

ANZ MARKETS DEPOSIT TERMS AND CONDITIONS

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INTRODUCTION

These ANZ Markets Deposit Terms and Conditions set out the terms on which the Bank provides the Customer with one or more Deposits when the Bank is acting through its Markets division, including the Markets Dealing Room and Markets Operations.

1. INTERPRETATION AND DEFINITIONS

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

- (a) a person includes a reference to a government, state, state agency, corporation, body corporate, association, partnership or individual;
- (b) a person includes a reference to that person's legal personal representatives, successors and permitted assigns;
- (c) the singular includes the plural and vice versa;
- (d) a reference to an agreement, a document or a law is a reference to the agreement, document or law (and, if applicable, any of its provisions) as amended, novated, supplemented or replaced for the time being; and
- (e) section, clause, paragraph and other headings are for convenience only and do not affect their interpretation.

1.2 **Definitions**

'Agreed Currency' means the currency in which any payment in respect of any Deposit under this Agreement is to be made as agreed between the Customer and the Bank, or in the absence of such agreement, as notified by the Bank to the Customer;

'Agreement' means these ANZ Markets Deposit Terms and Conditions as amended and or supplemented from time to time;

'ANZ Australia' means Australia and New Zealand Banking Group Limited ABN 11 005 357 522;

'Applicable Rate' means the Bank's then prevailing exchange rate or, if unavailable, such rate as reasonably determined by the Bank;

'Authorised Person' means, to the extent not agreed to inconsistently in writing between the Customer and the Bank, any person authorised by the Customer and notified to the Bank in a manner acceptable to the Bank to act on the Customer's behalf in giving Instructions and performing any other acts, discretions or duties under this Agreement or with respect to the operation or use of any Deposit;

'Authority' means any regulatory, administrative, government, quasi-government, supranational, law enforcement or supervisory authority, court or tribunal;

'Bank' means ANZ Bank New Zealand Limited (NZBN 9429040797410);

'Bank Cheque' means a bank cheque or cashier order drawn by or on behalf of the Bank for the Customer;

'Bank Group Member' means any of ANZ Australia, its subsidiaries, and all persons Controlled by any of the foregoing, in each case wherever in the world and including all branches and representative or regional offices;

'Business Day' means a day (other than a statutory or public holiday in the jurisdiction where the applicable Deposit is held and, where payment is being made or received, the home jurisdiction of the relevant currency) on which the Bank is open for the transaction of ordinary banking business in (i) the jurisdiction where the applicable Deposit is held, (ii) where an Instruction or communication is being addressed, the country to which such Instruction or communication is addressed and (iii) where a payment is being made or received, the home jurisdiction of the relevant currency;

'Cleared Funds' means funds deposited into or standing to the credit of any Deposit that the Bank has received full and final payment that cannot be reversed or cancelled;

'Control' means either: (a) the possession, directly or indirectly, of more than 50% of the equity interests in a person; or (b) the power to direct, or cause the direction of, the management and policies of a person, whether through ownership of voting interests, by contract or otherwise;

'Costs' means costs, charges and expenses including those incurred in connection with advisers and any legal costs;

'Customer' means a person who makes a Deposit with the Bank;

'Cut-off Time' means the latest time for the Bank to receive an Instruction from the Customer;

'Deposit' means any deposit held by the Customer with the Bank as described in clause 4 when the Bank is acting through its Markets division, including the Markets Dealing Room and Markets Operations;

'Force Majeure Event' means any event beyond the Bank's reasonable control, including, without limitation:

- (a) fire, flood, earthquake, storm or other natural event;
- (b) strike or other labour dispute;
- (c) war, insurrection, terrorism or riot;
- (d) acts or failure to act by any Authority;
- (e) changes in Law or any order of any Authority;
- (f) any failure, disruption or interference failure of any telecommunications, electricity supply and other utilities;
- (g) any technical failures, disruptions or interference to any computer system or equipment (whether caused by hardware or software); and
- (h) any failure, disruption or interference of any service provided by the Bank or any third party or third party system used by the Bank in providing and maintaining Deposits;

'Foreign Currency Deposit' means a Deposit denominated in a currency which is not the currency of the jurisdiction in which the Deposit is held;

'Indirect Loss' means any indirect or consequential loss including loss of profits or anticipated savings, loss of business opportunity, loss of goodwill or reputation, business interruption, unauthorised access to or loss of data, economic loss or any special, indirect or consequential damage and includes any Costs arising in connection with any of them. Indirect Loss does not include any Loss that arises in the usual course of things from the relevant act or omission;

'Instructions' mean all requests and instructions (including any standing instructions) relating to a Deposit given by the Customer to the Bank as agreed between the Bank and the Customer and 'Instruction' means any of the same;

'Law' means any treaty, law, statute, rule, regulation, court order or standard of any Authority or any request, order, directive, guideline, notice, code, decision or statement of policy or practice of any Authority having the force of law or, if not having the force of law, in respect of which compliance in the relevant jurisdiction is customary;

'Loss' means any damage, loss, liability, Cost, delay or diminution in value;

'Sanctions' means any economic or trade sanctions, imposed by any Authority;

'Security' means any mortgage, lien, charge or other security or arrangement having like effect;

'Tax' means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same); and

'Withdrawal' means in respect of any Deposit, any withdrawal or transfer of funds from such Deposit.

2. CUSTOMER RESPONSIBILITIES, REPRESENTATIONS AND WARRANTIES

2.1 Customer Agreements: The Customer agrees

- (a) to provide the Bank with all information and documentation as the Bank may reasonably request from time to time, including as may be required by Law or any agreement or arrangement with any local or foreign Authority. The Customer acknowledges that all information provided to the Bank shall be accurate, complete, up to date and not misleading;
- (b) to promptly (or otherwise within 30 days) notify the Bank of any changes to information previously provided to the Bank. The Customer agrees that until the Customer has notified the Bank of such change and the Bank has had a reasonable opportunity to act on such notification, the Bank may rely on the information previously provided to it;
- (c) to comply with all instructions and procedures that the Bank may from time to time impose, acting reasonably and in accordance with all relevant Law, in relation to the operation or use of any Deposit, including, without limitation, any identity checks, verification procedures or other security procedures that the Bank may use to establish authenticity of Instructions or prior to opening or acting on a Deposit;
- (d) to make its own assessment as to whether it is subject to any legal, regulatory or tax obligations or duties in respect of this Agreement or any Deposit and at all times comply with such legal, regulatory and tax obligations and duties. The Customer acknowledges that the Bank is not providing any legal, tax or accounting advice in respect of any Deposit, or any advice regarding the suitability or profitability of any transaction associated with any Deposit;
- (e) to inform the Bank as soon as possible of any error, dispute or suspicion of fraud or illegality in respect of any Deposit or any Instruction;
- (f) to use all reasonable precautions to prevent fraudulent or unauthorised access to a Deposit;
- (g) that its rights in respect of a Deposit are personal to it, and notwithstanding any other provision contained in this Agreement, a purported dealing by it in relation to those rights (including by way of assignment, transfer, Security, declaration of trust or otherwise) will not be effective to give anybody other than the Customer any right or interest in a Deposit as against the Bank;
- (h) that the Customer is responsible for maintaining the security of its data and ensuring that its data is adequately backed-up. The Customer agrees that in the absence of any wilful misconduct, gross negligence or fraud on the part of the Bank, and without limiting its obligations under the Privacy Act 2020, the Bank is not liable to the Customer for any loss of its data; and
- (i) that where the Customer is acting as a trustee of a trust in using and operating a Deposit, even if the trust does not have a trust deed, the Customer must advise the Bank that it is so acting as a trustee. If the Customer has not advised the Bank it is acting as a trustee of a trust and provided all details of the trust reasonably required by the Bank, the Bank may treat the Customer as acting as principal and solely for its own beneficial interest under this Agreement, and that Deposits are being used for the Customer's sole beneficial interest.

2.2 Authorised Persons The Customer acknowledges and agrees that:

- (a) each Authorised Person is authorised by the Customer to give Instructions, perform any acts or obligations under this Agreement for and on behalf of the Customer and bind the Customer under this Agreement and any transaction contemplated by this Agreement in relation to a Deposit;

- (b) the Customer is responsible to the Bank for all Instructions signed, initiated, sent or given by an Authorised Person and all acts of an Authorised Person (including fees, charges and liabilities incurred or to be incurred or arising from such Instructions or acts);
- (c) the Bank may rely on any Instruction or agreement signed, initiated, sent or given by an Authorised Person which purports or appears to be genuine and to have been signed, initiated, sent or given by an Authorised Person by whom it purports to be signed, initiated, sent or given, notwithstanding that the Customer subsequently alleges that such instruction or agreement is not authorised by the Customer;
- (d) each Authorised Person will continue to be authorised until such time as the Bank receives written notice from the Customer to the contrary and until receipt of such notification, the Bank will be entitled to rely on, and will be fully protected in acting on, the information relating to the Authorised Persons previously provided to it; and
- (e) the Bank may require each Authorised Person to be identified according to any Law or any other requirement reasonably specified by the Bank. The Bank may, in its discretion, not process or act on any Instruction until it has completed the verification of identity checks required by all applicable Law.

2.3 Instructions: The Customer agrees:

- (a) to ensure that any Instruction is correct, complete and authorised and that the Bank is entitled to assume so;
- (b) that any Instruction is irrevocable;
- (c) that the Bank may (but is not obliged to) enquire about or attempt to verify the authenticity of any Instruction;
- (d) that the Bank may act on any Instruction even if such Instruction is contrary or inconsistent with any other existing Instruction received by the Bank;
- (e) that, if requested by the Customer, the Bank will use reasonable endeavours to cancel a transaction (including any payment) which the Bank has carried out following receipt of an Instruction or, if not carried out, to stop the further processing of the transaction (including the payment), but the Bank will have no liability for failure to do so. The Customer acknowledges and agrees that in respect of any payment, if it requests the Bank to cancel an Instruction, the Bank may not return the funds to the Customer until they are received by the Bank.
- (f) that the Bank may refuse to act on any Instruction if:
 - (i) the Instruction has not been received prior to the relevant Cut-off Time;
 - (ii) the Instruction is incorrect, incomplete, unclear or inconsistent or does not comply with the format specified by the Bank or agreed with the Bank;
 - (iii) the Instruction appears to the Bank to be unauthorised, not authentic or in breach of any relevant security measure;
 - (iv) (whether in respect of a future value date Instruction or otherwise) the value of any Withdrawal in an Instruction exceeds the Cleared Funds available in the relevant Deposit at the relevant time or any maximum limit allowed by the Bank or agreed by the Customer;
 - (v) accepting or acting upon any Instruction would require any action by or information from the Bank on a day that is not a Business Day; or
 - (vi) accepting or acting upon any Instruction would cause a breach of any other agreement between the Bank and the Customer or any applicable Law, Sanction, requirement of any competent Authority or any internal policy relating to corporate governance, risk management or audit.

2.4 **Customer's representations and warranties:** The Customer represents, warrants, and acknowledges to the Bank, that:

- (a) where the Customer is a corporation,
 - (i) the Customer is duly incorporated, established and validly existing under the Law of the Customer's country of incorporation, establishment or constitution (as the case may be);
 - (ii) the Customer has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of this Agreement to which the Customer is or will be a party and the transactions contemplated by this Agreement;
 - (iii) it is for its corporate and commercial benefit for it to enter into this Agreement, and doing so is consistent with its corporate interest;
 - (iv) neither the signing, delivery or performance of this Agreement nor any Instruction or transaction contemplated by this Agreement does or will contravene or constitute a default under, or cause to be exceeded:
 - (A) any Law applicable to the Customer or any of the Customer's assets;
 - (B) the Customer's constitutional documents; or
 - (C) any agreement which is binding upon the Customer;
- (b) unless agreed to in writing by the Bank, the Customer is not acting as an agent for another person or entity;
- (c) where a Customer is acting as a trustee:
 - (i) it has full power and authority to make and deal with each Deposit in the manner the Customer uses it; and
 - (ii) in entering into this Agreement and in making Deposits, the Customer is at all times acting in the best interests of the beneficiaries of the trust;
- (d) all Deposits are made and will be used and operated by the Customer solely for business purposes. Accordingly, the provisions of the Consumer Guarantees Act 1993 shall have no effect in relation to this Agreement, any transactions or any Deposits;
- (e) unless otherwise notified to the Bank in writing, the Customer is resident in New Zealand for the purpose of the Goods and Services Tax Act 1985; and
- (f) to the fullest extent permitted by Law, the Bank excludes any and all liability to the Customer under sections 9, 12A, 13 and/or 14(1) of the Fair Trading Act 1986.

2.5 **Anti-Money Laundering**

- (a) Notwithstanding any other provision contained in this Agreement to the contrary, the Bank is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any anti-money laundering, counter-terrorism financing or economic or trade sanctions laws or regulations applicable to the Bank.
- (b) The Customer must promptly provide to the Bank all information and documents that are within its possession, custody or control reasonably required by the Bank in order for the Bank to comply with any anti-money laundering, counter-terrorism financing or economic or trade sanctions laws or regulations applicable to the Bank.
- (c) The Customer agrees that the Bank may disclose any information concerning the Customer to any Authority where required by Law.
- (d) The Customer agrees to exercise its rights and perform its obligations under this Agreement in accordance with all applicable anti-money laundering, counter-terrorism financing or economic or trade sanctions laws or regulations.
- (e) The Customer declares that it is acting for its sole beneficial interest and not in a trustee or agency capacity, unless otherwise disclosed to and agreed by the Bank in writing.

- 2.6 **Foreign Exchange Risk:** The Customer acknowledges that:
- (a) the Bank will repay a Deposit in the same currency that it is made in. This means that if a Deposit is in a foreign currency, the New Zealand dollar value of the Deposit will change if the value of the New Zealand dollar compared to that foreign currency changes whilst the relevant amount is a Deposit.
 - (b) if the Bank, acting reasonably, converts a Deposit to another currency for any reason, the Customer will face exchange rate risk. The Bank will do this using the Applicable Rate and the Bank is not responsible for any loss the Customer may suffer as a result of converting the Deposit at that time, unless there is any gross negligence, wilful misconduct or fraud on the part of the Bank.

3. BANK'S ROLE

- 3.1 **Bank Role:** The Bank is not acting as a fiduciary for the Customer in respect of this Agreement, any Deposit or any transaction thereunder.
- 3.2 **Liability:** The Bank shall not be liable to the Customer for any Loss suffered or incurred or which may arise directly or indirectly in any way arising from or in any way connected with a Deposit, save that the Bank shall remain liable to the Customer, as applicable, for any direct Loss to the extent only that, that Loss is caused by the Bank's material breach of the Agreement, gross negligence, wilful misconduct or fraud. Notwithstanding the above, neither the Bank nor the Customer will be liable to the other party for any Indirect Loss.
- 3.3 **Compliance with Verification Checks and Security Procedures:** The Bank shall not at any time be obliged to provide or maintain a Deposit in the event that any identity checks, procedures or other security procedures that the Bank may, at its discretion, acting reasonably, impose in respect of that Deposit have not been complied with to its satisfaction.
- 3.4 **Force Majeure Event:** Notwithstanding the foregoing, neither the Bank nor the Customer shall be responsible or liable to the other party for any Loss incurred or sustained by the Bank or the Customer due to a Force Majeure Event. If, as a result of a Force Majeure Event, the Bank becomes unable, wholly or in part, to perform any of its obligations under this Agreement or to provide or maintain a Deposit, the Bank will suspend the relevant Deposit until the relevant Force Majeure Event has ceased to affect the availability of the Deposit.
- 3.5 **Tax Residency Information:** The Bank may freeze or close Deposits, or suspend Withdrawal or other use of Deposits by, a Customer if:
- (a) the Bank has not received tax residency information which the Bank has reasonably requested about the Customer (or about the persons who own or control the Customer); or
 - (b) the Bank has reason to believe that the tax residency information provided (whether about the Customer or those persons who own or control the Customer) is incomplete or inaccurate.

4. DEPOSITS

- 4.1 **Opening Deposits:**
- (a) The Bank shall allow the Customer to make and maintain one or more Deposits from time to time as agreed by the Bank. The opening and operation of each Deposit shall be subject to this Agreement, any applicable Law, Sanction and the rules of any relevant Authority.
 - (b) Unless otherwise agreed, the Bank may require the Customer to deposit a minimum amount of money in a Deposit as a condition to opening a Deposit.

4.2 Types of Deposit

- (a) The Bank may, in its sole discretion, agree to provide the Customer with one or more time or fixed term Deposits. Deposits can be:
 - (i) for a fixed term as agreed by the Customer and the Bank ('Term Deposit'); or
 - (ii) where the principal is repayable on demand ('Call Deposit').
- (b) The Customer shall provide the Bank with the necessary Instructions with respect to the handling of any Term Deposit at maturity. In the absence of any Instructions, the Bank may (but is not obliged to) renew the Term Deposit by placing, as a fresh Deposit, the principal plus or minus accrued interest for such period as it deems fit or as permitted under applicable Law. Interest shall be payable based on the rate determined by the Bank or as agreed between the Bank and the Customer. Any Withdrawal of a Term Deposit prior to its maturity date may only be made with the prior consent of the Bank and on such terms and conditions as the Bank may impose from time to time. The Bank may withhold some or all of any interest payable or may impose charges on any Term Deposit from which Withdrawals are made prior to maturity.

4.3 Currency of Deposit

- (a) A Deposit can be denominated in New Zealand dollars or a foreign currency the Bank agrees to. A fee or charge may be denominated in a different currency to a Deposit. If so, the Bank will convert the currency of the fee or charge into the currency of the Deposit at the Applicable Rate.
- (b) Any debits and credits denominated in a different currency from that of the relevant Deposit shall be converted into the relevant currency at the Applicable Rate. Any charges incurred in connection with such conversion will be for the account of the Customer. The Bank is only obliged to effect a payment or a transfer of funds to or from a Deposit at the place where the Deposit is established and held.
- (c) In respect of any Deposit:
 - (i) the Bank assumes no liability, unless there is any gross negligence, wilful misconduct or fraud on the part of the Bank, for any diminution in the value of funds in any Deposit for any reason whatsoever (for example, fluctuation in interest rates, exchange rates, taxes or depreciation) or the unavailability of such funds on maturity due to restrictions on convertibility, requisition, involuntary transfers, moratoria, exchange controls or any Force Majeure Event;
 - (ii) if the country of origin of any currency restricts the availability, credit or transfers of any funds in that currency, the Bank will have no obligation to pay, from any Deposit, such funds in that currency. The Bank may (but shall not be obliged to), and the Customer authorises the Bank to, discharge its obligations with respect to such funds by paying to the Customer, at any time (whether before or after maturity), such funds in any other currency at the Applicable Rate and in any manner as the Bank may determine at its discretion acting reasonably. The Customer agrees that any such payment shall constitute good, valid and complete discharge of the Bank's obligations to the Customer with respect to such funds;
 - (iii) without prejudice to Clauses 4.3(c) (i) and (ii) above, the Customer acknowledges that all Foreign Currency Deposits are subject to fluctuations in prevailing market conditions which upon maturity may result in either gains or losses to earnings and/or investments; and
 - (iv) the Customer acknowledges that opening of any Foreign Currency Deposit may be subject to such terms and conditions as may be reasonably imposed by the Bank from time to time.

4.4 Interest on Deposits

- (a) Interest will be paid at the rate as agreed by the Customer and the Bank.
- (b) Where interest is payable by the Bank:
 - (i) Interest will be paid at the frequency as agreed by the Customer and the Bank and where there is no such agreement, as determined by the Bank in its discretion acting reasonably and notified by the Bank to the Customer
 - (ii) Interest on Call Deposits may only be paid at the frequency initially agreed (notwithstanding earlier repayment of the principal by the Bank).
- (c) If the Bank is due to pay the Customer interest within 7 calendar days of the maturity date of a Term Deposit, the Bank will not do this. Instead, the Bank will include this interest with the final payment to the Customer on the maturity date.
- (d) Interest is only payable up to and including the day before the original maturity date.
- (e) All payments made by the Bank will be paid into an account nominated by the Customer. If the Bank is due to make any payment on a non-Business Day, the Bank will make that payment on the next Business Day.
- (f) Negative Interest:
 - (i) The interest rate which applies to a Deposit may be less than 0% per annum (**'Negative Interest Rate'**). Where a Negative Interest Rate applies:
 - (A) Interest will be payable by the Customer to the Bank in respect of the Deposit at the Negative Interest Rate (**'Negative Interest'**); and
 - (B) Negative Interest will be paid at the frequency and date for payment:
 - 1. as agreed by the Bank and the Customer; or
 - 2. where there is no such agreement, as determined by the Bank in its discretion acting reasonably and notified by the Bank to the Customer.
 - (ii) Where Negative Interest is payable, the:
 - (A) Bank may make a deduction from the Deposit (including from the principal amount of any Deposit) for any Negative Interest;
 - (B) Customer may nominate another account or Deposit at the Bank in the Customer's name to have any Negative Interest deducted from;
 - (C) Bank and the Customer may agree that any Negative Interest can be paid by direct debit from an account with another bank; or
 - (D) Bank and the Customer may agree that any Negative Interest can be paid from an account with another bank.
 - (iii) If the Bank does not receive payment from the Customer of any Negative Interest on any Deposit within 2 Business Days of the date that such payment is due to be made, the Bank may make a deduction from the Deposit or another account or Deposit at the Bank in the Customer's name (at the Bank's discretion) in an amount equal to the overdue payment of Negative Interest. Such deduction may result in the account being overdrawn on terms notified by the Bank to the Customer.

4.5 Term Deposits

- (a) **Changing a Term Deposit:** A Term Deposit is a contract that the Bank has no obligation to agree to amend. If the Customer requests an amendment (such as a withdrawal **'Early Withdrawal'**) before the maturity date, the Bank may specify preconditions before agreeing to amend the contract. Those preconditions may include reducing the applicable interest rate, setting any minimum withdrawal amount, payment of any costs and losses the Bank calculates as applicable, requiring repayment of interest already paid or accrued and requiring the payment of a higher amount of any Negative Interest.

- (b) **Early Withdrawal from a Term Deposit:**
 - (i) The Customer can only request an Early Withdrawal by giving the Bank 31 days' prior notice. The Bank does not have to agree to Early Withdrawal. If the Bank agrees to Early Withdrawal, it will repay the funds on the 32nd day following receipt of the request. If the maturity date occurs during the Customer's notice period, the Bank will repay the funds on the maturity date.
 - (ii) Only one Early Withdrawal request can operate at any one time for each Term Deposit. The Customer may not change an Early Withdrawal request, but may cancel an Early Withdrawal request by written notice to the Bank. No cancellations can be made within 2 Business Days of the date that repayment is due to be made.
- (c) **Repayment of a Term Deposit at the maturity date:**
 - (i) Subject to clause 4.5(d) at the maturity date of a Term Deposit, the Bank will repay the Customer the amount originally invested, plus or minus any interest accrued on that amount not already paid.
 - (ii) If the Customer has not nominated an account for repayment (including payment of interest), the Bank may withhold paying the Customer until an account has been nominated. If payment is delayed because the Customer has not nominated an account for repayment, the Bank will not pay any interest for the period of that delay. Interest is only payable for the period up to but excluding the maturity date.
- (d) **Risks relating to Term Deposits:** The Customer acknowledges that it may receive less than originally invested in a Term Deposit if the Bank deducts:
 - (i) costs arising from any Early Withdrawal from the original amount of the Term Deposit. This may be the case if market interest rates have risen since the Customer opened the Term Deposit;
 - (ii) interest the Bank has already paid if the Customer withdraws some or all of the money in the Term Deposit or the Bank closes the Term Deposit; and/or
 - (iii) Negative Interest.
- (e) **Inactive Deposits:** For Deposits with a balance over NZ\$100 that have been inoperative for a period of six years or more, the Bank may be required to transfer the balances of the Deposits to the Commissioner of Inland Revenue under the Unclaimed Money Act 1971.

4.6 **Right to take money from, or close, a Deposit:**

- (a) The Bank can take money out of a Deposit, or keep any unpaid interest, to:
 - (i) pay any money owed to the Bank by the Customer, including for the payment of any Negative Interest; or
 - (ii) pay money owed to a government agency or someone else if the Bank has received a demand under certain laws or a Court order requiring the Bank to do so.
- (b) The Bank can refuse, acting reasonably, to let the Customer access money in a Deposit if the Customer has breached an agreement entered into with the Bank, in a material way.
- (c) The Bank can refuse to pay the Customer any amounts from a Deposit or withdraw amounts from a Deposit, if the Bank reasonably believes that the Customer is using any Deposits, products, or services provided by the Bank for an unlawful purpose.

4.7 **Withdrawal and Payments.**

- (a) **Withdrawal and Payments.** In respect of any Withdrawal from a Deposit or payment Instructions by the Customer:
 - (i) the Bank will, subject to any limit agreed or imposed by the Bank, allow a Withdrawal from such Deposit:

- (A) if the Customer has Cleared Funds in such Deposit at least equal to the Withdrawal amount; and
- (B) if the Withdrawal, including any Instruction, is completed in compliance with this Agreement;
- (ii) the Bank may, in its sole discretion, allow a Withdrawal of funds which are not Cleared Funds. If such funds are subsequently reversed or dishonoured, the Bank may exercise recourse against the Customer and the Customer will be liable for the value of the relevant debit to such Deposit;
- (iii) if it is not practicable for the Bank to honour the Customer's requested Withdrawal method, the Bank may honour any Withdrawal request by provision of a Bank Cheque for effecting the relevant payment;
- (iv) the Bank will process any Instructions on the payment date specified by the Customer, provided:
 - (A) the Instruction has been received by the Bank prior to the relevant Cut-off Time;
 - (B) the payment is within any processing limits set by the Bank or threshold or authorisation limits set by the Customer (where applicable converted into the relevant currency at the Applicable Rate); and
 - (C) the Deposit has sufficient Cleared Funds or adequate credit arrangements in place to make the payment specified in the Instruction;
- (v) if an Instruction is received on or specifies a payment date falling on a non-Business Day, the payment will be processed on the next Business Day, unless otherwise agreed between the Bank and the Customer;
- (vi) the Bank is, on receipt of an Instruction, authorised to debit the relevant Deposit for the amount of the payment; and
- (vii) unless specified by the Customer in any Instruction, the Bank may determine the order of priority of any payment in any Instruction.

5. DEPOSIT STATEMENTS, CONFIRMATION ADVICES AND REPORTING SERVICES

- 5.1 **Statements and Advices:** Deposit statements, confirmation advices or reports (whether in paper format or by any other means) may be provided to the Customer (as agreed with the Customer) or made accessible to the Customer at monthly or such other intervals as the Bank may agree with the Customer.
- 5.2 **Discrepancies:** The Customer shall verify the correctness of each Deposit statement, confirmation advice or report received from the Bank and, unless the Customer informs the Bank in writing within 30 days of the date of each Deposit statement or confirmation advice of any error, irregularities, omissions, inaccuracies or discrepancies in the entries therein, such entries shall be deemed correct and shall be binding unless there is an obvious error or any wilful misconduct, gross negligence or fraud on the part of the Bank.
- 5.3 **Rectification of Errors or Omissions:** Notwithstanding Clause 5.2 above, the Bank may at any time rectify errors or omissions in any statement, confirmation advice or report which, once so rectified, shall be binding on the Customer unless there is an obvious error or any wilful misconduct, gross negligence or fraud on the part of the Bank.
- 5.4 **Computer Generated Reports:** Any report by the Bank that is computer generated requires no signature and is to be read in conjunction with the relevant Deposit statement.

6. TAXES

6.1 **Taxes:** The Customer will pay all Taxes applicable to it and payable in connection with any Deposit and, where applicable, the Bank may debit any such Taxes from a Deposit.

6.2 Withholding

(a) The Bank may be required by Law or agreement or arrangement with any local or foreign Authority to deduct or withhold from payments made to the Customer in connection with a Deposit. Where the Bank is required to make a deduction or withholding, the Customer acknowledges and agrees that the relevant payment will be reduced by the amount of that deduction or withholding.

(b) Resident Withholding Tax (RWT) will be deducted from interest payments made to New Zealand resident Deposit holders (unless an exemption applies and the appropriate documentation provided). The Inland Revenue Department has the ability to change the RWT rates elected by the Customer. For non-resident Deposit holders, Non-Resident Withholding Tax will be deducted or, if agreed with the Bank, the cost of the approved issuer levy will be deducted from interest payments.

6.3 **Gross-up:** If the Customer is required by Law to make a deduction or withholding for or on account of Tax, the sum payable by the Customer to the Bank (in respect of which such deduction is required to be made) shall be increased to the extent necessary to ensure that the Bank receives a sum net of any deduction or withholding equal to the sum which it would have received had no such deduction been made or required to be made. The Customer shall make that deduction and any payment required in connection with that deduction within the time allowed and in the minimum amount required by Law.

7. TERMINATION AND SUSPENSION

7.1 **Termination with immediate effect:** The Bank may terminate a Deposit with immediate effect and without notice:

- (a) if, in the Bank's opinion, acting under the Customer's Instruction or providing any Deposit to the Customer would cause the Bank to be in breach of any applicable Law, Sanction or requirement of any competent Authority; or
- (b) if the Bank is required to do so in compliance with any Law, Sanction or requirement of any competent Authority or the Bank's internal policy.

Upon such termination, any obligation due by the Customer to the Bank shall become immediately due and payable.

7.2 **Outstanding Instructions:** Any termination of a Deposit shall be without prejudice to any outstanding Instruction or any right or obligation which may have arisen between the Bank and the Customer prior to such termination or which is expressed in this Agreement to survive termination of this Agreement.

7.3 **Consequence of Termination:** Upon termination of a Deposit:

- (a) the Customer authorises the Bank to debit any and all charges and expenses and any Negative Interest due and payable in connection with such termination and any other amount owing by the Customer to the Bank under this Agreement. If the Customer thinks the amount is incorrect, the Customer can ask the Bank how the Bank has calculated or determined it and the Bank will take reasonable steps to provide that information; and
- (b) if there remains a credit balance after such debiting, the Customer authorises the Bank to, at its discretion, acting reasonably, to transfer such credit balance by such means of remittance as the Bank deems appropriate to such account (including an account with another branch of the Bank) as it deems fit or by means of a draft payable to the Customer, mailed to the Customer at its last known address, at the Customer's own risk.

- 7.4 **Survival of Clauses:** Clause 2.5 (Anti-Money Laundering), Clause 2.6 (Foreign Exchange Risk), Clause 3.2 (Liability), Clause 4.4 (Interest on Deposits), Clause 4.5 (Term Deposits), Clause 4.6 (Right to take money from, or close, a Deposit), Clause 6 (Taxes), Clause 7.2 (Outstanding Instructions), Clause 7.3 (Consequence of Termination), Clause 8 (Indemnities), Clause 9 (Set-off), Clause 10 (Disclosure of Information) and Clause 18 (Governing Law and Jurisdiction) and any other provisions which by their nature are intended by the parties to survive termination will survive the termination of any Deposit or this Agreement.

8. INDEMNITIES

- 8.1 **Agreed Currency:** Each amount due and payable by the Customer to the Bank under this Agreement will be made in the Agreed Currency. If, for any reason the amount so received by the Bank (converted at the Applicable Rate where applicable) falls short of the amount in the Agreed Currency payable to the Bank, the Customer will, to the extent permitted by applicable Law, immediately pay such additional amount in the Agreed Currency as may be necessary to compensate for the shortfall.
- 8.2 **Indemnity for Loss:** The Customer agrees to indemnify and keep indemnified the Bank and its directors, officers, employees, agents and representatives and make good all reasonable Loss, including any legal costs on a full indemnity basis (except to the extent that such Loss was caused by the Bank's wilful misconduct, negligence or fraud) which the Bank and its directors, officers, employees, agents and representatives may suffer, incur or sustain in connection with or related to:
- (a) a representation, warranty or statement made, or taken to be made, by or on behalf of the Customer in relation to a Deposit being incorrect or misleading (including by omission) when made or taken to be made;
 - (b) the Customer's use of the Deposit;
 - (c) failure by the Customer to perform or observe any of its obligations under this Agreement;
 - (d) any determination or decision made to act or refusal to act by the Bank in connection with the Deposit because of a court order or other similar obligation (whether or not subsequently discharged);
 - (e) the Bank acting or declining to act, in accordance with the Agreement, on the Customer's Instructions or any instruction or request which the Bank reasonably believes to be given by or on behalf of the Customer irrespective of how received;
 - (f) doing anything in connection with a subpoena, notice, order or enquiry by an Authority involving the Customer, its business or assets, a Deposit or anything in connection with them;
 - (g) exercising, enforcing or preserving rights, powers or remedies in connection with this Agreement or a Deposit;
 - (h) any claim made against the Bank by a third party relating to the Customer's use of any Deposit;
 - (i) it being unlawful in any jurisdiction for the Bank to perform its obligations or enforce its rights;
 - (j) any breach of any anti-money laundering, counter-terrorism financing or economic or trade sanctions Laws (other than by the Bank);
 - (k) any breach by the Customer of a Law or requirement of any Authority; or
 - (l) any transaction to which a Deposit relates in any way being tainted by fraud or alleged fraud (other than the Bank's fraud).

For the avoidance of doubt, the foregoing indemnity shall include, without limitation, any liability for tax and any deficit balances in any Deposit.

The Bank will give the Customer written notice of the amount it must pay the Bank under this Clause 8.2. The Customer must make that payment on the date and in the manner reasonably specified by the Bank in the notice. If the Customer thinks the amount is incorrect, the Customer can ask the Bank how the Bank has calculated or ascertained it and the Bank will take reasonable steps to provide that information.

Any indemnity or similar obligation in this Agreement:

- (1) is a continuing obligation despite any intervening payment, settlement or other thing;
- (2) independent of the Customer's other obligations;
- (3) survives the termination or discharge of any Deposit; and
- (4) is in addition to any other rights that the Bank has under this Agreement, or given independently by Law.

It is not necessary for the Bank to incur an expense or make a payment before enforcing a right of indemnity under this Agreement.

9. SET-OFF

- 9.1 The Bank may, at any time, where permitted by Law and without notice to the Customer, set-off any debts owed by the Customer to the Bank against any debts owed by the Bank to the Customer.
- 9.2 The right set out in Clause 9.1 above applies irrespective of the currency in which such debts are owed and whether or not the Bank's or the Customer's debts are present or future, matured or unmatured, actual or contingent and whether such liability is several or joint with another or as principal or surety. Where the exercise of a right of set-off involves a currency conversion, the Customer authorises the Bank to apply a currency conversion rate at the Applicable Rate.

10. DISCLOSURE OF INFORMATION

- 10.1 **Authorisation to Disclose:** The Customer agrees and acknowledges that the Bank is authorised to disclose any information regarding the Customer (including, without limitation, relating to any of its transactions, its financial condition, its Deposit(s)) to any or all of the following persons:
 - (a) any affiliate of the Customer;
 - (b) any actual or proposed assignee of the Bank, or participant or sub-participant in or transferee of any of its rights in relation to the Customer under a duty of confidentiality to the Bank or any Bank Group Member;
 - (c) any office, branch, affiliate, subsidiary, employee or agent of the Bank;
 - (d) any auditors or professional advisers of the Bank or any Bank Group Member under a duty of confidentiality to the Bank or any Bank Group Member;
 - (e) any third party or third party system provider to the Bank or any Bank Group Member;
 - (f) any third party services provider whose services the Customer may have requested through the Bank;
 - (g) any relevant Authority;
 - (h) any person when required to do so pursuant to subpoena or other court process issued out of any applicable jurisdiction;
 - (i) any person when otherwise required to do so in accordance with the Laws of any applicable jurisdiction; and
 - (j) any local or foreign Authority with whom the Bank or any Bank Group Member has an agreement or arrangement which requires customer or Deposit information to be disclosed, whether the disclosure is made directly by the Bank or through another Bank Group Member.

The Customer also agrees and acknowledges that any Bank Group Member may transfer any of the above information to any party referred to above to whom it is authorised to disclose the same notwithstanding that such party's principal place of business is outside of the Customer's country of establishment/incorporation or that such information following disclosure will be collected, held, processed or used by such party in whole or part outside of the Customer's country of establishment/incorporation.

11. MODIFICATION AND WAIVERS

11.1 **Modifications:** The Bank may amend, modify or supplement the provisions of this Agreement or vary or change any Deposit at any time on 30 days' notice in writing or by way of electronic communication, notice in the media, notice on the Bank's website or by any other method permitted by Law.

Notwithstanding the above, the Bank will not give the Customer prior notice:

- (a) where the changes are outside the Bank's control, except to the extent such notification is otherwise required by Law;
- (b) where the changes are required by Law to take immediate effect, in which case they will take effect immediately; or
- (c) of a change to an interest rate or other variation subject to market fluctuations or external references.

11.2 **Waivers:** Waivers of any of the Bank's rights or powers and consents by the Bank shall only be valid if signed on behalf of the Bank in writing. Waivers and consents are given by the Bank in its absolute discretion.

12. TRANSFERS

12.1 **Transfer by Customer:** The Customer must not transfer, grant Security or declare a trust over any of its rights arising under this Agreement or a Deposit without the prior written consent of the Bank.

12.2 **Transfer by Bank:** The Customer agrees that the Bank may transfer, grant Security over or declare a trust over any of its rights under this Agreement including any Deposit without the Customer's (or any other person's) consent. The Customer agrees to comply with any reasonable request the Bank may have to give effect to such transfer, including executing any documents or performing any action as the Bank may reasonably require in this regard.

13. GENERAL

13.1 **Privity of Agreement:** Unless this Agreement expressly states otherwise a person who is not a party to this Agreement shall have no rights to enforce any provision of this Agreement. For the avoidance of doubt, consent of any person not a party to this Agreement is not required to amend such Agreement.

13.2 **Prior Written Agreement**

- (a) This Agreement will replace any prior written agreement the Bank may have with the Customer in relation to Deposits.
- (b) The Customer acknowledges that it has made its own independent enquiry and investigations in relation to the subject matter of this Agreement and has entered into this Agreement solely in reliance on its own judgement.

13.3 **Invalid, illegal or unenforceable provisions:** The invalidity, illegality or unenforceability of a provision of this Agreement does not affect or impair the continuation in force of the remainder of this Agreement. The Customer agrees that the Bank may substitute any invalid or unenforceable provision with a valid and enforceable provision which achieves, to the greatest extent possible, the economic, legal and commercial objectives of the invalid or unenforceable provisions.

- 13.4 **Exercise of rights and remedies:** A failure to exercise or a delay in exercising a right or remedy provided by this Agreement or by Law does not impair or constitute a waiver of the right or remedy or an impairment of or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by Law prevents further exercise of the right or remedy or the exercise of another right or remedy.
- 13.5 **Joint and several liability:** If the Customer comprises more than one person or the Customer holds a Deposit jointly with another person, each person will be jointly and severally liable for the Customer's obligations under this Agreement and references to the Customer in this Agreement means each of those persons.

14. PRUDENTIAL REQUIREMENT DISCLOSURE

Our Reserve Bank Disclosure Statement is available at anz.co.nz. The Bank's obligations under this Agreement and each Deposit do not constitute deposits or liabilities of ANZ Australia. ANZ Australia does not stand behind or guarantee the Bank. Australian Prudential Regulatory Authority regulates all Authorised Deposit Taking Institutions (ADI) in Australia. ANZ Australia is an ADI. However, the Bank is not an ADI.

15. FURTHER INFORMATION AND COMPLAINTS

If the Customer needs more information about a Deposit or has any problems with a Deposit, they should phone their ANZ Dealer. If the Customer is not satisfied with this information and wants to put a complaint in writing, they should send a letter to their ANZ Dealer at ANZ Bank New Zealand Limited, Level 10, 171 Featherston Street, Wellington 6011. Alternatively, the Customer can use the Bank's online complaint form on its website www.anz.co.nz. If the Customer does not believe the Bank has resolved the complaint, the Customer may be able to obtain free independent help from the Banking Ombudsman. The Customer can write to them at Freepost 218002, PO Box 25327, Featherston Street, Wellington 6146, phone 0800 805 950, or find information on their website, bankomb.org.nz.

16. PRIVACY AND CONFIDENTIALITY

- (a) Information provided to the Bank will be kept strictly confidential and will be securely held by the Bank and/or by any Bank Group Member. The Customer has a right to access its information and may also request that it be corrected. A fee may be payable.
- (b) The Bank will make every effort to keep customer information up to date.
- (c) How the Bank uses customer information will depend on the purpose for which that information was collected.
- (d) Generally, the Bank may collect and use customer information to:
 - (i) consider applications for facilities, products or services;
 - (ii) administer, manage and monitor any facilities, products or services;
 - (iii) identify, prevent or investigate any actual or suspected fraud, unlawful activity, misconduct or threats to the Bank's systems. The Bank's use of information may include monitoring traffic and information to and from the Bank's website and other IT systems for those purposes;
 - (iv) conduct market research, data processing and statistical analysis;
 - (v) perform administrative and operational tasks (including risk management, debt recovery, exposure aggregation, systems development and testing, credit scoring, staff training and market or customer satisfaction research); and
 - (vi) unless the Customer notifies the Bank otherwise in writing, provide the Customer with information about other facilities, products or services including certain third party products or services.

- (e) The Bank may use customer information for the purpose of data matching and in doing so may collect information about the Customer. 'Data matching' is the process of comparing information with publicly available information and/or with information held by a reputable entity the Bank has an ongoing relationship with in order to better enable the Bank to carry out any of the above purposes.
- (f) The Bank may disclose customer information to carefully selected third parties for the purposes of data matching, provided those third parties are subject to an obligation of confidentiality.
- (g) The Bank may obtain information and make such enquiries about the Customer as the Bank may consider warranted from, or give information to, any source including any Bank Group Member and credit reference agencies for the above purposes, or anyone else who assists the Bank to identify, prevent or investigate fraud, unlawful activity, misconduct or threats to the Bank's systems.
- (h) The Bank may disclose customer information to credit reference agencies for the purpose of obtaining credit reports. Those credit reference agencies may retain that information and provide it to their customers who use their credit reporting services. If the Customer defaults in any obligations to the Bank, then the Bank may disclose customer information to credit reference or debt recovery agencies and it may be retained by them. Those agencies may provide that information to their customers who use their credit reporting services.
- (i) The Bank's security standards are maintained and its technology regularly updated to provide protection for the information it holds. The Bank does not sell, publish or give away customer information.
- (j) Certain Laws also require the Bank to disclose customer information on request, for example the Tax Administration Act 1994.

17. NOTICES

- 17.1 Any notice or other communication to the Customer in respect of this Agreement may be given in any manner set forth below to the address, number or email provided by the Customer, and will be deemed effective as indicated:
- (a) if in writing and delivered in person or by courier, on the date it is delivered;
 - (b) if sent by fax transmission, on the date that transmission is received in legible form;
 - (c) if sent by ordinary mail (not certified or registered mail), on the 5th Business Day (at the address to which it is posted) after posting;
 - (d) if sent by certified or registered mail (airmail, if overseas) or equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
 - (e) if sent by email, at the time sent to the relevant recipient unless the sender receives an automated message that the email has not been delivered.
- 17.2 Any notice or communication to the Bank will only be effective if it is expressly marked for the attention of the department or officer as the Bank may notify the Customer from time to time.

18. GOVERNING LAW AND JURISDICTION

- 18.1 **Governing Law and Jurisdiction:** Unless specified otherwise, this Agreement will be governed by and construed in accordance with the Law of New Zealand. The parties submit to the jurisdiction of the courts of New Zealand and of any courts competent to hear appeals from those courts. Notwithstanding the above, the Bank may take proceedings in any country where the Customer has assets or where the Customer conducts business activities.
- 18.2 **Waiver of Immunity:** The Customer irrevocably waives any sovereign and other immunity the Customer may have in any jurisdiction from legal proceedings, attachment before or after judgment or execution judgment.

