

# NZ Consumer | 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. Payments and Interest**

- 2.1. The Borrower must repay the outstanding Total Advances to Elantis by monthly instalments commencing on the Date of First Instalment.
- 2.2. Interest will accrue on the outstanding Total Advances and is payable by you at the end of each month as set out in Box 6 of the Details.
- 2.3. 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 Advances 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. Nothing in clause 7.1 prevents the Borrower from applying under section 55 of the Credit Contracts and Consumer Finance Act 2003 ("**CCCF Act**") to Elantis to change this Contract on the ground of unforeseen hardship in accordance with clause 24 and sections 56 and 57 of the CCCF Act.

**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 2020 (“Privacy Act”)**

17.1. The Borrower authorises:

- a) Elantis and its agents (duly authorised brokers and other insurance intermediaries "Agents") to collect, use, disclose and otherwise process information without the Borrower to 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 necessary to enable Elantis to perform its obligations under this Contract; and
- c) Elantis or its Agent to use any information about the Borrower, for the purpose of assisting Elantis to 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 subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 that if 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. General**

- 20.1. 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.
- 20.2. Any capitalised terms referred to in these General Terms and the Details section of this Contract have the meaning set up 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.

**21. CCCF Act – Part Prepayments**

Elantis has the right to decline any part prepayment from the Borrower under section 49 of the CCCF Act. Elantis will promptly refund any part prepayment made by the Borrower that is not accepted by Elantis.

## **INITIAL DISCLOSURE STATEMENT FOR CONSUMER CREDIT CONTRACTS**

(other than revolving credit contracts) - *section 17 of the Credit Contracts and Consumer Finance Act 2003*

**IMPORTANT** – This document sets out the key information about your consumer credit contract (together with the front page of that Contract). You should read it thoroughly. If you do not understand anything in this document, you should seek independent advice. You should keep this disclosure statement and a copy of your Contract in a safe place. The law gives you a limited right to cancel the Contract (see below for further details). Note that strict time limits apply.

### **CREDITOR DETAILS**

You may send notices to Elantis by postal address or email to the addresses below

Elantis is registered on the Financial Service Provider (FSP) Register with the following details:

**FSP Registration Name:** Elantis Premium Funding (NZ) Limited

**FSP Registration number:** FSP26107

**Physical business address:** Level 6, Swanson House, 12-26 Swanson Street, Auckland 1010

**Postal address:** PO Box 106386, Auckland City 1143

**Email:** admin@elantis.co.nz

### **CREDIT AND PAYMENT DETAILS**

See front page of Contract for details regarding:

- initial unpaid balance and total advances.
- timing, number and amounts of payments required under the Contract (including interest charges and method of charging interest).
- credit fees and charges payable. Note that the contract may allow us to vary this/these fee(s) and charge(s).

Note that Elantis and other parties may pay a fee or commission in relation to the Contract as set out in clause 11 of the General Terms.

### **CONTINUING DISCLOSURE**

Elantis may be required to provide you with regular statements. The statements will give you information about your account. If required by law, a continuing disclosure statement will be provided to you on a six monthly basis in accordance with Section 18 of the Credit Contracts and Consumer Finance Act 2003.

### **WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS**

This is secure credit. If you fail to meet your commitments under the Contract, Elantis can exercise its rights under clause 3(a) of the General Terms. See front page of Contract for further details regarding this security interests.

### **RIGHT TO CANCEL**

They are entitled to cancel the consumer credit contract by giving notice to Elantis.

#### **Time limits for cancellation**

You must give notice that you intend to cancel this Contract within 5 working days of the date you receive this document if it is given to you in person, within 7 working days of it being sent if it is emailed to you, or within 9 working days of it being sent if it is posted to you. Saturdays, Sundays, and national public holidays are not counted as working days.

#### **How to cancel**

To cancel, you must give Elantis written notice that you intend to cancel the Contract by—

- giving notice to Elantis or an employee or agent of Elantis; or
- posting the notice to Elantis or an agent of Elantis; or
- emailing the notice to Elantis' email address.

You must also pay the cash price of the property or services (or the balance of the cash price after deducting any amount you have already paid) within 15 working days of the day you give the cancellation notice.

#### **What you may have to pay if you cancel**

If you cancel this Contract you may still be liable to pay the Establishment Fee referred to on the front page of the Contract or any part of the Establishment that remains unpaid at the time of cancellation.

If you cancel this Contract, Elantis can also charge you interest for the period from the day you received the advance until the day you repay the advance.

### **WHAT TO DO IF YOU SUFFER UNFORESEEN HARDSHIP**

If you are unable reasonably to keep up your payments or other obligations because of illness, injury, loss of employment, the end of a relationship, or other reasonable cause, you may be able to apply to Elantis for a hardship variation. To apply for a hardship variation, you need to:

- (a) make an application in writing; and

- (b) explain your reason(s) for the application; and
- (c) request one of the following:
  - an extension of the term of the Contract (which will reduce the amount of each payment due under the Contract); or
  - a postponement of the dates on which payments are due under the Contract (specify the period for which you want this to apply); or
  - both of the above; and
- (d) give the application to Elantis.

Do this as soon as possible. If you leave it for too long, Elantis may not have to consider your application.