

Gem CreditLine Conditions of Use



Gem CreditLine Conditions of Use

1. Meaning of Terms

In this contract:

a day ends:

- (i) in the case of debiting interest pursuant to clause 11, at midnight on that day; and
- (ii) in the case of payments made, at the time the payment is received by us;

account

means any Gem CreditLine account opened in your name for the purpose of this contract;

application for Gem CreditLine account

means the application for a Gem CreditLine revolving credit facility with credit card and PIN completed by you;

ATM

means automatic teller machine;

balance

means the difference between all amounts credited and all amounts debited to the account;

cash advance

means any EFT Transaction involving a withdrawal of cash from your account at any authorised ATM using your credit card and your PIN or by any other means approved by us;

closing balance

for any period means the amount identified on your monthly statement of account as the closing balance for the period to which that statement relates;

credit card

means any credit card or additional credit card issued under this contract;

Credit Contracts Act

means the Credit Contracts and Consumer Finance Act 2003 (as amended from time to time) and all regulations thereunder;

CreditLine Select advance (instalment plan)

means any advance which is to be repaid by fixed monthly payments over such periods of time as may be agreed between you and us;

daily balance

means the balance of the account at the end of a day;

deferred payment advance

means any advance in relation to which a deferred payment period is then applicable;

deferred payment period

means in relation to any advance, the deferred payment

period (if any) agreed between us and you (or any additional cardholder on your behalf) in relation to that advance;

disclosure statement

means the statement entitled “disclosure statement” sent to you with these terms and conditions as required under the Credit Contracts Act;

EFT Transaction

means any transaction carried out by electronic funds transfer;

EFTPOS

means Electronic Funds Transfer at Point of Sale whereby funds are debited to your account at the merchant’s point of sale to pay for goods or services;

electronic funds transfer or EFT

means the process by which funds are withdrawn electronically from your account including cash advances. You authorise an Electronic Funds Transfer by using your card with your associated PIN or signature at an Electronic Transaction Terminal;

Electronic Transaction Terminal

means any terminal or device approved by us in which you can use your card and PIN. This may include:

- ATMs of selected financial institutions; and
- EFTPOS terminals.

Latitude

means Latitude Financial Services Limited;

interest-free start-up advance

means any advance in relation to which an interest-free start-up period is then applicable;

interest-free start-up period

means in relation to any advance, the interest-free start-up period (if any) agreed between us and you (or any additional cardholder on your behalf) in relation to that advance;

low interest start-up advance

means any advance in relation to which a low interest start-up period is then applicable;

low interest start-up period

means in relation to any advance, the low interest start-up period (if any) agreed between us and you (or any additional cardholder on your behalf) in relation to that advance;

PIN

means the personal identification number (if any) which has been allocated to you by us for use with your card in any Electronic Transaction Terminal;

Privacy Act

means the Privacy Act 1993 (as amended from time to time);

sales voucher

means a Gem CreditLine sales voucher completed by a merchant, signed by you and provided to you as evidence of a purchase using your account;

this contract

means these Gem CreditLine Conditions of Use, the disclosure statement and any sales voucher;

unauthorised transaction

means any transaction made without your knowledge or consent;

we, us, or our

means Latitude Financial Services Limited;

working day

means a day other than a Saturday or Sunday or Public Holiday in New Zealand;

you and your

means the applicant for the account and includes his/her successors and permitted assigns; and

your personal information

means all and any information about you which you provide to us and all information about you that we may hold now or in the future which is “personal information” about you as that term is defined in the Privacy Act.

2. Using Your Account

- 2.1 Subject to the terms and conditions of this contract, you may use your account to obtain advances for any purpose approved by us including purchases and cash advances. We may suspend, withdraw or limit your cash advance facility at any time.
- 2.2 We may refuse to let you use your account or your credit card if:
 - it has not received all information and documents it requires about you;
 - that use would result in you exceeding your credit limit;
 - you are in default under this contract or any other contract with us;
 - your credit card has been reported lost or stolen or has expired; or
 - we believe in our sole discretion, that there is any other reason to do so.
- 2.3 Subject to conditions notified by us from time to time, we may at its discretion approve any request for an advance under your account whether that request is made in writing, by telephone or by any other means. Our payment to persons in accordance with your directions,

into a bank account in your name, by cheque in your favour or by way of cash advance to you or an additional cardholder will be an advance made under this contract.

- 2.4 Where we receive a telephone or other instruction from you (including instructions received through any Electronic Transaction Terminal) regarding your account, and that instruction appears to our reasonable satisfaction to have been made in accordance with authorities held by us, you irrevocably authorise us to act on such instructions and to the extent permitted by law, you indemnify us against all losses, claims and expenses that we may incur by reason of acting on that instruction. We may, without further authority from you, debit all such claims and expenses to your account whether or not your account may exceed its credit limit as a result. Interest may therefore be charged on such amounts, pursuant to clause 11.
- 2.5 Unless fraud or gross negligence occurs, you agree that an amount shown on a sales voucher or other transaction record is conclusive evidence of the price of the goods or services or the amount of the advance to which that voucher or transaction record relates.
- 2.6 You may be required to produce acceptable identification when using your credit card or your account.
- 2.7 You may not treat any promotional material displayed on any premises as a statement by us that you may use your credit card on those premises. We are not responsible for any decision by any merchant not to accept your credit card or any decision by any merchant to refuse to supply you with goods and/or services using your credit card or to impose limits or conditions on the use of your credit card. You must resolve those problems directly with the merchant.
- 2.8 We are not responsible and give no warranty for any goods or services which you obtain from a merchant using your credit card, except as required by law. You must resolve any complaints directly with the merchant.
- 2.9 Any refund to you by a merchant is matter for agreement between you and the merchant only. We are not responsible for any refund except as required by law.

3. Credit Limit

- 3.1 The credit limit on your account is the amount we determine to be the credit limit on your account from time to time.
- 3.2 You must keep the balance of your account within the credit limit at all times. If you exceed your credit limit, you must pay the excess amount to us immediately.

- 3.3 The credit limit on your account does not change simply because we debit an amount to your account that takes the balance of your account over the credit limit.

4. Credit Card

- 4.1 You request us to issue to you and any additional cardholder a credit card for your use in respect of this contract. However, we are not obliged to issue any credit card.
- 4.2 To protect your credit card you must:
- sign it as soon as you receive it;
 - carry it with you whenever you can;
 - regularly check that you still have your credit card; and
 - not give your credit card to anybody else, including your friends and family.
- 4.3 Your credit card will not be accepted unless it carries your signature and you must not use it if you have not signed it.
- 4.4 Each credit card belongs to us and is valid only until the earlier of the expiry date printed on it or the date it is cancelled by us. Your credit card may not be copied or reproduced in any way.
- 4.5 You must destroy any credit card that has expired or is no longer valid by cutting it in half.

5. PIN

- 5.1 We will allocate a PIN to you when a credit card is first issued. If the record of the PIN is lost or stolen, we may issue you with a new PIN and, if necessary, a replacement credit card.
- 5.2 Since anyone who has your credit card and PIN can conduct a transaction on your account, you must take special care to protect both of them.
- 5.3 To protect your PIN you must:
- try to memorise it;
 - destroy our advice to you of the PIN as soon as you have opened it;
 - not write it on your credit card even if the PIN is disguised;
 - not keep a record of it with or near your credit card;
 - not tell anyone your PIN, including friends, family, our staff or staff of any other financial institution;
 - make sure that no one watches you enter your PIN at Electronic Transaction Terminals.

- 5.4 To minimise the risk of unauthorised transactions occurring on your account, you must keep any record of your PIN, even if disguised, separate and well away from your credit card.

For example, you must not keep your credit card and PIN:

- in a wallet, bag or briefcase even if in different compartments;
- in your car, even if in different areas of your car;
- at work or at home in the same room; or
- in any other situation where your credit card and PIN can be found and used.

- 5.5 If you make a record of your PIN you must ensure the record is reasonably disguised. You have not made a reasonable attempt to disguise your PIN if you:

- record the PIN in reverse order;
- record the PIN as a series of numbers with any of them marked to indicate the PIN;
- record the PIN as a telephone number with the PIN in its correct sequence anywhere within the telephone number;
- record the PIN as a telephone number where no other telephone numbers are recorded; or
- disguise the PIN as a date or as an amount.

There may be other forms of disguise which may be similarly unsuitable because of the ease of another person working out your PIN.

6. Lost or Stolen Cards and PINs

- 6.1 You must advise us immediately if your credit card or PIN is lost or stolen or you suspect unauthorised transactions using your account have been made. This can be done by calling toll free on 0800 242 273.
- 6.2 If you cannot contact us by phone because our telephone number is not available you will not be responsible for unauthorised use of your credit card which could have been prevented if you were able to contact us. You must, however, notify us of the loss, theft, or misuse of your credit card within a reasonable time from the re-establishment of our telephone reporting facilities.
- 6.3 You must report to us all the information you have about the loss, theft or misuse of your credit card and/or PIN. We will give you some form of acknowledgement which you should retain as evidence of the date and time of your report. We may require you to confirm your report in writing.

7. Your liability for unauthorised transactions

- 7.1 Unless you have acted fraudulently or negligently, you will not be liable for any unauthorised transaction on your account that:
- is caused by the fraudulent actions or gross negligence of our staff or agents;
 - happens before you receive your credit card or PIN;
 - happens after you have notified us that your credit card has been misused, lost or stolen or that PIN security has been breached; or
 - is made with a credit card that is forged, faulty, expired or cancelled.
- 7.2 You will be liable for actual losses for all unauthorised transactions on your account caused by:
- unreasonably delaying notification to us of:
 - the misuse, loss or theft of your credit card; or
 - your PIN becoming known to someone else;
 - acting fraudulently or negligently; or
 - your failure to comply with these Conditions of Use including, without limitation clause 5,
- up to the higher of:
- the daily transaction limit applicable to your credit card; and
 - the credit limit available on your account.
- 7.3 Unless clause 7.1 or 7.2 applies, you will only be liable for any unauthorised transaction on your account that occurs before you advise us that your credit card is lost, stolen or your PIN may have been disclosed to someone else or any unauthorised transaction has been made, up to a maximum of \$50. Once you have notified us that your credit card has been lost or stolen or your PIN may have been disclosed to someone else, you will not be liable for any unauthorised use of your credit card after that time unless you have acted fraudulently or negligently.
- 7.4 Any reference in this clause to you acting fraudulently or negligently includes you acting fraudulently or negligently either alone or together with any other person.

8. Electronic transaction access

- 8.1 We will use all reasonable efforts to maintain electronic transaction access to your account at all times unless:
- an Electronic Transaction Terminal malfunctions or is unavailable for use as described in Condition 8.2;
 - your account is over the credit limit or considered out of order by us.

In any of these circumstances, electronic access to your account may be denied or withdrawn without prior notice to you.

- 8.2 We will be responsible to you for any direct and/or reasonably foreseeable loss which occurs because an Electronic Transaction Terminal accepts your instructions but fails to carry out the transaction requested (excluding any Electronic Transaction Terminal which is obviously faulty, or where it has been advised by message notice or display as being faulty). We will not be responsible in any way if an Electronic Transaction Terminal does not accept your instructions or your credit card or PIN fails to work in the terminal.
- 8.3 In addition to these Conditions of Use, the use of your credit card in any Electronic Transaction Terminal is subject to the conditions imposed from time to time by other financial institutions who are parties to any electronic funds transfer system. Access to any Electronic Transaction Terminal is at the relevant merchant or financial institution's sole discretion.
- 8.4 Minimum and maximum daily withdrawal limits apply to your credit card for cash withdrawals through Electronic Transaction Terminals. A maximum daily number of withdrawals may also apply. These details are available from us on request. We reserve the right to limit or change the maximum and minimum daily withdrawal limits and number of withdrawals available on your account.
- 8.5 Transactions at Electronic Transaction Terminals will ordinarily be processed to your account on the day that you make the transaction or the following bank business day.
- 8.6 When you complete a transaction through an Electronic Transaction Terminal you should receive a printed transaction record.

9. Statement of account

- 9.1 We will send you monthly statements of account (continuing disclosure statements). However, we need not send a statement of account if:
- there have not been any transactions on your account since your last statement (if any) and the unpaid balance is nil; or

- you are in breach of this contract and we have taken steps to enforce it.
- 9.2 Statements of account show, among other things, all amounts debited or credited to your account during the statement period.

10. Errors/Disputes and Resolutions

- 10.1 It is your sole responsibility to promptly check and verify:
- the statements of account sent to you by us even if you are away from the address to which we send the statements of your account; and
 - the sales vouchers or other transaction records provided to you by merchants, financial institutions, Electronic Transaction Terminals or any other source as records of transactions on your account, and to retain those statements of account, sales vouchers or other transaction records.
- 10.2 You should notify us without delay if there is an error in your account, on your statement of account or if unauthorised transactions have been made on your account. You should notify us by:
- calling toll-free on 0800 500 505. If you call us, we may ask you to confirm your concern in writing; and
 - writing to us at the address shown on your statement of account.
- 10.3 It is essential that you give us all the information you have to help us resolve your concern. If we are unable to resolve your concern immediately, we will inform you of our procedures for the investigation and resolution of your concern.
- 10.4 Within 21 days of receiving the details of your concern, we will write to you to inform you of our decision or how much longer our investigation will take. We should complete our investigation within 45 days but in exceptional cases we may need more time. If we do, we will inform you in writing.
- 10.5 When we complete the investigation we will write and notify you of the decision, the reasons for the decision and the sections of these Conditions of Use (where applicable) on which the decision is based.
- 10.6 If we find that your account was wrongly debited or credited we will correct this error including adjusting interest, fees and/or charges and notify you in writing.
- 10.7 If we decide that your account was not incorrectly debited or credited, or, in the case of unauthorised transactions you were responsible for at least part of the loss, we will give you a copy of the documents on which our decision is based.

11. Interest

- 11.1 The current interest rate for the balance of your account is shown on each of your monthly statements. One or more interest rate(s) may apply to advances made under this contract.
- 11.2 Each interest rate is divided by 365 days to calculate a daily interest rate.
- 11.3 We may grant an interest-free start-up period for any advance made using your credit card at our sole discretion.
- 11.4 A cash advance incurs interest from the day it is made until the date the cash advance is repaid in full from and including the date of the advance. Interest on a cash advance is payable at the rate applying to cash advances from time to time.
- 11.5 Interest charges are calculated on a daily basis by applying the applicable daily interest rate to the relevant portion of the daily balance of your account at the end of each day. When calculating interest charges, we will deduct from the daily balance any outstanding amount relating to an interest-free start-up advance if that advance's interest-free start-up period has not expired so that interest is not charged on any amount which is subject to an unexpired interest-free start-up period.
- 11.6 Interest charges will be debited to your account monthly on the date of each statement of account.
- 11.7 Any interest charges debited to your account will form part of the balance on which interest charges are calculated.
- 11.8 Interest is not payable by us on any credit balance on your account.

12. Fees and Charges

- 12.1 The fees and charges that you must pay under this contract are set out in the disclosure statement.
- 12.2 You agree to pay all the fees set out in the disclosure statement and any other fees and/or charges determined by us and you authorise us to debit the fees and charges that you must pay under this contract to your account. Any fees and charges debited to your account will form part of the balance on which interest charges may be calculated.
- 12.3 Subject to clause 18, 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 under this contract at any time.

13. Payments

Payment Generally

- 13.1 You must pay all the following amounts to us:
- advances charged to your account; and
 - other amounts charged under this contract including interest charges, fees and charges and enforcement expenses.
- You authorise us to debit these amounts to your account. Once an advance has been made under your account it cannot be stopped in the same way as a cheque.
- 13.2 You may make payments by the methods set out in your statements. All payments are to be made in New Zealand dollars and must be accompanied by details identifying your account.
- 13.3 We will not treat a payment as made until it is actually credited to your account. All payments will be provisionally credited to your account for a clearing period of eight working days. During this clearing period, you may not be able to access any credit established by a payment to your account. However, once any amount provisionally credited to your account has been cleared, the amount of that payment will be credited to your account as at the date we received it.
- 13.4 We may choose to waive immediate payment of any amount due under this contract. Failure by us to insist upon immediate payment of an amount due hereunder or to take any action shall not act as a waiver or prejudice our powers in respect of any remaining or future instalment.
- 13.5 You must not send cash to us in the mail.

Minimum Monthly Payment

- 13.6 You must pay us at least the amount shown as the minimum monthly payment due in each statement of account. The minimum monthly payment is:
- any payment due under a CreditLine Select advance, and either;
 - \$20 or 3% of the closing balance (excluding any CreditLine Select advance or unexpired deferred payment advance), whichever is the greater, together with any amount shown as overdue; and
 - any establishment fee in relation to a CreditLine Select advance; or
- 13.7 You must make the minimum monthly payment by the due date shown on the statement of account. The due date is 21 days after the date of the statement of

account except for any amount shown as overdue which is payable immediately.

- 13.8 If you wish, you may pay more than the minimum monthly payment due.
- 13.9 If the balance of your account exceeds the credit limit, you must immediately make a payment to bring the balance within your credit limit.
- 13.10 You are obliged to pay the minimum payment each month even if you do not receive the statement of account sent to you by us. Account details are available from us.

14. Application of Payments

- 14.1 Generally, payments received by us will be applied against your account in the following order (although we may apply a payment in any order without notification to you):
 - (a) enforcement expenses;
 - (b) any payment due in the current or a previous statement period under a CreditLine Select advance;
 - (c) other fees, charges and any insurance premiums;
 - (d) interest;
 - (e) any other amount due from a previous statement period;
 - (f) any other amount due in the current statement period; and
 - (g) any amounts not yet due for payment.
- 14.2 Payments under clauses 14.1 (e) and (f) will be applied to low interest start-up advances, cash advances, purchases, expired deferred payment advances, expired interest free start-up advances, expired low interest start-up advances, and unexpired interest free start-up advances.
- 14.3 Payments under clause 14.1 (g) will be applied to cash advances, purchases, expired deferred payment advances, expired interest free start-up advances, expired low interest start-up advances, CreditLine Select advances, unexpired low interest start-up advances, unexpired interest free start-up advances, and unexpired deferred payment advances.

15. To End This Contract

- 15.1 You can cancel this contract at any time by:
 - advising us in writing; and
 - paying us all amounts you owe under this contract including any amounts accrued or charged but not yet debited to your account.
- 15.2 If you cancel this contract pursuant to clause 15.1 or if we cancel this contract pursuant to clause 16.1 you must destroy all credit cards by cutting it (them) in half.

- 15.3 If amounts are charged to your account after you have told us that you want to cancel this contract, we can refuse to pay the amounts, or pay them and recover the amounts from you. In either case, we can tell any merchant that this contract and/or your credit card (and any additional credit card) has been cancelled.
- 15.4 All amounts you owe under this contract including any amounts accrued or charged but not yet debited to your account become immediately due and payable in the event of your death or if you become bankrupt or insolvent.

16. We may Cancel Your Credit Card and Refuse to Provide Further Credit

- 16.1 We may at any time cancel your credit card and refuse to provide any further credit to you under this contract, whether or not you are in default under this contract.
- 16.2 If we cancel your credit card, you must not attempt to access or draw down credit from your account, and you must destroy your credit card and any additional credit card by cutting it (them) in half.
- 16.3 If we cancel your credit card, the rest of this contract continues to operate. We will still charge you interest, fees and charges and you must still make payments to us.

17. Default and Enforcement

- 17.1 You are in default under this contract if:
- you do not pay any amount payable under this contract in full on or before its due date; or
 - any cheque, bank order or other instrument given by you in payment of any amount payable under this contract is dishonoured; or
 - you do not comply with any other condition of this contract or any other contract with us; or
 - an additional cardholder does not comply with the terms of this contract.
- 17.2 If you are in default under condition 17.1 we may require:
- all moneys then outstanding under your account to become at once due and payable by you; and/or
 - you to destroy your credit card and any additional credit card by cutting it (them) in half.
- 17.3 Enforcement expenses may become payable under this contract in the event of a breach. You must pay all reasonable collection costs and enforcement expenses (including court costs and costs on a solicitor client basis

and all costs of administration) that we incur arising from any default by you. We may debit these amounts to your account.

- 17.4 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.

18. Variations to your Credit Contract

We may vary this contract (including but not limited to the annual interest rate) at any time as follows:

- if the variation is agreed between you and us, full particulars of the variation will be provided to you before the change takes effect.
- However, if any such variation reduces your obligations (other than as a result of a hardship application under section 55 of the CCCFA); changes your credit limit, changes the interest rate or the way in which interest is calculated or applied; or changes the amount, frequency, time for payment or method of calculation of any payment, fee or charge payable under your credit contract, we shall notify you within 5 working days after such variation takes effect, or in your next monthly statement.
- any other variation will take effect not less than 14 working days after the date of notice.

Notice of any variation will be given by:

- putting a notice on or with your statement of account; and/ or
- posting a notice to your last known address; and/or
- sending you a notice by email; and/or
- press advertisement.

19. Additional Cardholder

- 19.1 If you want to cancel the authority of an additional cardholder to operate on your account, you must advise us in writing and destroy the additional credit card by cutting it (them) in half. You will remain liable for all advances obtained by the additional cardholder.
- 19.2 You authorise us to give any additional cardholder information about your account and this contract.

20. Personal Information

- 20.1 You agree that the personal information acknowledgement signed by you when you applied for your Gem CreditLine account applies to any information you provide to us in connection with your account, including the information you provided at the time of application.
- 20.2 You agree that we may disclose information about your account to any organisation which is involved in authorising or facilitating use of your credit card or facilitating any credit limit increase on your account.
- 20.3 You authorise us to disclose your personal information to any of our related entities and for those entities to disclose your personal information among them for any of the purposes permitted under the Privacy Act and/or this contract including without limitation, for account management and marketing purposes.
- 20.4 Your personal information is held by us subject to the Privacy Act. The Privacy Act gives you the right to see and correct your information.
- 20.5 You agree that we may utilise any credit reporters' monitoring services to receive updates if the information held about you changes. You acknowledge that we will give your personal information (including without limitation, repayment history information, details relating to your account, and payment default information) to credit reporters for these purposes 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 relating to you information about your credit worthiness and credit history.
- 20.6 You authorise us when we open and review your account, and offer you products and services or credit limit increases to make all credit rating and other inquiries that we deem, in our sole discretion, to be appropriate.
- 20.7 You agree that where your account application was completed at a Merchant premises, all information held about you at any time may be disclosed and exchanged with the Merchant for the purpose of marketing its products and services, and to enable the Merchant to monitor and maintain its introducer facility with us.
- 20.8 If you are in default under this contract or any other agreement you have with us you agree that your personal information may be provided to, and for the use of, credit rating and debt collection agencies.

21 General Conditions

- 21.1 You acknowledge that commissions may have been or may become payable by us to other persons including any supplier of goods or services purchased by you from the proceeds of any advance under this contract.
- 21.2 You must notify us as soon as possible if you change or intend to change your name or address. We may give any correspondence, notice or other document to you by personal delivery or be sending it to your last mailing address appearing in our records, or by any other method permitted by law.
- 21.3 This contract is governed by New Zealand law.
- 21.4 If there are two or more of you, then your obligations under this contract apply to each of you jointly and severally and notice to one of you shall be deemed to be notice to all (subject to the provisions of any applicable legislation).
- 21.5 You cannot assign your account or this contract. We may assign, transfer or novate to any person or otherwise deal in any manner with, any of our rights obligations or interests under this contract, and you authorise us to disclose to any such assignee, transferee or party to a novation all information it holds about you or your account including your personal information for all and any of the purposes set out in clause 20.
- 21.6 Where you use credit provided under this contract primarily for business or investment purposes (or both) this contract will not be a consumer credit contract for the purposes of the CCCFA. Accordingly, you acknowledge that, in these circumstances, you do not have any of the rights of a debtor under a consumer credit contract under that Act. Nothing in this credit contract which refers to or incorporates provisions of the CCCFA (including but not limited to the Statement of Right to Cancel in the disclosure statement) is intended to imply that any debtor has rights which it would not otherwise have under that Act.

**To report lost or stolen cards please telephone
0800 242 273**

**For information on your Gem CreditLine account contact
0800 500 505**

Please visit us at gemfinance.co.nz

Name of Creditor:

Latitude Financial Services Limited,
PO Box 4058, Shortland Street, Auckland 1140