



## **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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**Please Note:**

**The AFS Loan Contract and Mortgage Terms and Conditions do not contain all of the information you may be required to be given by law before you offer to borrow from AFS. The rest of that information is contained in the Schedule and the Information Statement included with the AFS Loan Contract and Mortgage Terms and Conditions.**

# AFS LOAN CONTRACT AND MORTGAGE TERMS AND CONDITIONS

## Acceptance of offer

You agree that:

- (a) Automotive Financial Services Pty Limited ABN 73 003 622 375 Australian credit licence 383762 ("AFS" or the "Credit Provider") may accept your offer by an authorised officer of AFS signing the Memorandum of Acceptance on the Loan Contract and Mortgage Schedule or by AFS paying any of the amounts listed in the schedule to the payees named in the schedule, whichever is the earlier;
- (b) it is not necessary for AFS to communicate such acceptance to you for it to be effective;
- (c) such acceptance will of itself and without notice to you, immediately create a valid and binding contract; and
- (d) this contract will be governed by and construed according to the law applying in NSW.

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 you pay interest charges) 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 reasonably determining that:

- (a) this contract complies with all legal requirements relating to it;
- (b) you have received all statements and information required by law to be given to you;
- (c) any mortgage and any guarantee has been given and is valid and binding on you and the guarantor; and
- (d) no event of default under clause 8.1 has occurred and is continuing.

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), 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. If this contract is one to which the National Credit Code applies, you have a right under the National Code to apply for a change to your contract to:
  - (a) extend the period of the contract and reduce the amount of each repayment accordingly;
  - (b) postpone during a specified period the dates on which repayments are due; or
  - (c) extend the period of the contract and postpone during a specified period the dates on which payments are due,without a change being made to the annual percentage rate, where you are unable reasonably, because of illness, unemployment or other reasonable causes, to meet your obligations under this contract and reasonably expect to be able to discharge your obligations if the terms of the contract were so changed. AFS has no obligation to agree to any changes you apply for. You should seek legal advice in relation to any such application.
- 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. You also authorise the payment of any origination fees payable in connection with this contract.

- 3.4 (a) Where this contract is one to which the National Credit Code applies:
- (i) interest charges will be calculated on the unpaid daily balance of the loan at the daily percentage rate. Interest charges will be accrued daily and AFS can debit interest charges to your account monthly. The first debit will be on the date which is one month from the settlement date and later debits will be on the same day in each month after that. If a day on which AFS would otherwise debit interest is the 29th, 30th or 31st of a month and that month does not contain such a date, interest will be debited to your account on the last day of that month. AFS can also debit interest charges to your loan account at the following times:
    - immediately before AFS credits to your loan account a payment that equals or exceeds the loan account balance at that time; and
    - on the day the loan account balance plus any amounts charged, accrued or payable but not yet debited to your loan account less any rebates of premium for consumer credit insurance financed under this contract to which you are entitled under the National Credit Code becomes due under clause 8 below;
  - (ii) The amount of interest charges debited to your loan account will comprise the sum of interest charges calculated for each day in the period commencing on:
    - in the case of the first interest debit, the settlement date;
    - otherwise, the day following the last day for which an interest charge was debited, and ending:
      - where the interest charge debit takes effect earlier than immediately before the end of the day on which it is debited, the day before the day on which the interest charge is debited;
      - otherwise, the day on which the interest charge is debited.
- (b) Where this contract is one to which the National Credit Code does not apply:
- (i) you agree to pay the total amount of interest charges payable as set out in the schedule; and
  - (ii) 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 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 made by you under this contract, which are received by AFS after the close of business will be credited to the loan account balance the next business day.
- 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 less any rebates of premium for consumer credit insurance financed under this contract to which you are entitled under the National Credit Code.
- 3.9 Unless the consideration payable or to be provided under this contract is not otherwise expressly stated to be inclusive of GST, AFS may, in addition to any amount or consideration expressed as payable or to be provided elsewhere in this contract, subject to issuing a valid tax invoice, recover from you an additional amount on account of GST, equal to the GST payable on the relevant supply. Any additional amount on account of GST recoverable from you under this clause shall be calculated without any deduction or set-off of any other amount and is payable by you on demand by AFS whether such demand is by means of an invoice or otherwise and may be debited to the loan account.

#### **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 1.2 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:
    - A. contain such terms, conditions, exclusions and exceptions as are reasonably required by AFS to protect its interest in the goods;
    - B. be taken out in your name; and
    - C. note AFS' interest as mortgagee 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 immediately 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
- (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 the insurance is for the benefit of AFS and AFS is entitled to receive all money payable under the policy 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. You must check the provisions of the relevant policy for any security shortfall insurance to determine what cover is actually provided under the policy.

## **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 first class 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;
- (c) 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 AFS's negligence;
- (d) 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;
- (e) 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;

- (f) 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;
  - (g) 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;
  - (h) 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;
  - (i) 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 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;
  - (j) 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 and where AFS' consent is given, it may be given subject to whatever conditions AFS sees fit to impose;
  - (k) 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;
  - (l) 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; and
  - (m) not to cause or permit the goods to be affixed to any land or building without the prior written consent of AFS 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 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 and in 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.
- 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 less any rebates of premium for consumer credit insurance financed under this contract to which you are entitled under the National Credit Code 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 less any rebates of premium for consumer credit insurance financed under this contract to which you are entitled under the National Credit Code 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 payout 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 less any rebates of premium for consumer credit insurance financed under this contract to which you are entitled under the National Credit Code 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 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;
  - (d) 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;
  - (e) 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;
  - (f) you are a partnership and a change occurs in the constitution of the partnership without AFS' consent;
  - (g) you are a trustee of a trust and you without AFS' written consent cease to be the sole trustee, you do or omit to do anything in breach of the terms of the trust, 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;
  - (h) the goods are totally or substantially lost or destroyed;
  - (i) 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
  - (j) any guarantee required by AFS has been withdrawn.
- 8.2 If you are in default then subject to any law (including requirements as to notice) the loan account balance plus any amounts charged, accrued or payable but not yet debited to your loan account less any rebates of premium for consumer credit insurance financed under this contract to which you are entitled under the National Credit Code automatically become due and payable and subject to any law (including requirements as to notice) AFS may commence enforcement proceedings against you. Where this contract is one to which the National Credit Code applies, AFS must give a default notice in accordance with the National Credit Code allowing you a period of at least 30 days to remedy the default prior to beginning enforcement proceedings except where:
- (a) we believe on reasonable grounds that we were induced by fraud on your part to enter into the credit contract or mortgage; or
  - (b) we have made reasonable attempts to locate you but without success; or
  - (c) a court authorises us to begin the enforcement proceedings; or
  - (d) we believe on reasonable grounds that you have removed or disposed of the goods or intend to remove or dispose of the goods, without our permission or that urgent action is necessary to protect the goods.
- 8.3 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 8.2 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 National Credit Code or any other law. If this contract is one to which the National Credit Code applies, then under the National Credit Code AFS cannot take possession of the goods without the consent of a Court if the amount currently owing under your contract is less than 25% of the amount of credit provided or \$10,000, whichever is the lesser, except if AFS believes on reasonable grounds that you have removed or disposed of the goods or intend to remove or dispose of them without AFS's permission or that urgent action is required to protect the goods.
- 9.2 If AFS takes possession of the goods, AFS will give you a notice setting out the estimated value of the goods and all other information required by the National Credit Code (if applicable). 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 less any rebates of premium for consumer credit insurance financed under this contract to which you are entitled under the National Credit Code; 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, subject to compliance with the National Credit Code and any other law:
- (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 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.
- 9.4 The net proceeds received by AFS will be applied in accordance with clause 12.

## 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 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.
- 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 immediately 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, as disclosed in the schedule. You consent to the payment of this commission. The amount of the commission is shown in the schedule unless it was not ascertainable at the time you signed the contract.
- 11.2 Where credit-related insurance is financed by this contract a commission will be paid by the insurer in relation to that insurance. You consent to the payment of this commission. The amount of the commission is shown in the schedule unless it was not ascertainable at the time you signed the contract.
- 11.3 A commission may be paid by any insurer named in the schedule under the heading "Other Insurance" to AFS, the supplier or a broker, their agent or employee or a related corporation of AFS. You consent to the payment of this commission. The amount of the commission is shown in the schedule unless it was not ascertainable at the time you signed the contract.

## **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 1.2 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:

- (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 reasonably 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 7.6 of this contract ; and
- (f) do all acts including executing any document which AFS is of the opinion is reasonably necessary in respect of this contract.

## **14 Miscellaneous**

- 14.1 This contract will not be binding on AFS and the loan transaction contemplated by it will not commence until your offer has been accepted by AFS in accordance with the "Acceptance of offer" section above. The effect of this clause will not be affected or prejudiced by any prepayment of money by you or the delivery of any part of the goods to you.
- 14.2 After this contract is made AFS may 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. This clause does not limit AFS's right to vary the terms under clause 14.3.
- 14.3 AFS may unilaterally vary or change the terms of the contract as follows:
- (a) changing the amount or frequency of repayments or when they are due;
  - (b) changing credit fees and charges; and
  - (c) imposing new credit fees and charges;
- 14.4 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 changes under clauses 14.2 or 14.3 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.
- 14.5 Where this contract is one to which the National Credit Code applies, this contract is not to be read as:
- (a) excluding, modifying or restricting any of the rights, powers or duties conferred or imposed on AFS or on you by or under the National Credit Code;
  - (b) allowing the variation of the provisions of this contract or a guarantee in respect of this contract in any way not allowed by the National Credit Code;
  - (c) requiring or securing (or purporting to do so) the payment of an amount or the performance of an obligation beyond that allowed by the National Credit Code; or
  - (d) including a provision which is void under the National Credit Code.
- 14.6 Any part of this contract which is illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability, without invalidating the remaining parts of the contract.
- 14.7 If any condition, clause, provision or term of this contract contains within it any sub-conditions, sub-clauses, sub-provisions or sub-terms, each of those sub-conditions, sub-clauses, sub-provisions or sub-terms and any combination of any of those sub-conditions, sub-clauses, sub-provisions or sub-terms is a separate condition, clause, provision or term of the relevant contract and is to be read as if it was a separately expressed condition, clause, provision or term in that contract.

- 14.8 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.
- 14.9 A guarantee will be or has been taken by AFS from each guarantor named in the schedule.
- 14.10 You authorise AFS to rectify any error made in processing or calculating any payment, debit or credit made under this contract.
- 14.11 (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 free from any equity, set-off or counterclaim.
- (b) You cannot assign this loan contract or the mortgage or any interest you have in them without the prior written consent of AFS.
- 14.12 Before or after AFS has become entitled to exercise its powers in clause 8.2, 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.
- 14.13 If you are a trustee of any trust you are liable under this contract both personally and as trustee of each trust.
- 14.14 If this contract is one to which the National Credit Code does not apply, AFS, in AFS' discretion, may at any time apply any moneys received by AFS from any source and any moneys payable by AFS to you for any reason whatsoever towards satisfaction of any amount owing to AFS under this contract.
- 14.15 You irrevocably agree that:
- (a) 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.

## 15 Defined terms

- 15.1 Words defined in the National Credit Code have the same meanings in this contract.
- 15.2 Unless the context otherwise requires, 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.
- "daily percentage rate"** is the annual percentage rate for a day divided by 365;
- "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 1.2 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;

“**National Credit Code**” means the National Credit Code that comprises Schedule 1 of the *National Consumer Credit Protection Act 2009* on the date your offer is accepted;

“**origination fee**” means any fee payable by you in respect of the origination of this loan and the activities undertaken as part of the origination of this loan including finance broker's fees and fees payable to AFS for payment to a supplier operating under the point of sale exemption under regulation 23 of the National Consumer Credit Regulations;

“**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 "AFS 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 "AFS Loan Contract and Mortgage Terms and Conditions";

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

- for a day on which an interest charge is debited to your loan account and where the debit made on that day includes the interest charge for that day, the loan account balance immediately before the end of that day; and
- for any other day, the loan account balance at the end of that day;

“**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 "AFS Loan Contract and Mortgage Terms and Conditions".

15.3 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.

15.4 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 US

Automotive Financial Services Pty Limited  
ABN 73 003 622 375 ACL No. 383762

Phone: 1800 688 995

Fax: 07 3290 1587

Writing: Automotive Financial Services Pty Limited  
PO Box 123, Springwood QLD 4127

Emailing: [enquiries@afs.com.au](mailto:enquiries@afs.com.au)

Website: <https://www.afs.com.au>

## IMPORTANT

The following statement entitled "Things You Should Know About Your Proposed Credit Contract" only applies if the contract is regulated by the National Credit Code.

## FORM 5 INFORMATION STATEMENT

paragraph 16 (1)(b) of the Code  
regulation 70 of the Regulations

### THINGS YOU SHOULD KNOW ABOUT YOUR PROPOSED CREDIT CONTRACT

This statement tells you about some of the rights and obligations of yourself and your credit provider. It does not state the terms and conditions of your contract.

If you have any concerns about your contract, contact the credit provider and, if you still have concerns, your credit provider's external dispute resolution scheme, or get legal advice.

### THE CONTRACT

#### 1 How can I get details of my proposed credit contract?

Your credit provider must give you a precontractual statement containing certain information about your contract. The precontractual statement, and this document, must be given to you before-

- your contract is entered into; or
  - you make an offer to enter into the contract;
- whichever happens first.

#### 2 How can I get a copy of the final contract?

If the contract document is to be signed by you and returned to your credit provider, you must be given a copy to keep. Also, the credit provider must give you a copy of the final contract within 14 days after it is made. This rule does not, however, apply if the credit provider has previously given you a copy of the contract document to keep.

If you want another copy of your contract, write to your credit provider and ask for one. Your credit provider may charge you a fee. Your credit provider has to give you a copy-

- within 14 days of your written request if the original contract came into existence 1 year or less before your request; or
- otherwise within 30 days of your written request.

#### 3 Can I terminate the contract?

Yes. You can terminate the contract by writing to the credit provider so long as -

- you have not obtained any credit under the contract; or
- a card or other means of obtaining credit given to you by your credit provider has not been used to acquire goods or services for which credit is to be provided under the contract.

However, you will still have to pay any fees or charges incurred before you terminated the contract.

#### 4 Can I pay my credit contract out early?

Yes. Pay your credit provider the amount required to pay out your credit contract on the day you wish to end your contract.

#### 5 How can I find out the pay out figure?

You can write to your credit provider at any time and ask for a statement of the pay out figure as at any date you specify. You can also ask for details of how the amount is made up.

Your credit provider must give you the statement within 7 days after you give your request to the credit provider. You may be charged a fee for the statement.

#### 6 Will I pay less interest if I pay out my contract early?

Yes. The interest you can be charged depends on the actual time money is owing. However, you may have to pay an early termination charge (if your contract permits your credit provider to charge one) and other fees.

**7 Can my contract be changed by my credit provider?**

Yes, but only if your contract says so.

**8 Will I be told in advance if my credit provider is going to make a change in the contract?**

That depends on the type of change. For example -

- you get at least same day notice for a change to an annual percentage rate. That notice may be a written notice to you or a notice published in a newspaper.
- you get 20 days advance written notice for-
  - a change in the way in which interest is calculated; or
  - a change in credit fees and charges; or
  - any other changes by your credit provider;

except where the change reduces what you have to pay or the change happens automatically under the contract.

**9 Is there anything I can do if I think that my contract is unjust?**

Yes. You should first talk to your credit provider. Discuss the matter and see if you can come to some arrangement.

If that is not successful, you may contact the AFCA scheme. The AFCA scheme is a free service established to provide you with an independent mechanism to resolve specific complaints. The AFCA scheme can be contacted on 1800 931 678 (free call), by email at [info@afca.org.au](mailto:info@afca.org.au), online at [www.afca.org.au](http://www.afca.org.au), or you can write to them at GPO Box 3, Melbourne VIC 3001.

Alternatively, you can go to court. You may wish to get legal advice, for example from your community legal centre or Legal Aid.

You can also contact ASIC, the regulator, for information on 1300 300 630 or through ASIC's website at <http://www.asic.gov.au>.

## **INSURANCE**

**10 Do I have to take out insurance?**

Your credit provider can insist you take out or pay the cost of types of insurance specifically allowed by law. These are compulsory third party personal injury insurance, mortgage indemnity insurance or insurance over property covered by any mortgage. Otherwise, you can decide if you want to take out insurance or not. If you take out insurance, the credit provider can not insist that you use any particular insurance company.

**11 Will I get details of my insurance cover?**

Yes, if you have taken out insurance over mortgaged property or consumer credit insurance and the premium is financed by your credit provider. In that case the insurer must give you a copy of the policy within 14 days after the insurer has accepted the insurance proposal.

Also, if you acquire an interest in any such insurance policy which is taken out by your credit provider then, within 14 days of that happening, your credit provider must ensure you have a written notice of the particulars of that insurance.

You can always ask the insurer for details of your insurance contract. If you ask in writing, your insurer must give you a statement containing all the provisions of the contract.

**12 If the insurer does not accept my proposal, will I be told?**

Yes, if the insurance was to be financed by the credit contract. The insurer will inform you if the proposal is rejected.

**13 In that case, what happens to the premiums?**

Your credit provider must give you a refund or credit unless the insurance is to be arranged with another insurer.

**14 What happens if my credit contract ends before any insurance contract over mortgaged property?**

You can end the insurance contract and get a proportionate rebate of any premium from the insurer.

## MORTGAGES

**15 If my contract says I have to give a mortgage, what does this mean?**

A mortgage means that you give your credit provider certain rights over any property you mortgage. If you default under your contract, you can lose that property and you might still owe money to the credit provider.

**16 Should I get a copy of my mortgage?**

Yes. It can be part of your credit contract or, if it is a separate document, you will be given a copy of the mortgage within 14 days after your mortgage is entered into.

However, you need not be given a copy if the credit provider has previously given you a copy of the mortgage document to keep.

**17 Is there anything that I am not allowed to do with the property I have mortgaged?**

The law says you can not assign or dispose of the property unless you have your credit provider's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or can not do with the property.

**18 What can I do if I find that I can not afford my repayments and there is a mortgage over property?**

See the answers to questions 22 and 23.

Otherwise you may-

- if the mortgaged property is goods - give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;
- sell the property, but only if your credit provider gives permission first;

OR

- give the property to someone who may then take over the repayments, but only if your credit provider gives permission first.

If your credit provider won't give permission, you can contact their external dispute resolution scheme for help.

If you have a guarantor, talk to the guarantor who may be able to help you.

You should understand that you may owe money to your credit provider even after the mortgaged property is sold.

**19 Can my credit provider take or sell the mortgaged property?**

Yes, if you have not carried out all of your obligations under your contract.

**20 If my credit provider writes asking me where the mortgaged goods are, do I have to say where they are?**

Yes. You have 7 days after receiving your credit provider's request to tell your credit provider. If you do not have the goods you must give your credit provider all the information you have so they can be traced.

**21 When can my credit provider or its agent come into a residence to take possession of mortgaged goods?**

Your credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the National Credit Code.

## GENERAL

### 22 What do I do if I can not make a repayment?

Get in touch with your credit provider immediately. Discuss the matter and see if you can come to some arrangement. You can ask your credit provider to change your contract in a number of ways -

- to extend the term of your contract and reduce payments;  
or
- to extend the term of your contract and delay payments for a set time; or
- to delay payments for a set time.

### 23 What if my credit provider and I can not agree on a suitable arrangement?

If the credit provider refuses your request to change the repayments, you can ask the credit provider to review this decision if you think it is wrong.

If the credit provider still refuses your request you can complain to the external dispute resolution scheme that your credit provider belongs to. Further details about this scheme are set out below in question 25.

### 24 Can my credit provider take action against me?

Yes, if you are in default under your contract. But the law says that you can not be unduly harassed or threatened for repayments. If you think you are being unduly harassed or threatened, contact the credit provider's external dispute resolution scheme or ASIC, or get legal advice.

### 25 Do I have any other rights and obligations?

Yes. The law will give you other rights and obligations. You should also READ YOUR CONTRACT carefully.

**IF YOU HAVE ANY COMPLAINTS ABOUT YOUR CREDIT CONTRACT, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING THE AFCA SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT THE AFCA SCHEME OR GET LEGAL ADVICE.**

**THE AFCA SCHEME IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. THE AFCA SCHEME CAN BE CONTACTED ON 1800 931 678 (FREE CALL), BY EMAIL AT [INFO@AFCA.ORG.AU](mailto:INFO@AFCA.ORG.AU), ONLINE AT [WWW.AFCA.ORG.AU](http://WWW.AFCA.ORG.AU), OR YOU CAN WRITE TO THEM AT GPO BOX 3, MELBOURNE VIC 3001.**

**PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.**