

Phone: 09 520 0192

Application no: 9264

Applicant Details			
Name	XYZ Limited	Trading Name	
Address	PO Box 1234 TAURANGA NZ 3144	Contact Name	Mr Smart Client
		Contact Phone	07 5783333
		Mobile	
Email	info@xyz.co.nz	Fax	

Professional Fee Details			
Funded Amount	\$ 5,000.00	Professional Advisor	RHB Chartered Accountants Ltd
Invoice/Statement No.	123456		
Number of Instalments	6		

Repayment Details					
Initial Instalment of		\$937.50	Administration Fee	\$50.00	
Followed by	5 monthly instalments of	\$887.50	Total Amount Payable	\$5,325.00	(excludes admin fee)
Flat Interest Rate		6.50%	First Instalment Due	15/12/2010	(monthly thereafter)
Credit Charge		\$325.00			

Application and Agreement

The Applicant has expressed an interest in applying for finance to fund (by way of loan with interest) amounts that are or may become payable by it for Professional Supplies provided by the Professional Advisor.

If the Applicant wishes to proceed with this application on the terms set out in this form, it will need to sign in the space provided below and return to FFL together with a completed and signed direct debit authority (in the form provided by the Professional Advisor or otherwise available from FFL on request).

If FFL accepts the Applicant's application, then upon receipt of the Initial Instalment from the Applicant, FFL will pay the relevant drawdown amount to the Professional Advisor and make a funding facility available to the Applicant on the terms and conditions set out in this form (including the general terms and conditions).

Please note, no agreement in relation to the provision of any funding by FFL will arise between the Applicant and FFL until such time that FFL has accepted the Applicant's duly completed and signed application, at which time this form (including the general terms and conditions) will constitute the valid and binding contractual arrangements of the parties to it.

The Applicant acknowledges that anything it does in connection with any agreement between it and FFL (including the submission of written information and the provision of signatures), whether before or after the agreement is formed, is valid and enforceable if done electronically. FFL consents to the Applicant giving any information and providing any signatures in electronic form.

The Applicant acknowledges that any funding applied for under this application is to be used for business or investment purposes and accordingly will not constitute consumer credit for the purposes of the Credit Contracts and Consumer Finance Act 2003.

Signed for and on behalf of the Applicant by:

If a partnership all partners to sign. If a company two directors to sign.		ALL SIGNATURES MUST BE WITNESSED BY
		Signature
Signature of authorised person	Signature of authorised person	Name
Name of authorised person	Name of authorised person	Occupation
Date	Date	Address

POST ALL ORIGINALS TO
 feeSmart Finance Limited
 PO Box 113-027 Newmarket
 AUCKLAND 1149

General Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Agreement, unless the context requires otherwise:

Account means your account with FFL in respect of the Facility;

Administration Fee means the amount set out in your Client Application Form;

Agreement means the agreement between you and FFL in respect of the Facility and includes these general terms and conditions together with your signed and accepted Client Application Form;

Client Application Form means the application form pursuant to which you apply for funding from FFL under the Facility and which upon signing by you and acceptance by FFL forms part of this Agreement;

Commencement Date means the Initial Instalment Date, subject to payment of the Initial Instalment to FFL in cleared funds and without setoff or deduction;

Drawdown means any advance on the Account under the Facility;

Drawdown Amount means the amount payable by FFL to the Professional Advisor upon Drawdown, being the "Funded Amount" set out in the Client Application Form in respect of the initial Drawdown and the amount that FFL has agreed to fund pursuant to clause 3.3 in respect of any subsequent Drawdown;

Facility means the running account credit facility to be provided by FFL to you under this Agreement upon satisfaction of the conditions set out in clause 3.1;

FFL means Feesmart Finance Limited a limited liability company incorporated in New Zealand under number 2149768

Initial Instalment means the amount set out in your Client Application Form;

Initial Instalment Date means the date upon which you are required to pay the

- Initial Instalment, as set out in your Client Application Form;
- Monthly Instalment** means the monthly instalment amount payable by you to FFL, being initially as set out in your Client Application Form and thereafter as varied following any subsequent Drawdown in accordance with clause 4.2;
- Professional Advisor** means the professional adviser set out in your Client Application Form;
- Professional Supplies** means the provision of advisory and/or compliance services, software, hardware and/or other goods or services by the Professional Advisor to you;
- Total Amount Payable** means the total amount payable by you to FFL, being initially as set out in the Client Application Form and thereafter as varied following any subsequent Drawdown in accordance with clause 4.2, but excludes any Administration Fee; and
- You** means the "Applicant" named in the relevant Client Application Form.
- 1.2 **General interpretation:** In this Agreement, unless the context requires otherwise:
- Currency:** unless specifically stated otherwise, reference to any monetary amount (including the use of the \$ symbol) is to New Zealand dollars;
- Person:** reference to a person includes a reference to a natural person, body corporate, government agency and to an unincorporated body of persons;
- Including:** any reference to "including" is without limitation to the generality or specificity of the surrounding words; and
- Liability:** if a party comprises more than one person, each such person's liability is joint and several.
- 1.3 **Construction:** This Agreement may not be construed adversely to a party just because that party prepared, or procured the preparation of, this Agreement.
2. **TERM**
- 2.1 **Commencement and expiry:** This Agreement commences on the Commencement Date and will continue until the date of expiry and/or termination under clause 7.
3. **DRAWDOWN**
- 3.1 **Conditions:** Drawdown is conditional upon:
- FFL's acceptance of your Client Application Form;
 - FFL's satisfaction (in its sole discretion) with the outcome of its credit checks in respect of you and your business;
 - FFL's satisfaction (in its sole discretion) with the legitimacy of the Professional Supplies claimed; and
 - payment of the Initial Instalment to FFL in accordance with clause 4.1(a).
- FFL may refuse to provide funding under the Facility if all conditions have not been satisfied within 7 days of the Commencement Date or such longer period as FFL may agree.
- 3.2 **Initial Drawdown:** Subject to satisfaction of the conditions set out in clause 3.1, FFL will, within 14 days of receipt of the Initial Instalment in full and without setoff or deduction, pay the Drawdown Amount to the Professional Advisor in satisfaction of its entire obligations in respect of the initial Drawdown under this Agreement.
- 3.3 **Further amounts:** You may from time to time request FFL in writing to extend the scope of the Facility to cover any other amount incurred or to be incurred by you in respect of Professional Supplies, provided that such requests must be made through the Professional Advisor and otherwise in accordance with any requirements notified by FFL.
- 3.4 **Subsequent Drawdown:** If a request for further funding under clause 3.3 is accepted, FFL will advance the relevant Drawdown Amount to the Professional Advisor within 14 days of the date of such acceptance, in satisfaction of its entire obligations in respect of such Drawdown under this Agreement.
4. **REPAYMENT OF LOAN**
- 4.1 **Repayment:** You will repay the Total Amount Payable to FFL as follows:
- the Initial Instalment together with any Administration Fee, on or before the Initial Instalment Date;
 - the Monthly Instalment, on or before the same date as the Initial Instalment Date in each consecutive month thereafter until the Total Amount Payable has been repaid in full; and
 - any residual amount on or before the date of payment of the final Monthly Instalment or as otherwise advised by FFL.
- 4.2 **Variation to amounts:** You acknowledge and agree that the Monthly Instalment and the Total Amount Payable may be amended from time to time by FFL where the total amount on Account is increased following a subsequent Drawdown under clause 3.4. A statement in writing signed by a director, secretary or officer of FFL stating the Monthly Instalment, Total Amount Payable or any other amount due or owing by you to FFL will be conclusive evidence of the amount so stated.
- 4.3 **Payment amounts:** Unless otherwise agreed in writing, any payments payable by you to FFL under this Agreement will be payable in cleared funds and without setoff or deduction to FFL's nominated bank account.
- 4.4 **Default interest:** Interest at the rate that is 5% above the Flat Interest Rate set out in your Client Application Form will be payable on any amount that is overdue for payment by You to FFL under this Agreement, calculated on a daily basis from the date payment fell due until the date payment is received by FFL in full.
- 4.5 **Default fees:** In addition to any amount payable under clause 4.4 or otherwise under this Agreement, you must also pay to FFL the following fees:
- \$30.00 dishonour fee, in respect of each payment or direct debit which is dishonoured. Any dishonour fee is payable and will be debited to your Account at the time the relevant payment was due; and
 - \$30.00 late payment fee, in respect of each payment which is not made on the due date and remains outstanding for seven days after the due date. Any late payment fee is payable and will be debited to your Account on the date which is seven days after the due date for payment.
- FFL may at its discretion from time to time alter any of the fees referred to above upon written notice to you. Any such changes will take effect from the time stipulated by FFL which shall not be before the date of the notice.
5. **WARRANTIES**
- 5.1 **Warranties:** You warrant and represent to FFL that during the term of this Agreement:
- any funding provided under the Facility is to be used for business or investment purposes and accordingly this Agreement is not a consumer credit contract under the Credit Contracts and Consumer Finance Act 2003;
 - any amounts funded relate to Professional Supplies provided by the Professional Advisor and the provision and payment of such Professional Supplies is not in dispute;
 - you will promptly advise FFL of any dispute between you and the Professional Advisor in relation to any Professional Supplies including full details of such dispute;
 - upon request by FFL, procure that any of your principal partners, shareholders and/or other officers required by FFL (as the case may be) enter into a deed of guarantee and indemnity in respect of your obligations under this Agreement in the form provided by FFL at the relevant time; and
 - You will promptly notify FFL of any proposed or anticipated change of shareholding, ownership, sale of receivables or any other action or circumstance that may materially affect your ability to comply with your obligations under this Agreement and any failure to comply with this clause will be deemed a material breach of this Agreement for the purposes of clause 7.
6. **CREDIT REPORTS AND INFORMATION:**
- 6.1 **Authority:** You hereby authorise FFL, its related companies and any agent or other service provider approved by FFL (including the Professional Advisor) to:
- make enquiries from time to time of any person concerning you and/or your business to assess your current and ongoing credit worthiness; and
 - hold and use any information collected for the purposes of this Agreement and for any research, business development, marketing and/or sales purposes.
- 6.2 **Access and change to information:** You may request access to and correction of any information FFL holds in relation to you. Such requests must be in writing and FFL may charge a fee for the reasonable costs incurred in responding to your requests.
- 6.3 **Privacy:** FFL will comply with the Privacy Act 1993 as it applies to this Agreement.
7. **EXPIRY AND TERMINATION**
- 7.1 **Expiry:** This Agreement will expire and terminate on the date that the Total Amount Payable together with all other interest, charges and amounts payable in respect of the Facility have been repaid in full by you to FFL.
- 7.2 **Termination for default:** FFL may immediately terminate this Agreement by written notice to you, if:
- you fail to make a payment to FFL when due and payable;
 - a payment made by you to FFL is dishonoured on presentation or otherwise;
 - you become, or are deemed to be, insolvent or bankrupt;
 - you make an assignment for the benefit of, or enter into or make any arrangement or composition with, your creditors;
 - you go into receivership or have a receiver, trustee, administrator and manager (or any of them) (including a statutory manager) appointed in respect of all or any of your property;
 - you pass a resolution, or any proceeding is commenced, for your winding up or liquidation (other than for the purposes of a solvent reconstruction approved by FFL); and/or
 - you have:
 - breached a provision of this Agreement that is incapable of remedy; or
 - failed to remedy any breach of this Agreement that is capable of remedy within 5 days of notice of that breach having been given stating the nature of the breach and requiring remedy.
- 7.3 **Default costs and expenses:** You will indemnify FFL against all costs and expenses incurred by FFL either directly or indirectly in connection with any failure by you to comply with your obligations, or breach of your representations and warranties, under this Agreement.
- 7.4 **Consequences of default:** You acknowledge and agree, that upon termination of this Agreement under clause 7.2:
- the Total Amount Payable, together with all other interest, charges and amounts payable in respect of the Facility or any other funding arrangement between you and FFL (including any amount payable under clause 7.3) will immediately become due and payable without the necessity for any demand or notice to you; and
 - FFL may assign or otherwise transfer its entire right, title and interest in and to such amount to the Professional Advisor or any other person without further notice or consultation to you.
8. **NOTICE AND DELIVERY**
- 8.1 **Notice:** Any notice or other communication in connection with this Agreement will be:
- in writing; and
 - left at the address or sent by prepaid post to the address of the relevant party or any replacement address notified by that party, or sent by email to an address provided by the addressee for the receipt of email.
- 8.2 **Deemed receipt:** Notices or other communications are deemed received:
- if delivered by hand, on delivery;
 - if delivered by post:
 - on the third day following posting if sent and received within New Zealand; and
 - on the tenth day following posting if sent to or from an overseas destination;
 - if delivered by email, on the business day the email is sent or the next business day if sent outside normal business hours, provided that the email was correctly addressed to the address provided by the addressee for the receipt of email and no error message was received by the information systems used by the sender to send the email.
9. **MISCELLANEOUS**
- 9.1 **Entire agreement:** This Agreement:
- constitutes the entire understanding and agreement between you and FFL relating to the transactions contemplated by this Agreement; and
 - supersedes and extinguishes all prior agreements, arrangements and understandings between you and FFL relating to the transactions contemplated by this Agreement.
- 9.2 **Further assurances:** You will do all such further acts (and sign any documents) as may be required by FFL to give full effect to this Agreement.
- 9.3 **Costs:** Unless otherwise agreed in writing as between you and FFL or expressly specified in this Agreement, each party will bear its own costs in relation to the negotiation, preparation, execution and performance of this Agreement.
- 9.4 **Assignment:** You acknowledge and agree that FFL may at any time and at its sole discretion, assign or otherwise deal with its rights and interests under or in connection with this Agreement without your consent. You may not assign or otherwise deal with your rights, interests or obligations under or in connection with this Agreement without FFL's prior written consent (which may be granted or withheld at FFL's sole discretion).
- 9.5 **Amendment:** Unless otherwise provided, no amendment to this Agreement will be effective unless it is in writing and signed by you and FFL.
- 9.6 **Waiver:** No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by a party in respect of any breach of the other party's obligations under this Agreement is to:
- operate as a waiver or prevent the subsequent enforcement of that obligation; or
 - be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence in respect of, or a waiver of, any subsequent or other breach.
- 9.7 **Time of the essence:** You acknowledge and agree that time is of the essence in respect of the performance of your obligations under this Agreement.
- 9.8 **Severance:** Any unlawful or voidable provision in this Agreement will be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions, provided that the reading down or severing of such provision does not materially affect the purpose of or frustrate this Agreement.
- 9.9 **Preservation of rights:** Unless expressly provided, the rights and/or remedies exercised by either party under this Agreement will be without prejudice to any of its other rights and/or remedies under law or in equity.
- 9.10 **Governing law:** This Agreement is governed by the laws of New Zealand. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the New Zealand courts.

