



**Industrial and Commercial Bank of China (New Zealand)  
Limited**

**Home Loan General Terms and Conditions**

## TABLE OF CONTENTS

1.	GENERAL INFORMATION	3
2.	DEFINITIONS	3
3.	CHANGES TO THE TERMS OF YOUR LOAN	6
4.	CONDITIONS WHICH APPLY PRIOR TO BORROWING	7
5.	INSURANCE REQUIREMENTS	7
6.	PROCEDURE FOR BORROWING	8
7.	TYPES OF LOANS	8
8.	CONSTRUCTION AMOUNTS	9
9.	PAYMENTS AND LIMITS	11
10.	REQUESTS FOR LOAN CHANGES ON HARDSHIP GROUNDS	11
11.	INTEREST	12
12.	HOW TO MAKE PAYMENTS	13
13.	EARLY REPAYMENT	14
14.	EVENTS OF DEFAULT	15
15.	DEFAULT INTEREST AND FEES	16
16.	FEES AND COSTS	16
17.	INCREASING AND EXTENDING YOUR LOAN	16
18.	CANCELLATION	17
19.	PRIVACY	17
20.	TRUSTEES	18
21.	ASSIGNMENT	19
22.	GENERAL	19
23.	HOW TO CONTACT US	21

## Terms and Conditions

### 1. GENERAL INFORMATION

1.1 The terms and conditions that apply to your Loan are set out in:

- these Terms and Conditions;
- your Loan Agreement;
- the initial disclosure statement provided to you for the purposes of the Credit Contracts and Consumer Finance Act 2003;
- any Security documents;
- any document which we give you which changes the terms and conditions of your Loan;
- our Fees and Charges Brochure; and
- any other Loan Document relating to your Loan.

Other terms not included in the documents listed above may also be implied by New Zealand law.

1.2 These Terms and Conditions contain some provisions which relate to all Loans, and some provisions which relate only to Home Loans. Your Loan Agreement specifies which kind of Loan you have. These Terms and Conditions are subject to any specific terms set out in your Loan Agreement (which will override the relevant part of these Terms and Conditions if they conflict with them), and any document which we give you which changes the terms and conditions of your Loan. You agree to be bound by these Terms and Conditions and any other terms which apply to your Loan when you sign your Loan Agreement. Please keep your Loan Documents in a safe place.

1.3 The terms and conditions governing your general banking relationship with us, including the operation of your Specified Account and other banking services we provide to you, are set out in the General Terms. If there is any conflict between any part of the General Terms and these Terms and Conditions, these Terms and Conditions will apply.

### 2. DEFINITIONS

2.1 Words in these Terms and Conditions which are capitalised are words with specific meanings, as set out in clause 2.2 below. In addition:

- "**you**" means each person named in the Loan Agreement as the "Borrower". If there is more than one, it means each person jointly and individually (unless the context requires otherwise), and includes their successors and permitted assignees. "**Your**" has a corresponding meaning;
- "**we**" or "**ICBCNZ**" means Industrial and Commercial Bank of China (New Zealand) Limited and our successors, assignees and authorised agents. "**Our**" and "**us**" have corresponding meanings;
- a reference to any document or agreement includes that document or agreement as amended, supplemented or replaced from time to time;

- a reference to any statute or a provision of a statute includes that statute or provision as amended, modified, substituted or re-enacted from time to time and any regulations and other instruments issued or made under that statute from time to time;
- a reference to "**costs**" includes costs, losses (including indirect and consequential losses), fees, charges, claims, judgments, damages, penalties, interest and all liabilities, including the costs of any legal advisers (on a solicitor client basis);
- a reference to us giving you notice means public notice, press release, notices in our branches or on our website ([www.icbcnz.com](http://www.icbcnz.com)), mail to the address you have advised to us, or such other method as we see fit; and
- a reference to our website means [www.icbcnz.com](http://www.icbcnz.com).

## 2.2 Defined terms

"**Amounts Owing**" means, at any time, the total amount of money owing to us under your Loan (or, as the context requires, under a Portion of your Loan) including principal, interest, fees and costs.

"**Business Day**" means any day other than a Saturday or Sunday on which banks are open for normal banking business in Auckland.

"**Collateral Provider**" means any Guarantor or any person named as a debtor in any Security given to us in connection with your obligations under the Loan Documents.

"**Construction Amount**" means any Portion of your Home Loan specified in your Loan Agreement as your Construction Amount or, as the context requires, the amount which is outstanding under your Construction Amount.

"**Default Rate**" means a rate that is 15% per annum above the highest Interest Rate applicable to any part of your Loan at the time that interest at the default rate is charged.

"**Early Repayment Charge**" means the charge described in clause 13.

"**Essential Terms**" means the essential terms of your Loan described in clause 3.

"**Fees and Charges Brochure**" means our fees and charges brochure, including any schedules to it (as changed, updated or replaced from time to time), which is available at our branches and on our website.

"**Fixed Rate Period**" means, in relation to any Portion of your Loan which is specified in your Loan Agreement as being subject to a fixed Interest Rate, the length of time that the fixed Interest Rate applying to that Portion of your Loan is to remain the same.

"**General Terms**" means our General Terms and Conditions (as changed, updated or replaced from time to time) which are available at our branches and on our website.

"**Guarantor**" means any person named as a guarantor in any guarantee given to us in connection with your obligations under the Loan Documents.

"**Home Loan**" means a home loan made available by us and made up of one or more Portion(s), as specified in your Loan Agreement, or, as the context requires, the outstanding balance under your home loan at any time.

**"Interest-only Period"** means, in relation to any Portion of your Loan which is specified in your Loan Agreement as being subject to an interest only period, the length of time that interest only is payable in respect of that Portion of your Loan.

**"Interest Rate"** means the annual interest rate or rates specified in your Loan Agreement.

**"Loan"** means a Home Loan.

**"Loan Agreement"** means any loan agreement between you and us in relation to a Loan (as changed, updated or replaced from time to time).

**"Loan Amount"** means, in relation to any Portion, the amount specified as such in your Loan Agreement in relation to that Portion.

**"Loan Documents"** means these Terms and Conditions, each Loan Agreement, any letter of offer applying to your Loan, any document evidencing a Security, any document setting out an amendment to the terms of your Loan, and any other document specified by us as a Loan Document.

**"Mortgage"** means any mortgage specified in your Loan Agreement or otherwise provided to us which secures your obligations to us under your Loan Documents.

**"Net Balance"** means, in relation to an Offset Portion, the positive difference (if any) between the principal amount owing under the Offset Portion and the credit balances in the Specified Account.

**"Offset Portion"** means the Portion of your Home Loan specified as such in your Loan Agreement or, as the context requires, the outstanding balance under that Portion at any time.

**"Payment Date"** means each date on which you are scheduled to make a payment in accordance with your Loan Agreement.

**"Payment Amount"** means, in relation to a Portion, the minimum amount of principal and/or interest payable, as specified in your Loan Agreement (which, in relation to an Offset Portion, may be reduced by reference to the credit balances in your Specified Account).

**"Portion"** means, in the case of Home Loans, your Home Loan or that Portion of your Home Loan specified as such in your Loan Agreement or, as the context requires, the outstanding balance under your Loan or that Portion at any time.

**"Security"** means each security interest provided to us from time to time in connection with your Loan and includes any Mortgage, debenture, general security agreement, specific security agreement, trust, pledge, lien, or other security interest given in connection with your Loan Documents and any personal guarantee given by any third party in connection with a Loan and any security interest given in connection with such guarantee, and includes any substitute guarantee or security interest given.

**"Specified Account"** means the account held in your name from which we deduct all of your Payment Amounts and other Amounts Owing, as specified as such in your Loan Agreement.

**"Table Loan"** means your Home Loan or that Portion or Portions of your Home Loan specified in your Loan Agreement as your Table Loan(s) (as applicable) or, as the context requires, the outstanding balance under any Table Loan at any time.

**"Term"** means, in relation to your Loan or a Portion of your Loan, the period from the date you first borrow under your Loan or that Portion of your Loan until the relevant Amounts Owing are due to be repaid in full, as specified in your Loan Agreement.

**"Termination Date"** means the date specified as such in your Loan Agreement, being the final date on which you can borrow your Loan (or a part of it).

**"Variable Interest Rate"** means our variable interest rate for Home Loans (other than Offset Portions) from time to time. Details of our prevailing variable interest rate can be obtained from our branches or from our website.

**"Variable Offset Interest Rate"** means our variable offset interest rate for Offset Portions from time to time. Details of our prevailing variable offset interest rate can be obtained from our branches or from our website.

### **3. CHANGES TO THE TERMS OF YOUR LOAN**

We may change these Terms and Conditions or any other term applying to your Loan (other than any Essential Term) which we consider to be commercially justifiable at any time without having to obtain your agreement, by giving you:

- at least 14 days' prior notice of the change to you (other than any change to the Interest Rate or any fees and charges applicable to your Loan); and
- prior notice to any change to the Interest Rate (other than a fixed Interest Rate which is an Essential Term, as referred to below) or any fees and charges applicable to your Loan.

We will give you notice of any change by writing to you or by way of public notice, press release, notices in our branches or on our website or as otherwise authorised by law.

#### **Essential Terms**

We will not make any changes to any Essential Term of your Loan unless: (i) the changes are agreed between you and us, or (ii) the changes are necessary or appropriate as a consequence of any change in law that affects your Loan (and we will give you prior notice to such changes required). The Essential Terms of your Loan are:

- If your Loan (or a Portion of your Loan) is subject to a fixed Interest Rate, the fixed Interest Rate and the Payment Amount for the duration of the relevant Fixed Rate Period specified in your Loan Agreement.
- The Loan Amount, the Payment Dates, any increase to the Term of your Loan and the Termination Date of your Loan (or Portion of your Loan).
- The repayment type (whether principal and interest or interest only, or in the case of a Home Loan, whether Table Loan) specified in your Loan Agreement and the timing for payment of any Payment Amounts.

#### **Extra Security**

We may ask you to give new or additional Security if we believe any of the following applies:

- We believe the value of the property which is subject to Security (if any) has significantly reduced by reason of movements in currency or otherwise and including where we are unable to enforce any Security provided for any reason or the Security is subject to any prior ranking security in favour of another person.

- A guarantor tells us they are terminating or withdrawing the guarantee they have provided to us in relation to your obligations to us under the Loan Documents.
- We released any Security for any reason (including at your request) and we need replacement Security for your obligations to us under the Loan Documents.

We will act fairly and reasonably (including complying with our obligations under the Credit Contracts and Consumer Finance Act 2003) in assessing whether we require new or additional Security and will give you reasonable time to meet our request. If you are unable to give us the new or additional Security within the timeframe that we have given you, you will breach your Loan and we may exercise our rights under clause 14 below.

#### **4. CONDITIONS WHICH APPLY PRIOR TO BORROWING**

Your Loan can only be drawn when we have confirmed that all conditions to drawdown set out in your Loan Documents have been met, that all Security which is to be given has been provided and is in a form acceptable to us, and that all terms of the Loan Documents are being complied with.

##### **Time Limits for signing Loan Agreement and first advance under your Loan**

In addition, if you do not comply with the requirements set out under the heading 'Time Limits' in your Loan Agreement in respect of signing of your Loan Agreement and timing of the advance (or the first advance, where multiple advances are permitted) under your Loan, we will not be obliged to lend you any money.

#### **5. INSURANCE REQUIREMENTS**

Your Loan Agreement and any Mortgage or other Security document will specify what insurance is required. You must keep all insurance in place until you have repaid the Loan and all other Amounts Owing. If we ask for it, you must give us a copy of your certificate of insurance. If we require it, the proceeds of any insurance claim must be used to repay the Amounts Owing. We may ask the insurance company to pay any proceeds directly to us to be applied towards the Amounts Owing.

##### **House insurance**

If you have a Home Loan, the Mortgage will require you to obtain house insurance (unless the land has no buildings on it). The insurance must cover the full replacement value of any building on the land, and we will need to see evidence that insurance is in place before you borrow your Home Loan.

##### **Lender's mortgage insurance**

We may, or we may require you to, take out lender's mortgage insurance on terms we approve and with an insurer agreed to by us and in our name (we will be the insured party and would have all of the benefit of the insurance) if the amount of your Loan would exceed what would normally be acceptable to us based on our lending criteria. You will pay any premiums on the insurance. Lender's mortgage insurance protects us in situations where we have not been able to recover any Amounts Owing (for example, if you default under any Loan and we sell any mortgaged property and the sale proceeds are less than the amount you owe us). If we do make a claim under lender's mortgage insurance then you may become obliged to repay the Amounts Owing to the insurer instead, and to give the insurer the benefit of any Security. We will tell you if we require lender's mortgage insurance when we offer you the Loan (or when we agree to increase the amount of your Loan, or to allow any reborrowing that requires our consent).

### **Mortgage redemption insurance**

If you give us a Mortgage over a unit titled property, the Mortgage may require you to take out mortgage redemption insurance with an insurer approved by us and in our name. If applicable, we will be the insured party and have all of the benefit of the insurance. This additional insurance may be necessary because, except in limited circumstances specified in the Unit Titles Act 2010, the body corporate is bound at law to apply funds received by it under its insurance policy towards replacing the units (rather than towards the amounts owing). If we do make a claim under mortgage redemption insurance then you may become obliged to repay any amount owing to the insurer instead, and to give the insurer the benefit of any security.

### **Builders' risk insurance**

If you are using a Loan to finance construction work then builders' risk insurance will also be required – see clause 8 below.

## **6. PROCEDURE FOR BORROWING**

If you comply with clause 4 above, you may borrow money under a Loan on any Business Day before the Termination Date and in the amounts you request. You must tell us in writing the date on which you want to borrow any Portion of your Loan, in what amount and your nominated bank account or solicitor's trust account for deposit.

Unless your Loan Agreement provides otherwise, you may only borrow your Loan in one lump sum (but which can be structured into one or more Portions). This does not apply to any Construction Amount, which may be drawn down in stages.

Any amount borrowed under a Portion must not, when added to all principal amounts which are outstanding under that Portion, exceed the relevant Loan Amount.

## **7. TYPES OF LOANS**

These Terms and Conditions apply to all of the Home Loans (whether secured or unsecured) that we offer. If you have a Home Loan, the type of Home Loan will be specified in your Loan Agreement. Loan types are described below.

### **Portions**

Each Portion is to be paid off over the relevant Term in the amounts and frequency specified in your Loan Agreement. A Portion may consist of any of the following:

- a fixed Portion which has a fixed Interest Rate for a fixed term.
- a variable Portion which has a Variable Interest Rate or a Variable Offset Interest Rate and may have a margin and/or a low equity premium (see clause 11 below) applied.
- an Interest-only Period, where no principal repayment is required to be made in relation to the relevant Portion for the duration of the Interest-only Period.
- a Table Loan Portion, which may also be an Offset Portion.
- a construction Portion (if you borrow to buy land and build or renovate a house), which is drawn down in multiple advances and which may have an Interest-only Period if the construction Portion is a Table Loan.



### **Table Loan**

A Table Loan is an amount that is paid off in regular amounts spread evenly across the relevant Term. Every regular payment you make will include a combination of interest and principal (unless the Table Loan also has an Interest-only Period, in which case only interest will be payable during the Interest-only Period). The initial combination of payments of interest and principal you make will mainly comprise interest on your Table Loan. However, as the amount you owe us under the Table Loan gets less, your regular payment will include less interest and more principal repayment.

If you have an Offset Portion, then the amount of interest you will be charged on the Offset Portion will be reduced if you have credit balances in your Specified Account.

### **Interest only loan**

An Interest only loan is a Loan on which only accrued interest is payable during the Term and which is followed by a final repayment of the full Amount Owing on the Termination Date.

### **Offset Portion**

To the extent that any Portion of your Home Loan is an Offset Portion, any credit balances in your Specified Account will be taken into account for the calculation of the amount of interest you will be charged on your Offset Portion. The amount of interest you will be charged on your Home Loan will be reduced if you have a credit balance in your Specified Account.

If the credit balance in your Specified Account is greater than the principal amount owing on your Offset Portion on any day, then no interest will accrue on your Offset Portion for that day. You may still be entitled to credit interest in respect of the credit balance of your Specified Account, but only where, and to the extent that, the total credit balance of your Specified Account exceeds the total balance of the Offset Portion of your Home Loan.

If the credit balance in your Specified Account is less than the principal amount owing on your Offset Portion on any day, no interest will be paid on any credit balance in your Specified Account.

If you elect your Home Loan to have an Offset Portion, you authorise us to debit the credit balances in your Specified Account towards repayment of the Payment Amount due on your Offset Portion on each Payment Date.

## **8. CONSTRUCTION AMOUNTS**

When you borrow a Home Loan to build or renovate a house, some additional conditions apply (unless waived by us):

- you can borrow your Construction Amount in stages (that is, by progressive drawdowns) by providing us with a written request prior to each progressive drawdown;
- you must provide us with a registered valuer's report (in a form satisfactory to us) before you can borrow any of the Construction Amount. Loan funds will only be made available at each drawdown date if the total amount borrowed (following the relevant drawdown) at that date does not exceed the loan to value ratio (which means the maximum amount that we will make available under a Loan at any time, measured as a percentage of the then current value of the Security given for the Loan) applying to the property;

- builders' invoices must be provided before each draw down of the Construction Amount. Subject to other conditions being met, we will fund the amount set out in the invoice, provided that a certificate by a registered valuer or quantity surveyor is given to us before each drawdown of the Construction Amount, stating how much money you need to finish the next stage of construction, and how much money you need to finish all of the construction works;
- you must use your own money (in the amount we have agreed with you) towards the build or renovation works before we will make any of the Construction Amount available to you;
- you must take out a builders' risk insurance policy approved by us with our interest as mortgagee noted on the policy for the full period of the construction before you can borrow the Construction Amount. Builders' risk insurance insures the building and materials until the house is completed. Once the house is completed then you must take out house insurance (see clause 5 above);
- you must ensure that construction is carried out in accordance with the construction contract we have approved (if applicable) and in the case of a 'labour only' or owner-builder arrangements, you must ensure there are quality control measures in place so that any serious error in the initial cost estimates or cost overruns can be quickly identified and remedial action considered;
- you must provide us with copies of all duly issued and current resource management and local body consents required from statutory authorities for the construction works and provide us with notice of all environmental issues (if any) related to the site, each document in form and substance satisfactory to us in all respects;
- you must keep us informed of progress at regular intervals during construction;
- you must provide us with a certificate of practical completion from your builder (with a completed application for a code compliance certificate and confirmation that it has been lodged with the relevant building consent authority attached) before your final drawdown;
- you must send us copies of all code compliance certificates within three months of your final drawdown;
- if, as part of the construction, new certificates of title are issued, you must provide us with evidence of such new certificates of title issued and provide us with new Mortgage(s) over the relevant properties within two months of the date of practical completion of the construction; and
- unless we have agreed to extend the Termination Date (at our sole discretion), you will not be able to borrow any of the Construction Amount after the Termination Date, even if your construction work is delayed, and unless we have agreed to increase the Construction Amount (at our sole discretion) you will not be able to borrow more than the previously agreed Construction Amount, even if the amount you need to finish the construction work is more than that.

We may also require you to obtain a registered valuer's certificate showing the current market value of the property from time to time and/or once the construction is fully completed.

## **9. PAYMENTS AND LIMITS**

You must make regular payments of principal and/or interest as specified in your Loan Agreement on each Payment Date. All Amounts Owing must be paid in full on the last day of the relevant Term. If you have an

Offset Portion, then the amount of interest you will be charged on the Offset Portion will be reduced if you have credit balances in your Specified Account.

All payments are to be made in cleared funds without set-off or counter claim and free of any deduction or withholding, except to the extent required by law. If you or we are legally obliged to deduct or withhold an amount from any payment due to be paid to us under the Loan Documents, then that payment will be increased so that we receive and retain, free from liability, a net amount equal to the amount that we would have received and retained if no deduction or withholding had been made.

If you wish to change the frequency of your Payment Dates, you must contact us. We will confirm any such change in writing to you.

Amounts repaid cannot be reborrowed.

The aggregate principal outstanding under a Portion must not exceed the relevant Loan Amount at any time. If the aggregate principal outstanding under a Portion exceeds the relevant Loan Amount, you must immediately repay any outstanding principal balance on that Portion which exceeds the Loan Amount. An Early Repayment Charge may apply.

### **Interest-only payments**

If a Portion of your Home Loan has an Interest-only Period, then we will calculate the interest that accrues on that Portion during that Interest-only Period. Such interest will be payable on each Payment Date.

Interest during an Interest-only Period can accrue at a fixed Interest Rate, the Variable Interest Rate or the Variable Offset Interest Rate.

At the end of the Interest-only Period, that Portion of your Loan will automatically become a Table Loan subject to a Variable Interest Rate or, in the case of an Offset Portion, a Variable Offset Interest Rate, with principal and interest payable on each Payment Date, unless you request otherwise.

Your Interest-only Period will be specified in your Loan Agreement and may be up to five years.

## **10. REQUESTS FOR LOAN CHANGES ON HARDSHIP GROUNDS**

We understand that your personal circumstances may change which can make it hard for you to meet your payment obligations to us. If you are experiencing hardship, let us know immediately as we may be able to change the terms of your Loan. You have the right to ask us to change your Loan Documents if you are experiencing hardship in accordance with section 55 of the Credit Contracts and Consumer Finance Act 2003 and we will consider any such request in accordance with the relevant legislation.

To apply for a hardship variation, please write to us and include all the information set out under the heading 'What to do if you suffer Unforeseen Hardship' in your Loan Agreement. You will also need to tell us how you think the changes to your Loan will help you meet your payment obligations to us.

We may only agree to change your Loan if we consider the changes you want to be fair and reasonable given the hardship that you are experiencing.

## **11. INTEREST**

Interest will be calculated daily on the outstanding part of each Portion at the end of each day at the relevant Interest Rate (that is, by applying the relevant Interest Rate divided by 365). Interest will be charged from the first day you borrow money under the relevant Portion until the Portion has been fully

repaid. Interest is payable on each Payment Date. If you have an Offset Portion, then the amount of interest you will be charged on the Offset Portion will be calculated on that Portion by reference to the difference between that Portion and the credit balances in your Specified Account, and accordingly the amount of such interest charged will be less than the amount which would have been charged if you had not had an Offset Portion.

### **Fixed Interest Rates**

If you have a Portion that is subject to a fixed rate, the period during which the fixed Interest Rate will stay the same will be specified in your Loan Agreement. This period begins when that Portion of your Loan is first drawn down. The fixed rate which applies to that Portion of your Loan will not change during the Fixed Rate Period (unless you fail to pay any amount to us when it is due, in which case, additional interest will be payable by you on the overdue amount).

At least 2 Business Days before the end of the Fixed Rate Period, you must notify us as to what you would like to do next. If you do not make alternative arrangements with us by then, we will review your Interest Rate and we may change it to our prevailing Variable Interest Rate (which may be higher than the Interest Rate which applied to the relevant Portion of your Loan during the fixed rate period).

### **Variable Interest Rates or Variable Offset Interest Rate**

If all or part of your Loan is subject to a Variable Interest Rate or a Variable Offset Interest Rate, you will be advised of our prevailing Variable Interest Rate or Variable Offset Interest Rate (that is, the rate which will initially apply to your Loan or that part of your Loan, together with any margin and/or low equity premium – see below) when we offer the Loan to you.

We may change our Variable Interest Rate or Variable Offset Interest Rate at any time without having to obtain your agreement. We will give you notice in accordance with clause 3 above before we make the change.

If the Interest Rate includes reference to a margin, we may also make changes to that margin which we consider to be commercially justifiable from time to time. We will give you notice in accordance with clause 3 above before we make the change.

If you have a Portion to which our Variable Interest Rate or Variable Offset Interest Rate applies and our Variable Interest Rate or Variable Offset Interest Rate (or any relevant margin) increases during the term of your Loan, we will automatically increase your relevant Payment Amounts if that is necessary to repay that Portion over the same term. We will give you notice of your new Payment Amounts.

If you have a Portion to which our Variable Interest Rate or Variable Offset Interest Rate applies and our prevailing Variable Interest Rate or Variable Offset Interest Rate (or any relevant margin) decreases, the amount of your relevant Loan repayments will stay the same and the Term of that Portion may reduce instead. If you would rather that your Payment Amounts reduced instead, please contact us.

If you wish to change a Variable Interest Rate or Variable Offset Interest Rate Home Loan to another one of our Home Loans, please contact us.

### **Low Equity Premium**

We may add or increase a 'low equity' interest rate premium ("**Low Equity Premium**") to an Interest Rate if the aggregate of amounts owing to us, and/or the aggregate of the limits for every loan you have with us (under the Loan Documents or any other agreement) exceeds certain limits set by us in accordance with our internal credit requirements from time to time. We will notify you if this is the case. A Low Equity Premium

will apply for the term of the Loan, unless reduced or removed as we see fit if you provide evidence satisfactory to us that the aggregate amounts owing and/or the aggregate limits for each loan you have with us under any agreement falls below the relevant limits.

### **Progressive draw down**

Where your Loan Agreement provides that you can drawdown your Loan (or part of your Loan) progressively (that is, in stages rather than in one lump sum):

- then, if your Loan has an Interest-only Period, interest only will be charged on your Loan (or on the relevant part) until your Loan (or the relevant part) is fully drawn down, or (if earlier) the expiry of your Interest-only Period;
- interest will be calculated on the outstanding balance of your Loan (or the relevant part of your Loan) at the end of each day and payable monthly (unless specified otherwise in your Loan Agreement); and
- the Payment Amounts specified in the Loan Agreement may be adjusted to reflect amounts drawn down after the date of the Loan Agreement, and references in these Terms and Conditions (or in the Loan Agreement) to Payment Amounts shall be deemed to refer (where applicable) to such payment as they may be so adjusted.

If you have a fixed rate Loan then you may not draw down your Loan (or the fixed rate Portion of it) progressively.

## **12. HOW TO MAKE PAYMENTS**

All of your Payment Amounts and payments of default interest, fees and other Amounts Owing under your Loan will be deducted by direct debit from your Specified Account, or may be paid by any other method that we have confirmed is acceptable to us. You must ensure that there are sufficient funds in your Specified Account to cover your payments. If you have not made any payment on its due date, then you authorise us to deduct any amount due from your Specified Account.

If you do not have sufficient funds in your Specified Account on any payment date, we may deduct the amount due anyway, even if that will result in any borrowing limit you have with us being exceeded. Alternatively, we may deduct any amount you owe us from any other account you hold with us.

If there are insufficient funds in your Specified Account and we decide (at our discretion) not to exceed any borrowing limit, or to deduct an amount from any other account, you will be in default under your Loan. If you become aware that there are insufficient funds in your Specified Account to meet your payments, please contact us immediately.

We will credit payments as soon as practicable after we receive them, which may not necessarily be the day that you pay. Payments received by us will go towards payment of outstanding fees under the Loan Documents or the General Terms, then towards interest and then towards payment of other Amounts Owing (though we may change this order at our discretion).

Where there is more than one person named as the "Borrower" in your Loan Agreement and your Specified Account is held by those persons, any one of those persons acting individually may authorise amendments to any payments from your Specified Account provided that:

- the amendments do not reduce the repayments under your Loan to a level that is lower than the minimum Payment Amount required by your Loan Documents; and

- the signing authority executed by the account holders for the Specified Account authorises that account to be operated by any one of the account holders; and
- the account holder who requests the change is available to sign such authorisation documentation as we may request.

### **13. EARLY REPAYMENT**

#### **Procedure for early repayment**

You may make additional repayments in respect of a Portion (in an amount of \$1,000 or higher) over and above your Payment Amounts at any time. If you are repaying any part of a Portion which has a fixed Interest Rate then you will have to pay an Early Repayment Charge. After any early repayment of part of a Portion, you can either continue to pay the same Payment Amounts until your Portion is fully repaid and the Term of your Portion may reduce or (if you ask us in writing) you can reduce your Payment Amounts and then the Term of your Portion will not change.

You can also tell us that you want to increase your Payment Amounts in respect of a Portion, in which case the Term of the relevant Portion will reduce. An Early Repayment Charge may apply if you increase Payment Amounts relating to a Portion that is subject to a fixed Interest Rate.

You may repay all or part of a Portion that has a Variable Interest Rate or a Variable Offset Interest Rate at any time. No Early Repayment Charge will apply.

'Early repayment' is a prepayment in whole or part of a Loan under the Credit Contracts and Consumer Finance Act 2003.

#### **Fixed Rate Periods and Early Repayment Charges**

If your Loan has a Fixed Rate Period and you switch to a new fixed rate or to a Variable Interest Rate or a Variable Offset Interest Rate before the end of a Fixed Rate Period then we may also charge you an Early Repayment Charge on the same basis as if you have prepaid your Loan.

#### **Early Repayment Charge**

An Early Repayment Charge is payable if a Portion which has a fixed Interest Rate is repaid early by you (including because we have required early repayment as permitted by the terms of your Loan Documents – see clause 14 for when we can do this), or in any of the other situations described above under the headings "Procedure for early repayment" and "Fixed Rate Periods and Early Repayment Charges".

The Early Repayment Charge will compensate us for any loss resulting from the early repayment (in particular, we may suffer a loss if our fixed Interest Rate at the time of the early repayment is lower than the fixed Interest Rate applying to the Loan or part of the Loan which is being repaid early). An Early Repayment Charge is an estimate of that loss.

The amount you may have to pay to compensate us for the loss is calculated using the formula prescribed in regulation 9 or regulation 11 of the Credit Contracts and Consumer Finance Regulations 2004.

An Early Repayment Charge (and any applicable early repayment administration fee, as referred to below) will be payable on the date that the full or part prepayment takes place, or when the minimum Payment Amount is increased or when you switch your Fixed Rate Period to a new fixed rate period or to a Variable Interest Rate or a Variable Offset Interest Rate.

If you would like to change the terms of your fixed Interest Rate Loan before the end of the current Fixed Rate Period, you should contact us and we will give you details of any Early Repayment Charge that you may have to pay.

#### **Early Repayment Administration Fee**

You may also have to pay our administrative costs arising from the prepayment, or a charge equal to our average administrative costs arising from the prepayment of fixed interest rate contracts of the appropriate class. Our average early repayment administration fees are set out in our Fees and Charges Brochure.

#### **14. EVENTS OF DEFAULT**

We may require you to repay immediately the whole of your Loan and all other Amounts Owing and/or we may cancel your Loan or any undrawn Portion of your Loan and/or we may exercise any of our rights under any Loan Document and at law, if any of the following situations occur (whether or not such situation is beyond your control):

- you do not pay, when due, any Amounts Owing, or any other amount owing under any agreement with us;
- if you or any other Collateral Provider fails to comply with any of the terms of your Loan Documents or our General Terms;
- if you are adjudicated bankrupt, are unable to pay, or do not pay, your debts as they become due and payable, or become insolvent, or take steps to benefit any of your creditors or to adjust or reschedule a material part of your debts, or in our view your financial position otherwise changes adversely to a material extent (or any of these events or circumstances occurs or applies to any Collateral Provider);
- we think that there has been an event which impacts adversely on our ability to enforce any document evidencing any Security;
- something happens (whether by your actions or not) that we think impacts adversely on your ability, or on any Collateral Provider's ability, to continue meeting your or their obligations under the Loan Documents;
- you die or become legally incapacitated (or any Collateral Provider does);
- we reasonably believe you or another person has acted fraudulently in connection with any Loan Document or any other agreement you have with us;
- circumstances exist which, in our opinion, impact adversely on our ability to continue making the Loan available to you;
- all or any part of any Loan Document is terminated, repudiated or becomes illegal, invalid or unenforceable or of limited force and effect; or
- we are making a Construction Amount available to you and, in our opinion, there has been an unreasonable delay in the building or renovation work being funded by the Construction Amount, or in drawing down the Construction Amount.

If any of the situations listed above occurs, you must tell us immediately.

Your Loan Documents may describe other events (which may be described as 'events of default', 'event of review' or similar) in addition to the above which may allow us to require early repayment of the Loan.

## **15. DEFAULT INTEREST AND FEES**

### **Default Interest**

If you fail to pay any Payment Amount, or other amount, when it falls due (other than as a consequence of the occurrence of any of the events described in clause 14 above or any other event described in a Loan Document as an 'event of default', 'event of review' or similar), we may charge you additional interest at the Default Rate on the overdue amount calculated daily (by applying the Default Rate divided by 365) from the due date until the date it is fully repaid. Default interest will be debited from the Specified Account or any other account you hold with us at such intervals as we determine. We may also from time to time (at our discretion) add any default interest due but unpaid to the principal amount of any part of your Loan.

### **Default Fees**

We may also charge you a default fee for any breach of your Loan Agreement or on enforcement of your Loan Agreement (including if any of the events described in clause 14 above (or any other event described in a Loan Document as an 'event of default', 'event of review' or similar) arises). Our standard default fees from time to time are set out in our Fees and Charges Brochure.

## **16. FEES AND COSTS**

A list of the fees and charges we may charge in connection with your Loan (which may change from time to time) is set out in our Fees and Charges Brochure. Fees will be deducted from your Specified Account.

If we incur any costs in relation to your Loan and/or Security, you agree to indemnify us for those costs and accordingly reimburse us for those costs on demand. We may deduct those costs from your Specified Account or any other account. If we make any such deduction, we will give you written notice that we have done so (but any failure to do so will not relieve you of your obligation to pay our costs).

We may increase, decrease, apply new fees and charges or change the terms of payment of any fee or charge payable under the terms of a Loan by giving you notice in accordance with clause 3 above before we make the change.

## **17. INCREASING AND EXTENDING YOUR LOAN**

If you are complying with all of the terms of the Loan Documents, you may ask us (amongst other things) to:

- increase any Portion which is subject to our Variable Interest Rate or Variable Offset Interest Rate;
- lend you a new fixed Portion; or
- extend the term of a Portion which is subject to our Variable Interest Rate or Variable Offset Interest Rate.

We will give you notice confirming any increase, new fixed Portion or extension that we agree to.

## **18. CANCELLATION**

You have the right, for a short period of time specified in your Loan Agreement, to cancel your Loan after you have signed the Loan Agreement in accordance with the Credit Contracts and Consumer Finance Act



2003. During this period, you may cancel your Loan for any reason but you must write to us and tell us you are cancelling your Loan within the time limit for cancellation specified in your Loan Agreement.

We will tell you as soon as possible how much you owe us. If you cancel your Loan in accordance with the Credit Contracts and Consumer Finance Act 2003 and we have lent money to you, you must pay us in cleared funds the following amounts:

- the principal amount of your Loan that is outstanding;
- any application fee that is still outstanding and the amount of any reasonable expenses we had to pay in connection with your Loan Agreement and cancellation of your Loan (including legal fees and fees for credit reports, etc); and
- interest calculated on the principal amount outstanding for each day until all amounts have been paid.

Although your right to cancel your Loan under the Credit Contracts and Consumer Finance Act 2003 is only for a short time, you can repay your Loan early at any time but you may need to pay an Early Repayment Charge or an early repayment administration fee in relation to any repayment of a Portion which has a fixed Interest Rate.

## **19. PRIVACY**

We will comply with all privacy laws and rules of banker's confidentiality that apply to us. You agree that we may collect personal information from you or any other person who can provide us with information that is of relevance to us. We may make enquiries about any personal information that you provide to us in order to check the accuracy of the information.

Your personal information is being collected, held and used for the purposes of:

- opening, operating or maintaining your Loans with us, providing services to you, or assisting our relationship with you;
- assisting us in developing and running our business; and
- providing you with information about accounts and services that we think might be of interest to you (including from our related companies such as our parent company, Industrial and Commercial Bank of China, and selected business partners). This may involve, among other things, contacting you via email, text message or an online facility, or by telephone or post. If you ask us not to provide you with this information, we will comply with your request.

We will take reasonable measures to ensure that your personal information is accurate and protected while we have it. You may ask us to show you the personal information we hold about you and request any personal information to be corrected. You must promptly inform us of any changes in your personal details.

If we are asked to provide personal information about you to another person, we will only do so in accordance with these Terms and Conditions (and any relevant additional terms and conditions), with your prior consent or as required by law.

You authorise us to disclose your personal information to:

- our related companies (including our parent company, Industrial and Commercial Bank of China Limited);

- credit reporting agencies;
- Collateral Providers;
- reputable market research organisations for the purpose of conducting market research for us;
- insurers in relation to any Amounts Owing or any property that you have given us Security over;
- our assignees or potential assignees;
- any agent or person we engage to assist us in collecting any money from you;
- anyone that we need to contact in order to carry out your instructions to us (including the recipient of an automatic payment or direct debit); or
- anyone that we need to contact in order to assist us in developing or running our business.

We may be required to release your personal information to persons such as law enforcement authorities, the courts and government agencies. We will release your personal information in these situations if we reasonably believe that the people requesting it have the authority to have it, or that we are required by law to release it.

Credit reporting agencies may retain your personal information and provide it to third parties as part of their credit reporting systems.

You agree that should any check with a credit reporting agency reveal adverse information, we are authorised by you, where there are multiple applicants, to inform any applicant of this fact.

For security, verification, training and evidentiary reasons, we may record:

- phone conversations you have with us on any matter, either through phone banking or directly with us; and
- your use of electronic banking.

## **20. TRUSTEES**

If you have entered into the Loan Documents as a trustee, this clause will apply.

You represent and warrant to us that:

- The person or persons named in the Loan Agreement as trustees of the trust are the only trustees of the trust and have been validly appointed and have the power and authority to hold the trust assets and carry on the trust's business;
- The trustees have the power under the trust deed and have been duly authorised to enter into the Loan Documents;
- The trustees have the right to be fully indemnified out of the trust assets in priority to the beneficiaries in respect of all obligations under the Loan Documents and we are entitled to be subrogated to that right in respect of the trustees' obligations under the Loan Documents;

- At the date of the Loan Agreement, the trust assets are sufficient to satisfy all obligations in which you have a right of indemnity (including under the Loan Documents);
- No action has been taken or proposed to wind-up, terminate or liquidate the trust; and
- You are not in default under or in breach of the trust deed.

At our request, you must exercise your right of indemnity against the trust assets or any beneficiary for our benefit. This right is in addition to all other rights we have under the Loan Documents.

If you do not have any interest or right in the assets of the trust (including as beneficiary), other than as a trustee, then your liability to us under the Loan Documents will be limited to the trust assets unless we cannot recover Amounts Owing from the trust assets because any warranty set out above is not correct, or because of dishonest, wilful default or misconduct by you in respect of any Loan Document. In this case, the limitation of liability above will not apply and you will be liable to us from your personal assets for the amount that we would have been able to recover from trust assets if the dishonesty, wilful default or misconduct did not apply.

## **21. ASSIGNMENT**

We may assign or transfer our rights and obligations under the Loan Documents to any other person and may disclose personal information about you to a potential assignee or transferee. In the event of any assignment or transfer by us, references to us in the Loan Documents are deemed to be references to the assignee or transferee. However, references to our Variable Interest Rate or Variable Offset Interest Rate will continue to be references to our prevailing relevant Variable Interest Rate or Variable Offset Interest Rate (as the case may be) and not those of the relevant assignee or transferee.

You are not permitted to assign or transfer your rights or obligations under the Loan Documents unless we agree in writing.

## **22. GENERAL**

- All payments to be made by you must be paid in full without any deduction or withholding. However, if you or we are legally obliged to deduct or withhold an amount from any payment due, then that payment will be increased so that we receive and retain, free from liability, the amount we would have received if no deduction or withholding had been required.
- You must comply with all laws and constitutional requirements that affect you, your business or your property.
- The provisions of the Loan Documents will be governed by and interpreted in accordance with New Zealand law.
- The illegality, invalidity or unenforceability of any provision of any Loan Document will not affect the legality, validity or enforceability of any other provision of that Loan Document.
- You represent and warrant that all information given to us, including financial information provided by you, or someone on your behalf, in connection with the Loan Documents is true and complete and accurate in all material respects and that you do not know of any material facts or circumstances

which have not been disclosed to us which could affect our decision to make your Loan available to you.

- All Security will secure the Amount Owing.
- You consent to each Collateral Provider receiving a copy of the Loan Document and any information about your financial position that is in our possession.
- You must promptly deliver to us within a reasonable time frame (as specified by us), any information relating to you or any Collateral Provider (including your business, financial condition and operations, or that of any Collateral Provider, as applicable) that we reasonably request.
- No failure by us to exercise or delay in exercising any right or remedy available under the Loan Documents or at law will waive that right or remedy, nor will a partial exercise of any right or remedy preclude any further exercise of that right or remedy or any other right or remedy.
- If your Loan is made available to more than one person, each person named in the Loan Agreement as the Borrower is jointly and severally responsible for repayment of the whole Loan and all Amounts Owing.
- Notwithstanding any other provision in these Terms and Conditions or the Loan Agreement, if an amount is due on a day which is not a Business Day, you agree to pay it to us on the next Business Day unless the next Business Day falls in the following calendar month, in which case you agree to pay it to us on the previous Business Day.
- If you live outside New Zealand or if you are not entitled to be permanently resident in New Zealand you must let us know, and you must appoint an agent in New Zealand acceptable to us, to accept notices on your behalf.
- Each Loan Document (unless required otherwise by a registry or similar office where such document is to be submitted) may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), all of which when taken together shall constitute one and the same instrument, and each of the parties to a Loan Document may execute a Loan Document by signing any such counterpart.
- If your Loan has been borrowed for business or investment purposes then you agree that, to the extent the law permits, the Credit Contracts and Consumer Finance Act 2003 does not apply to the Loan Documents.
- A certificate from us regarding any amount relating to your Loan will, in the absence of a manifest error, be conclusive evidence of that amount.
- If you have entered into the Loan Documents as a partner of a partnership, you will continue to be bound by the Loan Documents despite:
  - (a) any changes which may take place from time to time in the partnership, including death, retirement or incapacity of any partner or the admission of any new partner; or
  - (b) the fact that the partnership no longer carries on business.

## 23. HOW TO CONTACT US

You can contact us:

on 0800 99 55 88 (from within New Zealand) and +64 9 379 5588 (from overseas) or by visiting our branch office at Ground Floor, 2 Queen Street, Auckland.

(our call centre is open 24 hours a day, 7 days a week whereas our branch customer services are open Monday to Friday 9:00 am – 4:00 pm)

- by post to:

Level 11  
188 Quay Street  
Auckland

PO Box 106656  
Auckland 1143

- by email to [info@nz.icbc.com.cn](mailto:info@nz.icbc.com.cn)
- via our website: [www.icbcnz.com](http://www.icbcnz.com)