

NZ Commercial | Terms & Conditions



These General Terms apply whenever Elantis Premium Funding (NZ) Limited ("Elantis") funds insurance premiums for the Borrower.

1. Advance of Amount Financed

- 1.1. Elantis will lend the Amount Financed to the Borrower and the Borrower will pay the Deposit to Elantis in cleared funds by the Commencement Date for the purpose of clause 1.2.
- 1.2. Elantis will fund the premiums for the Insurances on behalf of the Borrower by paying the Total Premium (which comprises any Deposit paid by the Borrower and the Amount Financed) to the Intermediary or to the underwriters of the Insurances ("Insurers") on the Commencement Date.
- 1.3. Elantis may keep any interest earned on the Deposit between the date it is received from the Borrower and the Commencement Date. Elantis will not be liable for any loss arising from the Intermediary's failure to pay any part of the Total Premium to the Insurers by any due date.

2. Interest and instalments

- 2.1. The Borrower must repay the Amount Financed and the Total Cost of Credit to Elantis by monthly instalments commencing on the Date of First Instalment.
- 2.2. All money owing under this Contract must be paid by the Date of Last Instalment (unless earlier demand by Elantis under clause 7).

3. Security and power of attorney

To secure its obligations under this Contract and any other agreement with Elantis, the Borrower:

a) assigns to Elantis the exclusive right to claim, demand, sue for, recover, settle and receive any money payable by the Insurers under any of the Insurances (including money payable on cancellation of any of the Insurances or any event or circumstance covered by any of the Insurances occurring) ("Insurance Proceeds"); and

b) appoints Elantis, and any of its officers, employees or related companies, separately, as the Borrower's attorneys in the event of default with the power to do all things in respect of the Insurances and the Insurance Proceeds as if the attorneys themselves were the insureds under the Insurances, including to deal with any of the Insurances (including cancel such Insurances) and the Insurance Proceeds as the attorney considers desirable, to protect Elantis' interests. Upon repayment of all money owing to it, Elantis will reassign the rights set out in clause 3(a) to the Borrower.

4. Borrower's Undertakings

- 4.1. The Borrower must not cancel any of the Insurances or allow them to be cancelled or to expire without Elantis' consent. The Borrower must not at any time assign, charge or otherwise deal with its interest in the Insurance Proceeds without Elantis' consent. This clause does not affect or prevent the exercise of Elantis' rights under this Contract.
- 4.2. The Borrower must notify Elantis immediately of:
 - a) any loss, sale of or damage to any property subject to any of the Insurances;

- b) any Insurer's refusal to issue any of the Insurances; or
- c) any of the Insurances being cancelled or expiring.

5. Borrower's Warranties and Indemnities

5.1. The Borrower warrants to Elantis that:

- a) all information given to Elantis by the Borrower or the Intermediary in connection with this Contract is true, correct and complete and is not misleading; and
- b) it has made, and will continue to make, full and adequate disclosure to the Insurers of all facts relevant to the Insurances and that upon Elantis' payment of the Total Premium under clause 1.2, the Insurances will be in full force and effect and not voidable.

5.2. The Borrower fully indemnifies Elantis against all claims, losses, liabilities, costs and expenses of any nature arising directly or indirectly from:

- a) the Borrower's failure to comply with any obligation under this Contract;
- b) Elantis exercising any right under this Contract; or
- c) Elantis acting on any notice, request, direction or instruction given by or on behalf of the Borrower at any time in connection with this Contract.

Unless proven otherwise, a certificate or statement by Elantis is evidence of the amount of loss payable by the Borrower under this clause.

6. Events of Default

For the purpose of this Contract, an Event of Default occurs if:

- a) Elantis does not receive cleared payment of the Deposit from the Borrower by the Commencement Date or any of the Insurances do not issue on terms that enable Elantis to freely exercise its rights upon the occurrence of an Event of Default;
- b) the Borrower fails to pay any amount owing under this Contract or any other agreement with Elantis by the due date;
- c) Borrower commits an act of bankruptcy, is dissolved or has a liquidator, receiver, or similar official appointed over, or an encumbrancer take possession of, any of its assets;
- d) the Borrower becomes entitled to make a claim under any of the Insurances; or
- e) any of the Insurances are cancelled or become or are claimed to be void or voidable; or in Elantis' opinion, the Borrower may not be able to perform its obligations under this Contract or the security under this Contract may not be enforceable or is likely to be prejudiced in any way.

7. Elantis' rights upon Event of Default

7.1. If an Event of Default occurs:

- a) The Borrower must immediately pay all money owing under this Contract (including any accrued interest) to Elantis on demand.
- b) Elantis may set off any amounts received from or on behalf of the Borrower (including the Insurance Proceeds) against any amounts owed by the Borrower to Elantis under this Contract or any other agreement as Elantis thinks fit.
- c) Elantis (or any of its officers, employees or related companies) may cancel or otherwise deal with any of the Insurances, and exercise the Borrower's rights under any of the Insurances (e.g to receive the Insurance Proceeds or make, pursue or settle any claims in connection with any of the Insurances) in any way it considers desirable to protect Elantis' position and recover money owing by the Borrower under this Contract and any other agreement with Elantis

7.2. If an Event of Default results in a default in payment, the Borrower must pay default interest on the amount in default calculated at a rate of 5% above the monthly interest rate from the date of default until the default is paid. Elantis may vary the default interest rate at any time by giving written notice to the Borrower.

7.3. The Borrower must pay all costs and expenses incurred by Elantis in connection with this Contract on an Event of Default occurring.

8. General payment obligations

The Borrower must pay all amounts owing under this Contract in full and in cleared funds by the due date without any set off, withholding or deduction and otherwise as directed by Elantis. If Elantis requires, the Borrower must pay instalments under this Contract by direct debit or electronic funds transfer and provide Elantis with the appropriate forms and authorities.

9. Notices

The Borrower authorises Elantis to give any notices or disclosures in relation to this Contract, and consents to receiving such notices and disclosures, by email or other electronic communication. Notice by Elantis to the Borrower will be effectively given if sent by post or delivered to the Intermediary's address, sent by email to the Intermediary's email address or sent by fax to the Intermediary's fax number. Notices will be deemed to have been received on the 3rd business day after posting (if posted), on production of a transmission report by the fax machine from which it was sent (if faxed) and at the time of email transmission (if emailed).

10. Borrower's obligations and waiver

Time is of the essence in relation to the performance of the Borrower's obligations under this Contract. Any waiver by Elantis must be in writing and signed by Elantis. No failure by or delay in Elantis insisting on the strict performance of this Contract or exercising any right under this Contract will operate as a waiver of those matters.

11. Commissions

The Borrower acknowledges that:

- a) Elantis will pay a fee or commission to the Intermediary in connection with this Contract and that a separate commission or fee arrangement may exist between the Intermediary and any of the Insurers in relation to the Insurances
- b) the Intermediary acts on behalf of the Borrower and not as agent of Elantis in effecting the Insurances and arranging this Contract.
- c) The Intermediary and its officers and employees are not authorised to make any representation or warranty on behalf of Elantis

12. Completion of Blanks

The Borrower authorises Elantis to complete any blanks in the offer in the Details.

13. Duties, Taxes and Elantis' costs

The Borrower must pay all duties and taxes payable in connection with this Contract.

14. Joint and several obligation and general interpretation

Where the Borrower is two(2) or more persons this Contract binds those persons jointly and each of them severally.

15. Assignment of Interest

15.1. The Borrower agrees that Elantis may at any time assign its interest in this Contract.

15.2. The Borrower may not assign its interest in this Contract, or the Insurances subject to this Contract without Elantis' consent.

16. Funding additional insurance premiums

The Borrower or the intermediary may request Elantis to fund other insurance premiums (including premium renewals) under these General Terms without the need for a new offer to be completed. The Borrower confirms that unless Elantis receives written notice that the Intermediary's authority is cancelled, Elantis may assume without further inquiry that the Intermediary is authorised by the Borrower to arrange any future insurances requested by the

Intermediary on behalf of the Borrower, including additional or replacement insurances. If Elantis, in its absolute discretion, funds any additional insurance premiums under this clause, that additional funding (including any document provided to the Borrower or the Intermediary from time to time) will be deemed a new "Contract" under these General Terms.

17. Privacy Act 1993 ("Privacy Act")

17.1. The Borrower authorises:

- a) Elantis and its agents (duly authorised brokers and other insurance intermediaries "Agents") to collect, verify, exchange and disclose information (both now and in the future) about the Borrower from the Insurers, any reference bureau, credit reporting agency, financial institution or other credit provider, employee or landlord of the Borrower and any third party (each a "Third Party") in accordance with Elantis' Privacy Policy available at <https://www.elantis.co.nz/our-resources>;
- b) Each Third Party to provide Elantis or its Agent with any information about the Borrower; and
- c) Elantis or its Agent to use any information about the Borrower, for the purpose of assisting Elantis to carry out its usual business functions and activities, consider the Borrower's application for credit (including any future application), comply with any obligations Elantis may have under anti-money laundering and countering financing of terrorism legislation and any other purpose in connection with the Insurances or these General Terms.

17.2. The credit reporting bodies we usually deal with are Experian – formerly Illion (contact details and privacy policy available at <https://www.experian.co.nz/privacy-policy> and Equifax (contact details and privacy policy available at <https://www.equifax.co.nz/privacy>). We may exchange your personal and credit-related information with credit reporting bodies to verify your identity, assess your finance application and provide/administer and manage your loan. If you fail to meet your payment obligations in relation to consumer credit or commit a serious credit infringement, we may disclose this to a credit reporting body. The types of information that may be provided to a credit reporting body and our management of credit-related information are explained in our Privacy Policy.

17.3. Elantis will confirm the names and addresses of each Third Party used in relation to a Borrowers loan on request and so that the Borrower may contact the Third Party to access and request correction of personal information.

18. Consumer Guarantees Act 1993 ("Consumer Guarantees Act")

If this Contract is for business purposes, the Borrower agrees that the Consumer Guarantees Act 1993 does not apply and that to the extent permitted by law all guarantees in relation to the credit services are expressly excluded unless otherwise expressly confirmed in writing by Elantis.

19. Borrower's Directions to the Insurers and Intermediary

19.1. The Borrower agrees and declares for the benefit of the Insurers and the Intermediary that under this Contract:

- d) it has assigned all Insurance Proceeds to Elantis as security for the payment of all money owing at any time to Elantis and that the Insurers and the Intermediary may rely on this declaration and a statement from Elantis as to money owing; and
- e) Elantis may at any time give the Insurers notice of that assignment.

19.2. The Borrower irrevocably directs:

- a) The Insurers to cancel the Insurances upon request by Elantis (or any of its employees and officers) and to pay the Insurance Proceeds to Elantis; and
- b) The Intermediary, upon request by Elantis (or any of its employees and officers), to procure cancellation of any of the Insurances and the payment of the Insurance Proceeds to Elantis.

- 19.3. The Borrower acknowledges and declares for the purposes of the Contracts (Privacy) Act 1982 that the direction given by it under clause 19.2 constitute promises that confer, and are intended to confer, benefits on the Insurers and may be relied upon and enforced by the Insurers.
- 19.4. The Borrower authorises the Intermediary to receive all notices and demands on behalf of the Borrower.

20. Law

This Contract is governed by the laws of New Zealand and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the court system of New Zealand.

21. Interpretation

Any capitalized terms referred to in these General Terms and the Details section of this Contract have the meaning set out beside those terms in the Details section of this Contract. Any reference to "you" is a reference to the Borrower and any reference to "we" or "us" is a reference to Elantis.