

# CUSTOMER COPY SMITHS CITY

A Trading Division of Smiths City (Southern) Limited ("SCS")  
550 Colombo Street PO Box 2343 Christchurch

## OPTIONAL PLAN ACCOUNT AGREEMENT INCLUDING DISCLOSURE UNDER THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT 2003 ("CCCFA")

Full name and address of debtor;

Name                                    «M\_\_sequence\_num»  
                                          «name»  
Address                               «address\_1»  
                                          «address\_2»  
                                          «address\_3»  
Phone                                 «phone\_type\_1» «phone\_number\_1»                                 «phone\_type\_2» «phone\_number\_2»

We may send notices to you by writing to your postal address or sending a fax to the number specified (if any).

Full name and address of creditor;

Name                                   Smiths City (Southern) Limited  
Address                               550 Colombo Street  
                                          PO Box 2343  
                                          Christchurch  
Phone                                 (03) 983 3000                                 Fax (03) 983 3071  
Email                                 accounts@smithscityfinance.co.nz

You may send notices to us by writing to our postal address, emailing us to the address listed above or sending a fax to the number specified

### STATEMENTS

We are required to provide you with regular statements that will give you information about your account (e.g. any interest or fees charged during the statement period) and the amount and timing of your next payments. Statements will only be provided where there have been transactions during the statement period, or if the starting or ending balances of the statement are not zero. Statements will generally be provided on a monthly basis. Under certain circumstances you may receive a statement less often than monthly, but in any case where a statement is to be provided, it will be no less often than every 45 working days.

### PAYMENTS

Your monthly statement will show the minimum amount you are required to pay and the date upon which such payment is due. The minimum payment will be the greater of \$10.00: or

- (a) any amount overdue for payment, and
- (b) any interest charged to your account, and
- (c) 3.00% (the Minimum Percentage Amount) of the closing balance less amounts (a) and (b) above (if any)

You have the option of making payment of any amount larger than the Minimum Dollar Amount. Payment is due by the date shown on the statement (in these conditions called the due date). Payment may be made at any of our branches. Any sum paid to your account shall be applied in the settlement of amounts charged to the account in such order as we may determine. You acknowledge that we may hold a credit balance on your account. If a credit balance is to be refunded to you, we reserve the right to charge a fee to recover any costs incurred in refunding that balance (see Credit Fees and Charges below - Overpayment).

### INTEREST

An interest free period applies to an individual purchase from the date of purchase to the end of the calendar month in which that purchase is made, if the closing balance on the statement for the previous month is paid in full by the due date. If any part of the closing balance from the previous month remains unpaid after the due date, interest will be charged on the entire unpaid balance. Interest will be charged at the end of each month, but interest will be calculated daily by multiplying the portion of the unpaid balance by a daily interest rate. The daily interest rate is calculated by dividing the Annual Interest Rate by 365. The Annual Interest Rate is 23.95%. The Default Interest rate is the Annual Interest Rate plus 2.00% (see action 2.3 overleaf).

### SECURITY INTEREST

Please note that, in accordance with section 3.6 of the terms and conditions listed overleaf, you are granting us a security interest over Goods purchased through this facility.

### UNFORESEEN HARDSHIP

Section 55 of the Credit Contracts and Consumer Finance Act grants you certain rights in the event of unforeseen hardship.

- 1) A debtor who is unable reasonably, because of illness, injury, loss of employment, the end of a relationship, or other reasonable cause, to meet the debtor's obligations under a consumer credit contract and who reasonably expects to be able to discharge the debtor's obligations if the terms of the contract were changed in a manner set out in section 56 may apply to the creditor to agree to that change.
- 2) An application under subsection (1) must -
  - a) be in writing; and
  - b) be given to the creditor; and
  - c) specify the reasonable cause (for example, illness, injury, loss of employment, or the end of a relationship) for the debtor's inability to meet the debtor's obligations under the consumer credit contract.
- 3) A debtor who makes an application under this section is not entitled to make another application in relation to the same consumer credit contract unless -
  - a) the application is made not less than 4 months after the previous application is made; or
  - b) in the case of an application that is made less than 4 months after the previous application is made, -
    - i) the creditor agrees to consider the application; or
    - ii) the reasons for the debtor seeking the change under section 56 are materially different from the reasons given in the previous application.

The application for Unforeseen Hardship must be forwarded to the Credit Department at Smiths City Finance Ltd, PO Box 2343, Christchurch, 8140.

**The following CREDIT FEES AND CHARGES (which are not included in the initial unpaid balance) are or may become payable under, or in connection with, the contract.**

DISHONoured AP/CHEQUE-In event of your automatic payment or cheque being dishonoured, any 3<sup>rd</sup> party fees incurred will be passed on.  
REPOSSESSION - In event of a Repossession Agent being used, any 3<sup>rd</sup> party fees incurred will be passed on. ARREARS NOTICE – in the event of an Arrears Notice being mailed to you, we reserve the right to charge you \$19 per notice, such fee to be added to the balance of your account.

SCS agrees to extend you a credit facility by opening an Option Plan Credit Account (“the Account”) to enable you to purchase goods (“the Goods”) from us.

#### You Should

- Take the opportunity to take legal and/or financial advice because the Contract is a legal document imposing obligations which you must comply with.
- Carefully check the General Terms and Conditions.

### GENERAL TERMS AND CONDITIONS

1. Definitions
  - 1.1. References to the Annual Interest Rate, Default Interest Rate, Minimum Dollar Amount and Minimum Percentage Amounts are references to the Annual Interest Rate, Default Interest Rate, Minimum Dollar Amount and Minimum Percentage Amount as specified in the Disclosure Statement.
2. What and how you agree to pay
  - 2.1. Payments
    - 2.1.1. You must make all payments to us in cleared funds in NZ\$ without any deduction, in the amounts at the intervals and at the address set out in this Contract or at any place or in any manner that we specify.
    - 2.1.2. When you have been involved in a transaction with us, and as otherwise required by the Credit Contracts and Consumer Finance Act 2003 (CCCFA), you will receive a statement of your Account showing a minimum amount to pay and a due date for that payment. Statements will generally be provided on the monthly basis.
    - 2.1.3. The minimum amount will be the greater of the Minimum Dollar Amount of:-
      - 2.1.3.1. Any amount overdue for payment (a); and
      - 2.1.3.2. Any interest charged to your account (b); and
      - 2.1.3.3. The Minimum Percentage Amount less amounts (a) and (b) above (if any).
  - 2.2. Interest and charges
    - 2.2.1. No Interest is charged on a purchase from the date of the purchase to the end of the calendar month in which that purchase is made if the closing balance on the statement for the previous month is paid in full by the due date. If any part of the closing balance from the previous month remains unpaid after the due date, interest will be charged on the entire unpaid balance.
    - 2.2.2. Interest will be calculated daily by multiplying the portion of the unpaid balance by a daily interest rate. The daily interest rate is calculated by dividing the Annual Interest Rate by 365.
    - 2.2.3. Interest rate will be debited to the Account on the last day of the month and will appear on the following statement as a debit and will form part of the closing balance on that statement.
    - 2.2.4. We may debit your Account with the charges described in the Disclosure Statement.
  - 2.3. Default interest
    - 2.3.1. If you default in paying any amount due to us and the default continues or you exceed any credit limit we have agreed with you then you will be required to pay interest at the Default Interest Rate on the unpaid amount and/or excess amount over the agreed credit limit, if any, (as the case may be) on a daily basis while the default continues or the credit limit is exceeded and we reserve the right to compound default interest on a monthly basis. SCS reserves the right to vary these fees and charges.
  - 2.4. Prepayments – General
    - 2.4.1. Under the CCCFA you are entitled to make a full prepayment of the amount you owe us under the Contract at any time.
3. Other things you agree to
  - 3.1. Suspension of credit
    - 3.1.1. SCS may, at its absolute discretion and at any time by giving you notice suspend credit under this contract for such period as SCS may determine.
  - 3.2. Credit Limits
    - 3.2.1. SCS may, at any time by giving you notice, impose a credit limit or vary any credit limit imposed by SCS, in relation to this contract.
  - 3.3. Insurance
    - 3.3.1. You will insure the Goods with an insurance company approved by us for their full insurable value against such risks that subject to the CCCFA we may specifically require you to insure against from time to time.
    - 3.3.2. We will be entitled to such of the proceeds of the policy following a claim to repay the amount you owe us under the Contract.
    - 3.3.3. You will pay the policy premiums as and when they are due.
    - 3.3.4. Where, at our discretion, we accept your insurance, you will on request provide us with a certificate of currency from your insurer.
  - 3.4. You have rights of access to and correction of personal information supplied in SCS as provided by the Privacy Act 1993.
  - 3.5. Use, care and maintenance of Goods
    - 3.5.1. You will only use the Goods for the purpose for which they were designed and in compliance with the manufacturer’s instructions.
    - 3.5.2. You will maintain the Goods and keep them in good condition except for fair wear and tear.
    - 3.5.3. You agree that we have the right to inspect the Goods on the giving of reasonable notice and if necessary we can give you written notice requiring you to repair the goods within a specific time-frame.
    - 3.5.4. If you fail to do this then we can carry out the repairs and the cost will be a debt that you owe us due on the date that we invoice you.
  - 3.6. Grant of security interest and reservation of title
    - 3.6.1. As security for the amount that you owe us under the Contract (and any other amount you owe SCS from time to time whether under this Contract or any other contract) and as a security for your compliance with your obligations under the Contract you grant us a security interest in the Goods.
    - 3.6.2. You agree that we may register a financing statement on the Personal Properties Securities Register (PPSR) perfecting our security interest.
    - 3.6.3. You waive the right to receive a verification statement.
    - 3.6.4. You will not grant any other party a security interest in the Goods without our consent which we can give at our discretion. If you grant a third party a security interest without our express permission you may be in breach of this contract and SCS has the right to cancel and repossess the goods listed on this contract.
    - 3.6.5. You agree that until you have paid everything you owe us under the Contract we retain legal ownership of the Goods.
    - 3.6.6. In the event that we exercise our security interest and sell the goods to reduce your debt to us, any residual balanced owing will still be due and payable and we reserve our rights to collect this debt from you.
  - 3.7. Assignment
    - 3.7.1. We can transfer or assign the Contract to someone else. If we do this the Contract and the benefit of the security interest you have granted us will apply to the transferee as if it were SCS and the transferee will have the same rights as us.
    - 3.7.2. We can give any assignee or transferee or anyone associated with them any information we have about you.
    - 3.7.3. We assign our rights under the Contract absolutely to Smiths City Finance Limited (“SFL”) on the date of the Contract and by accepting these terms and conditions acknowledge that assignment.
    - 3.7.4. You may not transfer or assign the Contract unless you first get our consent which we may give at our discretion.
  - 3.8. Costs
    - 3.8.1. You agree to pay us our reasonable costs and expenses that we incur in registering a financing statement and enforcing any of the provisions of the Contract against you if you default.
  - 3.9. GST
    - 3.9.1. You confirm that as at the date of this Contract you are not registered as a supplier under the Goods and Services Tax Act 1985 and agree that if you do register you will inform us immediately and give us your GST number.

### GENERAL TERMS AND CONDITIONS – continued

4. Legal Issues
  - 4.1. Applicable law
    - 4.1.1. New Zealand law applies to the Contract and you accept the non-exclusive jurisdiction of its Courts.
  - 4.2. Certificate of amount owing
    - 4.2.1. Subject to your rights under the CCCFA a certificate from us setting out what you owe us under the Contract is conclusive proof of what you owe us unless you prove to the contrary.
  - 4.3. More than one Account Holder
    - 4.3.1. If there is more than one of you, you are each liable for the amount due under the Contract. We can make a claim or demand on any one or more of you.
  - 4.4. Continuation of obligations
    - 4.4.1. The obligations in the Contract continue notwithstanding your death and insolvency
  - 4.5. Notices
    - 4.5.1. Notices by either party to the other(s) are to be given in accordance with the CCCFA.
    - 4.5.2. You agree to tell us of any changes to your personal details as recorded in this Contract.
  - 4.6. Variation
    - 4.6.1. We can vary the Contract at any time. We will give you written notice of the variation.
    - 4.6.2. Subject to the CCCFA any variation will be effective from the date that the variation is disclosed to you.
  - 4.7. Further assurance
    - 4.7.1. You agree to sign any other documents or do anything else we ask you to do to enable us to fully protect our interests under the Contract.
  - 4.8. Partial validity
    - 4.8.1. If a clause in the Contract is found to be unenforceable or illegal than that will not affect the legality or enforceability of any other clause in the Contract.
  - 4.9. Where the CCCFA does not apply
    - 4.9.1. If you are not a “consumer” as defined in the CCCFA then the rights granted to consumers under the CCCFA will not apply to you.
    - 4.9.2. You agree to sign any other documents or do anything else we ask you to do to enable us to fully protect our interests under the Contract.
5. What you agree we may do
  - 5.1. Default
    - 5.1.1. You will be in default if:-
      - 5.1.1.1. You do not comply with your obligations under this Contract;
      - 5.1.1.2. If you become insolvent or if you are a company, are wound up or have a receiver appointed;
      - 5.1.1.3. Legal proceedings are commenced against you which may, in our opinion, put the goods at risk or if a third party asserts a claim to the Goods
  - 5.2. Consequences of Default
    - 5.2.1. If you are in default then SCS may at its option do any one or more of the following:-
      - 5.2.1.1. Require you to remedy the default in the manner and within a period that we tell you;
      - 5.2.1.2. Require you to pay to us all amounts that you owe under this Contract on the date that we tell you;
      - 5.2.1.3. Cancel the contract with the cancellation to be effective on the date that we tell you;
      - 5.2.1.4. Charge you the costs that we incur of repairing any goods damaged by you;
      - 5.2.1.5. Repossess the Goods in accordance with the Credit (Repossession) Act 1997.
      - 5.2.1.6. If you do not pay your account you will be in breach of your finance agreement and if your account falls into arrears we reserve the right to lodge at our discretion a “Payment Default” with an external credit reporting agency.
6. Warranties
  - 6.1. Our responsibilities to you
    - 6.1.1. Where you are a consumer purchasing the Goods for domestic use then the provisions of the Consumer Guarantees Act 1993 will also apply.
    - 6.1.2. If you are a consumer purchasing the Goods for non-domestic use then the Consumer Guarantees Act 1993 will not apply.
    - 6.1.3. We will not be liable to you for any consequential loss you may suffer or costs that you incur as a result of any defect in the Goods except to the extent that the loss or cost is covered by the terms of the warranty or, where applicable, the Consumer Guarantees Act.

### STATEMENT OF RIGHT TO CANCEL

The Credit Contracts and Consumer Finance Act 2003 gives you a right for a short time after the terms of this contract have been disclosed to you to cancel the contract.

#### How to cancel

If you want to cancel this contract you must give written notice to SCS.

You must also –

- a) Return to SCS any advance and any other property received by you under the contract (but you cannot do this if you have taken possession of any goods or if you bought any property at an auction or if the contract is for the sale of services that have been performed); or
- b) Pay the cash price of the property or services within 15 working days of the day you give notice.

#### Time limits for cancellation

If the disclosure documents are handed to you directly you must give notice that you intend to cancel within 5 working days after you receive the documents.

If the disclosure documents are sent to you by electronic means (for example, e-mail) you must give notice that you intend to cancel within 5 working days after the electronic communication is sent.

If the documents were mailed to you, you must give the notice within 9 working days after they were posted.

Saturdays, Sundays and national public holidays are not counted as working days.

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

If you cancel the contract SCS can charge you-

- a) The amount of any reasonable expenses SCS had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc); and
- b) Interest for the period from the day you received the property or services until the day you either pay the cash price for the property or services or return the property to SCS.

This statement only contains a summary of your rights and obligations in connection with the right to cancel. If there is anything about your rights or obligations under the Credit Contracts and Consumer Finance Act 2003 that you do not understand, if there is a dispute about your rights, or if you think that SCS is being unreasonable in any way, you should seek legal advice immediately.

### COMPLAINTS

If you are not satisfied with the service you have received from us you should contact us. We have an internal complaints process and undertake to investigate your concerns promptly and fairly. You may contact us to make a complaint by telephone, by email or in writing.

We are a member of an independent dispute resolution scheme operated by Financial Services Complaints Limited (“FSCL”) and approved by the Ministry of Consumer Affairs. We have 40 days to respond to your complaint. If you are not satisfied by our response, you may refer the matter to FSCL by emailing [info@fscl.org.nz](mailto:info@fscl.org.nz) or calling FSCL on 0800 347257. Full details of how to access the FSCL scheme can be obtained from [www.fscl.org.nz](http://www.fscl.org.nz). There is no cost to you to use the services of FSCL.