



# Gem Personal Loan Contract

Terms & Conditions.

Effective October 2024

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## Contract Terms and Conditions

These Personal Loan Contract Terms and Conditions do not contain all the information making up the **agreement** between **you** and **us**. Other contractual information is contained in the **schedule** which together with these Personal Loan Contract Terms and Conditions constitute the **agreement** between **you** and **us**.

The meaning of words printed **like this** in these Personal Loan Contract Terms and Conditions is explained in 13 (Meaning of Words).

### 1. What we lend and when

- 1.1 **We** agree to lend **you** the **advance amount** by making the payments set out in the **schedule**. **You** authorise **us** to use the **advance amount** to make these payments.
- 1.2 **You** are liable for all **your** obligations under this **agreement** both separately on **your** own and jointly with any one or more of the **persons** named in the **schedule** as "Customer(s)". **You** includes **your** successors and permitted assigns.
- 1.3 However, **we** only have to lend if:
- (a) **we** have received in a form satisfactory to **us**:
- each **security** and related document (**such as** title documents and acknowledgments); and
  - evidence of any insurance **we** require adequately noting **our** interest; and
  - any report or valuation **we** require; and
  - any other document or information (**including** a direct debit authority) **we** require; and
- (b) **your** financial circumstances have not changed significantly since information concerning those financial circumstances was first provided to **us**; and
- (c) no **security** has been withdrawn or is otherwise unenforceable and **you** have not withdrawn from a **security**; and
- (d) the property the subject of a **security** has not become the subject of a claim from a third party; and
- (e) **you** are not in default under this **agreement** or a **security**.
- 1.4 **Our** obligation to lend **you** the **advance amount** terminates if **you** do not borrow it within 20 days of the **disclosure date** (or any longer period **we** consent to).
- 1.5 Unless **we** otherwise agree, **you** may only borrow the **advance amount** in one lump sum.

## 2. The annual interest rate

The **annual interest rate** at which **you** will be charged interest for any day under this **agreement** is as described in the **schedule**.

Where the **annual interest rate** is described as a variable rate in the **schedule**, **we** may change the **annual interest rate** at any time without **your** consent.

If **we** make such a change, **we** must notify **you** within **5 working days of the day on which the change takes effect**:

- (a) in writing; or
- (b) in such other manner as may be permitted by law,

## 3. Interest charges

### How we calculate interest charges

3.1 Interest charges for each day are calculated by applying the **daily interest rate** to the **balance owing on your loan account** at the end of that day.

### When we debit interest charges

3.2 Interest charges accrue daily from and **including** the **settlement date** and are debited to **your loan account** (so increasing the **balance owing on your loan account**):

- (a) at monthly intervals, the first debiting to occur one calendar month after the **settlement date**; or as specified in the **schedule**, and
- (b) on the day **you** repay the **total amount owing** in full.

If, however, the relevant month does not contain the scheduled day for debiting then **we** debit interest charges on the last **working day** of that month.

## 4. Repayments

### What you must pay

4.1 **You** must repay to **us**:

- (a) the **advance amount**; and
- (b) all interest charges; and
- (c) all fees and charges (as changed by 7.4); and
- (d) all other amounts payable under this **agreement**, by making repayments in accordance with the **schedule** and **your** continuing **disclosure statements** and, in any event by no later than the last day of the **loan term** or by any later date that **we** determine.

4.2 The **schedule** sets out the repayments **we** require as at the **disclosure date**.

### How to make repayments

4.3 **You** must make the required monthly repayments at the times required by and in accordance with the **schedule** unless **we** agree in writing to change the repayment arrangements. If **you** pay more, this will help reduce the amount of interest **you** pay but does not affect **your** obligation to ensure that there are sufficient funds in the **loan account** to meet **your** obligations in accordance with the **schedule**. Payment in excess of the scheduled payments may be applied as future scheduled payments, at **your** instruction or our discretion. Also refer to Clause 5 for

any additional payments that may be payable should **you** repay the loan prior to the end of the **loan term**.

- 4.4 **We** may require **you** to make the repayments by direct debit.
- 4.5 **You** must ensure that there are sufficient funds to allow any cheque, direct debit, automatic payment, or other payment facility to be honoured at first instance.
- 4.6 **We** must pay any money remaining after the **total amount owing** is repaid either to **you** or to another **person** entitled to it (**such as** pursuant to a court order).

## 5. Early repayment

### What you must pay if you repay early

If **you** repay the total amount outstanding prior to the end of the **loan term** **you** will have to pay:

- (a) the total amount outstanding as at the date of early repayment;
- (b) all accrued interest charges to the date of early repayment.
- (c) fees and charges that may apply to **your** loan from time to time (if any).

## 6. Redraw (Applies Only to Variable Rate Loans)

- 6.1 **You** may ask **us** to allow **you** to redraw amounts that **you** have prepaid under this **agreement** (for example, if **you** have made repayments of a greater amount than required). It is in our discretion to approve a request to redraw from **you**.
- 6.2 However, **you** may not redraw an amount which would result in the **balance owing on your loan account** exceeding the amount which would have been owing if **you** had paid all scheduled repayments on time.
- 6.3 The minimum amount that **you** may redraw, subject to clauses 6.2 and 6.5, is as **we** advise **you** from time to time.
- 6.4 A request for a redraw can only be made by contacting **us** and **you** must nominate the account into which the amount requested is to be paid.
- 6.5 Without limiting **our** discretion to refuse a request to redraw, **we** will not provide a redraw that **you** request if:
  - (a) the **total amount owing** has been fully repaid; or
  - (b) **you** are in default under this **agreement**; or
  - (c) where the **schedule** specifies a **security**, there has been a change in the **security** position since the **disclosure date** of this **agreement**; or
  - (d) **your** instructions are not in accordance with the account mandate (the instructions given to **us** for operating the **loan account**); or
  - (e) **you** do not provide **us** with instructions on how **your** redraw is to be applied; or
  - (f) **your** instructions are not in accordance with this **agreement**; or

- (g) **you** have cancelled the option to redraw pursuant to clause 6.7; or
  - (h) **we** have cancelled **your** option to redraw pursuant to clause 6.8; or
  - (i) **we** believe doing so is in either **your** interest or **ours – for example** to protect **you** from fraud or other losses or to manage regulatory requirements.
- 6.6 By entering into this **agreement, you** each authorise any co-borrower to access any excess referred to in clause 6.2, individually, by using this redraw facility.
- 6.7 **You** can cancel the right to redraw at any time.
- 6.8 **You** acknowledge and agree that **we** can cancel **your** right to redraw at any time without **your** prior consent and without prior notice. However, if **we** do, **we** will give **you** notice after **we** do so.

## 7. Fees and charges

### Enforcement expenses may become payable under this agreement or any security in the event of a breach

- 7.1 Subject to this clause, **you** must pay **us**:
- (a) all credit fees and charges in the circumstances indicated in the **schedule** and any new fees and charges **we** impose under 7.4; and
  - (b) any expenses **we** incur in enforcing this **agreement** or a **security** after a default (**including** repair **costs**, legal **costs (including costs** incurred on a solicitor/client basis), storage **costs**, expenses incurred in preserving and maintaining property **such as** by paying insurance after a default). These expenses are payable when **we** ask for them to be paid.

A government or other third-party fee or charge will only be payable by **you** to the extent of the actual amount finally determined as being payable by the relevant third party.

- 7.2 **You** authorise **us** to debit any of these amounts to **your loan account. We** may do so on or after the date **we** pay them or the date they become due or payable by **you** or **us** (whichever is earlier).

The amount, frequency or time for payment or method of calculation of a fee or charge may change or a new fee or charge may be imposed under this **agreement**. Clause 7.4 sets out how, when and if, **you** will be notified of any change.

- 7.3 The credit fees and charges current at the **disclosure date** are shown in the **schedule**.

### Changes to fees and charges

- 7.4 **We** may change the amount of any fee or charge or change the method of calculation, frequency, or time for payment, or impose a new fee or charge at any time. If **you** are not satisfied with a change that **we** have made, **you** may make an early repayment (see clause 5 above)

**We** will notify **you** in writing in accordance with the **CCCFA**.

## Disclosure of credit fees and charges

7.5 Where **we** have provided **you** with an offer to enter into another loan contract at the same time as **we** provide **you** with an offer on which this **agreement** is based, the credit fees and charges disclosed in this **agreement** are disclosed on the assumption that credit is provided under one loan **agreement** before it is provided under the other loan **agreement** and where relevant the credit fees and charges are apportioned accordingly.

## 8. Statements

8.1 **We** will send **you** periodic statements. These statements constitute continuing disclosure under the CCCFA and show all amounts debited or credited to **your** account during the statement period.

8.2 Where **you** have consented to disclosure being made in electronic form, an email containing either your statement or a link to an internet page containing **your** statement will be sent to the email address provided by **you**. Alternatively, statements will be posted to **your** last known mailing address.

## 9. If you are in default

### When are you in default?

9.1 **You** are in default if:

- (a) **you** do not pay on time all amounts due under this **agreement**; or
- (b) **you** do something **you** agree not to do, or don't do something **you** agree to do under this **agreement** or a **security**; or
- (c) **you** or another **person** gives **us** or has given **us** incorrect or misleading information in connection with this **agreement** or a **security**; or
- (d) **we** reasonably believe **you** or another **person** has acted fraudulently in connection with this **agreement** or a **security**; or
- (e) **you** are in default under a **security** or withdraws from it or it becomes unenforceable; or
- (f) **you** become **insolvent**, or steps are taken to make **you** so; or
- (g) at any time any judgment of any Court against **you** remains unsatisfied for more than seven days; or
- (h) a power of sale arises under any **security interest** over any **collateral** which is secured by a **security**; or
- (i) distress or execution is levied or issued against, or any lien is claimed over the **collateral**.

### What can happen then?

9.2 If **you** are in default, then subject to the requirements of any legislation:

- (j) the **total amount owing** becomes immediately due for payment (to the extent it is not already due for payment) without notice to **you**, and notwithstanding that the time or times appointed for payment under this **agreement** may not have arrived;

and/or

- (k) **we** may sue **you** for the **total amount owing** or enforce any **security** or do both; and/or
  - (l) **we** may take possession of the **collateral** and enter on any lands or premises where the **collateral** may be as **your** agents and if **we** incur any liability to any third party **you** shall indemnify **us** against any liability upon demand by **us**; and/or
  - (m) **we** may sell or lease all or part of the **collateral** in a manner and for consideration and on such terms and conditions as **we** think fit, without being responsible to **you** or any other party for any loss and **we** may do all things **we** consider necessary to complete any sale or lease.
- 9.3 **Your** obligation to pay on time is not cancelled by the provisions of this clause.
- 9.4 **We** will not be responsible for any property left in any repossessed or returned **collateral**. Unless **you** collect the same within one month of the date of repossession or return of the **collateral**, **we** may sell the property and credit the net proceeds to **your loan account**.

## 10. Securities

### Security interest in collateral

- 10.1 Clauses 10.1 to 10.5 (inclusive) only apply if the **schedule** indicates that **you** are to grant a **security interest** in **collateral** as **security** for payment of the **secured moneys**.
- By granting this **security interest you** undertake certain obligations. **You** also give **us** rights concerning **you** and the **collateral** - **for example**, if **you** do not comply with **your** obligations, in certain circumstances **we** may take possession of the **collateral**, sell it and sue **you** for any remaining money **you** owe **us**.
- 10.2 In consideration of **us** agreeing to this loan, **you** as legal and beneficial owner of the **collateral** grant a **security interest** in the **collateral** to **us** as **security** for payment of the **secured moneys** and the performance of **your** obligations under this **agreement**. Unless **you** already own the **collateral**, when **you** enter into this **agreement**, the loan is to be spent (wholly or partly) in purchasing the **collateral**.
- 10.3 **You** warrant that **you** have, or will have as soon as **you** purchase it, good title to and sufficient rights in the **collateral** and that it is, or will be, when purchased, free from any **security interest**.
- 10.4 **You** must:
- (a) keep the **collateral** insured for its full replacement value and to **our** satisfaction in **our** absolute discretion. **We** will be entitled to receive all moneys payable under the insurance policy;
  - (b) keep the **collateral** in good condition and replace any defective or worn out parts with new parts and any such replacement parts, accessions or accessories will upon attachment become part of the **collateral** and subject to the **security interest** created by this **agreement**;



- (c) comply with all legal requirements concerning the **collateral** or its use or possession, **including** those relating to registration;
- (d) notify **us** immediately if the **collateral** is lost, seized, confiscated, taken, detained or damaged;
- (e) notify **us** immediately regarding any change to **your** personal details, including **your** residential address, email address and phone number, and details of those changes; and
- (f) punctually pay all rents, taxes and charges from time to time falling due in respect of any premises in which the **collateral** or any part of it may for the time being be kept and produce to **us** when required by **us** the receipt or receipts for the payments.

10.5 **You** must not:

- (a) do anything which might prejudice **our security interest** in the **collateral**;
- (b) mortgage, sell, dispose of, pledge, charge, hire out or otherwise create, allow to be created or permit to exist a **security interest** in the **collateral**;
- (c) do anything or allow any state of affairs to exist which would give **us** reasonable grounds to believe that either **you** intend to remove or dispose of the **collateral** without **our** consent;
- (d) permit the **collateral** to become affixed to any land or to become an accession to any other property without first obtaining an acknowledgement or waiver in such form as **we** may require acknowledging that **our** interest is paramount; or
- (e) part with possession of or allow or permit the **collateral** to become damaged, lost, seized, confiscated, detained or damaged.

### **Effect of securities generally**

10.6 **You** agree that:

- (a) each **security** listed in the **schedule** is given to secure payment of the **secured moneys**;
- (b) if **you** default under this **agreement** it shall constitute a default under any other **security**, deed, document or **agreement** between **you** and **us**; and
- (c) if **you** default under any other **security**, deed, document or **agreement** between **you** and **us** it shall constitute a default under this **agreement**.

### **Collateral securities**

10.7 **You** agree that each **security** listed in the **schedule** shall be **collateral** with all other **security**, deeds, documents, and **agreements** given to **us** by **you** to secure the **secured moneys**. **You** also agree that all such documentation will be read and construed together so that a default under one will be a default under all.

10.8 **You** agree that with respect to any default **we** may exercise **our** rights, powers and remedies under any of the documents either together or separately and in any order, **we** think fit.

### **Liens**

10.9 **We** may pay any money in **our** opinion reasonably necessary to discharge or have withdrawn any lien or **security interest** on any **collateral** and such cost

may be debited to **your loan account** as if it were an amount referred to in 7.2.

## **GST**

10.10 For the purposes of the **GST Act**, **you** agree with **us** that the **collateral** (if any) has been acquired for private or domestic use only and will not be used in the course or furtherance of any taxable activity and further that any supply of the **collateral** if it was sold by **you** would not be a taxable supply and **you** acknowledge that **we** may rely on this covenant for the purposes of section 5(2) of the **GST Act**.

## **Power of Attorney**

10.11 **You**, and if there is more than one of **you**, each of **you** jointly and severally, irrevocably appoint **us** and each of **our** managers, officers and nominees (severally) for the time being to be **your** attorney to do all such things as **we** reasonably believe may be necessary or desirable to protect fully **our** interest under this **agreement including** (without limitation) for the purposes of executing any **security agreement**, and doing all such other things as are necessary to register or perfect a **security**.

## **Consumer credit insurance**

**You** acknowledge that **you** do not have to take out consumer credit insurance unless **you** want to. Unless **we** waive the requirement, **you** must take out insurance over the **collateral**.

## **Commission**

10.12 **You** acknowledge that:

- (a) **we** may receive a commission for the introduction of any insurance business financed by this **agreement**; and
- (b) **we** may pay a commission to the vendor of any **collateral** for the introduction of lending business; and

## **Personal Property Securities Act**

10.13 **You** acknowledge receipt of a copy of this **agreement** and waive any right **you** may have to receive a copy of any financing statement, financing change statement or verification statement that is registered, issued, or received at any time by **us** in relation to this **agreement**.

# **11. Personal information**

11.1 **You** agree that **we** may disclose **your** personal information to credit reporters and that those credit reporters may hold the information on their systems and disclose it to authorised users of the credit reporters' services. **You** also agree that **we** may disclose to any credit provider named in a credit report information about **your** creditworthiness and credit history.

11.2 **You** agree that **we** may collect and monitor such personal information about **you** as is necessary for the administration and protection of the **advance amount (including** without limitation utilising any credit reporters' monitoring services to receive updates if the information held about **you** changes) and may disclose repayment history, details relating to **your** account, and any payment default

information to credit reporters which may hold the information on their systems and disclose it to authorised users of the credit reporters' services.

- 11.3 **We** may (if necessary) disclose **your** personal information to fraud reporting agencies, and to any **person we** may appoint to assist in the enforcement of this contract.
- 11.4 Where **you** have requested insurance cover through **us, we** may disclose **your** personal information to Hallmark Life Insurance Company Ltd., Hallmark General Insurance Company Ltd. and/or any other insurer that provides that insurance cover.
- 11.5 **You** authorise **us** to use all personal information held about **you** to offer **you** further finance, to consider any future applications for finance from **you** and to provide **you** from time to time with details of other products and services.
- 11.6 **Your** personal information may be held physically or electronically by **us**, any related company of ours, or any third party contracted to store it, in New Zealand or offshore. **We** will comply with the Privacy Act 2020's requirements for safeguarding **your** personal information. Where the personal information may be readily retrieved, **you** shall have access to it and the right to request correction.
- 11.7 For the purpose of this clause reference to **we** and **us** means Latitude Financial Services Limited and its related companies.

## 12. General matters

### What happens to payments we receive?

- 12.1 **We** will use a payment applied to this **agreement** to reduce the **total amount owing** under this **agreement** in any order **we** choose.

### Effective date of transactions

- 12.2 The **advance amount** (or the relevant part of it) is provided on the day on which **we** debit **your loan account** for that purpose.

### Adjustments

- 12.3 **We** may subsequently adjust debits and credits to **your loan account** so as to accurately reflect the legal obligations of **you** and **us** (for example, because of an error or a dishonour). If **we** do this **we** may make consequential adjustments (**including** to interest charges).

### End of day

- 12.4 A day of the week ends for any purpose under this **agreement** at 4 pm.
- 12.5 **We** may change the time at which any day ends for any purpose under this **agreement**. **We** will give **you** notice of any such change in writing within 5 **working days** of the day on which the change takes effect.

### Assignment

- 12.6 To the extent permitted by law, **we** may transfer our rights, benefits and/or obligations under this **agreement**, to any **person** at any time. **You** agree that **we** may disclose any information or documents **we** consider desirable (**including** any "personal

information” about **you** as that term is defined in the Privacy Act 2020) to help **us** exercise this right.

- 12.7 **Your** rights are personal to **you** and may not be assigned.

### Variations and waivers

- 12.8 A provision of this **agreement**, or a right created under it, may not be waived except in writing signed by the party or parties to be bound.

- 12.9 **We** may agree to change this **agreement** or defer or waive any of these terms and conditions without creating a new contract.

- 12.10 **We** may change any provision of this **agreement** in addition to those specifically mentioned. **We** will notify **you** of any such change in accordance with the **CCCFA**. If **you** are not satisfied with a change that **we** have made, **you** may make an early repayment (see clause 5 above).

### Set-off

- 12.11 Subject to any statutory right of set-off which **we** cannot by law exclude by **agreement**, **you** must pay all amounts due under this **agreement** in full without setting off amounts **you** believe **we** or any of **our** related entities owe **you** and without counterclaiming amounts from **us**.

- 12.12 **We** may at any time without notice set off against any money owing by **us** or any of **our** related entities to **you** any debt or liability **you** may have to **us** on any account whatsoever.

### Applicable law

- 12.13 This **agreement** is governed by the laws of New Zealand.

- 12.14 If a provision of this **agreement** is or becomes illegal, invalid or unenforceable under any relevant law then the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision of this **agreement** will not be affected.

## 13. Meaning of words

Words printed like **this** but not defined in this section have the meaning given to them in the **disclosure statement**.

**advance amount** is stated in the **schedule**.

**agreement** means the **schedule** and these Personal Loan Contract Terms and Conditions.

**annual interest rate** means the per annum rate of interest as stated in the **schedule**.

**balance owing on your loan account** means, at any time, the difference between all amounts credited and all amounts debited to **your loan account** under this **agreement** at that time. When this amount is to be calculated at the end of a day, it includes all debits and credits assigned to that day.

**collateral** means the goods described in the **schedule** as being subject to a **security** and includes any goods acquired in replacement for or as additions or accessories to those goods.

**costs** includes charges and expenses, and **costs**, charges and expenses in connection with legal and other advisers.

**CCCFA** means the Credit Contracts and Consumer Finance Act 2003 and the regulations thereunder.

**daily interest rate** for a day is the **annual interest rate** for that day divided by 365, or 366 in a leap year.

**disclosure date** is as stated in the **schedule**.

**disclosure statement** means the information disclosed to **you** in the **schedule** as required by the **CCCFA**.

**for example** see **including**.

**GST Act** means the Goods and Services Tax Act 1985.

**including, for example** or **such as** when introducing an example, does not limit the meaning of the words to

(a) the examples provided; or

(b) things which are similar to the examples provided.

**insolvent** means being **insolvent - such as** being bankrupt, in receivership, in receivership and management, in liquidation, in provisional liquidation, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or otherwise unable to pay debts when they fall due.

**loan account** means an account **we** establish in **your** name for recording all transactions in connection with this **agreement**.

**loan term** is as stated in the **schedule**.

**person** includes an individual, a firm, a body corporate, an unincorporated association or an authority.

**PPSA** means the Personal Property Securities Act 1999.

**schedule** means the Gem Personal Loan Agreement - Incorporating Disclosure Statement.

**secured moneys** means all moneys **you** owe **us** under this **agreement** and all other moneys, **costs**, charges, interest, expenses and fees, both accrued and contingent, now or at any time owing by **you** to **us** on any account whatsoever.

**security** means each **security interest** described in the **schedule** under "Securities", any substitute or additional **security interest** given in connection with this **agreement** and any other **security interest** given by **you** which is **security** for the **secured moneys**.

**security interest** means any mortgage, assignment, charge, lien, pledge, trust, power or other rights given as or in effect as **security** for the payment of money or performance of obligations and includes a **security interest** as defined in the **PPSA**.

**settlement date** means the date **we** first lend **you** any of the **advance amount** and settlement has a corresponding meaning.

**such as** see **including**.

**total amount owing** means the **balance owing on your loan account**, plus all accrued interest charges and other amounts which **you** must pay under this **agreement** but which have not been debited to **your loan account**.

**we** means Latitude Financial Services Limited and its successors and assigns and **our** and **us** have a corresponding meaning.

**working day** means any day other than a Saturday or Sunday or public holiday in New Zealand.

**you** means the **person** or **persons** named in the **schedule** as "Customer(s)" and **your** has a corresponding meaning. If

there is more than one of **you**, it includes any one or more of **you**. Where there is more than one of **you** each of **you** is individually liable for the full amount.

The singular includes the plural and vice versa.

A reference to:

- (a) a document includes any variation or replacement of it;
- (b) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them); and
- (c) anything includes the whole and each part of it.

## **14. Financial Advice – Prescribed statement disclosure**

You are protected by responsible lending laws. Because of these protections, the recommendations given to you by us about personal loans, credit cards and any credit related insurance products are not regulated financial advice. This means that duties and requirements imposed on people who give financial advice do not apply to these recommendations. This includes a duty to comply with a code of conduct and a requirement to be licensed.

