



MORTGAGE

MEMORANDUM OF MORTGAGE

2024/4369

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What does the shading mean?

You'll notice shaded boxes (like this one) throughout this **memorandum of mortgage**. These boxes contain particularly important information or terms that we want to bring to your attention.

This mortgage

Some key things you need to know about this mortgage

- **This mortgage** is a type of security agreement. Under **this mortgage**, you grant us security over your **secured property**. Your secured property includes your property and certain other rights and interests in relation to your **property**. As the person who grants **this mortgage**, you are the "Mortgagor". We are the "Mortgagee".
- **This mortgage** is security for payment of the **secured money**. The **secured money** includes all money you owe us, now or in the future, under any **agreement** you have with us. This means that, unless we discharge it, the **security** you grant us under **this mortgage** is for any money you've borrowed from us, any money you've guaranteed to us, and any other money you agree to pay us (unless we expressly agree something different with you).
- Granting us security means that we have rights in your **secured property**. If we're not paid the **secured money**, this is a **default** and we can enforce **this mortgage** to recover it.
- **This mortgage** also sets out further obligations that you must comply with until we discharge it. For example, you must take good care of your **property**, keep it insured and pay your rates. If you don't comply with your obligations under **this mortgage**, this could also cause a **default**, which would also give us enforcement rights.
- If we enforce **this mortgage**, we'll have various powers to deal with your **secured property**. For example, we can sell your **property** to recover the **secured money** (even if it's your home).
- **This mortgage** remains in place until we discharge it, even if there's no longer any **secured money** owing. In some circumstances, we can still rely on **this mortgage** even if we've discharged it.
- You are bound by the terms of **this mortgage** as soon as you sign an **authority and instruction form** to register **this mortgage**.

This is an important document that sets out the terms that apply to **this mortgage**. Please read everything carefully. If you have any questions about anything in this document, or if anything about **this mortgage** isn't clear to you, please contact your solicitor.

In this **memorandum of mortgage**, when we talk about:

- "we", "us", and "our", we mean Kiwibank Limited and anyone who we assign or transfer our rights or obligations to. "We", "us" and "our" can also refer to any receiver or attorney, if that makes sense in context; and
- "you" and "your", we mean each person named as "Mortgagor" in **this mortgage** (as set out in your **authority and instruction form** and your **mortgage instrument**). If more than one of you is named as "Mortgagor", then your obligations are "joint and several". This means:
 - » each of you is responsible for meeting all the obligations under **this mortgage**; and
 - » if you breach **this mortgage**, we can choose to exercise our rights against any one or any number of you.

You'll also notice that some words are in bold. These have particular meanings, which we've outlined in section 17.

Mortgage terms and conditions

1. This mortgage

1.1 What is this mortgage made up of?

When we talk about **this mortgage**, we mean the agreement you enter into with us granting us a mortgage over your **property**, as well as a security interest over all your other **secured property**.

This mortgage is made up of:

- (a) the **mortgage instrument**;
- (b) the **authority and instruction form**; and
- (c) this **memorandum of mortgage**.

The **mortgage instrument** specifies key details of your mortgage (including the Mortgagor, the Mortgagee and the fact that it incorporates the terms and conditions contained in this **memorandum of mortgage**).

By signing an **authority and instruction form**, you authorise a solicitor or conveyancing practitioner to register **this mortgage** against the **title** to your **property** — they do this by submitting the **mortgage instrument** electronically.

In addition, our **general terms and conditions** govern our relationship with you. If there are any inconsistencies between **this mortgage** and our **general terms and conditions**, **this mortgage** has priority.

1.2 Our commitment to act reasonably

We'll act reasonably when we do anything under **this mortgage**, taking into account both your and our interests at the time. For example, we'll act reasonably when:

- (a) considering any request;
- (b) deciding whether to exercise any right we have (including whether we ask you to do something); and
- (c) exercising that right (including how we exercise that right and what we'll ask you to do).

You'll find more information about what we mean by acting reasonably in our **general terms and conditions**.

2. Security

2.1 You grant us security over your secured property

To secure payment of the **secured money**, you grant us the following **security**:

- (a) a mortgage over your **property**; and
- (b) a security interest in:
 - all your rights, licences, documents, and consents in relation to your **property**;
 - all your rights to receive any payments arising from your interest in your **property** or any of the other types of **secured property** described above. This includes:
 - » payments under any **lease** or licence in relation to your **property**; and
 - » any proceeds from the sale of trees, crops or produce on your **property**, or under any forestry right or profit à prendre.

The security interest you grant in this paragraph (b) takes effect as a fixed charge.

This mortgage secures the **secured money**. This is widely defined to cover all money you owe us at any time, for any reason (unless we expressly agree something different with you). For example, the **secured money** includes:

- (a) all money you owe us under any **agreement** (which includes **this mortgage**, any loan agreement, guarantee, indemnity or other **security**);
- (b) all principal, interest and fees you owe us;
- (c) any **costs** that you must pay us (for example, any legal costs we incur in relation to enforcing or protecting our rights under **this mortgage**);
- (d) all debit balances of any accounts you have with us (whether you authorised them or not) including any charges incurred on those accounts;
- (e) any money we pay, lend or owe others on your behalf or at your request;
- (f) any money that we're required to pay to a third party as a result of any transaction or account you have with us;
- (g) any amount we pay because you haven't paid it (such as rates and insurance premiums); and
- (h) any amount a court awards us in any judgment against you.

This type of mortgage is called an "all obligations" mortgage.

2.2 Obligation to pay

You must pay us the **secured money**:

- (a) as soon as you're required to under the terms of any **agreement**; or
- (b) otherwise, promptly after we ask you to.

2.3 This mortgage is a continuing security

This mortgage will remain in full force and continue to be **security** for the **secured money** until we discharge it, even if any of your accounts with us are in credit at any time.

2.4 Discharging this mortgage

We may discharge **this mortgage** (or part of the **secured property** from **this mortgage**) if you ask us to or at our own option. We'll generally only discharge **this mortgage** if:

- (a) we've been paid all of the **secured money**;
- (b) we don't have any further obligations to provide any more finance to you (or to anyone else whose obligations you've guaranteed);
- (c) no payment of **secured money** made or to be made to us may be avoided or recovered from us; and
- (d) you've complied with any reasonable requests we've made to enable us to finalise any outstanding matters relating to **this mortgage** and to discharge **this mortgage**.

2.5 What if we hold other security?

- (a) **This mortgage** is in addition to any other **security** we hold. This means that **this mortgage** doesn't affect, replace or merge with any other **security**. Neither will any other **security** affect, replace or merge with **this mortgage**.
- (b) We're not required to exercise our rights under **this mortgage** or any other **security** or guarantee in any particular order.

2.6 We don't have to use our rights immediately

This mortgage gives us several rights (including to take certain actions). However, we don't have to use those rights, or take those actions, either immediately or at all. Unless we've agreed in writing that we won't, we can still use those rights or take those actions later.

3. Priority amount

A priority amount under the **PLA** is the maximum amount that we can recover against your **secured property** before any other person with subsequent **security** over your **property** can receive payment. A priority amount doesn't limit the **secured money** or how much you owe us.

For the purposes of section 92 of the **PLA**, our priority amount is the amount stated in the **mortgage instrument**, plus interest. If the **mortgage instrument** doesn't state a priority amount, then our priority amount is \$100,000,000 plus interest.

4. Your obligations

Because we rely on your **property** as **security** for the money you owe us, we need you to take good care of it. You also can't do anything that would make your **secured property** materially less valuable or that would make it more difficult for us to enforce **this mortgage** or recover the **secured money**.

This section sets out things you must (and must not) do to help us protect our security interest and the value of your **secured property**. All of these obligations apply until we discharge **this mortgage**. We can agree that any of these obligations don't apply by providing our prior written consent.

If you're unsure about anything you can or can't do without our consent, or if you think you're unable to comply with any of these obligations, please contact us.

4.1 Your obligations in relation to your secured property

- (a) You must keep your **property** in a good condition, including repairing and maintaining it (but fair wear and tear is permitted). You must make sure that anyone else with access to your **property** does the same.
- (b) You must pay all proceeds from dealing with or disposing of your **secured property** into an account with us.
- (c) You must let us access and inspect your **property**, if we give you reasonable notice. You must also make sure anyone else who has possession of your **property** lets us access and inspect it.
- (d) You must obtain a valuation of your **secured property**, if and when we ask you to. This valuation must be completed by a registered valuer approved by us. You are responsible for paying for this valuation.
- (e) You must not do anything, or allow any other person to do anything, that would make any part of your **secured property** less valuable, to the extent that would be likely to **materially increase our risk**.

4.2 Restrictions on how you deal with your secured property

You must not do any of the things in this section without first getting our written permission.

- (a) You must not sell, give away, transfer or otherwise dispose of your **secured property** or any interest in it.
- (b) You must not lease, rent out, hire out or otherwise give up possession of your **property**.

It's important that you don't lease or rent out your **property** without first getting our permission.

You don't need to get separate permission if we've lent you the **secured money** for the express purpose of financing an investment property, or if you're granting **this mortgage** over an investment property as a condition of finance.

But, if your **property** isn't an investment property, or leased or tenanted at the time you grant **this mortgage** to us, and you later decide you want to lease or rent it out, you'll need to get written permission from us before you do so.

- (c) You must not grant or permit any mortgage or other **security** over your **secured property** to anyone else.
- (d) You must not consent to any resource consent application in relation to your **property**.
- (e) You must not allow or create any new easement, right or other interest over your **property**.

4.3 You must protect our interest as mortgagee

- (a) You must tell any third parties about our interest as mortgagee in your **secured property** if we ask you to.
- (b) You must not do anything, or allow any other person to do anything, that would:
 - » make it more difficult for us to enforce **this mortgage**; or
 - » materially affect our chances of recovering the **secured money**, if we were to enforce **this mortgage**.
- (c) You must make sure that no other party has any interest or rights to your **secured property** that would be likely to **materially increase our risk**.

4.4 Your obligations in relation to other things that are binding on you

- (a) You must do each of the following things, if not doing so would be likely to **materially increase our risk**:
- » comply with all laws, court or authority decisions, notices and agreements in relation to your **secured property**;
 - » comply with your **constitutional documents**;
 - » obtain and comply with building consents that are necessary to complete any works to your **property**;
 - » obtain, comply with and maintain all resource consents that are necessary for the current use of your **property**;
 - » comply with and maintain all other consents in relation to your **property**;
 - » not terminate any agreement that's binding on you in relation to your **secured property**; and
 - » pay all charges and other outgoings in relation to your **property** on time.
- (b) You must pay your rates on time. If you fail to pay your rates, we can pay them. If this happens, these costs will form part of the **secured money**.
- (c) You must pay all your taxes on time. The only exception to this is if you reasonably disagree that you owe the tax and you're discussing this with the IRD. If you rely on this exception, you'll need to set aside enough money to pay the tax if you're wrong.

4.5 What you must do if you are carrying out a business from your property

- (a) You must make sure that any business carried out at your **property** complies with all laws, court or authority decisions and notices relating to the business, if not complying would be likely to **materially increase our risk**.
- (b) You must make sure that any business carried out at your **property** carries (and complies with) insurance in relation to the type of risks and to the extent that's usual for that type of business.

4.6 What you must do in relation to this mortgage

- (a) You must only use any money we've lent you for the purpose we lent it to you.
- (b) You must allow us to exercise our rights under **this mortgage**.
- (c) You must comply with all conditions and requirements of **this mortgage** and any other **agreement** with us.
- (d) You must comply with the covenants and conditions of any other mortgage or encumbrance that's registered on the **title** to your **property**. Keep in mind that you must not agree to any mortgage or encumbrance registered after **this mortgage** without our consent.

4.7 You must keep us informed

- (a) You must provide any information we ask you to provide about:
- » you or your financial position;
 - » your **secured property**; or
 - » your body corporate, if your **property** is a unit title under the Unit Titles Act 1972 or the Unit Titles Act 2010.
- (b) You must provide this information to us when we ask you to.
- » You must tell us (and provide details) if:
 - » your details change (such as your name or address);
 - » anything happens that makes your **property** materially less valuable;
 - » any **default** (or any event that would become a **default** if any applicable grace period were to end) happens or is likely to happen;
 - » any person breaches any agreement that's binding on you and that fact is likely to **materially increase our risk**;
 - » anyone starts or threatens any litigation or proceedings against you in relation to your **secured property** that, if decided against you, would be likely to **materially increase our risk**;
 - » any environmental or building liabilities occur in relation to your **property**;
 - » anything happens that risks the priority of our interest as mortgagee; or
 - » anything else happens, or is likely to happen, in relation to you or your **secured property** that's likely to **materially increase our risk**.

You must tell us these things as soon as you practically can and without us asking you first.

5. Insurance

Your insurance is an important aspect of our security interest and so we rely on you to properly insure your **buildings**.

5.1 Your insurance obligations

- (a) You must insure your **buildings** on the terms set out below. You must keep that insurance in place on these terms until we discharge **this mortgage**.
- (b) Your insurance must:
 - » be with an insurance company who is acceptable to us. If we've not told you who we think is acceptable, it must be with an insurance company with a credit rating that's at least equal to Standard & Poor's rating of A-;
 - » provide cover for the full replacement value of your **buildings** (unless we agree otherwise in writing); and
 - » provide cover against all risks that are normally covered in a comprehensive policy (including loss or damage by fire, theft, flood and natural disasters) and any other risk that we ask you to cover.
- (c) You must:
 - » take out further insurance over your **buildings** if we ask you to;
 - » make sure that our interest as mortgagee is noted on your insurance policy. This means that we can ask the insurance company to pay any claim directly to us;
 - » give us a copy of your certificate of insurance, the insurance policy and any notice amending your policy if we ask for it;
 - » pay all your insurance premiums and any other **costs** required to maintain the insurance policy (including valuation fees);
 - » not do anything that's likely to invalidate your insurance policy;
 - » tell us promptly if your insurance policy is cancelled, lapses or is varied; and
 - » comply with any other requirements relating to insurance as we may ask you to.

5.2 Making insurance claims

You must:

- (a) tell us promptly about any material insurance claim you're entitled to make and give us details about that claim;
- (b) make all material insurance claims that you're entitled to make under your policy. You must do this promptly after the event giving rise to the claim;
- (c) make sure that the proceeds of any insurance claim are paid into an account with us (if you have one), or any other account we ask you to. You must hold any money you receive from an insurance claim on trust for us; and

- (d) if we ask you, use the proceeds of your insurance claim to repay the **secured money**. Otherwise, you must use the proceeds of your insurance claim to repair or replace the damaged or destroyed **buildings**.

5.3 We can also act on your insurance

- (a) If you fail to insure your **buildings** on terms that are acceptable to us, we've the right to take out insurance to protect our interest in the **buildings** (or to pay any missed payments). You must pay the cost of any insurance we pay for in relation to the **buildings**.
- (b) We may make, settle or take any proceedings in relation to any claim under any insurance obtained in relation to the **buildings**.

6. Unit titles

If your **property** is a unit title, you must:

- (a) comply with the requirements of the Unit Titles Act 1972 or the Unit Titles Act 2010 (as applicable), if not doing so would be likely to **materially increase our risk**;
- (b) pay all body corporate levies in full and on time;
- (c) obtain and follow our instructions on how to vote when a resolution requires at least 75% consent from eligible voters or will change the body corporate rules;
- (d) take all reasonable steps to make sure the body corporate's property (including all buildings, improvements and material fittings and fixtures) are insured by the body corporate for its full insurable value (unless we agree to something different in writing); and
- (e) make sure that our interest as mortgagee is noted by the body corporate and by each insurer.

7. Leases

7.1 Your additional obligations if you are the tenant

If your **property** is or includes a **lease**, and you are the **tenant**, you must:

- (a) pay all rent in full and on time;
- (b) comply with the **lease** and take all reasonable steps to make sure any other party complies with the **lease**, if not complying (in either case) would be likely to **materially increase our risk**;
- (c) not change or agree to change the **lease** unless that change is minor or administrative or is unlikely to **materially increase our risk**;
- (d) do everything in your control to make sure that the **lease** is renewed or extended;
- (e) give us a copy of the **lease** if we ask for it;
- (f) give us a copy of all notices you receive or issue under the **PLA** in relation to the **lease**, or for any arbitration proceedings or expert determinations relating to the **lease**;
- (g) immediately let us know if the **lease** is terminated or expires; and
- (h) promptly register the **lease** under the Land Transfer Act 2017 if it hasn't been registered and it's required to be under the **lease**.

7.2 Your additional obligations if you are the landlord

If your **property** is or includes a **lease**, and you are the **landlord**, you must:

- (a) enforce the **tenant's** obligations and your rights under the **lease** on time, if not doing so would be likely to **materially increase our risk**;
- (b) give us a copy of the **lease**, if we ask for it;
- (c) give us a copy of all notices you receive or issue under the **PLA**, or for any arbitration proceedings, or expert determinations relating to the **lease**;
- (d) comply with our written directions as to the conduct of any arbitration proceedings or expert determinations;
- (e) promptly register the **lease** under the Land Transfer Act 2017 if it hasn't been registered and it is required to be under the **lease**; and
- (f) make sure that any re-registration of the **lease** is noted as being in renewal or substitution of the previous **lease** (if the **lease** is registered) and that our interest as mortgagee is retained in accordance with the Land Transfer Act 2017.

7.3 Freehold interest

If you acquire a freehold interest in your **property**, you must make sure that we have a valid first ranking registered mortgage of the freehold interest.

8. Licensed premises

If your **property** includes any licensed premises (as defined in the Sale and Supply of Alcohol Act 2012), you must make sure that at all times:

- (a) the provisions of the Sale and Supply of Alcohol Act 2012 are complied with in connection with your **property**, if not doing so would be likely to **materially increase our risk**;
- (b) each licence necessary for the conduct of the business carried on at the licensed premises is complied with (if not doing so would be likely to **materially increase our risk**), maintained and renewed, and each additional, temporary or replacement licence is obtained when required; and
- (c) the business carried on at the licensed premises is conducted in a proper, lawful and orderly manner if not doing so would be likely to **materially increase our risk**.

9. Farm land

9.1 Prudent practice

If your **property** is, or is likely to be, used for farming, horticulture, agricultural, forestry or a similar use, you must manage your **property** in accordance with prudent farm, horticulture, agricultural and/or forestry management practice.

9.2 Change in type of activity

You must not make any material change in the type of activity carried out on your **property** without first getting our written consent. For example, you must not:

- (a) enter your **property** into the New Zealand Emissions Trading Scheme (established under the Climate Change Response Act 2002);
- (b) enter your **property** into the Permanent Forest Sink Initiative (under Part 3B of the Forests Act 1949); or
- (c) do anything that may result in you accruing any rights or liabilities under any environmental credit scheme (such as, for example, a scheme involving carbon sequestration, biodiversity enhancement, or nitrogen trading).

10. Trustee liability

This section applies if you grant **this mortgage** as a trustee of a trust.

10.1 Your representations as a trustee

You confirm to us that the person(s) named in **this mortgage** (as set out in your **authority and instruction form** and the **mortgage instrument**) as the trustees of the trust are (and will be at all times) all of the trustees of that trust.

10.2 Liability of a trustee

- (a) Your obligations under **this mortgage** are personal and not limited to what you can pay from the trust assets, unless you're a **limited liability trustee**.
- (b) If you're a **limited liability trustee**, your obligations under **this mortgage** are limited to what you can pay from the trust assets.

10.3 Ceasing to be a trustee

- (a) If you cease to be a trustee of the trust, you'll remain liable to us under **this mortgage** and each other **agreement** until we give you a written release.
- (b) We'll generally only release you from your liabilities under **this mortgage** and each other **agreement** if we're satisfied that:
 - » the trust assets have vested in all the new and remaining trustees; and
 - » all the new and remaining trustees are liable under **this mortgage** (or any new mortgage which replaces **this mortgage**) and each other relevant **agreement**.

10.4 You must preserve your right of indemnity

You must not do anything that would risk your ability to be indemnified out of the assets of the trust.

11. Other amounts you may have to pay

- (a) You're responsible for meeting all your **costs** that need to be paid in relation to **this mortgage**.
- (b) You're also responsible for the **costs** that we incur in relation to preparing, signing, registering, changing, replacing, discharging or releasing **this mortgage** or waiving any term of **this mortgage**.
- (c) You must also pay for all **costs** that we incur and losses we suffer, in relation to:
 - » any **default** by you;
 - » exercising, enforcing, protecting or clarifying our rights under **this mortgage**;
 - » converting money from one currency to another for the purposes of making payments in relation to **this mortgage**;
 - » you not doing anything that you're contractually or legally required to do, and us doing that thing instead;
 - » us being required to pay an amount to a third party as a result of any transaction or account you have with us;
 - » appointing a receiver; and
 - » any investigations, claims or proceedings in relation to you or **this mortgage** by us or any investigator or against us by any third party.
- (d) If we ask you to pay for any of these **costs** or losses, you must pay them within three **business days** after we ask you to.
- (e) For the purposes of this section, "we", "us" and "our" also includes any receiver or attorney. This means you must also pay equivalent **costs** that any receiver or attorney incurs.
- (f) We won't ever ask you to pay for **costs** or losses that arise from our (or any of our officers', employees', agents', or receivers') fraud, negligence, mistake or intentional misconduct.
- (g) This section continues to apply after we discharge **this mortgage**.

12. Defaults

A **default** occurs when any of the events set out in section 12.1 below happens (which includes when an event of default happens under any other **agreement**).

If a **default** occurs, **this mortgage** becomes immediately enforceable and we can do any of the things set out in section 12.2 below. This includes taking possession of your **property** and selling it or appointing a receiver.

These enforcement rights are in addition to all the powers we have under law. We may also have other specific enforcement rights under other **agreements** (like any **security** you've granted over any personal property).

If anything happens that results, or could result, in a **default**, you must tell us as soon as you practically can after you become aware of it — don't wait for us to ask you first.

12.1 What is a default?

A **default** occurs under **this mortgage** immediately and without notice if:

- (a) you don't pay an amount when it's due under **this mortgage** or any other **agreement** (unless it was a scheduled amount that wasn't paid because of an administrative or technical error and it's paid within two **business days** of its due date);
- (b) an **insolvency event** occurs;
- (c) you breach any term of **this mortgage** or any **agreement** (other than a breach that's also a default under (a) or (b) above), and you don't correct that breach within 15 **business days** of becoming aware of it (or such other period we tell you to correct it in); or
- (d) an event of default occurs under any other **agreement**.

12.2 What happens if a default occurs?

If a **default** occurs, we can do any or all of the following:

- (a) declare the **secured money** immediately due and payable. This means that you must immediately pay us all the **secured money** (or any part of it) if we ask you to;
- (b) sell, purchase, divide, dispose of, manage or otherwise deal with your **secured property**;
- (c) make any arrangements regarding tenancies relating to your **property**;
- (d) exercise any other rights that you have in relation to your **secured property** (as long as we follow any procedures we're required to follow by law);

- (e) do anything else a mortgagee is permitted by law to do; and/or
- (f) appoint a receiver. The next section contains more information about receivers.

We can do any of the above things whether or not we have taken possession of your **secured property**. We'll always give you notice before we do any of these things, if we're required to by law.

13. Receivers

13.1 When can we appoint a receiver?

- (a) We can appoint a receiver (or receivers) over all or any part of your **secured property** and/or income from your **secured property** if:
 - » a **default** has occurred; or
 - » you request us to do so.
- (b) If we appoint a receiver, the appointment will be in addition to any other rights we have.
- (c) If we appoint a receiver, we'll do so in writing on our terms.

13.2 A receiver is your agent

A receiver acts as your agent. This means you are responsible for the receiver's actions.

13.3 Rights of a receiver

A receiver can:

- (a) do any of the things we can do under **this mortgage**, including under section 12.2 above;
- (b) employ advisors to help manage your **secured property**;
- (c) do all the things it has the power to do under law (including under the Receiverships Act 1993); and
- (d) do all the things an owner of your **secured property** can do.

13.4 How a receiver gets paid

If we appoint a receiver, we'll agree with them how much they'll get paid. You're responsible for paying these **costs** (and as a result, these **costs** will form part of the **secured money**).

13.5 Our right to remove or replace a receiver

We can remove or replace a receiver at any time.

14. Our protections

- (a) Unless a law expressly requires something different (and it's not possible to agree to exclude that law), we and any receiver or attorney are not:
 - » required to enforce payment of any **secured money**;
 - » responsible for any loss or damage resulting from exercising our rights under **this mortgage**;
 - » a mortgagee in possession (for the purposes of subpart 6 of part 3 of the **PLA**) of any **secured property** as a result of appointing a receiver to **secured property**;
 - » liable in relation to your **secured property**; or
 - » required to take on any of your obligations in relation to your **secured property** (however, we can discharge or comply with any obligation if we choose to, and you're responsible for any **costs** we incur in doing so).
- (b) We and any receiver or attorney are only accountable to you in relation to proceeds from enforcing **this mortgage** if we actually receive those proceeds.
- (c) Nothing in this section excludes us, any receiver or attorney from liability if we (or any of our, any receiver's or any attorney's officers, employees or agents) acted negligently or fraudulently.

15. Relationship of this mortgage with other laws

15.1 We have rights under other laws

The rights we, any receiver, or any attorney have under **this mortgage** are in addition to, and not instead of, any other rights we have under any other agreement or at law.

15.2 What if this mortgage seems to conflict with other laws?

If any term of **this mortgage** conflicts with any law (including any term implied by law), then **this mortgage** will take priority over that law, if that law allows.

This means that:

- (a) that law won't apply; or
- (b) that law will only apply to the extent it's varied by the terms of **this mortgage**; or
- (c) if it's not possible to vary or contract out of that law, then that term will be subject to that law.

15.3 PLA provisions

- (a) You agree that the following clauses of part 1 of schedule 2 to the **PLA** do not apply:
- » clause 3(2) — this means that if we use any insurance proceeds in relation to your **property** to pay the **secured money**, your right to pay the rest of the **secured money** isn't governed by the **PLA** (it'll instead be governed by the relevant **agreement** under which you owe us that **secured money**);
 - » clause 8(2) — this means that you must still comply with the insurance undertakings set out in **this mortgage** even if you comply with the insurance undertakings set out in any prior ranking mortgage or encumbrance;
 - » clause 16(1)(d) — this means that we can withhold consent to you making any material change in the type of farming you do on your **property**, for any reason; and
 - » clause 18 — this means that even if you pay all the **secured money** and perform all your obligations under **this mortgage**, we're not required under the **PLA** to return any mortgage instrument to you, give you a discharge in accordance with section 83 of the **PLA** or give back to you any certificates, instruments of title or other documents we hold (your rights following repayment of the **secured money** are instead governed by **this mortgage**).
- (b) To the extent that your property is transferred, assigned or transmitted to any person, section 203(1) of the **PLA** applies and nothing in **this mortgage** shall be taken to mean otherwise (meaning that any person who accepts the transfer, assignment or transmission will become liable to repay the **secured money**).

15.4 Consumer Guarantees Act 1993

The Consumer Guarantees Act 1993 does not apply if you have entered into **this mortgage** for a business purpose.

16. What else do you need to know?

16.1 Power of attorney

- (a) You appoint us and any receiver severally as your attorney. This means that we or any receiver, as your attorney, will have the power to do any of the following things:
 - » do anything the attorney thinks is necessary to make sure we're repaid the **secured money**;
 - » exercise any rights you may have in relation to your **secured property** on your behalf;
 - » do anything that you're required, or have the power to do, under **this mortgage** or any law; and
 - » do anything else that effects, completes, or helps us realise our rights under **this mortgage**.
- (b) Your attorney may delegate its powers (including this right to delegate).
- (c) You can't revoke the appointment of an attorney under this section and you ratify anything an attorney does in exercising its powers.

16.2 How do we communicate with each other?

- (a) We've set out the ways in which we'll give you notice in our **general terms and conditions**. We can give you notices about **this mortgage** in one or more of these ways.
- (b) You agree that we can use any email address or mobile number you've given us to receive notices.
- (c) These notice provisions are in addition to any notice requirements we're permitted or required to follow under law. For example, if we're required to give you notices in a certain way under the **PLA**, we'll follow those requirements. This may be by delivering it to you by registered post (if you're an individual) or by delivering it to a director or leaving it at your registered office (if you're a company).
- (d) If you're required to give us any notice or information under **this mortgage**, you should do so in writing to Kiwibank Limited, Private Bag 39888, Wellington 5045.

16.3 Our notices are accurate

Unless we've made an obvious error, you agree to accept our notices as accurate.

16.4 We'll make all the calculations under this mortgage

Where **this mortgage** requires a calculation to be made (for example, to calculate the amount of the **secured money**), we'll make that calculation. Unless we've made an error, you agree to accept our calculation.

16.5 We can deduct money from your accounts

You authorise us to deduct any money you owe us under **this mortgage** from any account you have with us. We can do this even if it would mean that the relevant account goes into overdraft or exceeds any approved credit limit.

16.6 Goods and services tax

If you register or are required to register for goods and services tax, then you must let us know promptly and provide us with your goods and services tax registration number.

16.7 Can this mortgage change?

You can't change **this mortgage** without our written consent and we can't change **this mortgage** without your written consent.

16.8 We can waive any rights under this mortgage

- (a) We can waive any of our rights or powers under **this mortgage** if we expressly agree to in writing.
- (b) Keep in mind that our waiver does not apply to any future event (unless we expressly agree in writing).

16.9 How do we manage your personal information?

- (a) We take the protection of your information seriously (including our legal obligations relating to the protection of information).
- (b) For details about how we collect and handle your information, please see our privacy policy.

16.10 What rights do we have to transfer this mortgage?

- (a) We can assign or transfer some or all of our rights and obligations under **this mortgage** to one or more others. We don't need your consent for any assignment or transfer and we don't need to give you notice of this.
- (b) If we assign or transfer any of our rights and obligations under **this mortgage**:
 - » references to "we", "us", or "our" in **this mortgage** will mean the person we've assigned or transferred our rights and obligations to; and
 - » where we've only assigned or transferred some of our rights and obligations, references to "us" in parts of **this mortgage** that contain rights and obligations that we've not assigned or transferred, will still be read as references to Kiwibank Limited.
- (c) You can't transfer any of your rights or obligations under **this mortgage** without our prior written consent.

16.11 If any provision of this mortgage isn’t binding on you, it doesn’t affect the other parts

If any provision of **this mortgage** isn’t binding on you and/or us (for example, because of a court ruling), the other provisions of **this mortgage** still apply. This means that we can still ask you to do all the other things you’ve agreed to do under **this mortgage**.

16.12 General legal provisions

New Zealand law applies to **this mortgage**.

You agree that New Zealand courts have the power to settle any legal proceedings in relation to **this mortgage**. However, we may take proceedings in any overseas court in relation to **this mortgage** if that’s where you are located.

17. Definitions and interpretation

17.1 Meaning of the words in bold

Word	Definition
agreement	Includes any security (including this mortgage), loan agreement, guarantee, indemnity or other banking (or related) agreement between us and you, or between us and any person whose obligations to us you’ve guaranteed.
authority and instruction form	A client authority and instruction form (in the form approved by the New Zealand Law Society and Registrar-General of Land) that authorises and instructs a lawyer or conveyancing practitioner to register this mortgage electronically against the title to your property . This includes all documents and pages that are attached to the authority and instruction form .
buildings	Anything attached to or erected on your property (including improvements).
business day	Any day other than a Saturday, Sunday or a national public holiday in New Zealand.
constitutional documents	Any founding documents of any person, organisation or other entity which, depending on the type of entity, includes constitutions, partnership agreements, limited partnership agreements, trust deeds or any equivalent articles or rules for association.

Word	Definition
costs	Includes costs, taxes, duties, liabilities, fees, charges and other expenses, including legal costs (on a full indemnity basis) and any receiver's costs and expenses (on a full indemnity basis). When we say "on a full indemnity basis", we're referring to your obligation to pay the actual costs incurred.
default	A default occurs if any event set out in section 12.1 occurs.
general terms and conditions	Our document entitled "Personal & Business Banking General Terms & Conditions".
insolvency event	An insolvency event occurs if any of the following things happen: • you're not able to pay your debts when they fall due; • your assets are less than your liabilities (including contingent liabilities); • anyone starts any insolvency action against you; • any step is taken to declare a moratorium, suspend your payments or to dissolve you; • you or your creditors enter into a creditors' arrangement or compromise or anyone takes any step to do so; • any step is taken to appoint a statutory manager, liquidator, receiver, administrator or similar officer in relation to you or your assets; or • if you're a natural person, you are adjudicated bankrupt.
landlord	A person who is a landlord or lessor under a lease. If a lease has been transferred or assigned, it means the person who accepted the transfer or assignment from the previous landlord or lessor.
lease	Includes any lease, sub-lease, cross-lease or licence to occupy.

Word	Definition
limited liability trustee	A trustee who: • is an independent trustee (meaning a person who isn't a beneficiary of the trust, who has no interest or right in the assets of the trust (other than as trustee) and who doesn't have any right to select or designate new beneficiaries); • hasn't breached their duties as a trustee; • hasn't breached the trust deed or any relevant law; and • hasn't made any untrue representation under this mortgage.
materially increase our risk	Our risk materially increases if the risk of any of the following things happening materially increases: • our reputation being seriously damaged; • us suspending, closing or cancelling an account, product or service under the terms of our general terms and conditions; • you or any person whose obligations you've guaranteed not being able to pay us any secured money on time; • us not being able to recover amounts we're owed by you or any one whose obligations you've guaranteed by enforcing any security or guarantee, for any reason (including because the value of any secured property has changed or because any security or guarantee is not effective); or • us not being able to assess the risk of any of these things happening.
memorandum of mortgage	This document, entitled "Memorandum of Mortgage".
mortgage instrument	The electronic mortgage instrument which is registered against the title to your property. The mortgage instrument specifies key details relating to this mortgage (including the Mortgagor, Mortgagee, and the number of this memorandum of mortgage).

Word	Definition
property	The land described in your authority and instruction form and the mortgage instrument (including all buildings , fixtures or improvements on that land), and all your rights, title and interests in that land. Your rights, title and interests would include your interest as landlord, tenant or licensee of the land and buildings .
PLA	Property Law Act 2007.
secured money	All money you owe us at any time, for any reason (unless we expressly agree something different with you). This includes: • all principal, interest and costs; • any money that you actually owe us or that you might contingently owe us (meaning that it's not yet a definite obligation, but it may become one in the future (for example, under a guarantee)); • any other money you owe us alone or with someone else; and • all other money that you owe us now and all money that you may owe us in the future. We've set out a few examples of the types of things this would include in section 2.1.
secured property	Your property and all your rights, licences, documents and consents in relation to your property that are subject to the security interest you've granted us under section 2.1 of this mortgage .
security	A mortgage, charge, pledge, lien, encumbrance or other security interest that secures any obligation of any person or any other similar agreement or arrangement.
tenant	A person who enters into a lease as a tenant or a lessee. This includes a person who has accepted a transfer or assignment of a lease .

Word	Definition
this mortgage	The agreement you enter into with us to grant us a mortgage over your property and a security interest over all your other secured property. This mortgage incorporates the mortgage instrument, any authority and instruction form, and this memorandum of mortgage. We explain more about how this mortgage works in section 1.1.
title	The record of title created under section 12 of the Land Transfer Act 2017 for an estate or interest in land in respect of your property.

17.2 Interpreting other words and phrases

When you're reading **this mortgage**:

- (a) if we refer to any **agreement**, document, law or policy, this means that **agreement**, document, law or policy as it may be amended or replaced from time to time;
- (b) examples we give in this document and references to "including" don't limit other things that might have been included;
- (c) any use of the singular includes the plural. Any use of the plural includes the singular;
- (d) when we refer to a person, this includes their successors, assignees, transferees and executors; and
- (e) when we refer to a receiver, this includes a reference to any person appointed or apparently appointed as a receiver or a receiver and manager.



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