

Tax Finance Agreement

Terms and Conditions

*These terms and conditions (the "**Conditions**", and each a "**Condition**") set out the rights and obligations of the Client and PTF in relation to the sale of Tax Purchase Rights by PTF to the Client, the payment by the Client for those Tax Purchase Rights and their associated Tax Deposits and the delivery by PTF of Tax Deposits to the Client. By submitting an Application the Client is agreeing to be bound by these Conditions.*

1. **Definitions:** The defined terms in the Application have the same meaning in these Conditions. In addition:

"**Application**" means the screen page: setting out the Provisional Tax Date, Tax Finance Amount, the Purchase Date, the Finance Charge Amount, the Initial Finance Charge Amount and the Outstanding Finance Charge, and which requests the Client to accept those terms.

"**BGL**" means Brew Greenslade & Co Limited.

"**Business Day**" means any day (other than Saturday or Sunday) on which banks are open for business in Auckland and Christchurch.

"**Client Taxpayer Account**" means the account identified as such on the Application.

"**Commissioner**" means the Commissioner of the IRD from time to time.

"**Dollars**" and "**\$**" means the lawful currency of New Zealand.

"**Finance Charge Amount**" means the total amount payable by the Client to PTF to acquire a Tax Purchase Right in relation to the Tax Finance Amount.

"**Initial Finance Charge Amount**" means the Dollar amount payable by the Client to PTF to acquire the Tax Purchase Right(s) referred to in an Application.

"**IRD**" means the Inland Revenue Department of New Zealand.

"**PTF**" means Provisional Tax Finance Limited.

"**Settlement Amount**" means the sum of the Outstanding Finance Charge (if any) and the Tax Finance Amount;

"**Outstanding Finance Charge**" means the difference between the Finance Charge Amount and the Initial Finance Charge Amount, if any.

"**Tax Act**" means the Income Tax Act 2004.

"**Tax Deposit**" means a deposit in the Tax Pooling Account.

"**Tax Deposit Date**" means the date on which a Tax Deposit is made into the Tax Pooling Account.

"**Tax Pooling Account**" means the tax pooling account maintained by PTF with the IRD under and in accordance with subpart MBA of the Tax Act.

"Tax Purchase Right" means the right granted or to be granted by PTF to the Client to acquire Tax Deposits sourced by PTF.

"Trust Account" means the account of the Trustee identified in Condition 9.

"Trust Account Deed Poll" means the trust account deed poll dated 17 August 2007 entered into by the Trustee and PTF to record for the benefit of, amongst others, the Client and PTF the basis and terms on which the Trustee will receive funds into and disburse funds from the Trust Account.

"Trustee" means Perpetual Trust Limited in relation to the receipt of Finance Charge Amounts and Settlement Amounts and the provision of Tax Deposit transfer instructions to the IRD in accordance with these Conditions.

2. **Acquisition of Tax Purchase Rights:**

- (a) To acquire a Tax Purchase Right the Client must pay the Initial Finance Charge Amount to PTF by not later than 10am on the second Business Day prior to the Provisional Tax Date. PTF may, but is not obliged to accept any payment received after that time on that date.
- (b) PTF reserves the right to reject any Application in its sole discretion. If it does so PTF will promptly notify the Client and the Trustee and direct the Trustee to return to the Client any Finance Charge Amount received by the Trustee into the Trust Account.
- (c) Under the Trust Account Deed Poll the Trustee covenants to hold the benefit of all Initial Finance Charge Amounts deposited in cleared funds into the Trust Account on trust for:
 - (i) until the Provisional Tax Date and it being satisfied that:
 - (aa) Tax Deposits equal to at least the sum of the Tax Finance Amount have been or will be deposited into the Tax Pooling Account; and
 - (bb) PTF has rights to require the Trustee to give the instructions contemplated by Condition 5, the Client; and
 - (ii) thereafter, BGL,

provided that the benefit of any interest accrued or accruing on the Initial Finance Charge Amount shall be held on trust for BGL.

3. **Confirmed Availability of Tax Deposits:** PTF shall ensure that sufficient Tax Deposits are held in the Tax Pooling Account from time to time in order to enable it to match the Tax Purchase Rights of the Client (and all its other clients) in accordance with these Conditions.

4. **Tax Purchase Right:** The Client may, on the applicable Purchase Date, exercise its Tax Purchase Right in respect of the Tax Finance Amount in full, or in part.

5. **Settlement and Delivery of Tax Deposits:**

- (a) PTF shall, on receipt of the Settlement Amount from the Client by not later than 10am on the relevant Purchase Date, procure that the Trustee gives instructions to the Commissioner to transfer the Tax Finance Amount) to the Client Taxpayer Account.
- (b) In the event insufficient cleared funds are received by PTF it will apply the funds received by it:
- (i) first, to satisfy the Outstanding Finance Charge; and
 - (ii) then, towards the Tax Finance Amount,
- (c) Under the Trust Account Deed Poll the Trustee covenants to hold the benefit of all Settlement Amounts deposited in cleared funds into the Trust Account on trust for:
- (i) until the Purchase Date and the Trustee being satisfied that directions have or will be given to the Commissioner to transfer the Tax Finance Amount and any Top-up Amount to the Client Taxpayer Account, the Client; and
 - (ii) thereafter; BGL,
- provided that the benefit of any interest accrued or accruing on the Settlement Amounts shall at all times be held on trust for BGL.
- (d) PTF shall not be obliged to procure the transfer of any Tax Deposit amount where it does not receive Settlement Amounts as required by these Conditions.
6. **Deferral of Purchase Date:** The Client may request that the Purchase Date be deferred. On receipt of a request PTF may (but shall not be obliged to) quote to the Client the additional finance charge that would be applicable to that extension and state a period (the last day of the period being the "**Cut-off Date**") during which the Client can accept that quotation. Actual deferral of an agreed Purchase Date is conditional on written acceptance of the revised terms by the Client and its deposit in cleared funds of the additional finance charge into the Trust Account by no later than 10am on the Cut-off Date.
7. **Early Termination:** If the Commissioner requires the Tax Pooling Account to be wound up under section MBA 8 of the Tax Act:
- (a) PTF will promptly notify the Client of the Commissioner's requirement;
 - (b) PTF will promptly, and in any event within 30 Business Days refund to the Client a portion of the Finance Charge Amount received by PTF from that Client; and
 - (c) all Tax Purchase Rights granted in favour of the Client will be automatically terminated.

The portion of the Finance Charge Amount to be refunded will be calculated by multiplying the receipted amount by the ratio of x to y where:

"x" is the number of days from the Provisional Tax Date to the refund date; and

"y" is the number of days from the Provisional Tax Date to the Purchase Date.

8. **No Responsibility for Late Settlement:**

- (a) PTF accepts no responsibility where a Client does not pay cleared funds to it on a timely basis in relation to the Provisional Tax Date or any Purchase Date. It is solely the Client's responsibility to ensure with its own bankers that funds will be received into the Trust Account on a cleared funds basis by the times required by these Conditions.
- (b) No rebate of any Finance Charge Amount will be paid on or with respect to any Tax Purchase Right that lapses in whole or in part. PTF assumes no responsibility to the Client for any direct, indirect or consequential loss (including any loss associated with PTF being entitled to retain all use of money interest accrued on the Tax Finance Amount and any Top-up Amount) suffered by the Client where it fails to exercise any Tax Purchase Right on the Purchase Date, whether in part or at all or fails to give or receive any notice contemplated by Condition 4(b)(ii).

9. **Payments:** All payments by the Client to PTF under these Conditions shall be made free and clear of any withholding, deduction (including set-off and counterclaim) or condition and shall be credited or deposited in cleared funds to the following account:

Account Name: Perpetual Trust Limited (Provisional Tax Finance Tax Pool Trust Account)
 Bank: ANZ National Bank Limited
 Branch: Auckland, Cnr Queen and Victoria Streets
 Account No: 0102-0985576-00

10. **Tax Deposit Date Representation:** PTF will ensure that each Tax Deposit which is the subject of an Application has a Tax Deposit Date which is the Provisional Tax Date referred to in the Application.

11. **Tax Act Confirmations:** For the purposes of subpart MBA of the Tax Act:

- (a) PTF represents and warrants to and for the benefit of the Client that:
 - (i) it has administration and information technology systems that satisfy section MBA 4(4) of the Tax Act and will maintain and operate those systems as required by that section;
 - (ii) none of its directors are discharged or undischarged bankrupts;
 - (iii) none of its directors has been convicted of any offence involving dishonesty;
 - (iv) all of its directors are eligible to be company directors;
- (b) PTF advises the Client that the Commissioner is not:
 - (i) required to oversee or audit the operation of the Tax Pooling Account;
or
 - (ii) liable for any loss that a person suffers because of the way PTF operates the Tax Pooling Account.

12. **No Liability:**
- (a) The Client agrees that PTF shall have no liability for any cost or loss (including consequential loss, loss of profit or loss of opportunity) of any nature whatsoever suffered or incurred by the Client in the event that:
 - (i) the Trustee does not instruct the Commissioner to transfer Tax Deposits to the Client's IRD account in accordance with Condition 5;
 - (ii) the IRD does not accept or action any request for a Tax Deposit transfer;
 - (iii) the IRD determines the effective date of a Tax Deposit transfer to be later than the Tax Deposit Date; or
 - (iv) any error in the Client Taxpayer Account details.
 - (b) PTF will use all reasonable endeavours to procure that the Trustee provides Tax Deposit transfer instructions to the IRD in accordance with these Conditions. Notwithstanding paragraph (c) above, in the event the IRD does not accept or action any request for a Tax Deposit transfer after the precondition to that transfer in Condition 5(c)(i) has occurred, PTF will treat the Client as a depositor client with it for the purposes of subpart MBA of the Tax Act.
 - (c) The Client acknowledges that the Trustee acts under the Trust Account Deed Poll solely on the instructions of and on the basis of information supplied to it by PTF. It relies on the accuracy of that information and assumes no obligations to enquire as to or investigate its accuracy. The Client acknowledges that the Trustee assumes no responsibility to it where the Trustee relies on such information.
13. **IRD Refusal of Tax Deposit Transfer:** The Client acknowledges that the Commissioner may refuse to accept a request for a transfer or may reverse a transfer if the Commissioner considers that the request for the transfer is made for the purpose or effect of tax avoidance.
14. **No Tax Advice:** PTF does not provide any tax advice to the Client in connection with the Client's submission of an Application or acceptance of these Conditions. The Client agrees that it is solely responsible for taking its own advice on the appropriateness of its acquiring Tax Purchase Rights, its rights under these Conditions and its tax affairs generally.
15. **No Beneficial Interest:** The Client agrees and acknowledges that it has no beneficial interest in any Tax Deposit until that Tax Deposit is transferred to its Client Taxpayer Account.
16. **No Assignment:** The Tax Purchase Rights sold to the Client are personal and may not be assigned, resold or otherwise disposed of by the Client without the prior written consent of PTF.
17. **Business Purposes:** The Client represents, warrants and confirms to and for the benefit of PTF that it enters into the agreement to which these Conditions relate for business purposes. The Consumer Guarantees Act 1993 does not apply to these Conditions.

18. **Completion by Agent:** Where an Application is completed on behalf of the Client by its accountant, the Client represents and warrants that its accountant is authorised on its behalf to contract with PTF, on behalf of the Client, on these Conditions and the Client acknowledges and agrees that it is and will be bound by these Conditions in the same manner as if it had completed and submitted the Application itself.
19. **Confidentiality:** PTF reserves the right to use information about the Client in its communications (including for this purpose, communications made by the Trustee on its behalf) with the IRD as required by the Tax Act and the Tax Administration Act 1994. Otherwise, PTF will not disclose information held or received by it in relation to the Client under or by reason of these Conditions save where it is required to do so by law.
20. **Notices:** Each notice or communication to PTF must be in writing and sent to:
- Level 1
101 Main Highway
Ellerslie
AUCKLAND
- FAX : 09 523 9763
Email: contact@taxfinance.co.nz
Attention: Kerry Brew

No notice or communication to or with PTF shall be effective until actually received by PTF. Each notice or communication by PTF to the Client shall be made in writing to the address of the Client recorded in its Application or to such other address of the Client advised by it to PTF by not less than 30 Business Days' prior notice.

21. **Partial Invalidity:** The illegality, unenforceability or invalidity of any Condition shall not affect the legality, enforceability or validity of that provision under another law nor the legality, validity or enforceability of any other provision.
22. **Amendments:** These Conditions may only be amended by written agreement of the Client, PTF and the Trustee. This Condition 22 is included for the benefit of and is intended to be enforceable by the Trustee under the Contracts (Privity) Act 1982.
23. **Calculations:** Any calculation of a finance charge or settlement payment amount by PTF shall be conclusive absent manifest error.
24. **Time of the Essence:** Time shall be of the essence in relation to the performance by the Client of its payment obligations under the Conditions.
25. **Governing Law:** These Conditions are governed by New Zealand law. The Parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

*A copy of the Trust Account Deed Poll is available at
<http://www.taxfinance.co.nz>, or on request from the Trustee:*

*Perpetual Trust Limited
PO Box 112
Christchurch
Attention: Laura Kau Kau
Phone: (03) 363 6410*