

RFS Merchant Terms and Conditions

- 11. TERMINATION**
- 11.1 Subject to clause 11.2 and 11.3, these Terms and Conditions shall continue until terminated by either party by not less than one month's written notice to the other.
- 11.2 RFS may suspend the credit facility in the event;
- (a) RFS is at any time for any reason unable to provide the credit facility or, the continued provision of the credit facility becomes illegal; or
 - (b) the Merchant is insolvent, fails to make a payment due to RFS or otherwise fails to comply with these Terms and Conditions in any respect.
- 11.3 RFS may terminate these Terms and Conditions upon written notice to the Merchant should:
- (a) the Merchant (or any Related Company or any Associated Person):
 - (i) become insolvent or unable to pay its debts as they fall due;
 - (ii) have a receiver appointed over the whole or part of its assets;
 - (iii) is wound up;
 - (iv) makes any composition or arrangement with its creditors; or
 - (v) ceases or intends to cease trading;
 - (b) the Merchant fails to pay any money to RFS when due;
 - (c) the Merchant breaches or fails to comply with these Terms and Conditions in any respect;
 - (d) the Merchant, its employees or agents participate in or RFS has reasonable grounds to suspect that the Merchant, its employees or agents, have participated in any fraud against RFS or a Customer;
 - (e) the ownership or effective control of the Merchant's business be transferred; or
 - (f) the Merchant fails to provide RFS with a copy of these Terms and Conditions properly signed by the Merchant and any Covenantor.
- 11.4 Without limiting any of its rights RFS will be allowed to take, at the Merchant's cost, all steps it considers necessary to remedy any breach of these Terms and Conditions.
- 11.5 Termination of these Terms and Conditions shall not affect any obligation, undertaking or indemnity incurred or given by the Merchant prior to such termination. To avoid any doubt, RFS may deem an Advance a Chargeback despite these Terms and Conditions terminating with the Merchant's obligations under clause 4.2 continuing notwithstanding.
- 11.6 The Merchant must return to RFS the Merchant Procedures and all other promotional material and forms upon these Terms and Conditions terminating.
- 12. CONFIDENTIALITY**
- The Merchant acknowledges that all documentation and information it or its officer or employees or agents receive in the course of dealing with RFS and with Customers and Cards is confidential. The Merchant will not disclose any of that information to any other party or use the information for its own benefit without RFS's consent.

- 13. NOTICES**
- Any notice required under these Terms and Conditions or the Merchant Procedures will be deemed to be sufficiently served or given if any one of the following methods is used:
- (a) it is delivered to the recipient personally;
 - (b) it is left at the recipient's usual or last known residence, business or at an address specified for that purpose;
 - (c) it is posted in a letter addressed to the recipient by name to that residence, business or address specified; or
 - (d) it is faxed to the recipient at the facsimile number last specified by the Merchant.

Any notice sent by mail shall be treated as having been received 48 hours after posting. Any notice sent by facsimile shall be treated as having been served immediately upon completion of sending (provided the sending facsimile machine produces a printout recording the time, and date of completed transmission).



- 14. PROMOTIONAL MATERIAL**
- 14.1 The Merchant may only advertise or promote RFS final products in a manner approved by RFS.
- 14.2 The Merchant consents to the use of its name in any Merchants' list RFS publishes from time to time.
- 15. FORCE MAJEURE**
- 15.1 RFS's ability to provide the services contemplated in these Terms and Conditions is subject to goods, services and technology necessary for the proper operation of the Card being available (such as electronic funds transfer services, telecommunications and electricity which are supplied by third parties). Should such goods, services or technology be interrupted or discontinued, then RFS will have no liability to the Merchant.
- 15.2 RFS will not be liable to the Merchant should RFS be unable to carry out its obligations for any reason beyond its reasonable control including strikes, riots, acts of war or terrorism, fire, other natural disaster or through government action.
- 16. RFS' LIABILITY LIMITS**
- 16.1 Since the services described in these Terms and Conditions are supplied to the Merchant for business purposes the Consumer Guarantees Act 1993 and the Credit Contract and Consumer Finance Act 2003 do not apply as between RFS and the Merchant.
- 16.2 Except as otherwise provided in these Terms and Conditions, all warranties and representations implied by law on RFS's part are excluded as between RFS and the Merchant to the fullest extent permitted by law.
- 16.3 In no case will RFS be liable to the Merchant for any consequential or indirect loss the Merchant suffers through RFS failing to carry out its obligations under these Terms and Conditions.
- 16.4 If RFS is found to be liable to the Merchant in connection with anything (or a related series of things) arising from the Terms and Conditions then RFS's total liability (apart from payments due under Clause 3) is limited to \$5,000.
- 17. PRIVACY**
- 17.1 RFS may from time to time undertake credit assessments and otherwise obtain, verify and exchange information (e.g. credit reports) concerning the Merchant or its owners, directors, shareholders or partners with third parties.
- 17.2 Any information the Merchant may provide to RFS or any existing information held by RFS or a Related Company of RFS (particularly where the Merchant is an individual) will be used for the following purposes:
- (a) assessing the Merchant's credit worthiness;
 - (b) administering and enforcing these Terms and Conditions;
 - (c) maintaining credit records with RFS, Related Companies of RFS and external agencies;
 - (d) marketing goods and services provided by RFS, Related Company of RFS or any other supplier nominated by RFS.

- 17.3 The Merchant authorises RFS to:
- (a) obtain information about the Merchant from other sources as RFS reasonably requires;
 - (b) retain and use information about the Merchant and provide this information to Related Companies of RFS and external agencies for the purposes listed above (such information may be used in updating and maintaining credit reporting agency/ies files and data bases, which are accessible to their customers);
 - (c) use electronic communications (including but not limited to, email, text messaging and instant messaging) to communicate to you for the purposes listed above.
- All such information will be held by RFS at its business address and other parties for the purposes described above. Where the information can be readily retrieved the Merchant will have access to it and will have the right to have the information corrected. Subject to the Privacy Act 1993 a fee for retrieval and correction may be charged.

- 18. GENERAL**
- 18.1 RFS may vary these Terms and Conditions from time to time by giving notice in writing to the Merchant. The variation will take effect from the date specified in the notice. By processing Advances following such notice the Merchant agrees to be bound by the variation.
- 18.2 These Terms and Conditions set out the terms governing the relationship between the Merchant and RFS. Upon the earlier to occur of RFS's acceptance of the Merchant's facility application or the Merchant's acceptance of a Purchase made by a Customer, these Terms and Conditions will be binding on the parties.
- 18.3 These Terms and Conditions do not establish a joint venture between the parties.
- 18.4 RFS may assign any of its rights and/or obligations under these Terms and Conditions. The Merchant will not assign or transfer its rights, interests or obligations under these Terms and Conditions without RFS's prior consent.
- 18.5 Should there be any inconsistency between these Terms and Conditions and the Merchant Procedures these Terms and Conditions shall prevail.
- 18.6 No waiver of any breach or failure to enforce any provision of these Terms and Conditions at any time by any party shall affect, limit or waive the right of such party to subsequently require the other to observe these Terms and Conditions.
- 19. RFS ACTING THROUGH AGENTS**
- The parties acknowledge and agree that all Related Companies of RFS (including Flexi Financial Services Limited) are authorised to act for and on behalf of RFS under these Terms and Conditions.



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Merchant Services
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Issued by Retail Financial Services Ltd (RFS)

Contents

Retail Financial Services Ltd (RFS) Merchant Terms & Conditions

INTRODUCTION

- A. RFS provides Customers with credit facilities to enable them to purchase Goods and/or Services;
- B. RFS has agreed to allow Customers to use the credit facility to make purchases from the Merchant on the following Terms and Conditions.

1. DEFINITIONS AND INTERPRETATION:

1.1 In these Terms and Conditions:

Advance means an advance of monies from RFS to the Merchant at the request of the Cardholder to pay for Goods Purchased by the Cardholder from the Merchant using the Card.

Associated Person means any persons who are associated persons of the Merchant within the meaning of section YB of the Income Tax Act 2007.

Business Day means a day on which trading banks are normally open for business in Auckland (excluding Saturdays, Sundays and public holidays). A Business Day starts at 9am and finishes at 5pm.

Card means the Cardholder's Farmers Finance Card.

Card Limit means the maximum amount of credit the Cardholder can access using the Card.

Card T&Cs means the Card Terms and Conditions.

Cardholder means the person or persons to whom the Card is issued by RFS.

Card Number means the 8 or 16 digit number printed (embossed) on the face of the Card.

Card Voucher means the document/receipt produced either manually or via an EFTPOS terminal or Merchant point of sale processing system, evidencing a Purchase via the Card or Card Number.

Chargeback is defined in clause 4.

Customer means person who purchases or desires to purchase Goods and/or Services from the Merchant via the Card or Card Number and includes a Cardholder.

Goods means goods sold by the Merchant to the Customer via the Card or Card Number.

Merchant Bank Account means the bank account nominated by the Merchant through which payments to or from RFS are to be processed.

Merchant Procedures means any information provided by RFS to the Merchant from time to time setting out the procedures the Merchant must follow.

Merchant means a retailer, supplier or any other person, firm or company who is party to these Merchant Terms and Conditions.

Purchase means the purchase by a Customer of Goods and/or Services from the Merchant via the Card or the Card Number and Purchased has a similar meaning.

Related Company means any company related to RFS (or the Merchant as the case may be) in terms of Section 2(3) of the Companies Act 1993.

Services means services provided or arranged by the Merchant.

Terms and Conditions means these Terms and Conditions.

1.2 Where the context requires it words denoting the singular shall mean the plural and vice versa.

1.3 Reference to clauses are references to clauses in these Terms and Conditions.

1.4 A party to these Terms and Conditions includes that party's executors, administrators, successors and permitted assignees.

2. PURCHASES

- 2.1 A Customer may make a Purchase by means of an Advance made by RFS to a Cardholder provided;
- the Cardholder is not in breach of the Card T & Cs; and
 - the proposed Advance plus the Cardholder's then Total Balance (as defined in the Card T & Cs) does not exceed the Card Limit.

2.2 Unless otherwise agreed in writing by RFS and the Merchant, and subject to clauses 2.5 and 6.2, before an Advance will be made the Merchant must have processed the Purchase via an EFTPOS terminal or point of sale processing system and ensured that;

- the Cardholder signs the Card Voucher for each Purchase; and
- the Cardholder's signature appearing on the Card is consistent with the signature on the Card Voucher; and
- the Merchant has complied in all respects with the Merchant Procedures.

2.3 Upon the Merchant complying with clause 2.2, RFS will pay the amount of the Advance in the manner specified in clause 3.1 (plus or minus any fees or commissions). This clause applies subject to clauses 4 and 5.1.

2.4 The Merchant will not issue GST invoices to RFS in respect of commissions owed by RFS to the Merchant or fees charged by the Merchant to RFS. Instead RFS will generate "IRD approved buyer-created tax invoices". RFS's GST registration number is 51-021-002.

2.5 RFS may permit the Merchant, on a case by case basis, to process a Purchase for a Cardholder without the Cardholder presenting the Card or without the Card being swiped through the EFTPOS terminal to initiate the transaction (Card Not Present Transaction). Except as otherwise agreed in writing by RFS, in any such case RFS will provide the Merchant with an authorisation number which must be written by the Merchant on the Card Voucher.

3. PAYMENTS TO MERCHANT

3.1 Subject to the provisions of the Card these Terms and Conditions, RFS will pay the Merchant the amounts referred to in clause 2.3 by direct credit to the Merchant's Bank Account within 2 Business Days of a Card Voucher being produced.

3.2 If a payment is made to the Merchant's Bank Account in error, the Merchant will immediately refund that payment failing which RFS may deduct such payment from the Merchant Bank Account where a direct debit authority exists or effect an offset referred to in clause 5.

4. CHARGEBACKS

4.1 An Advance will become a Chargeback if:

- it is processed or arises other than in accordance with these Terms and Conditions and the Merchant Procedures;
- it involves an obvious forgery of the Customer's signature; or the Card Voucher is incomplete or illegible;
- it is initiated through the use of a Card which was obviously counterfeit;
- it is one which the Customer disputes, or refuses to pay or acknowledge, because the Goods and/or Services the subject of the Purchase, are alleged:
 - to be defective or inadequate in any way;
 - not to have been ordered, delivered or received;
 - not to be as promised by the Merchant; or
 - have been returned or made available to the Merchant, for any other reason, including failure to comply with the Consumer Guarantees Act 1993;
- the Merchant has agreed to take back the Goods (or refrain from providing the Services), reverse the Purchase, or reimburse or compensate the Customer for any reason;
- it has been processed by the Merchant contrary to any instruction direction or authorisation given by RFS;
- the Merchant fails to provide a copy of the signed Card Voucher to RFS on request; or
- in the case of Card Not Present Transaction (as defined in clause 2.5), if the authorisation number provided by RFS pursuant to clause 2.5, is not written on the Card Voucher, or is illegible or irreconcilable.

4.2 If an Advance becomes a Chargeback the Merchant will repay RFS the Advance amount upon demand (plus or minus any applicable charges to or payments made by the Customer). The Merchant authorises RFS to debit any Chargebacks to the Merchant's Bank Account where a direct debit authority exists or otherwise effect an offset referred to in clause 5.

4.3 A Chargeback is not waived because RFS may have authorised a particular Purchase.

5. OFFSET

- 5.1 Where the Merchant has incurred any actual or contingent liability to RFS or any Related Company of RFS, RFS may offset such liability against any sum that would otherwise be due by RFS to the Merchant.
- 5.2 The Merchant cannot assign any credit balances it has with RFS or any Related Company of RFS.

6. MERCHANTS' UNDERTAKINGS

6.1 The Merchant undertakes that:

- subject to clause 2.5, Purchases will only be processed in the presence of the Customer;
- it will not act (or fail to act) in any which way which might give rise to any claim in respect of any Purchase under the Fair Trading Act 1993, the Credit Contracts and Consumer Finance Act 2003, the Privacy Act 1993, the Consumer Guarantees Act 1993 or any other applicable legislation;
- the price of any Purchase will not exceed the cash price defined in the Credit Contracts and Consumer Finance Act 2003 (or any statute amending or replacing the same);
- all Purchases will be processed in accordance with the then current Merchant Procedures and otherwise as RFS instructs, directs or authorises;
- it will honour all warranties and guarantees (whether under the Consumer Guarantees Act 1993 or otherwise) relating to each Purchase;
- when RFS pays, or credits the Merchant with the Advance, the Customer has not cancelled the Purchase; and
- it will otherwise comply with the Merchant Procedures.

6.2 The Merchant will not process any Purchase until the Goods and/or Services have been provided.

6.3 The Merchant will retain such information relating to Goods and/or Services Purchased by means of an Advance as the Merchant Procedures specify (and will provide such information to RFS on request).

7. MERCHANT SERVICE FEES

- 7.1 A service fee (a charge payable by the Merchant to RFS) will apply to each Advance made to enable the Customer to make a Purchase. RFS will;
- advise the Merchant of the service fees applicable from time to time; and
 - debit the service fee by offset unless otherwise agreed in writing with the Merchant.

8. INDEMNITIES

The Merchant indemnifies RFS from and against any claims, losses, damages, penalties, costs and expenses RFS suffers or sustains arising out of or incidental to:

- any breach by the Merchant of these Terms and Conditions or the Merchant Procedures;
- any dispute between the Merchant and the Customer;
- any representation, statement or undertaking made by the Merchant or its representatives to a Customer; or
- any Court or Dispute Tribunal decision adversely affecting RFS consequent on any act or omission of the Merchant, its directors, employees or agents.

9. LIMITED AGENCY

The Merchant is not RFS's agent for any purpose except facilitating an Advance.

10. DEFAULT INTEREST & EXPENSES

10.1 The Merchant will pay RFS all costs and expenses that RFS incurs as a result of exercising its powers under these Terms and Conditions including actual legal costs on a solicitor-client basis.

10.2 If the Merchant fails to pay any amount due under these Terms and Conditions then the Merchant shall pay RFS default interest calculated on a daily basis on the amount not paid from the due date until the date of payment at the rate that is the higher of 20%pa or 5% above the interest rate payable by the Customer under the relevant Advance.

1. DEFINITIONS AND INTERPRETATION

2. PURCHASES

3. PAYMENTS TO MERCHANT

4. CHARGEBACKS

5. OFFSET

6. MERCHANTS' UNDERTAKINGS

7. MERCHANT SERVICE FEES

8. INDEMNITIES

9. LIMITED AGENCY

10. DEFAULT INTEREST & EXPENSES

11. TERMINATION

12. CONFIDENTIALITY

13. NOTICES

14. PROMOTIONAL MATERIAL

15. FORCE MAJEURE

16. RFS' LIABILITY LIMITS

17. GENERAL

18. RFS ACTING THROUGH AGENTS