certificate to enter into this agreement, all satisfactory to *us*; and

(i) if *you* are entering into this loan agreement as trustee of a trust, or a *security provider* is a trustee of a trust, *we* have received a certified true and complete copy of the trust



deed, and a trustee's certificate to enter into the relevant documents (including confirmation you have been validly appointed as trustee or trustees, and comprise all of the trustees, of that trust, and you have a right of indemnity out of the assets of that trust with respect to your obligations and liabilities under the loan agreement which has not been restricted in any way the terms of that trust or any breach of trust or otherwise), all satisfactory to *us*; and

- (j) if a *security provider* is a company, *we* have received certified true copies of its constitution and certificate of incorporation, and a director's certificate to give the *security* being provided by it, all satisfactory to *us*; and
- (k) *we* have received any other document *we* reasonably require, satisfactory to *us*; and
- (l) *you* are not in default under this agreement (for example, *you* have paid all relevant fees and interest charges and have not given *us* any misleading financial or other information) or under any other agreement or *security interest* with *us* or with other financiers and no-one who provides a *security* is in default under or has withdrawn from that *security*; and
- (m) *you* have complied with all other reasonable requirements *we* set.

3.2 If the *loan amount* is to be lent by way of progress payments or progressive drawdowns, all these terms must be satisfied at the time each progress payment or drawdown is requested.

## **4 SECURITY FOR THE LOAN**

### **Security over Term deposit**

- 4.1 To secure the repayment of the *loan amount* and all other amounts owing to us under this agreement from time to time, you grant to us a security interest (the *deposit security*) in and over the *secured account property*.
- 4.2 The *security* is intended to be first ranking in priority, continues to apply even if payments are made during the term of the loan, and is not released unless the loan and all other amounts owing to us under this agreement from time to time have been finally repaid or we sign a formal release.
- 4.3 You must not attempt to withdraw any amount from the *term deposit* unless we provide our express written consent.
- 4.4 If the amount of the *term deposit* decreases below the initial amount of the term deposit as described in the Details (whether due to set-off in accordance with Details or for any other reason) then you must, within [5] working days, deposit additional amounts to increase the *term deposit* to at least that initial amount.
- 4.5 You acknowledge receipt of a copy of this agreement and waive any right you may have to receive a copy of any financing statement, financing change statement or verification statement (each as defined in the *PPSA*) that is registered, issued or received at any time by us in relation to this Agreement.
- 4.6 To the extent permitted by law and in respect of this agreement and the *deposit security*, you and us contract out of sections 114(1)(a), 133 and 134 of the *PPSA*, and you waive your rights to receive notice of any proposal to retain personal property under section 120(2) of the *PPSA* or object to any proposal to retain any personal property under section 121 of the *PPSA*.
- 4.7 Where we have rights in addition to, or existing separately from, those in the *PPSA*, those rights will continue to apply and are not limited or excluded (or

otherwise adversely affected) by any right provided by this agreement or by law.

## Security generally

- 4.8 Security for this loan may be recorded in your loan agreement or in a separate security agreement, which will include the nature of the security and the terms and conditions applying to that security.
- 4.9 *You* and any other person who gives *us* security in relation to the loan may not give the same security to someone else unless *we* agree in writing. If *we* had not agreed and the security was given to someone else, then this loan agreement (and any other document under which the security is provided) will be in breach and *we* may ask *you* to repay any money *you* owe *us*.
- 4.10 If *we* exercise *our* rights under the security and recover an amount of money from the security, then *you* will still be responsible for paying any shortfall to *us*.
- 4.11 All security *you* have provided *us* will secure all your loans with *us*, now or in the future. Any existing security *you* have already given *us* for other loans (if any) will now also secure this loan, and other future loans. *We* will hold any security *we* have for your loan until all money owing under any loans with *us* have been repaid.
- 4.12 When all money owing under any loans with *us* has been repaid in full *you* can ask *us* to discharge any security held by *us* and *we* may charge the discharge of security fee set out in the Details when discharging such security.
- 4.13 *We* may ask *you* to give new or extra security in certain circumstances where *we* need replacement security, additional security to match the amount of the loan (whether by the loan amount increasing or the security value decreasing or the guarantor terminating or withdrawing their guarantee).

- 4.14 *You* agree to *us* giving information about *you*, including the Details, the General Terms & Conditions and any loan variation letter, to anyone who has given *us* security for this loan. *We* may do so to help the person understand their responsibilities and obligations, and to comply with laws that apply (for example, the CCCFA).

## Your right to cancel or to request to change the Loan

### 5 YOU MAY CANCEL YOUR LOAN

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- 5.1 *You* can cancel your loan agreement with *us* by giving written notice of the cancellation to *us* within:
- 5 working days of receiving the Details, if the Details are given to you in person;
  - 7 working days after the electronic communication is sent, if the Details are sent to you by email or other electronic communication: or
  - 9 working days after the Details are posted to you, if the Details are sent to you by post.

*You* will also need to pay *us* back any advance or any other property received from *us* within the time limits referred to above.

- 5.2 If *you* cancel your loan agreement, *we* may charge you the amount of any reasonable expenses *we* necessarily incur in connection with this loan and the cancellation, and interest charges (at the rate otherwise applicable under this agreement) on any advance or other property provided to you for the period until it is repaid.

### 6 YOU MAY REQUEST TO CHANGE YOUR LOAN IN UNFORESEEN HARDSHIP

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6.1 If *you* are unable, because of illness, injury, loss of employment, the end of a relationship or other reasons, to meet your obligations under this loan, *you* can apply to change your loan by writing to *us* specifying the reason for your inability to meet your obligations under the loan agreement. There may be extra requirements *you* will need to meet if:

- *you* have already missed some of the loan repayments;
- *we* have already sent *you* a notice under the Property Law Act 2007 for payment; or
- *you* have sent *us* a similar application in the recent past.

6.2 *We* may only be able to change your loan agreement if *we* consider the changes *you* want are fair in light of the reason(s) *you* have provided to *us*. *You* will also need to pay *us* back any advance or any other property received from *us* within the time limits referred to above.

If *you* cancel your loan agreement, *we* may charge you the amount of any reasonable expenses we necessarily incur in connection with this loan and the cancellation, and interest charges (at the rate otherwise applicable under this agreement) on any advance or other property provided to you for the period until it is repaid.

## **7 YOU MAY ASK TO CHANGE YOUR LOAN IN OTHER CIRCUMSTANCES**

7.1 *You* can ask *us* to change the loan, including the payment date, the type of interest rate, the type of loan, the loan term or the loan amount.

7.2 *We* may change upon your request at *our* absolute discretion and may not agree to part or all of your requested changes. Making changes to your loan may incur fees, including break costs (see clause 25).

## **8 YOU MUST USE YOUR LOAN BY THE SET DATE IN THE RATE LOCK AGREEMENT**

8.1 If *you* have a rate lock agreement with *us*, *you* must draw on your loan by the date stated in that agreement, unless otherwise agreed by *us*.

8.2 *We* may charge *you* a non-utilisation fee if *you* do not use the loan by the date stated in the rate lock agreement. This fee reflects the loss *we* incur from *you* not using the interest rate agreed or from not using the loan by the date agreed and is set out in the rate lock agreement.

8.3 If *you* wish to postpone the lending date or vary the interest rate, *you* can contact *us*.

## **Loan purpose**

### **9 LOAN PURPOSE SHOWN IN DETAILS**

The terms which apply to *you* depend on your loan purpose, as indicated in the Details. Your loan may be for more than one purpose.

### **10 RESIDENTIAL PROPERTY PURCHASE**

This loan purpose covers those who borrow to purchase an established residential property.

### **11 CONSTRUCTION LOAN**

11.1 This loan purpose covers those who

- borrow to buy land and build a home on it; or
- borrow to cover the cost of building a home on land they already own; or
- borrow to renovate a home.

If the Details indicate that the purpose of your loan is "Construction loan" *we* treat *you* as having a *term loan* from the *lending date* until the date *you* make your final *interest only repayment*. From the day after that date *we* treat *you* as having an *instalment loan* until the *balance owing on your account* is fully paid.

## Terms applying to construction loans

### Before *you* begin work

11.2 *You* must not begin any demolition or building work until *you* receive *our* written consent. (*Our* consent is required separately from this loan agreement.)

### Standard of work

11.3 *You* must ensure that all building work on the property is carried out as *we* have approved and in accordance with all laws.

11.4 *You* are alone responsible for ensuring that all plans are followed and that materials and workmanship are satisfactory even if *we* also monitor the building work. (If *we* do so, it is only for *our* own purposes, and even if *we* make a progress payment, it does not mean the building work is necessarily satisfactory.) *You* must have *our* written consent or the written consent of *our* valuer before *you* change any plan *we* have approved in a way which increases or decreases the original total building cost by more than \$1000.

### Progress payments

11.5 *We* lend the *loan amount* by making progress payments. (However, if part of the *loan amount* is being used to buy land, the first payment is not treated as a progress payment and is applied towards the land purchase.)

11.6 Before *we* have to lend the first progress payment, *we* must receive evidence to *our* satisfaction that *you* have already spent the funds which *you* are required to

contribute to the building costs or the land purchase set out in the Details as "Your Contribution".

11.7 *You* must ensure that a building stage is complete and allow *our* valuer to inspect the work (see below) **before** requesting the progress payment for that stage.

11.8 *You* must give *us* at least 3 days' written notice in advance of each required progress payment date.

11.9 Despite clause 2, *we* reserve the right to pay progress payments directly to your builder (if any), to any person supervising the building work for *you* or any other contractor, and not to *you*. However, *you* remain responsible for paying these people in accordance with your arrangements with them, regardless of when *we* make your progress payments.

11.10 *We* must receive evidence satisfactory to *us* that there is building insurance for the property for the amount in the Details, and that *our* interest is noted on the policy, before *we* have to lend the first progress payment.

11.11 *You* must not sign a request for a progress payment before the work covered by that progress payment is completed (that is, *you* must not "pre-sign" any request forms).

## Inspections

11.12 *You* (or your builder) must contact *us* when each building stage is complete (whether or not a payment is due) so that building inspections can be carried out as appropriate.

## 12 REFINANCING LOAN

12.1 This loan purpose covers those who refinance an existing loan (or loans) they have from *us* or from another lender.

12.2 If the Details indicate that this loan is to refinance an existing loan (or loans) *you* have from *us* and *we* already hold the

*security*, the terms of each existing agreement specified in the Special Conditions in the Details are replaced by the terms of this agreement.

### **13 LAND ONLY**

This loan purpose covers those who borrow to buy land.

### **Loan category**

### **14 LOAN CATEGORY**

If "owner occupier" is indicated in the Details or if *we* convert the loan at your request from investment to owner occupier, *you* must not rent the home out or allow anyone to live in it without *you*, unless *we* have first agreed. If *we* agree, *we* may treat your loan as an investment loan and change your *interest rate* as a result.

### **What *you* must pay and when**

### **15 WHAT *YOU* MUST PAY**

*You* must repay all amounts *you* borrow from *us* and *you* must pay *us* interest charges, other amounts under clause 16 and any enforcement expenses.

### **16 REPAYMENTS**

16.1 *You* must make payments to *us* in the frequency and in the currency set out in the Details.

16.2 The repayment methods are as follows. The Details indicate the method or methods applicable to your loan.

#### ***Principal and interest repayments***

16.3 *We* calculate *principal and interest repayments* so that, during the period they are payable

- the *balance owing* on your loan account at the start of the period, and
- all interest charges which accrue or become payable during the period;

are repaid during the period.

Under this method, the part of each repayment which repays the *balance owing on your loan account* at the start of the period gradually increases throughout the period but repayments are equal as long as the *interest rate* remain constant. However, the last repayment may be different as it equals the *total amount owing* on the last day of the *loan term*. *Principal and interest repayments* are rounded up to the nearest dollar.

#### ***Interest only repayments***

16.4 During each *interest only period*, *we* calculate interest only repayments as follows:

- each repayment covers a period.
- the length of each period is indicated in the Details (for example, fortnightly or monthly).
- the first period starts on the first drawdown date of any part of the amount to be borrowed. Each period ends at midnight on the day before the start of the next period.
- interest for one period is debited to your loan account at the end of the last day of each period.
- interest for one period becomes due for payment on the last day of that period.
- each *interest only* repayment equals the sum of:
  - interest charges debited to your loan account during the preceding period,

rounded up to the nearest dollar.

## All repayment methods

16.5 If the *interest rate* at the *lending date* is different to the rate shown in the Details, your initial repayment amount also changes from the amount, if any, shown in the Details. *We* notify *you* in writing of your initial repayment amount before the first repayment date.

16.6 *We* may also change the amount of following repayments in line with changes to the *interest rate* or fees and charges or otherwise as necessary to ensure that the *loan amount* and all other amounts *you* must pay are repaid within the *loan term* (for example, to make up for any repayments *you* have made late). If the change increases the repayment amount, *we will* notify *you* in writing beforehand of the changed repayment amount and when it applies.

## 17 LOAN TERM

Unless otherwise indicated in the Details, the *loan term* begins on the *lending date*. The length, or the end date, of the *loan term* is specified in the Details. *We* may change the *loan term* under clause 21.4 or 22.7.

## 18 WHEN AND HOW TO PAY

18.1 Your first repayment is due as described in the Details.

Unless the Details indicate otherwise, all following repayments are then due at monthly intervals - for example, if the first repayment is due on the 15th October, each later repayment is due on the 15th of every month.

If your repayments are due on the 29th, 30th or 31st of a month, and a particular month does not have that date, *you* must pay your repayment on the last day of that month.

18.2 If a repayment is due on a day which is not a *business day*, *you* may pay on the next *business day*.

18.3 On or before the last day of the *loan term*, *you* must pay the *total amount owing*.

18.4 *We* may apply any repayment or other payment *we* receive from *you* to any other loan *you* have from *us*.

18.5 *You* must pay all amounts due under this agreement (and each security or other document *you* enter into in relation to this agreement) in full without setting off amounts *you* believe *we* owe *you* and without counterclaiming amounts from *us* unless this agreement is regulated by the CCCFA and *you* obtain an order against *us* which the CCCFA expressly permits may be set-off against amounts *you* owe *us*.

## 19 PAYMENT OF FEES AND CHARGES AND OTHER AMOUNTS

*You* may obtain information on current fees, charges and *interest rates* by telephoning *us* on +64 9 980 9000 or visiting *our* website at [www.bankofchina.com/nz](http://www.bankofchina.com/nz)

Enforcement expenses may become payable under this agreement or any mortgage or other security in the event of a breach.

19.1 *You* must pay *us*:

- (a) all fees and charges in the circumstances indicated in the Details and any changed or new fee or charge notified to *you*;
- (b) an amount equal to any government charges and duties on receipts or withdrawals under this agreement, calculated in accordance with the relevant legislation. Without limiting this obligation, *you* must pay financial institutions duty, if any. These are payable whether or not *you* are primarily liable for such charges and duties; and

- (c) when *we* ask, any reasonable expenses *we* reasonably incur in performing or enforcing this agreement or a *security* after *you* are in default (*including*:
- (i) in the case of a mortgage, expenses incurred in preserving and maintaining the property - *such as* by paying insurance, rates and taxes for the property; and
  - (ii) the use of *our* staff and facilities).

19.2 You authorise us to debit any of your accounts with any amounts you owe to us. We may do so on or after the date we pay them or the date they become due or payable by you or us (whichever is earlier). You may also pay these amounts through other methods permitted by us from time to time. We may debit amounts you owe to us from an Account even if that causes that Account to become overdrawn or increase an existing overdraft on that Account.

19.3 To the extent they are known, the amounts of the fees and charges current at the *disclosure date* are shown in the Details.

19.4 By giving *you* advance notice (in writing or by newspaper advertisement), *we* may change the amount, or frequency of payment, of any fee or charge, or impose a new one. But some changes in government fees and charges are publicised by the government and not *us*.

Where this agreement is regulated by the CCCFA, *we* will comply with the notice requirements of the CCCFA.

19.5 *We* are not obliged to refund the application fee under any circumstance.

## **20 INTEREST CHARGES**

*You may find out our current interest rates by telephoning us on +64 9 980 9000 or visiting our website at [www.bankofchina.com/nz](http://www.bankofchina.com/nz)*

*You* must pay *us* interest charges for each day on the *balance owing on your loan account* for the end of that day. Interest charges are calculated daily at the *interest rate* set out in the Details on the basis of a 365 day year (*including* in a leap year).

The interest charges accrue daily from and including the *lending date*. They are debited to your loan account on:

- (a) each payment date; and
- (b) the last day of the loan term.

If *you* are in default, the interest charges are higher (see clauses 29.1 to 29.3).

## **21 VARIABLE INTEREST RATE**

21.1 Whenever your loan or a tranche of your loan has the variable *interest rate*, *we* may change the *interest rate* which applies to the loan or the applicable tranche of the loan at any time.

21.2 If your loan starts with a variable *interest rate*, the *interest rate* shown in the Details is the rate applying at the *disclosure date* and is only a guide - the actual rate may have changed by the *lending date*.

21.3 *We* will notify *you* in writing or by a newspaper advertisement on or before the date of any *interest rate* change.

21.4 *We* may change your repayment amount or your *loan term*, or both, to take account of any change to the *interest rate* (and otherwise as permitted under clause 16.6).

Where this agreement is regulated by the CCCFA, *we* will comply with the notice requirements of the CCCFA.

## **22 FIXED INTEREST RATE**

22.1 Whenever your loan or a tranche of your loan is a fixed *interest rate* loan, the *interest rate* is fixed for an agreed period or periods, each of which is called a "fixed rate period". A fixed rate period ends on



(but excludes) the same day in the month as the lending date.

22.2 The *interest rate* for any fixed rate period is the rate *we* tell *you* in writing on or before the start of that fixed rate period.

22.3 If your loan or a tranche of your loan starts as a fixed *interest rate* loan, the *interest rate* shown in the Details is the rate applying at the *disclosure date* and is only a guide - the actual rate may have changed by the *lending date* if *we* change the fixed rate *we* are offering.

22.4 Unless *you* tell *us* that *you* want to continue under a fixed *interest rate* in writing before the end of your fixed rate period pursuant to clause 16.5, *we* will treat *you* as having chosen to convert to a variable *interest rate* that *we* may change from time to time rather than continuing to another fixed rate period. Once your loan is changed from the fixed *interest rate* to the variable *interest rate*, *you* may not change back to the fixed *interest rate*, unless *we* agree otherwise.

22.5 At the end of each fixed rate period, *you* may choose to re-fix the *interest rate* which will apply for the next fixed rate period (this rate may be higher or lower than or the same as the rate which applied for the current fixed rate period). The re-fixed *interest rate* takes effect on the first day in the new fixed rate period. To do this, *you* must notify *us* in writing at least 7 days before the end of the current fixed rate period. *We* charge a rollover fee for this change.

22.6 *We* notify *you* in writing or by a newspaper advertisement on or *before the date of any interest rate change*.

22.7 *We* may change your repayment amount or your *loan term*, or both, to take account of any change to the *interest rate* (and otherwise as permitted under clause 16.6).

22.8 *We* tell *you* in writing in advance:

(a) the new *interest rate*; and

(b) your new repayment amount or the changed remaining period of your *loan term*; and

(c) when the new repayment amount is first due.

22.9 If your fixed rate period shown in the Details is the same length as your *loan term*, then the *interest rate* applying at the *lending date* is fixed for the whole *loan term* and there are no fixed rate periods after the first fixed rate period.

## 23 BRIDGING LOANS

23.1 This clause 23 applies where the loan type described in the Details is a Bridging Loan.

23.2 When the *balance owing on your loan account* as a percentage of the valuation of the *Sale Property* exceeds the *loan to valuation ratio*, *you* must within 5 business days of *our* asking for it, either prepay your loan or provide *us* with additional *security* acceptable to *us* so that the loan to valuation ratio is not exceeded.

23.3 If *you* have a Bridging Loan where interest is capitalised for the *loan term*, interest will be debited to your loan account at monthly intervals on the same day of the month that your loan account was opened and on the date *you* pay the *total amount owing*. Interest debited will then form part of the *balance owing on your loan account* and bear interest accordingly.

## Early repayment

## 24 REPAYING EARLY

### Variable interest rate

24.1 Whenever your loan has the variable *interest rate*, *you* may repay early as much as *you* choose, at any time. *You* can do this by paying one or more lump sums.



## Fixed *interest rate*

24.2 Whenever your loan has a fixed *interest rate*, *you* may repay early all or any part of the *total amount owing at the end of* a fixed rate period without charge (except normal charges applying when the loan is ended).

24.3 *You* may also repay early all or any part of the *total amount owing at any time during* a fixed rate period; however, *you* may have to pay break costs (see clause 25).

24.4 Once *you* have notified *us*, *you* cannot change your mind - *you* must repay.

## Either *interest rate option*

24.5 Once *you* have made an early repayment *you* may not re-borrow the amount paid unless *you* have a redraw option permitted by *us*.

24.6 *We* charge an early repayment administrative fee as set out in the Details for any early repayment by *you*.

## 25 BREAK COSTS

25.1 Unless the Details indicate otherwise, if your loan has the fixed *interest rate*, *you* are taken to have broken your fixed rate period:

by repaying all or any part of the *total amount owing* before the relevant scheduled loan repayment date during a fixed rate period; or

- if we agree to change the fixed *interest rate* applicable to the loan before the end of a fixed rate period; or
- if the *total amount owing* becomes repayable during a fixed rate period because *you* are in default.

*You* must then pay *us* an amount *we* call "break costs".

25.2 Break costs are payable on the date of early repayment and are an amount equal to *our* reasonable estimate of *our* loss arising as a result of *you* breaking your fixed rate period. This loss usually arises because of changes in market *interest rates* between the start of your fixed rate period and when *you* break.

25.3 This clause contains a short description of the mathematical formulas *we* use when calculating break costs on the amount of the total amount owing that is repaid before its scheduled loan repayment date (in this clause, the '**early repayment amount**'). *We* calculate the following amounts for the period from the date of the early repayment until the end of the fixed rate period (in this clause, '**remaining period**')

- (a) the interest charges which would have been due on the early repayment amount over the remaining period, using the wholesale rate which applied at the start of the fixed rate period for the fixed rate period; and
- (b) the interest charges which would have been due on the early repayment amount over the remaining period, using the wholesale rate which would have applied over the remaining period on the date of your early repayment.

*We* then compare:

- (c) the sum of the early repayment amount and the interest charges calculated in (a) above; and
- (d) the sum of the early repayment amount and the interest charges calculated in (b) above.

Adjustments are made to recognise that *we* receive the money now, rather than over the remaining period. This adjustment is based on the wholesale rate which would have applied over the

remaining period on the date of your early repayment

A break cost will be charged by *us* only if the amount in (c) is greater than the amount in (d) (as adjusted in each case), and (if charged) will be based on the difference between the two adjusted amounts. If the amount in (d) is greater than the amount in (c) (as adjusted in each case), then *we* will only charge *you* an early repayment administration fee set out in the Details.

25.4 The break costs (as calculated by *us*) are assessed as notional transactions to provide a reasonable estimate of *our* loss. These may not be the actual transactions entered into in any particular case.

25.5 Break costs will not be calculated by *us* using the formulas prescribed in the Credit Contracts and Consumer Finance Regulations 2004.

**Warning:** Break costs can be quite high. *We* suggest *you* ask *us* for an estimate of the break costs and seek independent financial advice before *you* repay early under the fixed *interest rate* option. A fixed rate loan may not be suitable for *you* if *you* plan on terminating the loan within the fixed rate period when break costs are applicable.

## 26 WHAT HAPPENS TO YOUR REPAYMENTS AFTER REPAYING EARLY?

If *you* repay early only part of the *balance owing on your loan account*, the calculation of your repayment amount and the number of repayments payable do not change unless *we* agree otherwise. However, it may reduce your *loan term*.

## Default

### 27 WHEN ARE YOU IN DEFAULT?

*You* are in default if:

27.1 *you* do not pay on time any amount due under this agreement *you* have with *us*; or

27.2 *you* do something *you* agree not to do, or *you* don't do something *you* agree to do under this agreement; or

27.3 *you* give, or another person gives, *us* incorrect or misleading information in connection with this agreement or a *security*; or

27.4 *we* reasonably believe *you* or another person has acted fraudulently in connection with this agreement or a *security*; or

27.5 *you* become or another person who provides a *security* becomes *insolvent* or steps are taken to make *you* or them so; or

27.6 *you* are, or another person who provides a *security* is, in default under that *security* or withdraws from it.

## 28 WHAT CAN HAPPEN THEN?

28.1 If *you* are in default, *we* may give *you* a notice stating that *you* are in default.

If *you* do not, or cannot, correct the default within any grace period given in the notice or required by law (or if *you* are in default again for a similar reason at the end of that period), then, at the end of that period and without further notice to *you*, the *total amount owing* becomes immediately due for payment (to the extent it is not already due for payment).

*We* may then sue *you* for that amount, or enforce any *security*, or do both.

28.2 In limited circumstances set down by law (*such as* if *we* are unable to locate *you*), *we* need not give the notice or wait until the end of any grace period given in a notice. Instead, if *you* are in default, the *total amount owing* becomes immediately due for payment without notice. *We* may then immediately sue *you* for that amount, or enforce any *security*, or do both.

28.3 If *you* are in default, *we* may use any money *you* have in another account with *us* towards repaying the *total amount owing* (this is known as "combining accounts"). *We* may combine accounts without giving *you* any notice but *we* will tell *you* afterwards.

## **29 HIGHER INTEREST CHARGES**

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29.1 This clause 29 sets out how *we* calculate higher interest charges if *you* are in default.

29.2 If *you* do not make a repayment due under clause 16 on time, then, from and *including* the day that repayment is due until but excluding the day it is paid in full, *we* calculate interest charges under clause 20 at the *default rate* set out in the Details.

29.3 Your obligation to pay on time is not cancelled by this clause.

## **General matters**

### **30 CCCFA**

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30.1 Clause 30.2 applies to the extent that the CCCFA applies to this agreement.

30.2 If:

the CCCFA would otherwise make a provision of this agreement illegal, void or unenforceable; or

(a) a provision of this agreement would otherwise contravene a requirement of the CCCFA or impose an obligation or liability which is prohibited by the CCCFA,

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

### **31 ESTABLISHING YOUR LOAN ACCOUNT AND ACCOUNTING FOR TRANSACTIONS**

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31.1 *You* authorise *us* to open a loan account in your name and to debit to it each part of the amount *you* borrow on the date *we* lend it and any amount which *you* must pay under this agreement on or after the date it becomes due, without first notifying *you*. Each such loan account will be subject to our general terms and conditions relating to such accounts from time to time, a copy of which will be provided to you when the account is opened.

31.2 *We* may assign any date *we* consider appropriate to a debit or credit to the loan account (except that, in the case of a debit, the date must not be earlier than the date on which the relevant transaction occurs).

However, *we* credit payments to your loan account as soon as practicable after *we* receive them. This is not necessarily the same day that *you* pay.

31.3 *We* may subsequently adjust debits and credits to the loan account, and the *balance owing on your loan account*, so as to accurately reflect the legal obligations of *you* and *us* (for example, because of an error or because a cheque is dishonoured). If *we* do this, *we* may make consequential changes (*including* to interest charges).

31.4 *We* may use any payment *we* receive in connection with this agreement to reduce the *total amount owing* in any order *we* choose.

31.5 *We* give *you* a statement for your loan account every 6 months.

### **32 CONSENTS AND PERFECTION OF SECURITY**

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32.1 *You* must comply with all conditions and requirements in any consent *we* give.

32.2 To the extent permitted by the CCCFA and any other applicable law, *you* must promptly execute any documents and do all things that *we* reasonably require:

- (a) to ensure that this agreement is not void, voidable or otherwise unenforceable by *us* in accordance with its terms; and
- (b) to effect, perfect or complete the provisions of this agreement or any transaction contemplated by it; and
- (c) (including obtaining consents and signing and producing documents) to effect registration of this agreement or any other document on any register established pursuant to the *PPSA*.

### **33 VALUATIONS ARE FOR OUR BENEFIT**

- 33.1 Any property valuation is for *our* use only.
- 33.2 When the *balance owing on your loan account* as a percentage of all real property which *we* have *security* over exceeds the *loan to valuation ratio*, *you* must within 5 business days of *our* asking for it, either prepay your loan or provide *us* with additional *security* acceptable to *us* so that the *loan to valuation ratio* is not exceeded.

### **34 HOW WE MAY EXERCISE OUR RIGHTS**

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

- 34.1 If *we* do not exercise a right or remedy fully or at a given time, *we* can still exercise it later.
- 34.2 *Our* rights and remedies under this agreement are in addition to other rights and remedies provided by law independently of it.
- 34.3 *Our* rights and remedies may be exercised by any of *our* employees or any other person *we* authorise.
- 34.4 *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.

### **35 DISPUTE RESOLUTION PROCEDURE**

#### **What to do if *you* have a dispute and complaint**

- 35.1 If *you* wish to dispute on any matter or make a complaint against *us*, please contact *us*. *We* have both internal and external dispute resolution processes aimed to resolve any dispute or complaint from *you*.

#### **Lodging your dispute or complaint**

- 35.2 *You* should gather all relevant supporting documents about the dispute or complaint. Once *you* have contacted *us*, *we* will begin the process of investigating and resolving *your* complaint or dispute, at no cost to *you*. Many complaints can normally be resolved within 5 business days. *We* aim to resolve *your* dispute or complaint within 14 business days. If the matter is more complex, it may take a longer time to resolve. If that is so, *we* will keep *you* informed of the progress of the matter.

#### **Next step if *you* are not happy with *our* proposed resolution**

If *you* are not satisfied with *our* proposed resolution or any extended time for resolution of *your* dispute or complaint, *you* can also contact the Banking Ombudsman, an independent external dispute resolution service.

- 35.3 *We* are a financial service provider, registered under FSP number FSP409486.

### **36 OUR CERTIFICATES**

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

## 37 ASSIGNMENT

- 37.1 *We* may assign or transfer any of *our* rights, powers and discretions and remedies (including the power to vary interest rates and fees, and our other powers and discretions) under this agreement without your consent.
- 37.2 *You* agree that *we* may disclose to any potential assignee or transferee any such information or documents *we* consider necessary to help *us* exercise this right.
- 37.3 *You* also agree that any assignee or transferee may use such information or documents for the purposes and in the same manner as *us*.
- 37.4 Your rights are personal to *you* and may not be assigned without *our* written consent.

## 38 NOTICES, OTHER COMMUNICATIONS AND SERVICE OF DOCUMENTS

- 38.1 Notices, certificates, consents, approvals and other communications in connection with this agreement must be in writing or in any other form permitted by it.
- 38.2 Communications from *us* may be signed by any of *our* employees. If *you* are a company, communications from *you* must be signed by a director or a signatory authorised by *us* whose signature *we* have retained a copy.
- 38.3 *You* can give *us* a notice or a document by:
- (a) delivering it to *us* personally at *our* address stated in the Details or any new address *we* last notified *you*; or
  - (b) leaving it at, or sending it by post to *us* at *our* address stated in the Details or any new address *we* last notified *you*; or
  - (c) sending it by facsimile transmission to *our* facsimile number stated in the

Details or any new facsimile number *we* last notified *you*; or

- (d) electronically by sending the notice or document to *our* e-mail address disclosed in the Details.

38.4 *We* can give *you* a notice or a document:

- (a) by delivering it to *you* personally; or
- (b) by leaving it at, or sending it by post to *your* address *you* last notified *us*; or
- (c) electronically by sending the notice or document to any email address *you* have provided to *us* (whether as part of an account opening process or otherwise).

38.5 *We* may only give *you* a notice or document electronically if *you* have specifically agreed to it, and *you* have not withdrawn *your* consent. *You* acknowledge that by agreeing to receive notices or documents by electronic communication pursuant to clause 38.4(c) above:

- (a) paper notices and documents may no longer be given by *us*; and
- (b) electronic communications should be regularly checked for notices and documents; and

consent to the giving of notices and document by electronic communication may be withdrawn by *you* at any time by notice to *us*.

38.6 If a notice or document is sent by post, it is taken to be received on its date, or on the date it would have been delivered in the ordinary course of the post, whichever is the later (subject to the requirements of the CCCFA).

38.7 If the notice or document is given by *us* pursuant to clause 38.4(c) above, it is taken to be given at the time when the electronic communication enters into your information system (subject to the requirements of the CCCFA).



38.8 A notice or document takes effect from the time it is received unless another time is specified in it.

38.9 *You* must tell *us* as soon as possible if *you* change *your* name, address, phone number or email address.

38.10 *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 address in the Details (or any changed address notified to *us*) or by leaving it there. This does not prevent any other method of service.

## 39 VARIATIONS

In addition to other changes *we* may make, as detailed elsewhere in this agreement, *we* may vary any term of this agreement by giving *you* notice of the proposed change at least 14 days before. *We* may change this agreement at any time where *we* reasonably consider the change is necessary or prudent to enable *us* to comply with law, or with any mandatory director given by a regulator. *We* must give at least 14 days' notice before doing so. If CCCFA applies to this agreement, *we* may only vary this agreement in accordance with that Act, as applicable. For changes that are not referred to elsewhere in this agreement, *we* will notify *you* in writing of any variation before it takes effect. For other changes that are referred to elsewhere in this agreement, *we* will notify *you* as detailed elsewhere in this agreement.

## 40 LOAN SWITCHING

*You* may request (in a form satisfactory to *us*) for a *loan switch* (for example, by choosing another *interest only period* upon expiry of an existing *interest only period*, by switching your existing loan repayment method to another loan repayment method or splitting your existing loan account to different loan accounts with different repayment

methods, by switching your loan to a different loan product of the same loan type) if:

- (a) *your* request satisfies the criteria for *loan switch* set by *us* at the time of your request ;
- (b) *you* are not in default;
- (c) *you* pay the applicable fee set out in the Details;
- (d) *you* sign any new documentation that is required by *us*; and
- (e) the *loan amount* does not change.

To obtain current information on the type of *loan switch* permitted by *us* and the applicable criteria, please contact *us*.

## 41 SECURITY SUBSTITUTION

*You* may request (in a form satisfactory to *us*) for a *security substitution* if:

- (a) *you* are not in default;
- (b) *you* pay the applicable fee set out in the Details;
- (c) *we* are satisfied with the valuation and title to the new security property;
- (d) there is no change in the borrower or security provider;
- (e) *you* sign any new documentation that is required by *us*;
- (f) the *loan amount* does not change;
- (g) the settlement for the discharge of the existing security property occurs either simultaneously with or prior to the granting of the new security property.

## 42 CONSUMER GUARANTEES ACT

Consumer Guarantees Act 1993 may apply to guarantees in this loan agreement to



which *we* will comply. To the maximum extent the law allows it, *you* agree that *we* provide no other guarantees or warranties imposed on *us* by custom or law.

### **43 PRIVACY**

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Personal information provided by *you* in relation to a loan will be used by *us* to assess your application for a loan, to provide you with and manage any loan or other product offered by *us*, and to comply with applicable law. For these purposes, we may give such information to any *security provider*, credit reporter,

debt recovery agency, or a related company of *us*.

You have a right to access and correct any personal information about you under the Privacy Act 2020.

Please also refer to our general Privacy Policy available from our website.

### **44 APPLICABLE LAW**

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