

Loan Agreement

<b>Lender</b> (referred to as "BMW")	Name: Address:	BMW Financial Services New Zealand Limited PO Box 9510, Newmarket, Auckland 1149	<b>Application No:</b>
<b>Borrower(s)</b>	Name: Address: Date of Birth: Phone No: Email:	Name: Address: Date of Birth: Phone No: Email:	
If an organisation	Contact Person: Company Number: GST Registered:	Trading As/Trustee Of:	

Financial Details:

LOAN AMOUNT

\$

Annual Interest Rate

%

Default Interest Rate

%

Payment Details:

You must pay the instalment amount on the same day of each and every month as follows

No. of instalments	Instalment amount	Instalment Start Date
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	

Vehicle Details

New/Used		Year		Reg No	
Speedo				VIN	
Make				Colour	
Model					
Accessories					

Term (months):

Commencement Date:

Borrower Acknowledgment

1. I/we have received a full and complete copy of this Loan Agreement and the Schedule of Terms and agree to be bound by them.
2. I/we understand that if I/we have entered into any other agreement with BMW and that I/we default under that other agreement, then that default is also a default under this Loan Agreement and BMW is able to take enforcement action including repossessing the Vehicle financed under this Loan Agreement.

Signed by each Borrower:	Date:		20	(If a Borrower is a company, this must be signed by at least one director of the Borrower)
Signature				
Signature				

**Guarantee:** By signing this Loan Agreement the Guarantor(s) agree(s) to be bound by the guarantee terms set out in clauses 27 and 28 which means, amongst other things, that the Guarantor(s) will become liable as well as, or instead of, the Borrower and that the guarantor will be liable for the full amount of borrower's liabilities to BMW under this or any other agreement.

<b>Name of Guarantor(s)</b>		
<b>Address(es)</b>		

Signed by the guarantor(s):	Date:		20	(If a guarantor is a company, this must be signed by at least one director of the Guarantor and that signature witnessed)
Signature				In the presence of:
Signature				Signature of Witness
				Name of Witness
				Occupation
				City/Town of Residence

## Schedule of Terms

1. **Definitions:** Capitalised terms in this Schedule of Terms have the meaning set out on page 1 of the loan agreement but otherwise in this agreement:
  - Act** means the Credit Contracts and Consumer Finance Act 2003.
  - Default** has the meaning set out in clause 13.
  - PPSA** means the Personal Property Securities Act 1999.
  - Purpose** means to acquire or refinance the Vehicle.
  - Unpaid Balance** has the meaning set out in the Act.
2. **Interpretation:** Unless the context otherwise requires, in this agreement:
  - (a) If any obligation is due to be satisfied between the 29<sup>th</sup> to 31<sup>st</sup> of any month and in the relevant month there is no such date, the Borrower must make payment on the last day of that month. If a due date is not a working day in Auckland, then the due date is deemed to be the next working day in Auckland.
  - (b) The expressions accession, at risk, attach, proceeds and security interest have the respective meanings given to by the PPSA or where this is a consumer credit contract and those words are defined in the Act, the meaning in the Act applies.
  - (c) Credit contract and consumer credit contract have the respective meanings given to them in the Act.
  - (d) Reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision.
  - (e) Reference to the Borrower includes the Borrower's employees, agents, successors, permitted assigns, executors, administrator and other representative of such party, person or entity;
  - (f) Where there is more than one Borrower, each Borrower is jointly and severally liable to perform the obligations of all Borrowers.
3. **Loan:** At the Borrower's request, BMW agrees to advance the Loan Amount for the Purpose. The Borrower authorises and directs BMW to pay the Loan Amount to the vendor of the Vehicle, any person who has previously financed the Vehicle and to any vendor/broker in relation to options and accessories.
4. **Security Interest:** The Borrower grants BMW a security interest in the Vehicle, all accessories, replacement parts, and other goods which now or hereafter are supplied with or attached to the Vehicle and all proceeds to secure the payment and performance of all of the Borrower's past, present and future indebtedness and obligations to BMW under this agreement and under any other agreement or deed BMW has previously entered into with the Borrower or may enter into with the Borrower from time to time.
5. **Variation Agreement:** If the Borrower has entered into any other agreement(s) with BMW which pre dates this agreement, BMW and the Borrower or Lessee (as applicable) agree those other agreements are varied to specifically identify and record that the Borrower or Lessee has granted BMW a security interest in the Vehicle described in this agreement as security for the obligations in each of the other agreement(s).
6. **Payments:** The Borrower agrees to repay the Loan Amount in the manner and at the times specified in the Payment Details section, together with all other amounts payable (including interest) under this agreement.
7. **Borrower's obligations:** From the Commencement Date and for the Term the Borrower must:
  - (a) pay all amounts owing under this agreement in cleared funds on or before the due dates to BMW at the address BMW nominates, or, if BMW agrees, by direct debit, electronic banking or automatic payment to the BMW account BMW specifies from time to time.
  - (b) keep the Vehicle at the Borrower's address set out in the front page of this agreement or the address agreed in writing with BMW;
  - (c) comply with all legislation or other governmental requirements affecting the Borrower's possession and use of the Vehicle (including the prompt payment of all fines or statutory charges in relation to the Vehicle);
  - (d) keep the Vehicle in good condition and protect it from loss, damage, detention or seizure;
  - (e) maintain insurance with a reputable insurer for the Vehicle's full replacement value against all risks, ensure that each insurance policy notes BMW's interest in the Vehicle, names BMW as payee under that policy and produce for BMW (whenever it requests) the insurance policy and evidence of the payment of all premiums necessary to maintain the insurance in full force;
  - (f) promptly notify BMW of any matter adversely affecting the Vehicle and any default by the Borrower under this agreement; and
  - (g) do all other things which BMW requires to enable BMW to:
    - (i) ensure that the Vehicle is subject to an effective security interest having the priority required by BMW; and/or
    - (ii) assist BMW in exercising any of its rights under this agreement, whether on enforcement of BMW's security interest or otherwise.
8. **Restrictions:** From the Commencement Date and for the Term the Borrower must not:
  - (a) agree to sell, sell, lease or otherwise part with possession or dispose of, or permit the disposal of, any Vehicle or permit any security interest to attach to any Vehicle other than the security interest provided for in this agreement;
  - (b) change its name without first notifying BMW of the new name at least 21 days before the change takes effect;
  - (c) relocate any principal place of business outside New Zealand or (if the Borrower is a company) change its place of incorporation;
  - (d) move any Vehicle outside New Zealand;
  - (e) do, or omit to do, or allow to be done or omitted to be done, anything which could adversely affect any Vehicle or the security interest; or

## Schedule of Terms

- (f) make any deduction or withholding from (whether by way of set-off, counterclaim or otherwise), or attach any restrictions or conditions to, any amount payable to BMW.
9. **Representations:** The Borrower represents and warrants to BMW that all information provided in any application for credit and other information provided to BMW was and remains true, accurate and complete. These representations and warranties will be deemed to be repeated continuously so long as this agreement remains in effect.
10. **Prepayments:** The Borrower may not prepay or part pay any amount shown in the Payment Details. We reserve the right not to accept early payment or part payment of any amount shown in the Payment Details (**Prepayment**). If we do accept a Prepayment we will apply the Prepayment to the next payment due on the date the next payment is due as shown in the Payment Details. Nothing in this clause applies to or prevents the Borrower making an early repayment of the unpaid balance.
11. **Early Repayment:** The Borrower may repay the unpaid balance due under this agreement in full at any time (**full prepayment**) on the following terms:
- (a) Where this agreement is a consumer credit contract as defined by the Act, the Borrower shall pay a fee to compensate BMW for any loss resulting from full prepayment, together with BMW's administrative costs resulting from the full prepayment. The amount the Borrower will be required to pay BMW is set out in the formula prescribed in the Disclosure Statement (including daily interest charged on the unpaid balance until the prepayment amount is received by BMW); or
  - (b) In every other case, the Borrower shall pay a fee to compensate BMW for any loss resulting from full prepayment using the rule of 78 together with BMW's administrative costs resulting from the full prepayment; and
  - (c) the Borrower may not prepay only part of the unpaid balance.
12. **BMW's rights:** BMW may at any reasonable time:
- (a) require the Borrower to produce the Vehicle to BMW or its agent for inspection;
  - (b) have access to the Vehicle for the purpose of inspecting or testing the Vehicle, or exercising BMW's rights to take possession of the Vehicle and BMW is authorised to enter upon any premises where BMW believes the Vehicle is located including the address referred to at paragraph 6(b) or any other address that BMW reasonably believes the Vehicle may be located.
13. **Default interest:** If the Borrower fails to pay any amount payable under this agreement when due, it must pay BMW, default interest calculated on that amount on a daily basis at the Default Interest Rate from its due date until it is paid in full (both before and after any judgment).
14. **Default:** The Borrower is in default under this agreement if the Borrower breaches any term of this agreement, including failing to make any payment when due; if any representation made, or information provided, by the Borrower to BMW is untrue in any material respect; the Vehicle is at risk; being in default of any other agreement between the Borrower and BMW whenever that other agreement was entered into; if BMW's security interest in the Vehicle does not have priority over all other secured parties; or the Borrower or any guarantor goes into liquidation or bankruptcy, or a receiver is appointed in respect of the Borrower or any guarantor. The Borrower acknowledges that, every other agreement between BMW and the Borrower whether entered into before or after this agreement, is collateral to this agreement and a default under any other agreement is deemed to be a default under this agreement.
15. **Consequences of default:** If the Borrower is in default then BMW may enforce the security interest, and may, in addition to all other remedies, repossess the Vehicle and deal with the Vehicle as provided for in the Act or PPSA as applicable or appoint any person or persons to be a receiver of the Vehicle. In addition to, and without limiting or affecting, any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Vehicle as if the receiver had absolute ownership of the Vehicle.
16. **Acceleration:** This clause does not apply to consumer credit contracts. If the Borrower is in default of this agreement, then in addition to any rights or remedies BMW may have all amounts owing, or to become owing, under this agreement shall become immediately due and payable.
17. **Not accountable for loss:** BMW is not obliged to exercise any power or right arising under this agreement and BMW is not accountable for any loss arising by its delay or partial exercise of any such power or right.
18. **Indemnity:** The Borrower indemnifies BMW and any receiver appointed by BMW against all costs, losses and expenses incurred by BMW or the receiver in relation to this agreement, and in exercising any of BMW's rights or recovering any amounts owed to BMW (including any default interest, storage, repossession, legal or recovery costs in relation to the Vehicle); and any claim by any person relating to the Vehicle, or the exercise by BMW or the receiver of any right under this agreement. This indemnity extends to fees for compliance with a demand which is given under section 162 of the PPSA but where this agreement is a consumer credit contract, the indemnity is subject to the Act.
19. **No waiver:** Any indulgence BMW grants, or concession BMW makes, to the Borrower or any Guarantor does not waive any of BMW's rights under this agreement, and the Borrower or Guarantor will not be released from any of its or their obligations under this agreement until BMW expressly grant such a release in writing.
20. **Privacy:** BMW, any other company in the BMW group internationally as well as authorised BMW dealers and the motor vehicle dealer/broker who provided information to BMW in relation to this agreement (**Recipients**) may be provided with and use personal information related to this Agreement for their usual business activities, including promotions, event invitations, individual customer care. BMW will also provide details of the transactions carried out under this Agreement to a credit reporting agency (**CRA**) and report any default under this agreement to the CRA and use the CRA's monitoring service to receive updates if any of the information about you changes and providing information to the CRA. The CRA will hold that information on their systems and use it to provide their reporting service. The CRA may give any information you provide to its other customers. Your personal information may be held by BMW electronically or in hardcopy in New Zealand or elsewhere but in all cases BMW will control that information.

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You have a right under the Privacy Act 1993 to obtain access to and request correction of any information held by the Recipient and any CRA. For general information about BMW Financial Services privacy policies please see [web address]

21. **Payments on demand/by direct debit:** Except as provided in the "Payment Details" section of this agreement, all amounts payable under this agreement (including, but not limited to, all costs and all amounts payable under any indemnity) are payable on demand and are secured by the security interest. If BMW agrees that the Borrower may make payments by direct debit and a payment is not made when due, the Borrower agrees that BMW can, without prejudice to its other rights under this agreement, action that direct debit from time to time at later dates.
22. **Assignment:** BMW may, at any time, assign its rights, title and security interest in the Vehicle and this agreement or Guarantee without the Borrower's consent and without affecting the Borrower's liability or that of any Guarantor. The Borrower may not assign this agreement without BMW's prior written consent.
23. **PPSA:** The Borrower agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this agreement and waives any rights under sections under sections 116, 120(2), 121, 125, 129, 131 and 148 of the PPSA.
24. **Accessions:** The Borrower acknowledges that any accessions (including replacements and accessories) which are attached to the Vehicle shall become part of the Vehicle.
25. **Set-off:** The Borrower acknowledges that BMW can, at any time and without any notice, set-off any amounts BMW owes to the Borrower against any of its present and future indebtedness and obligations to BMW under this agreement or set off amounts BMW owes to the Borrower under this agreement against any other agreement between the Borrower and BMW.
26. **Service Address:** The Borrower agrees that both the physical address and email address provided in this agreement shall be treated as addresses for service for the purposes of any communications under this agreement, and that if the Borrower moves from that address or ceases using the email address those will continue as addresses for service for the purposes of this agreement until the Borrower notifies BMW of the new address or new email address, if any. That new address and/or email address shall then be treated in the same manner as addresses for service.
27. **Guarantee:** In consideration of BMW entering into this agreement with the Borrower, the Guarantor(s) jointly and severally guarantee the due and punctual payment to BMW by the Borrower, in the manner and at the times agreed upon between BMW and the Borrower, of all amounts owing to BMW at any time by the Borrower or which may otherwise become payable by the Borrower to BMW.
28. **Guarantor Acknowledgement:** The Guarantor(s) jointly and severally acknowledge and agree:
  - (a) to be bound as principal debtors;
  - (b) the liability of each Guarantor under this guarantee will not be released by any delay or other indulgence or concession which BMW may grant to the Borrower or any compromise which BMW may reach or variation BMW may agree with the Borrower, or by any other act, matter, circumstance or law whereby the Guarantor(s) may but for the provision of this clause have been released from liability under the guarantee.
  - (c) that the guarantee is a continuing guarantee and will be irrevocable and remain in full force and effect until BMW grants a written release of the guarantee and that this guarantee will bind our respective personal representatives;
  - (d) that BMW may at its discretion enforce the Guarantee without enforcing any other guarantee or security that BMW may hold from time to time;
  - (e) the Guarantee is in respect of all obligations and liabilities (past, under this agreement and future) to the BMW;
  - (f) the interest rate, terms, security and other provisions which relate to this agreement may change from time to time and the Guarantee is not released by such changes; nd
  - (g) the Guarantee was shown to the Guarantor and discussed with the Guarantor prior to it being signed.
  - (h) not in any way to compete with BMW for payment in the event of the bankruptcy or liquidation of the Borrower; and
  - (i) the guarantee is in addition to, and not in substitution for, any other security or rights which BMW may presently have or may subsequently acquire and this guarantee may be enforced against each of us without having recourse to any such securities or rights and without making demand or taking proceedings against the Borrower or the other(s) of us.
29. **Governing Law:** This agreement will be construed and take effect as a contract made in New Zealand and will be governed by New Zealand law, and the parties submit to the non exclusive jurisdiction of the New Zealand courts.