

# TERMS AND CONDITIONS OF MARKETS TRANSACTIONS

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**Transactions covered by these Terms and Conditions involve the risk of loss (for example due to movements in market rates). You should not enter into these transactions if you do not understand the risks. It is your responsibility to monitor your transactions. The Bank recommends that you seek professional advice about anything you do not understand.**

## 1. AGREEMENT

- 1.1 **Terms and Conditions govern:** Each Transaction entered into by the Bank and the Customer will, unless the Bank has expressly agreed otherwise in writing, be governed by, and subject to, these Terms and Conditions and the Confirmation for that Transaction.
- 1.2 **One agreement:** These Terms and Conditions and all Confirmations will together form one agreement ('Agreement') between the Bank and the Customer, effective from the date the first Transaction is entered into in accordance with clause 3 of these Terms and Conditions.

## 2. RELATIONSHIP BETWEEN PARTIES

- 2.1 **Customer representations, warranties and acknowledgements:** The Customer represents, warrants and acknowledges that:
- (a) it is capable of understanding (on its own behalf or through independent expert advice) and assessing the merits of and understands, accepts and assumes the terms, conditions and risks of a Transaction and the Agreement;
  - (b) it will ensure that each Transaction will be suitable for its objectives, financial situation and needs;
  - (c) it understands foreign exchange and derivatives markets and how they operate;
  - (d) the Bank is not acting as a fiduciary in respect of any Transaction;
  - (e) the Bank may from time to time take proprietary positions, make a market or undertake proprietary activities (including hedging transactions) related to the initiation or termination of a Transaction with the Customer. This may adversely affect the market price, rate or other factor(s) underlying a Transaction and consequently the value of the Transaction. The Bank has policies and procedures designed to minimise the risk that officers and employees are influenced by any conflicting interest or duty and that confidential information is improperly disclosed or made available;
  - (f) it will enter into each Transaction and the Agreement in reliance on such independent advice (including tax, legal and financial advice) as the Customer considers necessary and not on any representation or information made or given by the Bank; and
  - (g) no communication (written or oral) received from the Bank will be deemed to be an assurance or guarantee as to the expected results of any Transaction.
- 2.2 **No liability:** The Customer agrees that, to the maximum extent permitted by law, the Bank will not be liable for any loss incurred by the Customer in connection with:
- (a) a Transaction entered into under the Agreement;
  - (b) a default by the Customer of any of its obligations under the Agreement;
  - (c) the validity or invalidity of any Instruction received by the Bank;
  - (d) the Bank not acting upon any Instruction; or
  - (e) the Customer's failure to comply with any relevant terms and conditions for giving an Instruction,
- except to the extent that such loss arises directly from the negligence or fraud of the Bank, its officers or its employees.

### 3. ENTERING INTO TRANSACTIONS

3.1 **When bound:** Both the Bank and the Customer will be legally bound from the moment:

- (a) (if the Transaction is entered into orally) the details of a Transaction are agreed between the Bank and the Customer; or
- (b) (if the Transaction is entered into electronically, via an electronic service or system agreed to by the Bank ('electronic service')) the Bank is deemed to have received the Customer's electronic acceptance of the terms of the Transaction in accordance with any agreed terms or commonly accepted market practice.

3.2 **Confirmations:** The Bank may, promptly after the Customer and the Bank have agreed to enter into a Transaction, send the Customer (by post, fax or electronically (including by email)) a Confirmation setting out the agreed details of that Transaction. Promptly after receipt of a Confirmation, the Customer shall either:

- (a) notify the Bank if there is an error in that Confirmation; and
- (b) where the Confirmation requires an acknowledgement that the Confirmation is correct either:
  - (i) sign a copy of that Confirmation and return it to the Bank; or
  - (ii) provide such acknowledgement in accordance with any other method (including email or other electronic service) that has been agreed to by the Bank.

3.3 **Cancellation:** Where the Bank requires:

- (a) the Customer to sign and return the Confirmation to the Bank; or
- (b) an acknowledgement from the Customer that the Confirmation is correct;

the Bank may cancel the Transaction relating to that Confirmation, if the Customer does not sign the Confirmation or provide such an acknowledgement. The Bank will not be liable to the Customer in respect of any such cancellation.

3.4 **Transactions valid and binding:** Unless the Bank cancels a Transaction in accordance with clause 3.3, a Transaction will be valid and binding even in the absence of the Confirmation being signed by either the Bank or the Customer or an acknowledgement (as contemplated in clause 3.2) being provided by the Customer.

3.5 **Definitions:** Each Confirmation may incorporate definitions published by the International Swaps and Derivatives Association, Inc ('ISDA'). Each party undertakes to obtain and review a copy of any such definitions incorporated into a Confirmation. For the purpose of construing those definitions, these Terms and Conditions are taken to be the "ISDA Master Agreement". Each party represents that it understands that a copy of the relevant definitions can be obtained from ISDA, through its website (which at the date of these Terms and Conditions, has the address [www.isda.org](http://www.isda.org)).

3.6 **Inconsistency:** In the event of any inconsistency between any two or more of the following documents, they will take precedence over each other in the following descending order:

- (a) any Confirmation;
- (b) these Terms and Conditions; then
- (c) the relevant ISDA definitions.

In the event of any inconsistency between any term of these Terms and Conditions and any Schedule to these Terms and Conditions, the provisions of the relevant Schedule will prevail to the extent of the inconsistency.

3.7 **ANZ FX Online:** If the Customer requests, and the Bank agrees to provide the Customer with, access to ANZ FX Online, then the ANZ FX Online Terms and Conditions shall govern the Customer's use of, and access to, ANZ FX Online.

#### 4. HOW AND WHEN TO MAKE PAYMENTS AND DELIVERIES

4.1 **Payment and delivery:** In relation to each Transaction, the Bank and the Customer agree to make each payment or delivery agreed to be made by it, as specified in any Confirmation for that Transaction sent by the Bank to the Customer under clause 3.2. Payments shall be made in freely transferable funds for value on the due date to the account specified in the relevant Confirmation or otherwise agreed between the Bank and the Customer. Where settlement is by delivery (that is, other than by payment), such delivery shall be made for receipt on the due date in the manner specified in the relevant Confirmation, or otherwise agreed between the Bank and the Customer. Each payment or delivery will be by way of exchange for the corresponding payment or payments payable, or delivery or deliveries deliverable, by the other party.

4.2 **No Event of Default, etc:** The Bank will not be obliged to make a payment or delivery to the Customer if an Event of Default or Termination Event has occurred and is continuing or would occur as a result of that.

4.3 **Netting of payments:** If, on any date, both the Bank and the Customer are obliged to pay amounts in the same currency to the other under one or more Transactions then, on that date, unless the Bank and the Customer have otherwise agreed, the obligations of the Bank and the Customer to pay those amounts will be satisfied by payment of the net amount of those obligations from the party having the net debit to the party having the net credit.

4.4 **Payments to be free and clear:** All amounts payable under the Agreement shall be paid:

- (a) free and clear of any restriction or condition; and
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding on account of any tax; and
- (c) (subject to clauses 4.3, 8 and 9) without any deduction or withholding on account of any other amount, whether by way of set-off, counterclaim or otherwise.

4.5 **Deductions:** If either party is required by law to make any deduction or withholding from any amount paid or payable by it under the Agreement, then that party shall (without prejudice to clause 4.6):

- (a) promptly notify the other party of such requirement;
- (b) ensure that any deduction or withholding does not exceed the legal minimum and shall pay the amount required to be deducted, withheld or paid to the relevant authority before the date on which penalties attach to that deduction or withholding; and
- (c) promptly deliver to the other party the receipt issued by the applicable authority evidencing that such deduction or withholding has been made.

4.6 **Gross up:** If, at any time:

- (a) the tax is an Indemnifiable Tax; or
- (b) a Change of Law occurs,

and (in the case of (b) above, as a consequence thereof) the Customer is required by law to make any deduction or withholding from any amount paid or payable by it under the Agreement, the Customer shall pay to the Bank such additional amount as is necessary to ensure that, after that deduction or withholding is made, the Bank receives and retains (free from any liability in respect of any such deduction or withholding) a net amount equal to the amount which it would have received and so retained had no such deduction or withholding been made.

## 5. REPRESENTATIONS AND WARRANTIES

5.1 **Representations and warranties of the Customer:** Unless otherwise expressly agreed in writing by the Bank, the Customer represents and warrants, in relation to itself and any Support Provider (as at the date on which it enters into each Transaction or, in the case of the representation in clause 5.1(i), continuously until the Customer satisfies all its obligations in relation to each Transaction) that:

- (a) **Status:** it is either an individual, company, limited partnership, or other legal entity capable of entering into the Agreement duly incorporated or otherwise existing under the laws of the jurisdiction of its incorporation or creation;
- (b) **Power and authority:** it has:
  - (i) the power to enter into, and perform its obligations under, the Transaction, the Agreement and any Support Document to which it is a party; and
  - (ii) taken all necessary action to authorise the entry into and performance of the Transaction, the Agreement and any Support Document to which it is a party;
- (c) **Obligations:** its obligations under the Transaction, the Agreement and any Support Document to which it is a party are legal, valid, binding and enforceable;
- (d) **No laws violated:** its entry into and performance of the Transaction, the Agreement and any Support Document to which it is a party, will not:
  - (i) violate or contravene any law to which it is subject; or
  - (ii) result in a breach of any other agreement or obligation by which it is bound;
- (e) **No default, etc:** no Event of Default or Termination Event has occurred and remains unremedied or will result from its entry into or performance of the Transaction, the Agreement or any Support Document to which it is a party;
- (f) **Full disclosure:** all information provided by it or on its behalf to the Bank at any time in connection with the Transaction, the Agreement or any Support Document to which it is a party was true and accurate in all material respects and not misleading as at the date on which it was provided (whether by the omission of facts known to it or otherwise);
- (g) **No agency:** it is entering into the Transaction, the Agreement and any Support Document to which it is a party as principal and not as agent or (unless the Bank has agreed that clause 5.2 applies) as trustee of any trust or settlement;
- (h) **Business purposes:** it is entering into the Transaction and the Agreement for the purposes of a business and accordingly nothing in the Consumer Guarantees Act 1993 (New Zealand) will apply to the Agreement or the Transaction;
- (i) **Bankruptcy:** if an individual, it is not and has never been adjudicated bankrupt; and
- (j) **Solvency:** it is able to pay its debts as they become due in the normal course of business.

5.2 **Representations and warranties of a trustee:** If the Customer is acting as the trustee or trustees of a trust (in this clause 5.2 'Trust'), the Customer represents and warrants, as at the date on which it enters into each Transaction, that:

- (a) **Trust validly created:** the Trust has been validly established, and is validly existing, under the laws of its country of establishment;
- (b) **Trustee:** the Customer has been validly appointed as trustee or trustees of the Trust, and comprises all of the trustees of the Trust;
- (c) **Power, authority etc:** its entry into and performance of the Transaction, the Agreement and any Support Document to which it is a party:

- (i) is permitted by the trust deed establishing the Trust (the 'Trust Deed');
  - (ii) has been duly authorised in accordance with the Trust Deed; and
  - (iii) does not result in any breach of trust in relation to the Trust; and
- (d) **Right of indemnity:** it has a right of indemnity out of the assets of the Trust with respect to its obligations and liabilities under the Transaction, the Agreement and any Support Document to which it is a party, which right of indemnity has not been negated or limited in any way by the provisions of the Trust Deed or by any breach of trust in relation to the Trust or otherwise.

5.3 **Representations and warranties of a limited partnership registered under the LP Act:** if the Customer is a limited partnership under the LP Act, each of the general partners (personally and jointly and severally), represent and warrant, as at the date on which it enters into each Transaction, that:

- (a) **Obligations:** its obligations under the Transaction, the Agreement and any Support Document to which it is a party are legal, valid, binding and enforceable;
- (b) **No laws violated:** its entry into and performance of the Transaction, the Agreement and any Support Document to which it is a party, will not:
  - (i) violate or contravene any law to which it is subject; or
  - (ii) result in a breach of any other agreement or obligation by which it is bound;
- (c) **No default, etc:** no Event of Default or Termination Event has occurred and remains unremedied or will result from its entry into or performance of the Transaction, the Agreement or any Support Document to which it is a party.

## 6. UNDERTAKINGS

### 6.1 The Customer:

- (a) **Deliver specified information:** shall promptly provide to the Bank any forms, documents or other information specified in any Confirmation or requested by the Bank from time to time;
- (b) **Notify default, etc:** shall promptly notify the Bank of the occurrence of any Event of Default or Termination Event; and
- (c) **Consents:** shall obtain, maintain in full force and effect and comply with all consents which are required in relation to its continuing business and to enable it or any Support Provider, to lawfully enter into, exercise its rights and perform and comply with obligations under the Agreement, any Transaction or Support Document to which it is a party and to ensure that those obligations are legal, valid, binding and enforceable in accordance with their respective terms.

## 7. EVENTS OF DEFAULT AND TERMINATION EVENTS

7.1 **Events of Default:** Each of the following events (whether or not within the control of the Customer or any Support Provider) will be an Event of Default:

- (a) **Failure to pay or deliver:** the Customer fails to pay or make, when due, any payment or delivery under any Transaction or the Agreement or any other agreement with the Bank; or
- (b) **Other breach:** the Customer or any Support Provider breaches or does not comply with any obligation under the Agreement or any Support Document or any other agreement with the Bank to which it is a party; or

- (c) **Misrepresentation:** any representation or warranty made or deemed to be repeated by the Customer or any Support Provider in relation to any Transaction or the Agreement or any Support Document to which it is a party is or was untrue or incorrect in any material respect when made or deemed repeated; or
- (d) **Security:** any security over any asset of the Customer or any Support Provider is enforced or becomes enforceable; or
- (e) **Facilities Repaid:** any facilities which the Bank provides to the Customer for the borrowing of money or raising of finance by the Customer, or any other financial accommodation which the Bank provides to the Customer is repaid or satisfied in full or otherwise terminated; or
- (f) **Bankruptcy, etc:** the Customer or any Support Provider is adjudicated bankrupt, or is placed in receivership, or the Customer or any Support Provider enters into any assignment for the benefit of creditors or is subject to any agreement or compromise with creditors, or the liquidation or statutory management of the Customer or any Support Provider commences, or any event preliminary or analogous to the bankruptcy, receivership, administration, liquidation or statutory management of the Customer or any Support provider occurs; or
- (g) **Insolvency:** the Customer or any Support Provider is unable to pay, or does not pay, its debts as they become due and payable, or becomes insolvent, or the financial position of the Customer or any Support Provider or the value of any securities held by the Bank changes adversely to a material extent, in each case in the Bank's opinion; or
- (h) **Repudiation:** the Customer or any Support Provider disclaims or repudiates, in whole or in part, any Transaction, the Agreement or any Support Document (or any person on their behalf takes such action); or
- (i) **Resettlement:** if the Customer is acting as trustee or trustees of a trust (in this clause 7.1 (i), ('Trust')), any property of the Trust has, without the prior written consent of the Bank, been re-settled or set-aside or transferred to any other person other than in accordance with the Trust Deed establishing the Trust, or any person purports to do so; or
- (j) **Material adverse effect:** any other event or series of events, whether related or not, occurs, or any circumstances arise or exist, which in the opinion of the Bank may have a material adverse effect on the Customer or any Support Provider or the ability or willingness of the Customer or any Support Provider to comply with all or any of their obligations under any Transaction, the Agreement or any Support Document to which they are a party; or
- (k) **Death:** if a Customer or Support Provider is an individual, the death of that person; or
- (l) **Limited Partnership:** if the Customer is a limited partnership:
  - (i) without the prior written consent of the Bank, any steps are taken for the termination or deregistration of the limited partnership or the limited partnership is terminated or deregistered;
  - (ii) any terminating event (as referred to in section 86 of the LP Act) occurs in relation to the Customer or under the Customer's partnership agreement;
  - (iii) the Customer has no general partner at any time;
  - (iv) any one or more of the Customer's general partners suffers any event or commits any act set out in clause 7.1 (f) or (g) as if references in those clauses to the Customer were to the general partner; or
  - (v) any representation or warranty made or deemed to be repeated by any general partner in relation to any Transaction or the Agreement or any Support Document to which it is a party is or was untrue or incorrect in any material respect when made or deemed repeated; or
- (m) **Other:** any other event which the Bank and the Customer agree in writing or which is specified in a Confirmation to be an event of default for the purposes of the Agreement.



7.2 **Termination Events:** Each of the following events will be a Termination Event:

- (a) **Illegality:** if by reason of:
  - (i) the introduction of, or any change in, any law or any change in the interpretation or application thereof by any government, governmental agency or authority; or
  - (ii) compliance by a party with any directive, it becomes, or will become, illegal for that party or any Support Provider to participate in any Transaction or any part of any Transaction, or otherwise to give effect to the Agreement or any Support Document to which it is a party; or
- (b) **Force majeure:** a party or any Support Provider is prevented from making or receiving a payment or delivery under a Transaction or the Agreement or any Support Document to which it is a party or from complying with any other provision of the Agreement or any Support Document to which it is a party, or it becomes impossible or impracticable to perform or comply with that obligation or provision, in each case by reason of an act of God, riot, act of terrorism, civil commotion, insurrection, war (declared or undeclared), any other circumstances affecting the financial markets or the availability of finance to financial institutions generally or any other similar event or circumstance which:
  - (i) is beyond the control of that party or Support Provider; and
  - (ii) that party or Support Provider is not, after using all reasonable efforts (which will not require that party or Support Provider to incur a loss, other than immaterial, incidental expenses), able to overcome; or
- (c) **Tax event:** a party will, or there is a substantial likelihood that it will, be required on the next date for a payment or delivery under a Transaction, to make a deduction or withholding pursuant to clause 4.5; or
- (d) **GST event:** a party will, or there is a substantial likelihood that it will, be required on the next date for a payment or delivery under a Transaction, to make a payment under clause 11.3. That party will be the 'non-affected party' for the purposes of clause 8.2; or
- (e) **Other:** any other event or circumstance which the Bank and the Customer agree in writing or which is specified in a Confirmation as constituting a 'Termination Event' for the purposes of the Agreement.

7.3 **Hierarchy of events:**

- (a) Any event or circumstance which gives rise to an Illegality or Force Majeure Event will not, for so long as that is the case, also be an Event of Default under clauses 7.1(a) or 7.1(b), to the extent that such event or circumstance relates to the failure to make any payment or delivery or failure to comply with any other undertaking or obligation under the Agreement or any Support Document.
- (b) Except in the circumstances contemplated by clause 7.3(a), if an event or circumstance which would give rise to an Illegality or Force Majeure Event is also an Event of Default or other Termination Event, it will be treated as an Event of Default or other Termination Event and not as an Illegality or Force Majeure Event.
- (c) If an event or circumstance which would give rise to an Illegality is also a Force Majeure Event, it will be treated as an Illegality and not as a Force Majeure Event.

7.4 **Deferral of payment and delivery:** If an Illegality or Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery required to be made under that Transaction will be deferred and will not be due until the earlier of the first Business Day after the expiry of the Waiting Period and the date on which the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist.

## 8. CONSEQUENCES OF AN EVENT OF DEFAULT OR TERMINATION EVENT

### 8.1 Termination following an Event of Default or cancellation: If:

- (a) an Event of Default occurs; or
- (b) the Bank cancels a Transaction under clause 3.3,

the Bank may by not more than 20 days notice to the Customer designate a date not earlier than the day such notice is effective as the Early Termination Date in respect of some or all of the outstanding Transactions.

### 8.2 Termination following a Termination Event:

- (a) If a Termination Event occurs in respect of a party or any Support Provider, that party ('affected party') shall promptly notify the other party ('non-affected party'), specifying the nature of the Termination Event and identifying the Transactions which are affected by the event or circumstance. The non-affected party may, if the Termination Event is continuing after the expiry of the Waiting Period, by notice to the affected party, designate a date as the Early Termination Date in respect of some or all of the affected Transactions or all outstanding Transactions. If the 'non-affected party' designates a date as the Early Termination Date only in respect of affected Transactions, the affected party may by notice to the non-affected party, designate that same date as the Early Termination Date in respect of all the other outstanding Transactions.
- (b) If a Termination Event occurs in respect of both the Customer or any Support Provider and the Bank, each party shall promptly notify the other party specifying the Termination Event and identifying the Transactions which are affected by the event or circumstance. The Bank or the Customer may, by not more than 20 days notice, designate a date not earlier than the day such notice is effective as the Early Termination Date in respect of some or all of the affected Transactions or all outstanding Transactions.

8.3 **Effect of designation:** If the Early Termination Date occurs, no further payments or deliveries will be required to be made under clause 4.1 in respect of the Terminated Transactions and the following provisions of this clause 8 will apply.

8.4 **Calculation of Early Termination Amount:** On or about the Early Termination Date the Bank must calculate each of the following in New Zealand dollars (or if the Customer is not bankrupt or in liquidation, any other currency as the Bank selects in good faith):

- (a) the mark-to-market value of each Terminated Transaction as at the Early Termination Date using prevailing market rates chosen by the Bank in good faith. The Bank determines the mark-to-market value having regard to what the Bank determines that another person would pay the Bank (expressed as a negative number), or what the Bank determines that the Bank would have to pay another person (expressed as a positive number), for that other person to take over the Customer's rights and obligations under the Terminated Transactions that would, but for the occurrence of the termination of the Terminated Transactions have been required after the Early Termination Date.

The Bank is not required to use mid-market quotations or mid-market valuations in determining any mark-to-market values. While the Bank may choose to obtain firm or indicative quotations in order to determine a mark-to-market value, the Bank is not obliged to and the Bank can base its determination on other information such as market data or information from its own sources.

- (b) the unpaid amounts in respect of each Terminated Transaction as at the Early Termination Date, being the aggregate amount of:
  - (i) all payments which fell due for payment (or that would have become payable but for clause 4.2 or due but for clause 7.4) by the Customer or the Bank in respect of the Terminated Transaction under the Agreement on or before the Early Termination Date but which have not been paid; and

- (ii) the fair market value of all obligations of the Customer or the Bank to deliver which were required to be settled (or that would have been required to be settled but for clause 4.2 or due but for clause 7.4) in respect of the Terminated Transaction under the Agreement on or before the Early Termination Date but which have not been settled.

In making this calculation, the Bank may include unpaid Early Termination Amounts in respect of Transactions which were previously terminated, plus any interest in respect of them. Any unpaid amounts payable by the Bank are expressed as a negative number and any such amounts payable by the Customer are expressed as a positive number.

- (c) a single net amount in respect of the Terminated Transactions. This is calculated by the Bank netting the sum of all positive mark-to-market values and unpaid amounts against the sum of all negative mark-to-market values and unpaid amounts so that a single net amount is obtained.

If the single net amount calculated under clause 8.4(c) is positive, then that amount is the Early Termination Amount and the Customer must pay it to the Bank. Alternatively, if the single net amount calculated under clause 8.4(c) is negative, then the Early Termination Amount is the absolute value of that amount and the Bank must pay it to the Customer. Any Early Termination Amount payable by the Bank is subject to the other provisions of the Agreement, including clause 9.

- 8.5 **Obligations:** All obligations to make payments or deliveries under clause 4.1 in respect of the Terminated Transactions will be satisfied by payment of the Early Termination Amount.
- 8.6 **Notification:** The Bank shall notify the Customer of the Bank's determinations and the Early Termination Amount payable under clause 8.4 as soon as is reasonably practicable. The Customer's obligation to make any payment is not conditional on the Customer receiving any further information in relation to such determinations, or being satisfied with such determinations.
- 8.7 **Time of payment:** Payment of the Early Termination Amount shall be made within two Business Days of the Bank notifying the Customer of the Early Termination Amount under clause 8.6.
- 8.8 **Pre-estimate:** The Bank and the Customer agree that an amount recoverable under this clause 8 is a reasonable pre-estimate of loss and not a penalty.

## 9. SET-OFF

- 9.1 **Contractual set-off:** Without prejudice, and in addition, to any right of set-off, combination of accounts, lien or other right to which the Bank is at any time entitled (whether by law, contract or otherwise), the Bank may at any time on or after the occurrence of an Early Termination Date or on or after the date any amount is payable by the Customer to the Bank under the Agreement, without prior notice or demand, apply any amount owed or to become owing by it to the Customer under the Agreement in or towards satisfaction of any amount payable by the Customer (whether or not under the Agreement) and, for such purpose, is authorised to accelerate the date for payment of any amount owing by the Bank to the Customer, notwithstanding the terms upon which such amount is so owing. The Bank may exercise such rights notwithstanding that such liabilities may not be expressed in the same currency, and the Bank is authorised to effect any necessary conversion at the market rate of exchange then prevailing.
- 9.2 **Bank may estimate:** If an obligation is unascertained, the Bank may estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.
- 9.3 **No security interest:** This clause 9 is intended to give rights in contract only and is not intended to constitute, create or give rise to a security interest of any kind.

## 10. TRANSFER AND ASSIGNMENT

- 10.1 **Bank:** The Bank may, without the consent of the Customer, assign all or any of its rights or transfer all or any of its obligations under the Agreement to any one or more financial institutions.
- 10.2 **Customer:** The Customer may not assign or transfer (whether by way of security or otherwise) or declare a trust over any of its rights or obligations under the Agreement.
- 10.3 **Disclosure:** The Customer authorises the Bank to disclose to a potential assignee or transferee or any other person with whom it wishes to enter into contractual relations in connection with the Agreement, all information held by it about the Customer.

## 11. COSTS AND EXPENSES

- 11.1 **Costs and expenses:** All costs, losses, expenses (including legal expenses on a full indemnity basis) and other liabilities incurred by the Bank in connection with the exercise, enforcement or preservation, or the attempted exercise, enforcement or preservation, of any right under the Agreement or any Support Document shall be paid by the Customer on demand.
- 11.2 **Transaction taxes:** All stamp, documentary, transaction, registration and other similar duties and taxes (including fines, interest and penalties), if any, payable in connection with the Agreement or any Support Document shall be payable by the Customer.
- 11.3 **GST inclusive:** If any supply by one party to the other is, at the time of supply, subject to goods and services tax chargeable under the Goods and Services Tax Act 1985, the recipient shall pay to the supplier an amount equal to the applicable goods and services tax in addition to the consideration for that supply.

## 12. CURRENCY INDEMNITY

- 12.1 **Indemnity:**
- (a) If any payment under the Agreement is received by the Bank in a currency ('first currency') other than the currency ('second currency') in which it is payable (whether as a result of obtaining or enforcing an order or judgment, the dissolution of any person or otherwise), the amount received will only satisfy the Customer's obligation to pay that amount to the extent of the amount of the second currency which the Bank is able, in accordance with its usual practice, to purchase with the amount received in the first currency on the date of that receipt (or, if it is not practicable to make that purchase on that date, on the first day upon which it is practicable to do so).
- (b) The Customer indemnifies the Bank against:
- (i) any loss sustained by the Bank as a result of the amount purchased by it in the second currency pursuant to clause 12.1(a) being less than the amount due; and
- (ii) all costs and expenses incurred by the Bank in purchasing the second currency.
- 12.2 **Payment:** The Customer shall pay to the Bank, upon demand, in the currency stipulated by the Bank, all amounts payable pursuant to the indemnity contained in clause 12.1.

## 13. DEFAULT INTEREST

- 13.1 **Default interest and compensation for defaulted delivery:** If the Customer fails to pay any amount payable under the Agreement when due, or defaults in the performance of any obligation required to be settled by delivery, the Customer shall pay interest on that amount or, in the case of a default in delivery, an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, from its due date until it is paid or delivered in full (both before and after any judgment).

- 13.2 **Rate of default interest:** For the purposes of clause 13.1, interest shall be calculated and payable by reference to successive periods, each of which (other than the first, which will begin on and include the due date) will begin on the last day of the previous period. Each such period shall be of a duration selected by the Bank from time to time and the rate of interest applicable to a particular period will be the rate per annum determined by the Bank.
- 13.3 **Payment of default interest:** Interest payable pursuant to this clause 13, shall be payable on the last day of each period in respect of which it is calculated and on the date of payment of each overdue amount. Any such interest which is not paid when due shall be added to the overdue amount in respect of which it is payable and will itself bear interest in accordance with this clause 13.

## 14. MISCELLANEOUS

- 14.1 **Certificates:** Any certificate given by the Bank in relation to the Agreement, any Transaction or any Support Document (including as to amounts payable or deliverable by either party) is sufficient evidence of its contents unless its contents are proved to be incorrect.
- 14.2 **Entire agreement:** To the maximum extent permitted by law, the Agreement contains all of the terms, representations and warranties made between the parties with respect to its subject matter and supersedes all prior discussions and agreements relating thereto. Neither party has relied on any representation, warranty or assurance in entering into the Agreement (except as referred to in the Agreement) and each party waives any rights or remedies which it might otherwise have in relation to any representation, warranty or assurance.
- 14.3 **Survival of obligations:** Without prejudice to clause 8.3, the obligations of the parties under the Agreement will survive termination of any Transaction.
- 14.4 **Telephone recording:** Telephone conversations between the Bank and the Customer may be recorded. The Customer consents to such recording taking place and any recording or transcript of that recording being admissible as evidence in any suit, action or proceeding relating to the Agreement or a Support Document.
- 14.5 **Consequential loss:** Neither party is entitled to claim from the other any consequential loss in the event of that other party's breach of the Agreement or a Support Document.
- 14.6 **Amendments to the Agreement:** Subject to clause 14.7, no amendment or waiver in respect of the Agreement will be effective unless it is in writing and signed by each of the parties.
- 14.7 **Amendments of these Terms and Conditions:** The Bank may, at any time, either by giving 30 days written notice or by publication on the ANZ Website, amend or replace these Terms and Conditions. Any such amendment or replacement will take effect:
- (a) in relation to a written notice, on the expiry of that 30 day period; or
  - (b) in the case of publication on its website, 30 days after the amendment or replacement is published on the ANZ Website; or
  - (c) in either case, on any later date specified by the Bank.
- 14.8 If the Customer has not been advised by the Bank that the Customer is a "wholesale investor" within the meaning of the FMC Law, each provision of the Agreement that is not consistent with any of the following:
- (a) the FMC Law;
  - (b) any condition of a derivatives issuer licence held by the Bank under the FMC Law;
  - (c) any applicable product disclosure statement given to the Customer under the FMC Law,
- shall not be enforceable to the extent of that inconsistency.

- 14.9 **Authorised persons:** The Bank shall be entitled, without being required to make any further enquiry, to treat a person who holds themselves out as having the authority to enter into and settle a Transaction on behalf of a Customer and/or sign a Confirmation, as having the authority of the Customer to do so (and a Transaction entered into in these circumstances will be valid and binding even if it transpires that that person did not have that authority). Without limiting the foregoing, if the Bank requires, the Customer shall provide the Bank with a list of those persons the Customer has authorised to enter into and settle Transactions on its behalf and sign Confirmations.
- 14.10 **Partial invalidity:** If at any time any provision of the Agreement or any Support Document is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, that illegality, invalidity or unenforceability will not affect the enforceability of the provisions, or (as the case may be) the remaining provisions, of the Agreement or, as applicable, that Support Document, nor will the legality, validity or enforceability of any of those provisions under the law of any other jurisdiction be in any way affected or impaired thereby.
- 14.11 **No implied waivers:** Time shall be of the essence in respect of performance by the Customer or any Support Provider of their respective obligations under the Agreement and any Support Document to which each is a party, but no failure on the part of the Bank to exercise, and no delay on its part in exercising, any right, power or remedy under the Agreement or any Support Document will operate as a waiver thereof, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- 14.12 **Remedies cumulative:** The rights, powers and remedies provided in the Agreement are cumulative, and not exclusive of, any rights, powers or remedies provided by law.
- 14.13 **Obligations independent:** Each of the obligations of the Customer under clauses 4.6, 11 and 12 constitutes a continuing obligation, separate and independent from its other obligations under the Agreement.
- 14.14 **Enforcement:** It shall not be necessary for the Bank to incur any expense or make any payment before enforcing any of its rights in respect of any obligation of the Customer referred to in clause 14.13.
- 14.15 **Payments:** The obligation of the Customer to pay any money under the Agreement will only be discharged when the Bank is satisfied that the Customer or any other person or persons making any payment of that money was solvent at the time of making that payment or after the elapse of the period during which any such payment may become or be deemed to be avoided or voidable.
- 14.16 **Conflict of provisions:** In the event of a conflict between a provision of the Agreement and a provision of any Support Document, the Bank may, in its absolute discretion, determine which will prevail. In the event of a conflict between a provision of these Terms and Conditions and a Confirmation, the provisions of the Confirmation will prevail for the purposes of the Transaction to which it relates.
- 14.17 **Consents:** The Bank may give or withhold any approval or consent in its absolute discretion, and either conditionally or unconditionally.
- 14.18 **Joint and several liability:** If the Customer is a partnership (other than a limited partnership registered under the LP Act) trust or other entity comprising more than one person, each partner, trustee or person will be jointly and severally liable for the obligations of the Customer under the Agreement and references to the Customer in the Agreement means each of those persons.
- 14.19 **Determinations:** Any determination or estimate required to be made, or discretion to be exercised by the Bank under the Agreement will, unless the context otherwise requires, be made or exercised (as applicable) by the Bank in good faith and in a commercially reasonable manner, and will be binding in the absence of manifest error.
- 14.20 **Portfolio reconciliation:** The Bank may be required to reconcile the data it holds about certain Transactions between the Customer and the Bank. If this is required, this will be done in accordance with Schedule 4 of these Terms and Conditions.



## 15. NOTICES

### 15.1 Each notice or other communication to be given or made by a party under the Agreement shall:

- (a) **Writing:** be given or made in writing by facsimile or letter and be signed by the sender or an authorised officer of the sender or as otherwise agreed by the Bank (which may include any electronic service (for example by email)).
- (b) **Address:** be given or made to that party:
  - (i) at the address or facsimile number, and marked for the attention of the person (if any), from time to time designated by that party to the other for the purposes of the Agreement, provided that if the Customer has not designated an address or facsimile number for the purposes of the Agreement the Bank may give or make each notice or other communication under the Agreement to the Customer at any address or facsimile number which the Bank has for the Customer; or
  - (ii) if agreed by the Bank, sent by email to the email address that is advised by one party to the other (in a form satisfactory to the Bank) from time to time or sent by any other electronic service or other method that has been agreed between the Customer and the Bank.
- (c) **Deemed delivery:** not be effective until received by that party, and any such notice or communication will be deemed to be received by that party:
  - (i) (if given or made by letter) when left at the address of that party or 3 Working Days after being put in the post, postage prepaid, and addressed to that party at that address; or
  - (ii) (if given or made by facsimile) upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; provided that any notice or communication received or deemed received after 5pm on a Working Day, or on a day which is not a Working Day, will be deemed not to have been received until the next Working Day; or
  - (iii) (if sent by email) on the date it is delivered to the recipients email address as notified by one party to the other from time to time and when the sender receives an automated message confirming delivery or four hours after the time sent (as recorded on a device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever happens first; or
  - (iv) (if sent by an agreed electronic service) at the date that it was received at the recipients address for service of that electronic service; or
  - (v) (if sent by any other method that has been agreed between the Customer and the Bank) in accordance with the agreed method of receipt; or
  - (vi) despite (i)-(v) above, if they are received after 5pm in the place of receipt or on a non-Working Day, at 9am on the next Working Day.

### 15.2 **Process Agent:** The Customer irrevocably appoints the Process Agent to receive for it and on its behalf service of process in any proceedings. The Customer undertakes to ensure that the Process Agent remains present in New Zealand, or to appoint another person in New Zealand as its process agent.

## 16. FACSIMILE, EMAIL, TELEPHONE AND OTHER ELECTRONIC INSTRUCTIONS

16.1. **Acknowledgement:** The Customer acknowledges and agrees that:

- (a) the Bank may (in its discretion) accept and act on each facsimile, email, telephone or other electronic instruction or communication received by the Bank which is, or purports to be, given by the Customer or on the Customer's behalf and is in any way related to Markets Services ('Instruction');
- (b) any notice, confirmation or other communication in any way relating to a Markets Service ('Communication') which the Bank may from time to time be able to give, or is required to give, to the Customer, until written notice to the contrary from the Customer is received by the Bank, may (to the maximum extent permitted by law) be given by the Bank sending that Communication to any email address notified by the Customer to the Bank in writing ('Email Address');
- (c) the Bank is under no obligation to act on an Instruction and no Instruction is operative until it appears to the Bank that it has been received in full by the Bank;
- (d) the Customer will ensure that the Email Address is appropriately monitored and maintained or that any alternative email address is notified to the Bank in writing;
- (e) the Customer will comply with the security procedures or measures for use with email Instructions agreed between the Bank and the Customer (if any);
- (f) if the Bank accepts an Instruction that purports to have been transmitted or authorised by the Customer and appears to the Bank to be in compliance with the security procedures or measures as agreed between the Bank and the Customer (if any):
  - (i) the Bank may rely on that Instruction without making any enquiries or verifying the authenticity, accuracy or completeness of that Instruction; and
  - (ii) the Instruction will be deemed effective as the Customer's notice, request or instruction;
- (g) providing an Instruction by electronic transmission (including by email) is not a secure means of sending such an Instruction;
- (h) the Customer is aware of the risk involved in providing Instructions to the Bank by email, including the risk that Instructions may:
  - (i) be incomplete or inaccurate;
  - (ii) be fraudulently, mistakenly given or altered or not otherwise authorised by the Customer; and
  - (iii) not be received in whole by the Bank;and that the Bank may nevertheless accept and rely on such Instruction;
- (i) because of the convenience and other efficiency benefits of the Bank accepting and acting on Instructions sent by email, the Customer accepts the risk of the Bank accepting Instructions that are incomplete, inaccurate, fraudulently or mistakenly given or not otherwise authorised by the Customer or not received in whole by the Bank; and
- (j) to the maximum extent permitted by law, any Communication sent by the Bank to the Email Address is deemed to have been validly received for all purposes by the Customer. The Bank is under no obligation to send any Communication to more than one Email Address. This includes (without limitation) any Communication sent for the purposes of these Terms and Conditions or other master agreement, the Securities Act 1978, the Securities Markets Act 1988, the Financial Markets Conduct Act 2013 and the Financial Advisers Act 2008 (as replaced from time to time).



- 16.2 **Indemnity:** To the maximum extent permitted by law, the Customer agrees to indemnify the Bank and keep the Bank indemnified from and against all claims, actions, demands, liabilities, costs, charges, damages, losses, expenses (including all legal expenses on a full indemnity basis) and consequences of whatever nature which may be brought or preferred against the Bank or that the Bank may incur arising out of the Bank having acted or omitted to act wholly or partly in accordance with an Instruction, provided that act or omission is not caused by the Bank's negligence. The Customer agrees that this indemnity is unconditional, irrevocable and shall survive termination of all dealings between the Customer and the Bank and shall not be impaired by any act, omission, matter or thing that might discharge or impair the indemnity but for this clause.
- 16.3 **Interest:** The Customer agrees to pay interest on any amounts required to indemnify the Bank from the date of demand until the date of receipt by the Bank (after as well as before judgment). The rate of default interest shall be determined by the Bank at its discretion.
- 16.4 **Deductions:** The Customer authorises the Bank to charge any of the Customer's accounts held with the Bank with any sum of money that is payable by the Customer in connection with a transaction carried out by the Bank in reliance on an Instruction and payable to the Bank under the indemnity above.
- 16.5 **Obligation to notify:** The Customer will notify the Bank immediately if the Customer knows or suspects that an unauthorised party is aware of its password or code.

## 17. USE OF DATA AND ANTI-MONEY LAUNDERING

- 17.1 Any information which the Customer provides to the Bank will be kept strictly confidential and will be securely held by the Bank, any of its subsidiaries or its related companies (as defined in the Companies Act 1993), including Australia and New Zealand Banking Group Limited in Australia ('ANZ Group').
- 17.2 The Customer has a right to:
- (a) access the information by calling the Bank on 0800 220 400 (or +64 4 436 6608 if calling from outside New Zealand) or enquiring at any branch of the Bank; and
  - (b) request that information the Bank holds about a Customer be corrected.

In each case, a fee may be payable by the Customer to the Bank. The Bank agrees to make every effort to keep the Customer's personal information up to date. To assist the Bank, the Customer will advise the Bank of any changes in the Customer's personal details.

- 17.3 The Customer consents to the New Zealand Financial Markets Authority viewing the Customer's records relating to the Agreement.
- 17.4 The Customer acknowledges and agrees that the Bank may:
- (a) use information collected from the Customer to:
    - (i) consider the Customer's application for products or services;
    - (ii) administer, manage and monitor any products or services provided to the Customer;
    - (iii) conduct market research, data processing and statistical analysis;
    - (iv) unless the Customer disagrees, provide the Customer with information about other products or services including third party products or services; and
    - (v) obtain a legal entity identifier number, an Avox International Business Entity Identifier or equivalent form of identifier from third party providers (which may result in such information being publically available), if such identifier is required for internal Bank processes or in order to comply with any laws or regulations in New Zealand or overseas;

- (b) disclose information about the Customer to the ANZ Group, agents or contractors;
- (c) disclose information about the Customer to any government agencies or trade repositories to comply with any laws in New Zealand or overseas;
- (d) use the Customer's personal information for the purpose of data matching and in doing so may collect information about the Customer. 'Data matching' is the process of comparing the Customer's personal 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 purposes in clause 17.4(a) above;
- (e) disclose the Customer's information to carefully selected third parties for the purposes of data matching, provided those third parties are subject to an obligation of confidentiality;
- (f) obtain information and make such enquiries about the Customer as the Bank may consider warranted from any source including the ANZ Group and credit reference agencies; and
- (g) disclose information about the Customer to credit reference agencies for the purpose of obtaining credit reports on the Customer. If the Customer defaults in any obligation to the Bank, then the Bank may disclose information about the Customer to credit reference or debt recovery agencies. Those credit reference agencies may retain that information and provide it to their customers who use their credit reporting services.

17.5 Certain laws also require the Bank to disclose customer information on request. If the Bank receives a request from certain agencies to release the Customer's information, the Bank may not be able to advise the Customer that the request has been received. The Bank may also disclose information to the police, certain government agencies or other financial institutions where the Bank reasonably believes that the disclosure will assist in the investigation, detection and/or prevention of fraud, other illegal activity (including money laundering) or threats to the Bank's systems. The ANZ Group is subject to anti-money laundering and terrorist financing legislation in force in New Zealand, Australia and other countries. The Customer will provide all information to the ANZ Group which it reasonably requires to comply with these laws. Anti-money laundering and terrorist financing legislation in force in New Zealand, Australia and other countries may also prohibit the Bank from entering or concluding transactions which involve certain countries, persons or entities. As a result, the Customer agrees that the ANZ Group may:

- (a) delay or block any transaction, or refuse to pay any money, without incurring any liability; or
- (b) disclose any information concerning the Customer or the transaction to the New Zealand Police or Australian Federal Police or any relevant authority in any country in order to ascertain whether the laws in that country apply to a transaction or otherwise in compliance with those laws that aim to prevent or detect terrorist financing or money laundering, in the reasonable belief that the transaction may contravene those laws, and the ANZ Group will not incur any liability to the Customer as a result of that action.

17.6 In this clause, 'money laundering' includes any dealing with the proceeds of criminal activity and any dealing with funds or assets of any person or entity suspected of involvement in terrorism or any terrorist act.

## 18. ANZ WEBSITE TERMS FORM PART OF AGREEMENT

18.1 All transactions entered into using ANZ FX Online or ANZ eMatching are entered into in reliance on the basis that these Terms and Conditions will be deemed to include, where the ANZ Website is used, the ANZ Website Terms of Use and Privacy and Security Statement as amended from time to time, and such agreements together will be deemed to form a single agreement between the parties. If there is any inconsistency between the ANZ Website Terms of Use and Privacy and Security Statement on the one hand and the other terms of these Terms and Conditions, then the other terms of these Terms and Conditions will prevail to the extent of the inconsistency.

## 19. PRUDENTIAL REQUIREMENT DISCLOSURE

- 19.1 The Bank's obligations under these Terms and Conditions, and each Transaction entered into by the Bank and the Customer do not constitute deposits or liabilities of Australia and New Zealand Banking Group Limited. Australia and New Zealand Banking Group Limited does not stand behind or guarantee the Bank. Australian Prudential Regulatory Authority regulates all Authorised Deposit Taking Institution (ADI) in Australia. Australia and New Zealand Banking Group Limited is an ADI however the Bank is not an ADI.

## 20. GOVERNING LAW

- 20.1 The Agreement is governed by, and shall be construed in accordance with, the laws of New Zealand and the New Zealand courts shall have non-exclusive jurisdiction.

## 21. INTERPRETATION

- 21.1 **Definitions:** In the Agreement (including each Schedule), unless otherwise defined or the context otherwise requires:

**'ANZ eMatching'** means the system which facilitates electronic confirmation of Transactions, which may be made available to the Customer in accordance with Schedule 3 of these Terms and Conditions.

**'ANZ FX Online'** means the system which may be made available to the Customer more particularly described in Schedule 1 of these Terms and Conditions.

**'ANZ FX Online Terms and Conditions'** means the terms and conditions set out in Schedule 1 or such others as the Bank agrees from time to time, electronically via ANZ FX Online or otherwise.

**'ANZ Website'** means the site(s) delivering content on or through the internet, accessible at the internet address anz.co.nz or at such other internet address as the Bank may designate from time to time.

**'Bank'** means ANZ Bank New Zealand Limited.

**'Business Day'** means a day (other than a Saturday or Sunday) on which banks are open for business (including dealings in foreign exchange and foreign currency deposits) in Wellington and Auckland, and:

- (a) in respect of payments, the principal financial centre of the currency of the payment or, if different, the place where the account for receipt of the payment is located; or
- (b) in respect of deliveries, the place in which the delivery is to be made.

**'Change of Law'** means:

- (a) any introduction of, amendment to, clarification of, or a change in law;
- (b) any judicial decision, official administrative directive or announcement, published or private ruling, regulatory procedure, notice, assessment, directive or announcement or an amendment to, clarification of, or change in the official position of any governmental agency, in each case with respect to any law, judicial decision, official administrative directive or announcement, published or private ruling, regulatory procedure, notice, directive or announcement; or
- (c) any introduction of, amendment to, clarification of, or a change in any applicable generally accepted accounting practice, in each case, that occurs after the date the Bank and the Customer have entered into any Transaction.

**'Confirmation'** means, in relation to a Transaction, the document or other confirming evidence provided to the Customer by the Bank for the purpose of confirming or evidencing that Transaction.

**'Customer'** means a person who enters into a Transaction with the Bank.

**'Early Termination Amount'** means an amount payable in respect of Terminated Transactions in accordance with clause 8.4.

**'Early Termination Date'** means, in relation to a Transaction, the date designated by a party (acting in its absolute discretion) pursuant to clause 8.1 or clause 8.2.

**'Electronic Instruction'** means any electronic instruction, information, message or communication including a payment instruction issued or transmitted through ANZ FX Online or ANZ eMatching or any other electronic system designated by the Bank from time to time.

**'Event of Default'** means any event specified in clause 7.1.

**'FMC Law'** means the Financial Markets Conduct Act 2013 and the Financial Markets Conduct Regulations 2014.

**'Force Majeure Event'** means any event specified in clause 7.2(b).

**'Illegality'** means any event specified in clause 7.2(a).

**'Indemnifiable Tax'** means any tax other than a tax that would not be imposed in respect of a payment under the Agreement, but for a present or former connection between the jurisdiction of the government or taxation authority imposing such a tax and the recipient of such a payment (including, without limitation a connection arising from a citizen or resident of such jurisdiction or being or having been organised, present or engaged in a trade or business in such jurisdiction or having a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under the Agreement).

**'LP Act'** means the Limited Partnerships Act 2008.

**'Markets Service'** means any Transaction, communication or instruction between the Customer and the Bank, where the Bank is acting through its Markets division, including the dealing room and Markets Operations.

**'Process Agent'** means the person specified in writing by the Customer to the Bank as such.

**'Schedule'** means any schedule to these Terms and Conditions.

**'Specified Transaction'** means:

- (a) any existing or future transaction:
  - (i) which is a rate swap transaction, swaption, basis swap, forward rate transaction, commodity swap, commodity option, interest rate option, foreign exchange transaction, foreign exchange order transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions); or
  - (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made;
- (b) any combination of these transactions; and
- (c) any other transaction identified as a Specified Transaction in a Confirmation or which the Bank has advised in writing as being a Specified Transaction for the purposes of these Terms and Conditions, but does not include a transaction referred to in (a) or (b) above which the Bank has advised in writing is not subject to these Terms and Conditions.

**‘Support Document’** means any agreement, deed or other document recording the terms of a guarantee, security or other support of any nature provided by a Support Provider.

**‘Support Provider’** means any person who provides a guarantee, security or other support to the Bank (whether alone, or jointly or jointly and severally with any other person) in relation to the Customer.

**‘Terminated Transaction’** means a Transaction in respect of which an Early Termination Date has been designated.

**‘Termination Event’** means any event specified in clause 7.2.

**‘Terms and Conditions’** means the terms and conditions as set out in this agreement and includes each Schedule.

**‘Transaction’** means each Specified Transaction entered into between the Bank and the Customer from time to time.

**‘Waiting Period’** means in relation to a Termination Event, 7 days after the occurrence of that Termination Event.

**‘Working Day’** means a day (other than a Saturday or a Sunday) on which banks are open for business in Wellington and Auckland.

21.2 **References:** Except to the extent that the context otherwise requires, any reference in the Agreement to:

a **‘directive’** includes any present or future directive, regulation, request, requirement, voluntary credit restraint programme or notification by any means or change in interpretation or application of any law by any government, governmental agency or authority (in each case, whether or not having the force of law but, if not having the force of law, compliance with which is in accordance with the general practice of persons to whom the directive is addressed).

the **‘dissolution’** of a person includes the liquidation or bankruptcy of that person, or (where that person is a company) its removal from the register, and any equivalent or analogous procedure under the law of any relevant jurisdiction.

**‘government’** includes central or local government, and ‘governmental agency’ and ‘authority’ shall be construed accordingly.

**‘guarantee’** includes any contract of surety or indemnity.

a **‘law’** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute, treaty or other legislative measure, or guidance or standard of any governmental agency or authority.

something having a **‘material adverse effect’** on a person is a reference to it having a material adverse effect:

- (a) on that person’s financial condition or business, or;
- (b) on its ability to perform and comply with its obligations under the Agreement or any Support Document to which it is a party.

a **‘person’** includes an individual, firm, company, corporation, limited partnership, unincorporated body of persons, organisation or trust, and any government, governmental agency or authority, in each case whether or not having separate legal personality.

a **‘security’** includes a mortgage, charge, encumbrance, lien, pledge, security interest (as defined in the Personal Property Securities Act 1999 (New Zealand)), finance lease, sale and lease back, sale and repurchase, deferred purchase or title retention arrangement (other than in respect of goods purchased in the ordinary course of ordinary trading), credit support agreement, flawed asset arrangement, and any other security or arrangement having like economic effect over any property, assets or revenues.

**'tax'** includes any present or future tax, levy, impost, duty, rate, charge, fee, assessment, deduction or withholding of any nature and whatever called, imposed or levied by any government, governmental agency or authority, together with any interest, penalty, charge, fee or other amount imposed or made on, or in relation to, any of the foregoing, and 'taxation' shall be construed accordingly.

**'written'** and **'in writing'** include all means of reproducing words in a tangible and permanently visible form.

### 21.3 **Miscellaneous:**

- (a) Headings are inserted for convenience only and do not affect interpretation of the Agreement.
- (b) Unless the context otherwise requires the singular includes the plural and vice versa and words denoting individuals include other persons and vice versa.
- (c) A reference to any legislation includes any statutory regulations, rules, orders or instruments made or issued pursuant to that legislation and any amendment to, or re-enactment or replacement of, that legislation.
- (d) A reference to any document includes reference to that document as modified, novated, supplemented, varied or replaced from time to time.
- (e) A reference to any party to any document includes its heirs, successors, permitted assigns and personal representatives.
- (f) A reference to any gender includes all genders.
- (g) A reference to a time of day is a reference to New Zealand time unless otherwise stated.
- (h) Except where inconsistent with the context, the expression 'at any time' also means from time to time.

## SCHEDULE 1

### Terms and Conditions governing ANZ FX Online

#### 1. INTRODUCTION

- 1.1 This Schedule sets out the terms and conditions on which the Bank offers ANZ FX Online to the Customer.

All users of ANZ FX Online must read **Part A** and **Part C** of this Schedule.

The Customer must also read **Part B** of this Schedule, where the Customer has agreed with the Bank that the additional features in Part B apply to the Customer.

#### PART A – USING ANZ FX ONLINE

This Part A applies generally to the Customer in accessing ANZ FX Online and entering into a transaction through ANZ FX Online.

#### 2. ACCESSING ANZ FX ONLINE

- 2.1 The Bank may make available to the Customer a service known as 'ANZ FX Online' in order to facilitate electronic:
- (a) trading of foreign exchange and currency option transactions ('transactions') including Currency Transfers; and
  - (b) supply of other goods and services.
- 2.2 Where the Bank makes available and the Customer utilises ANZ FX Online, the terms and conditions set out in the ANZ FX Online Terms and Conditions will apply.
- 2.3 ANZ FX Online services will be supplied through the ANZ Website, the internet or any website, wide area network, wireless data network, intranet or any other electronic link which the Bank may designate from time to time.
- 2.4 The Bank will provide the Customer with computer software or material as the Bank deems necessary to enable the Customer to connect to the Bank and to access ANZ FX Online using an electronic and telecommunications link. The sub-licensing of this computer software by the Bank to the Customer is subject to the terms of the Bank's licence agreement with the copyright owners.
- 2.5 The Bank will provide the Customer with instructions for the operation and use of ANZ FX Online and the Customer agrees to use ANZ FX Online strictly in accordance with these instructions and the ANZ FX Online Terms and Conditions.
- 2.6 The Bank may act on and process all Electronic Instructions issued or transmitted through ANZ FX Online using the password, encryption keys or other access procedures and security information referable to the Customer without the Customer's further consent, reference or notice.
- 2.7 The Bank may treat such Electronic Instructions as authentic and is under no obligation to investigate the authenticity or authority of persons issuing or transmitting such Electronic Instructions or verify the accuracy and completeness of such Electronic Instructions.
- 2.8 The Bank will provide the Customer with the computer software and instructions for use of ANZ FX Online referred to above on receipt from the Customer of any information that the Bank requires to enable the Customer to use ANZ FX Online.

#### 3. ENTRY INTO TRANSACTIONS USING ANZ FX ONLINE

- 3.1 The parties may enter into a transaction using ANZ FX Online by the Bank making an electronic offer via ANZ FX Online to the Customer and the Customer electronically communicating its acceptance of that offer via ANZ FX Online to the Bank. A binding transaction exists when the



Bank receives the Customer's electronic acceptance. The Bank will be deemed to have received the Customer's acceptance of the Bank's electronic offer only when:

- (a) the Electronic Instruction containing the Customer's acceptance enters the ANZ FX Online database;
  - (b) a deal record is created by the ANZ FX Online database; and
  - (c) a deal number is generated by the ANZ FX Online database.
- 3.2 Where an indicative rate is provided to the Customer, this does not constitute an electronic offer and the Bank is not bound to transact with the Customer at that rate.
- 3.3 The Bank will not be bound by the terms of a transaction entered into using ANZ FX Online until the Electronic Instruction containing the Customer's acceptance of the Bank's electronic offer has been received by the Bank in the manner specified in clause 3.1 of this Schedule.
- 3.4 The Customer acknowledges that the transmission of its acceptance through an Electronic Instruction may not be received by the Bank in accordance with clause 3.1 of this Schedule for reasons beyond either parties' reasonable control including but not limited to mechanical, software, computer, telecommunications or electronic failure. The Customer further acknowledges that, to the extent permitted by law, the Bank is not liable in any way for any loss or damage arising directly or indirectly in connection with the transmission of an Electronic Instruction through ANZ FX Online or any failure to receive an Electronic Instruction for whatever reason excluding loss or damage arising directly from the negligence or fraud of the Bank, its officers or its employees.
- 3.5 Where a transaction is entered into using ANZ FX Online in the manner specified in clause 3.1 of this Schedule, an electronic deal acknowledgment may be issued by the Bank to the Customer via ANZ FX Online. The electronic deal acknowledgment does not constitute a 'Confirmation' as referred to in clause 3 of these Terms and Conditions.
- 3.6 The existence of a binding transaction entered into using ANZ FX Online is not conditional on either the issuance or receipt of an electronic deal acknowledgment. Accordingly, failure to receive an electronic deal acknowledgment via ANZ FX Online does not invalidate or otherwise prejudice the existence of a transaction entered into using ANZ FX Online.
- 3.7 Despite clause 3.5 of this Schedule, the Customer is responsible for ensuring that it receives an electronic deal acknowledgment and it should notify its Markets Dealer if it does not receive one within 1 business day of the date on which it sent an Electronic Instruction to the Bank.

#### **4. CONFIRMATION OF A TRANSACTION ENTERED INTO USING ANZ FX ONLINE**

- 4.1 Once a transaction has been entered into using ANZ FX Online, the Bank may issue the Customer with an electronic or paper confirmation of the transaction. Where the Bank issues an electronic confirmation, it constitutes a 'Confirmation' as referred to in clause 3 of these Terms and Conditions.
- 4.2 The existence of a binding transaction entered into using ANZ FX Online is not conditional on either the issuance or receipt of an electronic or paper confirmation of the transaction. Accordingly, failure to receive an electronic or paper confirmation of the transaction does not invalidate or otherwise prejudice the existence of a transaction entered into using ANZ FX Online.
- 4.3 Despite clause 4.1 of this Schedule, the Customer is responsible for ensuring that it receives an electronic or paper confirmation of the transaction and it should notify our Controller – New Zealand on 0800 170 001 if it does not receive one within 10 business days of the date on which it sent an Electronic Instruction to the Bank.



## PART B – ADDITIONAL FEATURES

This Part B only applies where the Bank has agreed that the following features will apply to the Customer.

### 5. CURRENCY TRANSFERS

- 5.1 The Customer may request the Bank to make a Currency Transfer on the Customer's behalf ('Currency Transfer request').
- 5.2 The Bank may, at its sole and absolute discretion, decide at any time not to accept the Customer's Currency Transfer request. The Bank will give the Customer notice as soon as practicable when the Bank decides not to accept such a Currency Transfer request (and such notice may be given electronically via ANZ FX Online).
- 5.3 Where the Bank has elected to accept the Customer's Currency Transfer request, the Bank will use all reasonable endeavours to execute the Customer's Currency Transfer provided there are sufficient cleared funds in the Customer's nominated account.
- 5.4 Currency Transfer requests can be submitted up until 4.30pm on the nominated payment date. In that context, the Bank will endeavour to process Currency Transfer requests within the following timeframes:
  - (a) when submitted on a Business Day, on that day;
  - (b) when submitted other than on a Business Day, on the next Business Day.

However, to the extent permitted by law, the Bank will not be liable for any refusal or omission to follow instructions or make any such payments or any other failure to fulfil its obligations, due to causes beyond the Bank's reasonable control (including without limitation, the failure or default of any third party network provider or any system or application not owned or directly controlled by the Bank including, for the avoidance of doubt, any failure in a third party's application or system which is used by the Customer to access ANZ FX Online, or any other electronic, telecommunications, power or computer processing failure).

- 5.5 At the time that the Customer gives the Bank a Currency Transfer request under clause 5.1 of this Schedule, the Customer authorises and instructs the Bank to:
  - (a) debit the Customer's nominated account held with the Bank (that is held in the same currency as the currency required for the Currency Transfer), with the amount of the requested transfer; and
  - (b) to debit the Customer's New Zealand dollar account held with the Bank with the amount of all fees, commissions or other charges or expenses payable by the Customer to the Bank in respect of the Bank's performance of the Currency Transfer request.
- 5.6 The Customer must provide all information and complete documentation which the Bank reasonably requires in respect of the Currency Transfer request.
- 5.7 A Confirmation under clause 3 of these Terms and Conditions will not be provided for a Currency Transfer.

### 6. PAYMENT ADVICE FOR A TRANSACTION ENTERED INTO USING ANZ FX ONLINE

- 6.1 The Bank may provide the Customer with a payment advice for transactions, including Currency Transfers. This payment advice does not constitute a confirmation for the purposes of clause 3 of these Terms and Conditions.

## PART C – COMMON PROVISIONS

This Part C applies to all users of ANZ FX Online unless specifically stated otherwise.

### 7. PAYMENTS TO AN ACCOUNT NOMINATED BY THE CUSTOMER

- 7.1 Payments to accounts nominated by the Customer, including Currency Transfers (only available when agreed with the Bank), will not be made until the Bank has satisfied the Bank's "know your customer" process. If the Bank has not been able to satisfy the "know your customer" process it will exercise its rights in accordance with clause 8 of these Terms and Conditions.
- 7.2 The Customer will need to know the other party's bank account number to set up an electronic payment. The Customer will be solely responsible for creating the payment and ensuring that the information the Customer provides to the Bank, including the other party's bank account number, is accurate. The Bank accepts no responsibility or liability if the bank account number or other information the Customer provides to the Bank is incorrect.
- 7.3 Electronic payments are irrevocable by the Customer and can not be stopped, cancelled or altered once the payment has been processed. The Customer must advise the Bank immediately if any incorrect electronic payment information is shown on its bank statement.
- 7.4 Where the Bank is instructed by the Customer to transfer funds to an account nominated by the Customer, including a Currency Transfer, the Bank will seek to make delivery at the time and in the manner specified in the Customer's Electronic Instruction or if that is not reasonably practicable for the Bank, in the manner the Bank reasonably considers appropriate in the circumstances.
- 7.5 If the Bank cannot send a payment directly to an account nominated by the Customer, then the Bank will use the Bank's correspondent to make the payment. In that event, the Bank may receive a commission or other benefit from the correspondent, the amount of which will depend upon various factors.
- 7.6 A correspondent may charge commission, fees or other charges in making a payment to an account nominated by the Customer. Those commissions, fees or charges will be deducted by the correspondent from the funds paid to the beneficiary account, or their cost passed on to the Bank.
- (a) Where such a deduction is made, the account nominated by the Customer will receive less than the payment amount specified in the Electronic Instruction.
  - (b) If the cost of any commissions, fees or other charges are passed on to the Bank, then the Customer will be required to reimburse the Bank for these costs.
  - (c) Should the Customer request the Bank to do so, the Bank will seek to obtain, within 10 Business Days, details of the commissions, fees and charges applied by specified correspondents that the Bank uses. The Bank's ability to obtain such details from the Bank's correspondents is, however, dependant on the cooperation of the individual correspondents.

For the avoidance of doubt, a correspondent may at any time convert a payment to its preferred currency before effecting the payment.

### 8. AVAILABILITY OF ANZ FX ONLINE

- 8.1 As electronic services are subject to interruption or breakdown for a variety of reasons, access to and use of ANZ FX Online is offered on an 'as is, as available basis' only.
- 8.2 The Customer is responsible for ensuring that it has adequate contingency plans to enable it to transact transactions by other means if there is any interruption to, delay in, or suspension or withdrawal of, the operation of ANZ FX Online.
- 8.3 The Bank may impose specific limits and restrictions on the Customer's use of ANZ FX Online. The Bank may alter or withdraw ANZ FX Online at any time. The Bank will give 14 days (or such shorter period as the specific circumstances may reasonably require) prior notice of such action. The Bank may also, where there has been a change in law, requirement of any competent authority, or

where it is reasonably required to protect the Customer's interests (including, but not limited to, the removal of inactive Authorised Users), withdraw or restrict ANZ FX Online without having to give any prior notice.

- 8.4 The Customer acknowledges that any software provided by the Bank to the Customer or downloaded by the Customer for the use of ANZ FX Online will, from time to time, be upgraded. The Customer must ensure that such software, including any upgrades, is suitable for use on, and does not adversely affect, its information systems.

## 9. AUTHORISED USERS

- 9.1 The Customer must nominate individuals to act as the Customer's Authorised Users of the ANZ FX Online service as required by the Bank.
- 9.2 The Customer is responsible for the appointment and administration of the Customer's Authorised Users in accordance with this clause and the Customer must ensure that each Authorised User is given the appropriate authorisation as required by the Customer to use ANZ FX Online.
- 9.3 Where the Customer nominates a new Authorised User, the Bank may endeavour to contact the Authorised User within 5 Business Days in order to carry out any "know your customer" procedures and provide necessary access procedures and security information for the use of ANZ FX Online to allow the Authorised User to access ANZ FX Online.
- 9.4 Any termination of appointment of the Customer's Authorised Users will not be effective until processed by the Bank. The Bank will endeavour to process such instructions promptly but it may take up to 5 Business Days.
- 9.5 The Customer must ensure that each Authorised User complies strictly with all obligations imposed on the Customer and Authorised Users by these Terms and Conditions.
- 9.6 The Customer acknowledges that it remains liable for all acts and transactions of each Authorised User during the period that the Customer's Authorised User has been granted access to ANZ FX Online and the Customer acknowledges that it is the Customer's responsibility to ensure that each Authorised User has the appropriate authority as required by the Customer and acts within this authority.
- 9.7 The Customer warrants that each Authorised User is competent to use ANZ FX Online and, accordingly, can access, operate and use ANZ FX Online from time to time and that any action taken by an Authorised User through ANZ FX Online will bind the Customer.

## 10. FRAUD AND SECURITY

- 10.1 The Customer is responsible for the accuracy and authorisation of all the Customer's Electronic Instructions.
- 10.2 If the Bank receives an Electronic Instruction that purports to have been given by the Customer, one of the Customer's Authorised Users, or any other person, and the Customer's security procedures or measures were provided in conjunction with the Customer's Electronic Instruction:
- (a) the Bank may rely on and/or accept that Electronic Instruction without making any enquiries; and
  - (b) that Electronic Instruction will be deemed effective as the Customer's Electronic Instruction.
- 10.3 The Customer must ensure that all passwords, encryption keys or other access procedures and security information for the use of ANZ FX Online are kept completely secure and confidential and are used in accordance with any instructions the Bank may provide. The Customer agrees to notify the Customer's Markets Dealer immediately if the Customer or any of the Customer's Authorised Users suspect that the security of any such access procedure or security information (or any part of it) may have been compromised or any unauthorised use may have occurred. Despite this, the Customer remains liable for all Electronic Instructions that are processed by the Bank before such notification.

- 10.4 The Customer acknowledges that the Bank is not responsible for any breach by the Customer of clause 10.3 of this Schedule or any loss or damage that the Customer may incur arising from the interception of any instructions or information transmitted by or to the Customer via ANZ FX Online or any unauthorised use of ANZ FX Online by persons purporting to act on the Customer's behalf, except to the extent that such loss or damage arises directly from the negligence or fraud of the Bank, its officers or its employees.

## 11. LIABILITY

- 11.1 To the extent permitted by law, the Bank will not be liable for any loss or damage that the Customer suffers in connection with the ANZ FX Online Terms and Conditions and use of ANZ FX Online excluding loss or damage arising directly from the negligence or fraud of the Bank, its officers or its employees.
- 11.2 Where the Bank has acted on an Electronic Instruction in good faith, the Bank will not be liable for any costs, losses or damages if, in relation to an Electronic Instruction, a delayed payment occurs.
- 11.3 All warranties, conditions and other terms implied by law or otherwise in connection with the ANZ FX Online Terms and Conditions and any use by the Customer of ANZ FX Online are, to the extent possible, hereby excluded. Liability for breach of any condition or warranty implied by law or otherwise, which cannot be excluded, is limited to the extent possible at the Bank's option to:
- (a) the supply of the goods or services again; or
  - (b) the payment of the cost of supplying the goods or services again.

## 12. ANZ DIGITAL KEY

- 12.1 If the Customer or its Authorised User uses the ANZ Digital Key application, the Customer has agreed to the ANZ Digital Key Terms and Conditions and Licence Agreement for use of ANZ Digital Key (as amended from time to time) (ADK Terms). The Bank is not currently party to the ADK Terms. The Customer agrees that the Bank is not liable for any loss or indirect loss whatsoever that arises from the Customer's or its Authorised User's use of ANZ Digital Key, including any loss or indirect loss arising from:
- (a) the Customer's, or its Authorised User's, device's inability and/or failure to access or use ANZ Digital Key, including any loss or damage to the device resulting from the Customer's or its Authorised User's access or use, or attempted access or use, of ANZ Digital Key (including downloading any associated applications for ANZ Digital Key); and
  - (b) the Customer's or its Authorised User's use of ANZ Digital Key, including arising from any security breach, if the Customer or its Authorised User have acted fraudulently (either alone or together with any other person), if the Customer or its Authorised User have installed applications on the device other than those available from locations permitted under the ADK Terms from time to time, or if the Customer or its Authorised User have caused or contributed to that loss, for example, by failing to comply with any of the ADK Terms.

The ADK Terms are available at <https://www.anz.co.nz/institutional/markets/terms-conditions/>.

## 13. DEFINITIONS

- 13.1 In this Schedule:

**'Authorised User'** means a person nominated by the Customer to use ANZ FX Online.

**'Currency Transfer'** means a foreign exchange transaction which effects a transfer of funds from an account the Customer holds with the Bank to an account nominated by the Customer, where the funds to be transferred are of the same currency as those held in the account the Customer holds with the Bank. The transfer cannot be made in New Zealand dollars.

**'Know your customer'** obligations mean obligations that the Bank may have under applicable

law (including the Anti-Money Laundering and Countering Financing of Terrorism Act 2009) to collect, analyse and (in some circumstances) disclose information about the Customer and/or the Customer's Authorised Users. 'Know your customer' obligations may also include ongoing monitoring of transactions carried out by the Customer or on the Customer's behalf using any of the Bank's electronic banking services.

## SCHEDULE 2

### Terms and Conditions governing FX Orders

#### 1. INTRODUCTION

- 1.1 This Schedule sets out the terms and conditions on which the Bank offers FX Orders to the Customer and which apply to all FX Orders entered into between them.

#### 2. OPERATION OF FX ORDERS

- 2.1 **Operation:** Subject to the other provisions of this Schedule, FX Orders will operate as follows:

- (a) **Request:** The making of a FX Order constitutes a request by the Customer for the Bank to enter into and, subject to the Order Conditions being satisfied or otherwise in accordance with this Schedule, Fill the FX Order.
- (b) **Acceptance:** A contract to enter into the Spot FX Transaction or FX Order or to perform the Order Service the subject of a FX Order (subject to the satisfaction of the Order Conditions of the FX Order) is formed at the time that FX Order is accepted by the Bank.
- (c) **Satisfaction of Order Conditions:** The Bank will determine if the Order Conditions (including the market rate of exchange applicable to the Customer) of a FX Order have been satisfied. If the Bank determines that the Order Conditions of a FX Order have been satisfied, the Bank will, subject to its normal practices, enter into the corresponding Spot FX Transaction or FX Order or perform the Order Service the subject of that FX Order and, after entering into the corresponding Spot FX Transaction FX Order or performing the Order Service, will regard that FX Order as Filled.
- (d) **Completion:** The corresponding Spot FX Transaction (and its completion), FX Order or performance of the Order Service the subject of a FX Order will be on the terms and conditions of this Schedule and any general terms and conditions applicable to that corresponding Order Service.
- (e) **Cancellation by the Customer:**
  - (i) The Customer may request the Bank to cancel a FX Order at any time before that FX Order is Filled.
  - (ii) On receipt of a request to cancel a FX Order:
    - (A) if the request to cancel that FX Order was received by the Bank after that FX Order was Filled, the Bank will, in accordance with its usual practice, use reasonable endeavours to advise the Customer that that FX Order has been Filled, and the FX Order will not be able to be cancelled, and must be completed; or
    - (B) the Bank will, in accordance with its usual practice, use reasonable endeavours to advise the Customer that the FX Order has been cancelled, whereupon that FX Order will be cancelled.
- (f) **Cancellation by the Bank:** The Bank may, in its discretion, cancel a FX Order at any time before that FX Order is Filled.
- (g) **Effect of cancellation:** The cancellation of a FX Order will result in the cancellation of that FX Order and the termination of the contract to enter into the corresponding Spot FX Transaction or FX Order or perform the Order Service the subject of that FX Order (if a contract had been formed), and neither the Bank nor the Customer will have any obligations or liabilities in respect of that FX Order.
- (h) **Amendment of a FX Order:**
  - (i) The Customer may request the Bank to amend a FX Order at any time before that FX Order is Filled.

- (ii) Upon receipt of a request to amend a FX Order:
    - (A) if the request by the Customer to amend a FX Order was received by the Bank after the that FX Order had been Filled, the Bank will, in accordance with its usual practice, use reasonable endeavours to advise the Customer that that FX Order has been Filled, and the FX Order will not be able to be amended, and must be completed; or
    - (B) the Bank will, in accordance with its usual practice, use reasonable endeavours to advise the Customer whether the Bank agrees to the requested amendments to that FX Order.
  - (iii) if the Bank agrees to the requested amendments to a FX Order, it will amend the relevant Order Conditions of that FX Order.
  - (iv) if the Bank does not agree to the requested amendments to a FX Order, it may cancel that FX Order in accordance with clause 2.1(f) of this Schedule.
  - (i) Lapse of FX Order: If the Good till Date is reached before a FX Order is Filled, that FX Order shall lapse and shall be of no further effect.
- 2.2 **Cancellation of Multi-leg FX Orders:** The cancellation of a Multi-leg FX Order shall not affect any corresponding Spot FX Transaction forming part of that Multi-leg FX Order which has been entered into by the Bank prior to the cancellation of that Multi-leg FX Order.
- 2.3 **Call FX Orders:** In the case of a Call FX Order, the Bank will, in accordance with its usual practice, use reasonable endeavours to contact the Customer to advise that the Order Conditions of that Call FX Order have been satisfied.
- 2.4 **Stop Loss FX Orders:** In the case of Stop Loss FX Orders, the Customer acknowledges that the requirement that the relevant market exchange rate fall below or exceed (as the case may be) the Order Rate and for the corresponding Spot FX Transaction to be entered into at the next traded lower or higher (as the case may be) rate, means that the losses of the Customer will be greater than if the corresponding Spot FX Transaction were entered into at the Order Rate.
- 2.5 **Take Profit FX Orders:** In the case of Take Profit FX Orders, the Customer acknowledges that if the corresponding Spot FX Transaction is entered into at the Order Rate, the Customer will receive the full benefit that it has contracted for. Accordingly, the Bank may, at any time and in its absolute discretion for any reason, determine to Fill a Take Profit FX Order as if the corresponding Order Conditions were satisfied (for the avoidance of doubt whether the Order Conditions are satisfied or not).

### 3. BANK'S RECORDS CONCLUSIVE

- 3.1 **Bank's records conclusive:** The records maintained by the Bank in respect of FX Orders (including all Order Conditions and whether they have been satisfied) shall be conclusive evidence of the description, status and legal effect of a FX Order or the satisfaction of an Order Condition and, in the absence of manifest error, will be conclusive and binding on the Customer.

### 4. MISCELLANEOUS

#### 4.1 Fees and Charges:

- (a) The Bank may charge a fee for accepting and/or Filling a FX Order. Any such fee will be advised to the Customer before the FX Order is entered into. The fee will be paid as agreed and, without limiting the Bank's rights to require payment of the fee, the Bank will have the right to deduct the fee (or its equivalent in another currency) from the amount the Bank is required to pay under the corresponding Spot FX Transaction.



- (b) The Bank may apply a “margin” to the FX Order. If a margin is applied to an FX Order, the Order Rate must be aggregated with the relevant margin so that the FX Order will be Filled only if the market rate of foreign exchange reaches a rate equal to the Order Rate plus the margin. The margin applicable to a FX Order will vary depending on a number of factors, including the Customer, the size of the amounts to be exchanged under the corresponding Spot FX Transaction, the particular Currency Pair and corresponding market exchange rate applicable to the corresponding Spot FX Transaction and market circumstances generally.

#### 4.2 Currency Exchange Rates:

The Customer acknowledges the following:

- (a) while many currencies are freely exchangeable, market or currency exchange rates (the market rates for the amount of one currency required to buy a unit of another) are not generally regulated in any official manner and are not quoted on any regulated, independent exchange;
- (b) parties wishing to exchange currencies are free to agree, as a matter of contract, the rate of exchange they will use in their specific transaction;
- (c) notwithstanding that indicative rates are published regularly, there is no market exchange rate applicable to all Spot FX Transactions or any other foreign exchange transactions;
- (d) while there are a number of sources of applicable market exchange rates, these typically show either historical data reflecting transactions which have occurred in the past or indications of rates which parties may (but are not obliged to) apply in transactions they enter into. They do not reflect and, and there is no, absolute market rate of exchange applicable generally; and
- (e) a market exchange rate will vary depending on factors such as the currencies and amounts to be exchanged, the term of the applicable contract and the creditworthiness of the parties.

## 5. DEFINITIONS

### 5.1 In this Schedule:

**‘Currency Pair’** means in relation to a Spot FX Transaction, the two currencies subject to that Spot FX Transaction.

**‘FX Order’** means a request by a Customer for the Bank to enter into a Spot FX Transaction or another FX Order (including Simple FX Orders and Multi-leg FX Orders) or perform an Order Service which request is conditional on specified Order Conditions being satisfied.

**‘FX Orders’** means the service provided by the Bank under which a Customer may request the Bank to enter into a FX Order.

**‘Filled’** means, in relation to a FX Order, that, subject to clause 2.5 of this Schedule, the corresponding Order Conditions are satisfied and the corresponding Spot FX Transaction or FX Order is entered into and/or Order Service performed, and “Fill” and “Filling” will have corresponding meanings.

**‘Good from Date’** means the date and time provided by the Customer as the date and time from which the FX Order has effect. If no Good from Date is specified in a FX Order, the FX Order shall have effect from the date and time the FX Order is accepted by the Bank.

**‘Good till Date’** means the date and time provided by the Customer as the date and time the FX Order will lapse in accordance with clause 2.1(i) of this Schedule and be of no further effect. If no Good till Date is specified in a FX Order, the FX Order shall remain in effect until the FX Order is Filled or cancelled in accordance with this Schedule.



**'Multi-leg FX Order'** means an arrangement comprising more than one FX Order, where one or more of the FX Orders does not have effect until, or is cancelled when, another FX Order is Filled or cancelled. The Multi-leg FX Orders available are the following:

- (a) **If Done FX Order:** An arrangement involving two FX Orders. The second FX Order will not have effect until the first FX Order is Filled;
- (b) **OCO FX Order:** An arrangement involving two FX Orders. The second FX Order is immediately and automatically cancelled when the first FX Order is Filled; and
- (c) **Take Profit/Stop Loss FX Order:** An arrangement involving three FX Orders. The second and third FX Orders will not have effect until the first FX Order is Filled. Immediately when the either the second or third FX Order is filled, the remaining FX Order is immediately and automatically cancelled.

**'Order Conditions'** means, in relation to a FX Order, the factual and other preconditions to the FX Order being filled, including a stipulated exchange rate reaching, exceeding or falling below a stated level. An Order Condition (including any applicable market rate of exchange) will be satisfied when the Bank, in its absolute discretion acting in good faith, believes that they are satisfied after taking into account factors the Bank may consider relevant, possibly including any or all of the following:

- (a) the size of the amounts to be exchanged under the corresponding Spot FX Transaction;
- (b) the creditworthiness of the Customer;
- (c) the ability of the Bank to actually mitigate the risks arising to it under the corresponding Spot FX Transaction; and
- (d) the particular Currency Pair and corresponding market exchange rate applicable to the corresponding Spot FX Transaction.

**'Order Rate'** means, in relation to a FX Order, the level of an exchange rate for a particular Currency Pair, specified as an Order Condition.

**'Order Service'** means a service agreed to be performed by the Bank on a FX Order being filled, including to use, in accordance with its usual practice, reasonable endeavours to contact a Customer.

**'Simple FX Order'** includes any of the following FX Orders:

- (a) **Call FX Order:** A FX Order in which the Customer requests the Bank to contact the Customer if the corresponding Order Conditions have been satisfied (including that any Order Rate has been reached);
- (b) **Stop Loss FX Order:** A FX Order generally used by a Customer to manage foreign exchange loss so that when a specified rate of exchange falls below or exceeds (as the case may be) the corresponding Order Rate, the Spot FX Transaction the subject of that FX Order will be entered into at the next traded, lower or higher (as the case may be) level of the specified exchange rate, as determined by the Bank in its absolute discretion acting in good faith. The Order Rate will be a rate less favourable to the Customer than the rate available to it for an equivalent Spot FX Transaction entered into at the time of the FX Order; and
- (c) **Take Profit FX Order:** A FX Order generally used by a Customer to take advantage of possible favourable movements in the exchange rate so that when a specified rate of exchange reaches or exceeds the corresponding Order Rate the Spot FX Transaction the subject of that FX Order will be completed at the Order Rate. The Order Rate will be a rate more favourable to the Customer than the rate available to it for an equivalent Spot FX Transaction entered into at the time of the FX Order.

**'Spot FX Transaction'** means a foreign exchange transaction which has a settlement date which is the market convention for spot transactions in the corresponding Currency Pair.

## SCHEDULE 3

### Terms and Conditions governing ANZ eMatching

#### 1. INTRODUCTION

- 1.1 This Schedule sets out the terms and conditions on which the Bank offers ANZ eMatching to Customers and which apply to all Transactions confirmed via ANZ eMatching.

#### 2. ACCESSING ANZ EMATCHING

- 2.1 The Bank may make ANZ eMatching available to the Customer.
- 2.2 ANZ eMatching will be supplied through the ANZ Website or any other electronic link which the Bank may designate from time to time.
- 2.3 The Bank will provide the Customer with instructions for the operation and use of ANZ eMatching and the Customer agrees to use ANZ eMatching strictly in accordance with those instructions and this Schedule.
- 2.4 The Bank may act on and process all Electronic Instructions issued or transmitted through ANZ eMatching using the password, encryption keys or other access procedures and security information referable to the Customer without the Customer's further consent, reference or notice.
- 2.5 The Bank may treat all Electronic Instructions as authentic and the Bank is under no obligation to investigate the authenticity or authority of persons issuing or transmitting all Electronic Instructions or verify the accuracy and completeness of such Electronic Instructions.

#### 3. ANZ EMATCHING AVAILABILITY

- 3.1 As electronic services are subject to interruption or breakdown for a variety of reasons, access to and use of ANZ eMatching is offered on an "as is, as available basis" only.

#### 4. CONFIRMATIONS USING ANZ EMATCHING

- 4.1. Once a Transaction has been entered between the Customer and the Bank, the Bank may enter the details into ANZ eMatching. If such details are entered into ANZ eMatching, the Bank may send the Customer an email to the Customer's Email Address advising the Customer that there is a Transaction available for the Customer to view through ANZ eMatching.
- 4.2. The existence of a binding Transaction is not conditional on a Confirmation being provided to the Customer by the Bank through ANZ eMatching. Accordingly, failure to receive a Confirmation through ANZ eMatching does not invalidate or otherwise prejudice the existence of a Transaction.
- 4.3. The terms of any Confirmation provided through ANZ eMatching are subject to these Terms and Conditions. For the avoidance of doubt, by confirming a Confirmation using ANZ eMatching, the Customer is satisfying any requirement in these Terms and Conditions to sign a copy of a Confirmation and return it to the Bank or to provide an acknowledgement to the Bank.
- 4.4. Despite clause 4.1 above, the Customer is responsible for ensuring that it receives a Confirmation through ANZ eMatching. If the Customer does not receive a Confirmation of a Transaction through ANZ eMatching within 1 Business Day of the date on which the Customer entered into a Transaction, the Customer should notify "International Payments and Markets Operations" on 0800 220 400 or +64 4 802 2000.

## 5. RESTRICTIONS ON ANZ EMATCHING

- 5.1 The Bank may impose specific limits and restrictions on the Customer's use of ANZ eMatching. The Bank may alter or withdraw ANZ eMatching on a permanent basis at any time. The Bank will give the Customer 14 days (or such shorter period as the specific circumstances may reasonably require) prior notice of any specific limit or restriction imposed on the Customer or any permanent alteration or withdrawal of ANZ eMatching.
- 5.2 The Bank may withdraw ANZ eMatching on a temporary basis at any time without any prior notice to the Customer.

## 6. SECURITY

- 6.1 The Customer must ensure that all passwords, encryption keys or other access procedures and security information for the use of ANZ eMatching are kept completely secure and confidential and are used in accordance with any instructions the Bank provides. The Customer agrees to notify the Bank immediately if it suspects that the security of any such access procedure or security information may have been compromised or any unauthorised use may have occurred. Despite this, the Customer remains liable for all Transactions that are processed by the Bank before the Bank receives such notification.
- 6.2 The Customer acknowledges that the Bank is not responsible for any breach by the Customer of clause 6.1 of this Schedule or any loss or damage the Customer incurs as a result of the interception of any instructions or information transmitted by or to the Customer through ANZ eMatching or any unauthorised use of ANZ eMatching by persons purporting to act on the Customer's behalf, except to the extent that such loss or damage arises directly from the negligence or fraud of the Bank, its officers or its employees.
- 6.3 The Customer must take all reasonable steps to ensure the integrity and proper operation of all of the Customer's security procedures.
- 6.4 Any security features which ANZ eMatching and the ANZ Website may have are in addition to, and do not reduce or otherwise limit, the Customer's level of reliance on the Customer's own internal risk controls to prevent unauthorised or incorrect instructions or information being sent to the Bank.

## 7. LIABILITY AND INDEMNITY

- 7.1 To the extent permitted by law, the Bank will not be liable for any loss or damage (whether direct or indirect) that the Customer suffers in connection with:
- (a) this Schedule;
  - (b) the Customer's use of ANZ eMatching;
  - (c) transmission of an Electronic Instruction through ANZ eMatching; or
  - (d) any delay or failure to receive an Electronic Instruction for whatever reason,
- except to the extent that such loss or damage arises directly from the negligence or fraud of the Bank, its officers or its employees.
- 7.2 The Customer agrees to indemnify and hold harmless the Bank, its directors, officers, employees, contractors and agents from all and any losses, damages, claims, liabilities and expenses (including legal fees) whatsoever, whether direct or indirect, arising from or in connection with:
- (a) any claim by any person to the extent that such claim arises out of, or in connection with, or is caused directly or indirectly by, a breach of the terms of this Schedule;
  - (b) any acts or omissions by the Customer or its employees or agents with respect to or in connection with accessing or using ANZ eMatching,
- provided that act or omission is not caused directly by the negligence or fraud of the Bank, its officers or its employees.

## 8. USERS

8.1 The Customer must:

- (a) appoint only trusted individuals to be the Customer's Users;
- (b) establish and comply with suitable internal management rules for the operation of, use and review of the use of ANZ eMatching, including any audit material;
- (c) establish Permissions which reflect the Customer's internal authorisation requirements and take account of any potential risk of fraud;
- (d) monitor use of ANZ eMatching and use of Access Methods;
- (e) not use ANZ eMatching for any purpose other than to access ANZ eMatching;
- (f) only use ANZ eMatching for the Customer's own confidential internal use and for the purpose expressly set out in this Schedule and, in particular, the Customer must not:
  - (i) grant any third party access to ANZ eMatching; or
  - (ii) operate ANZ eMatching on behalf of, or for the benefit of, any third party, except to the extent expressly agreed by the Bank;
- (g) acquire, maintain and operate all equipment and other facilities required for the Customer's use of ANZ eMatching; and
- (h) comply with all procedures as advised by the Bank when using ANZ eMatching.

## 9. DEFINITIONS

9.1 In this Schedule:

**'Access Methods'** means all passwords, user names, logon identifiers, PINs, smartcards and any other authentication methods.

**'Customer's Email Address'** means the Customer's email address notified by the Customer in writing to the Bank, such notification to be in a form satisfactory to the Bank.

**'Permission'** means any permission which may be assigned to a User to enable them to perform functions in relation to ANZ eMatching.

**'User'** means a person notified by the Customer to the Bank in a manner acceptable to the Bank.

- (b) the Portfolio Data will be sent to the Customer by email
- (d) on receipt by either party of a Discrepancy Notice, the Bank and the Customer will promptly consult in good faith to resolve the discrepancy as soon as possible by exchanging relevant information and discussing the basis of the discrepancy and the corresponding Portfolio Data. The Bank is not obliged to disclose or discuss the calculations or methodologies underlying any Portfolio Data to reconciliation of Portfolio Data.

## SCHEDULE 4

### Terms and Conditions governing Portfolio Reconciliation

#### 1. INTRODUCTION

- 1.1 This Schedule sets out the terms and conditions on which the Bank may seek to reconcile certain data it holds about certain Transactions between the Customer and the Bank and the process for resolving with the Customer any discrepancies in this data.

#### 2. AGREEMENT TO RECONCILE TRANSACTIONS

- 2.1 The Bank is subject to laws and regulations which may require the Bank to reconcile certain data it holds about certain Transactions between the Bank and the Customer with the data the Customer holds about those Transactions. This is known as '**Portfolio Reconciliation**'.

- 2.2 For the purpose of Portfolio Reconciliation, the Bank may, from time to time send Portfolio Data to the Customer in relation to certain Transactions between the Bank and the Customer.

- 2.3 **Portfolio Reconciliation:** The Customer acknowledges that:

- (a) the Bank will determine when it will send Portfolio Data to the Customer and what the Portfolio Data will consist of; and

- 2.4 **Discrepancies:** The Customer agrees that:

- (a) if the Customer, acting reasonably, identifies any material discrepancies in the Portfolio Data, the Customer will as soon as possible notify the Bank of such discrepancies by email to **MOPortfolioReconcili@anz.com** (or such other email address as advised by the Bank);
- (b) the Bank and the Customer will promptly consult in good faith to resolve any material discrepancies notified to the Bank as soon as possible; and
- (c) if the Customer has not notified the Bank of any discrepancies by the fifth Business Day following the Business Day the Bank sent the Portfolio Data to the Customer, the Customer will be considered to have accepted the Portfolio Data sent to it by the Bank as accurate.

- 2.5 **Discrepancies Identification and Dispute Resolution Procedure:** The Bank and the Customer will use the following procedure to identify and resolve discrepancies between them in relation to the Portfolio Data that have not been resolved under the previous paragraph, 5 Business Days after being notified to the Bank:

- (a) either the Bank or the Customer may deliver a Discrepancy Notice to the other party;
- (b) the Customer will send any Discrepancy Notice to the Bank by email to: **marketscustomerdisputes@anz.com** (or such other email address as advised by the Bank);
- (c) the Bank will send any Discrepancy Notice to the Customer by email;

- 2.6 **No Event of Default or Termination Event:** It is not an Event of Default or Termination Event if the Customer or the Bank does not perform any obligation under this clause.

- 2.7 **Other Portfolio Reconciliation Agreement:** This Schedule does not apply to the Customer or the Bank if the Customer and the Bank have entered into any other agreement in relation

## 3 DEFINITIONS

### 3.1 In this Schedule:

**'Discrepancy Notice'** means a notice in writing which states that it is a discrepancy notice and which sets out in reasonable detail the Transaction(s) and the Portfolio Data to which the discrepancy relates.

**'Portfolio Data'** means, with respect to each Transaction subject to Portfolio Reconciliation, the valuation of the Transaction and other details of the Transaction which may include the effective date, the scheduled maturity date, any payment or settlement dates, the notional value of the Transaction, the currency of the Transaction, the type of Transaction, the business day convention and any relevant fixed or floating rates of the Transaction. For the avoidance of doubt, 'Portfolio Data' does not include details of the calculations or methodologies underlying any term.

These Terms and Conditions of Markets Transactions are current as at 26 August 2020

ANZ Bank New Zealand Limited.

