

## **DIRECT DEBIT TERMS AND CONDITIONS**

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NEW ZEALAND



# DIRECT DEBIT TERMS AND CONDITIONS

## 1. APPLICATION

These Direct Debit Terms & Conditions set out the terms on which ANZ provides the Direct Debit Service to You in New Zealand.

## 2. DEFINITIONS

Any capitalised terms which are not defined in the body of this document are defined below, unless the content requires otherwise:

**Acceptor** means any of Your customers who have agreed to allow You to debit their nominated bank account in accordance with a Direct Debit Authority.

**Acceptor's Bank** means a Participating Bank that holds a bank account in the name of an Acceptor.

**Agency** means any regulatory, administrative, government, quasi-governmental, law enforcement or supervisory authority, body, agency, court or tribunal.

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

**ANZ Electronic Channels** means any electronic payments, receivables, information management and data delivery platforms and systems provided by ANZ allowing You to access and use the Direct Debit Service.

**ANZ Group Member** means:

- (a) ANZ; and
- (b) Australia and New Zealand Banking Group Limited (ABN 11 005 357 522); and

any related company or entity in which either of them holds a direct or indirect ownership interest (including any subsidiary), including their respective successors, assigns and transferees and persons deriving title under any of them.

**ANZ Manager** means Your ANZ Relationship Manager, ANZ Account Manager or equivalent.

**ANZ Website** means [www.anz.co.nz](http://www.anz.co.nz).

**Application Form** means any application form signed by You or any Authorised Person applying for and agreeing to ANZ providing the Direct Debit Service to You in accordance with the relevant Documents, including all maintenance, change and update forms.

**Authentication Method** means any agreed method of identification, a user name, login identifiers, PINs, codes generated by tokens, any password, access code, digital certificate or any other device (such as smart cards, tokens and electronic keys) used to access the Direct Debit Service, including through any ANZ Electronic Channel, and initiate and send any Communications and authorise any Transactions.

**Authorisation Code** means a unique numerical code which allows You to debit an Acceptor's account.

**Authorised Person** means any person authorised by You in such a form as is acceptable to ANZ to act on Your behalf in giving Communications and performing any other acts, discretions or duties under the Documents or in connection with the Direct Debit Service.

**Authority** means an approved 'Authority to Accept Direct Debits' form which the Acceptor signs to indicate their consent to allow You to debit their nominated account with the Acceptor's Bank.

**Business Day** means a Day (other than a Saturday or Sunday) that ANZ is open for general banking business in New Zealand.

**Cleared Funds** means funds standing to the credit of the Acceptor's account with ANZ that ANZ has received full and final payment for and that cannot be reversed or cancelled.

**Communication** means any instruction, notice, consent, request, approval, acceptance, confirmation, certificate, information or document and, in respect of You, includes any Direct Debit Instruction.

**Day** means the 24-hour period beginning and ending at 00:00 midnight New Zealand time.

**Direct Debit Authority** means the consent of an Acceptor to allow their nominated account to be debited, such consent in the form of an Authority.

**Direct Debit Service** means the Standard Service as set out in the Application Form provided by ANZ and the Participating Banks allowing You to submit a Direct Debit Instruction and to debit an Acceptor's nominated account with the relevant Acceptor's Bank through the Direct Debit System.

**Direct Debit Instruction** means an electronic file sent by You to ANZ through an ANZ Electronic Channel requesting the processing of an Acceptor's Direct Debit Authority and debit of the Acceptor's nominated account through the Direct Debit System.

**Direct Debit System** means the system by which an Acceptor can authorise the Acceptor's Bank to accept Direct Debits Instructions from ANZ on Your behalf and allow an Acceptor's nominated account to be debited. This system is governed by the rules and standards set by Payments NZ.

**Documents** means any document between You and ANZ in respect of the provision of the Direct Debit Service, including these Direct Debit Terms and Conditions, Application Form, any applicable

Service Schedule, Manual, fee schedule, instruction and any other documents given to You by ANZ.

**Fee Account** has the meaning given to it in clause 9.1(c).

**Force Majeure** means any events beyond ANZ's reasonable control, including:

- (a) fire, flood, earthquake, storm, or other natural event;
- (b) strike or other labour dispute;
- (c) war, insurrection, terrorism or riot;
- (d) acts of or failure to act by any Agency;
- (e) changes in Law or any order of any Agency;
- (f) any failure, disruption or interference failures of any telecommunications, electricity supply and other utilities;
- (g) any technical failure, disruptions or interference to any computer system, including any payment systems; or
- (h) any failure, disruption or interference of any goods or services provided by any third party, including any Participating Bank or correspondents.

**Insolvency Proceedings** means, in relation to a party, any steps taken or legal proceedings started or threatened against it for winding-up, dissolution or re-organisation, for the enforcement of any security interest over any of its assets or for the appointment of a liquidator, supervisor, receiver, administrator, administrative receiver, compulsory manager, trustee or other similar officer of its or in respect of any of its assets.

**Insolvent** means, in relation to a party, if:

- (a) an order is made or a petition is presented or a resolution is passed for the administration, liquidation, statutory management, winding up or dissolution of that party;
- (b) a receiver, administrator or other official or creditors' representative is appointed in respect of a person or any of the assets of that party;
- (c) that party is adjudicated insolvent or bankrupt for the purposes of any Law;
- (d) that party ceases or threatens to cease to carry on all or a substantial part of its business;
- (e) the holder of any security takes possession of the whole or (in the opinion of ANZ) any material part of the property or assets of that party;
- (f) that party enters into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (g) that party is otherwise unable to pay their debts when they fall due;

(h) in Your respect, Your financial position or the value of any securities held by ANZ changes adversely to a material extent in each case in the opinion of ANZ; or

(i) something having a substantially similar effect to the above happens in connection with that party under the Law of any jurisdiction.

**IP Rights** means any rights in relation to any intellectual property, including copyright and neighbouring rights, inventions (including patents and patent applications), registered and unregistered trade marks, confidential information (including trade secrets and know how), databases, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Law** means any law, statute, rules, regulation or standard of any Agency.

**Loss** means any loss, liability, costs and expenses (including legal costs on a full indemnity basis), claims, proceedings or damages of any kind arising out of contract, torts, statute or otherwise and whether foreseeable or not (including direct, indirect and consequential losses).

**Manual** means any ANZ Direct Debit Manual and any other manual, noticeboard, helptext, guideline and procedure provided to You by ANZ in respect of the Direct Debit Service.

**Participating Bank** means a bank or financial institution registered with Payments NZ allowing debits through the Direct Debit System.

**Payments NZ** means Payments NZ Limited, the company responsible for the standards and rules under which the Participating Banks operate the Direct Debit System.

**Processing Cut-Off Time** means 8:00pm (New Zealand time) on a Business Day unless otherwise notified to You by ANZ from time to time.

**Sanctions** means any economic or trade sanctions imposed by any Agency.

**Service Schedules** means the supplemental terms and conditions in respect of a particular Direct Debit Service.

**Standard Service** means the Direct Debit Service provided by ANZ allowing You to debit an Acceptor's nominated account in accordance with the Acceptor's Authority from at least 10 Business Days after providing the Authority to the Acceptor's Bank.

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

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**Termination Event** has the meaning given to it in clause 13.2.

**Transaction** means any debit or any other transaction effected through the Direct Debit System.

**You or Your** means the person named in the Application Form to whom ANZ provides the Direct Debit Service.

## 3. RESPONSIBILITIES

### 3.1 ANZ's Responsibilities

(a) ANZ will:

- (i) use reasonable skill and care in providing the Direct Debit Service;
  - (ii) comply with all obligations in the Documents; and
  - (iii) comply with all applicable Laws and all rules and standards of the Direct Debit System.
- (b) Notwithstanding anything to the contrary, nothing in the Documents shall require ANZ to undertake an act or omit to act if ANZ reasonably believes such act or omission would breach any Law, Sanction, requirement of competent Agency or any internal policy relating to corporate governance, risk management or audit.

### 3.2 Your Responsibilities

(a) You will:

- (i) provide ANZ with all information necessary to enable ANZ to perform its obligations under the Documents and any further information ANZ reasonably requests. You will ensure all information You provide to ANZ is accurate, complete, up to date and not misleading.
- (ii) inform ANZ as soon as possible of the occurrence of any Insolvency Proceedings; and
- (iii) inform ANZ as soon as possible of any error, dispute or suspicion of fraud or illegality in respect of any Transaction.

(b) You will comply with:

- (i) all security measures specified in writing by ANZ from time to time in relation to the Direct Debit Service;
- (ii) all instructions ANZ may issue to You in relation to the use or operation of the Direct Debit Service;
- (iii) all obligations in the Documents; and
- (iv) all applicable Laws and all rules and standards of the Direct Debit System.

### 3.3 Authority Form & Authorisation Code

(a) You agree and acknowledge:

- (i) ANZ must approve the form of each Direct Debit Authority strictly in accordance with the rules and standards of the Direct Debit System and the relevant Manual;
- (ii) You will be allocated an Authorisation Code following such approval which You must record on each Direct Debit Authority and each Direct Debit Instruction; and
- (iii) Payments NZ maintains a register of all Authorisation Codes.

(b) You may not alter the form of a Direct Debit Authority without ANZ's written consent.

### 3.4 Law and Sanctions

(a) You declare and undertake to ANZ that all Transactions processed by ANZ in accordance with any Direct Debit Instruction submitted by You for processing through the Direct Debit System, will not breach any Law, Sanction or requirement of any competent Agency.

(b) You will not make or allow to be made any Transactions processed by ANZ in accordance with any Direct Debit Instruction for any illegal or fraudulent purpose.

## 4. CAPACITY AND AUTHORITY

### 4.1 Authorised Persons

(a) You confirm that Your Authorised Persons are authorised by You to give and send Communications, perform any acts or obligations under the Documents and bind You under the Documents and any Transaction contemplated by the Documents in relation to the Direct Debit Service.

(b) You are responsible to ANZ for any Communications signed, initiated or sent by Your Authorised Persons and all acts of Your Authorised Person (including fees, charges and liabilities incurred or to be incurred or arising from such Communications or acts).

(c) ANZ may rely on any Communications or any agreement (including any notice or certificate) signed, initiated or sent by an Authorised Person which purports or appears to be genuine and to have been signed, initiated or sent by an Authorised Person by whom it purports to be signed, initiated or sent.

(d) Where a Communication has been signed, initiated or sent using an Authentication Method it shall be deemed to have been authorised, signed, initiated and sent by You.

(e) Each Authorised Person will continue to be authorised until such time as ANZ receives written notice from You to the contrary and until receipt

- of such confirmation, ANZ will be entitled to rely on, and will be fully protected in acting on, the information relating to the Authorised Persons previously provided to it.
- (f) ANZ may require each Authorised Person to be identified according to any Law or any other requirement reasonably specified by ANZ. ANZ will not process or act on any Direction or other Communications until it has completed the verification of identity checks required by all applicable Laws.
- ## 5. DIRECT DEBIT AUTHORITY
- ### 5.1 Obtaining and Retaining Direct Debit Authorities
- (a) You will obtain consent from an Acceptor by way of an approved Direct Debit Authority, ensuring the relevant Authority is completed and signed by the Acceptor and, if requested by the Acceptor, provide the Acceptor with either a copy of that Authority or written advice as to its terms and conditions.
- ### 5.2 Loading
- (a) You will submit the original of each Acceptor's Authority to the Acceptor's Bank at least 10 Business Days before You submit a Direct Debit Instruction in respect of that Acceptor to allow the Acceptor's Bank to load Your Authorisation Code against the Acceptor's nominated account.
- (b) You agree and acknowledge an Acceptor's Bank by written notice may refuse to load a Direct Debit Authority and Authorisation Code against an Acceptor's account for any reason, including if the Acceptor's signature on the Authority is not in accordance with the Acceptor's Bank's records. The Acceptor's Bank is under no obligation to provide You with a reason for such refusal.
- ### 5.3 Notice
- (a) Unless agreed otherwise with ANZ, You will give advance notice to each Acceptor at least 10 Business Days before You submit a Direct Debit Instruction in respect of the relevant Acceptor notifying them of:
- (i) the net amount to be debited through the Direct Debit System;
  - (ii) the due date for debiting such amount; and
  - (iii) the date, being at least two Days prior to the due date for debiting, by which the Acceptor must notify You to stop a direct debit.
- (b) All notices provided under this clause must comply with the rules and standards of the Direct Debit System and the relevant Manual.
- ### 5.4 Changes, Cancellations and Reversals
- (a) You agree and acknowledge:
- (i) an Acceptor may at any time cancel a Direct Debit Authority by giving appropriate notice to the Acceptor's Bank or to You. These instructions are effective immediately; and
  - (ii) an Acceptor's Direct Debit Authority may be terminated by the Acceptor without Your knowledge.
- (b) You will refer to ANZ before making any changes to any information quoted in a Direct Debit Authority. ANZ may require You to give notice of the change to the Acceptor and/or the Acceptor's Bank before processing a Direct Debit Instruction. You agree and acknowledge that where any changes are made by You to a Direct Debit Authority without notice to the Acceptor and ANZ has received a written request from the Acceptor's Bank within 120 Days from the relevant debit ANZ may reverse and/or alter the relevant direct debit.
- (c) You will take responsibility to amend Your records and reverse or cancel any relevant Direct Debit Instruction immediately on advice that the Acceptor's Direct Debit Authority has been cancelled, or that the Acceptor's account has been closed or transferred. In the case of cancellation or closure, no more direct debits are to be initiated by You through the Direct Debit System. In the case of a transfer of the Acceptor's account, all future direct debits must be sent to the Acceptor's new account through the Direct Debit System in accordance with the Initiator's Direct Debit Transfer Advice from the new Acceptor's Bank.
- ## 6. DIRECT DEBIT INSTRUCTIONS
- ### 6.1 Acting on Direct Debit Instructions
- (a) ANZ will only process and act on Your Direct Debit Instructions received before the Processing Cut-Off Time.
- (b) ANZ will, subject to the extent permitted by Law, notify You as soon as practicable if it cannot process or act on Your Direct Debit Instruction.
- (c) ANZ may determine the order of priority of any Direct Debit Instructions.
- (d) ANZ is specifically authorised to act on any Direct Debit Instruction even if it is contrary to or inconsistent with any other existing Direct Debit Instruction or Communication between You and ANZ.
- (e) ANZ may act on any incomplete or unclear Direct Debit Instruction if ANZ reasonably believes it can complete or clarify the Direct Debit Instruction without contacting You.

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- (f) Where ANZ receives a Direct Debit Instruction and ANZ is not the relevant Acceptor's Bank, ANZ or its authorised agent will, if details of the Acceptor's Bank have been provided, send the Direct Debit Instruction to the relevant Acceptor's Bank. ANZ will have no liability to You or the Acceptor for:
- (i) failure by the Acceptor's Bank to act on a Direct Debit Instruction where that Direct Debit Instruction has been forwarded to that Acceptor's Bank by ANZ as required; or
  - (ii) failure to send the Direct Debit Instruction, or to make further enquiries, where details of the Acceptor's Bank have not been provided to ANZ.
- (g) You will advise ANZ as soon as practicable after You become aware of any duplicated or incorrect Direct Debit Instruction initiated or sent by You.
- 6.2 Refusing to act on Direct Debit Instructions**
- (a) ANZ may, in addition to any other rights within the Documents, refuse at any time and for any reason to process a Direct Debit Instruction, if:
- (i) the Direct Debit Instruction has not been received prior to the relevant Processing Cut-off Time;
  - (ii) the Direct Debit Instruction includes incorrect, incomplete, unclear or inconsistent details;
  - (iii) the Direct Debit Instruction or relevant Direct Debit Authority does not fully comply with the format (including where relevant electronic file format) specified by ANZ or agreed with ANZ for the relevant Direct Debit Service;
  - (iv) the Direct Debit Instruction or relevant Direct Debit Authority appears to be unauthorised, not authentic or in breach of any relevant security measure;
  - (v) the Direct Debit Instruction appears to be in breach of any applicable Law, Sanction or requirement of any competent Agency;
  - (vi) where the Acceptor holds an account with ANZ as the Acceptor's Bank, the value of any Transaction in a Direct Debit Instruction exceeds the Cleared Funds (or, if applicable, any relevant credit limit) available in the relevant account;
  - (vii) the processing date of the Transaction is not the date noted in the relevant Direct Debit Authority;
  - (viii) ANZ has been advised that the relevant Direct Debit Authority has been cancelled; or
  - (ix) a Termination Event has occurred.
- (b) If ANZ refuses to process Your Direct Debit Instruction, ANZ will, subject to the extent permitted by any Law, Sanction or requirement of any competent Agency:
- (i) notify You as soon as practicable and provide You with written reasons; and
  - (ii) re-credit any funds drawn from an Acceptor's account relating to the refused Direct Debit Instruction.
- (c) ANZ will act reasonably in exercising any rights under this clause, and will consider Your interests and use reasonable efforts to liaise with You to resolve any issues which may arise.
- (d) ANZ is not obliged to, but will use reasonable endeavours to, meet any reasonable request for lodgment of a Direct Debit Instruction after the relevant Processing Cut-Off Time.
- 6.3 Processing of Direct Debit Instructions**
- (a) You are responsible for the validity of all Direct Debit Instructions submitted and for the correction of any errors associated with the preparation of Your Direct Debit Instructions including effecting reversals of any incorrect Transactions that may be processed by ANZ in accordance with Your Direct Debit Instructions.
- (b) ANZ may require confirmation from You before processing Your Direct Debit Instruction. ANZ will not be liable for any Loss arising from a delay while obtaining confirmation from You.
- (c) You further agree and acknowledge an Acceptor's Bank will automatically refuse to process a Direct Debit Instruction if:
- (i) Your Authorisation Code does not match the Authorisation Code loaded against the relevant Acceptor's account; or
  - (ii) no Authorisation Code has been loaded against the relevant Acceptor's account.
- 6.4 Recalls and cancellations of Direct Debit Instructions**
- (a) You may contact ANZ in writing with all relevant information to request that a Direct Debit Instruction be recalled or cancelled. ANZ will use all reasonable endeavours to recall or cancel a Direct Debit Instruction but will not be responsible if it has already been received by ANZ for processing or there is not enough time to act on Your request.
- 6.5 Disputes**
- (a) Any dispute as to the correctness or validity of an amount debited is not the concern of the Acceptor's Bank or ANZ, unless the debit has not been processed in accordance with the Direct Debit Authority and Direct Debit Instruction. Any other dispute lies between the Acceptor and You.

## **6.6 Transaction Errors and Dishonours**

- (a) ANZ will process the recovery and return after recovery of any unauthorised or dishonoured direct debits.
- (b) You agree and acknowledge ANZ may reverse any duplicate Transaction on the second Day after the debit date without the Acceptor's Bank consent if the Transaction has been duplicated or did not conform to Your Direct Debit Instruction or recover any erroneous Transactions with the Acceptor's Bank specific consent.

## **7. ANTI-MONEY LAUNDERING AND COUNTER TERRORISM FINANCING**

- (a) You agree that ANZ may delay, block or refuse to process any Direct Debit Instruction or Transaction without incurring any liability and without informing You of the reasons if ANZ suspects that:
  - (i) the Transaction may breach any Laws, Sanctions or requirement of any competent Agency;
  - (ii) the Transaction involves any person, country, product or entity that is itself sanctioned or is connected directly or indirectly to any person, country, product or entity that is sanctioned under any Sanction; or
  - (iii) the Transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful in New Zealand or any other country.
- (b) You will provide all information to ANZ which ANZ reasonably requires in order to manage money-laundering or terrorism-financing and economic and trade sanctions risk or to comply with any Laws or Sanctions in New Zealand or any other country or requirement of any competent Agency. You agree that ANZ and any ANZ Group Member may disclose any information concerning You to any Agency or where required by any such Law or Sanction in New Zealand or elsewhere without informing You.

## **8. CONFIDENTIALITY**

### **8.1 Confidential Information**

- (a) ANZ takes Your privacy very seriously. Information You provide to ANZ will be kept strictly confidential and will be securely held by ANZ and/or by any ANZ Group Member. You have a right to access the information by calling Your ANZ Manager or enquiring at any branch of ANZ and You may also request that it be corrected. A fee may be payable.
- (b) ANZ will make every effort to keep Your information up to date. To assist ANZ, please advise ANZ promptly of any changes in Your details, such as Your address.

- (c) How ANZ uses Your information will depend on the purpose for which that information was collected.
- (d) Generally ANZ may use this information to:
  - (i) consider Your application for facilities, products or services;
  - (ii) administer, manage and monitor any facilities, products or services provided to You;
  - (iii) identify, prevent or investigate any actual or suspected fraud, unlawful activity, misconduct or threats to ANZ systems. ANZ's use of information may include monitoring traffic and information to and from ANZ's website and other IT systems for those purposes;
  - (iv) conduct market research, data processing and statistical analysis; and
  - (v) unless You notify ANZ otherwise in writing, provide You with information about other facilities, products or services including certain third party products or services.
- (e) ANZ may disclose information about You to any ANZ Group Member, agent or contractor for the above purposes, or anyone else who assists ANZ to identify, prevent or investigate fraud, unlawful activity, misconduct or threats to ANZ systems.
- (f) ANZ may use Your information for the purpose of data matching and in doing so may collect information about You. 'Data matching' is the process of comparing Your information with publicly available information and/or with information held by a reputable entity ANZ has an ongoing relationship with in order to better enable ANZ to carry out any of the above purposes.
- (g) ANZ may disclose Your information to carefully selected third parties for the purposes of data matching, provided those third parties are subject to an obligation of confidentiality.
- (h) ANZ may obtain information and make such enquiries about You as ANZ may consider warranted from any source including any ANZ Group Member and credit reference agencies for the above purposes.
- (i) ANZ may disclose information about You to credit reference agencies for the purpose of obtaining credit reports on You. Those credit reference agencies may retain that information and provide it to their customers who use their credit reporting services. If You default in any obligations to ANZ, then ANZ may disclose information about You to credit reference or debt recovery agencies and it may be retained by them. Those agencies may provide that information to their customers who use their credit reporting services.

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- (j) ANZ may also disclose account information to any Authorised Person appointed in respect of Your Accounts.
- (k) ANZ's security standards are maintained and its technology regularly updated to provide protection for the information it holds. ANZ does not sell, publish or give away Your information.
- (l) Certain Laws also require ANZ to disclose Your information on request, for example the Tax Administration Act 1994. If ANZ receives a request from certain agencies to release Your information, ANZ may not be able to tell You that the request has been received. ANZ may also disclose information to any relevant Agency or other financial institution where ANZ reasonably believes that the disclosure will assist in the investigation, detection and/or prevention of fraud or other criminal offences, such as money laundering.
- (m) ANZ and all ANZ Group Members are subject to anti-money laundering and terrorist financing legislation in force in New Zealand, Australia and other countries. You agree to provide all information to ANZ and any ANZ Group Member 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 ANZ from entering or concluding Transactions which involve certain products, services, countries, persons or entities. As a result, You agree that ANZ and any ANZ Group Member may:
  - (i) delay or block any Transaction, or refuse to pay any money, without incurring any liability; or
  - (ii) disclose any information concerning You or a Transaction to any relevant Agency in any country in order to ascertain whether the Laws in that country apply to the 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 ANZ and any ANZ Group Member will not incur any liability to You as a result of that action.
- (n) 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.

## 8.2 Your duty of confidentiality

- (a) You shall treat all information You receive relating to ANZ, the Direct Debit Service, or any of ANZ's customers, as confidential and may only disclose such details to those of Your representatives who require the information to enable the proper operation and use of the Direct Debit Service,

and as a condition of such disclosure, You shall obtain their agreement to be bound by suitable obligations of confidentiality.

- (b) In no case may You disclose any of ANZ's confidential information to a third party (except Your auditors, lawyers or other third parties whose review is mandated by Law) without ANZ's prior written consent, which shall be conditional upon their agreement to be bound by suitable obligations of confidentiality.

## 9. FEES AND TAXES

### 9.1 Fees

- (a) You will pay ANZ, without set-off, deduction or counterclaim, all applicable fees and charges in relation to the use or operation of the Direct Debit Service as notified to You.
- (b) If ANZ fails to collect a fee or charges to which it is entitled, ANZ has not waived its right to collect that fee or the fee charge or for future Transactions of the same nature.
- (c) If You have a nominated fee account with ANZ for the Direct Debit Service, ANZ will debit all fees and charges for that Direct Debit Service from that account (the Fee Account). You are responsible for ensuring that funds are available in the Fee Account to cover all fees and charges payable and promptly advise ANZ of a replacement account if Your close Your Fee Account.
- (d) If You do not have a nominated Fee Account for the Direct Debit Service or if there are insufficient funds in that Fee Account, ANZ may debit all such fees and charges from any other account held by You with ANZ and/or charge interest on any amount due from the due date for payment until such payment is made at a rate ANZ may determine in its reasonable opinion.
- (e) ANZ will, upon request, provide information to You concerning the current Direct Debit Service fees and charges.
- (f) You will:
  - (i) pay all charges levied on ANZ by any third party (including any correspondent or Participating Bank) in respect of the Direct Debit Service; and
  - (ii) comply with all governmental exchange regulations applicable to the Direct Debit Service provided by ANZ to You and will pay ANZ on demand such amount as ANZ may be required to expend on account of such regulations.

### 9.2 Taxes and Deductions

- (a) You will pay all Taxes applicable to You and payable in connection with the Direct Debit Service.

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

## 10. VARIATIONS

- (a) ANZ may modify, amend, cancel, waive, or vary the Documents or any aspect of the Direct Debit Service in whole or in part, including by varying or introducing any fees and charges and will communicate any change, variation, alteration to You in at least one of the following ways:

Change	Minimum Notice	Method Of Notice
Variation to Terms and Conditions, including fees and charges or Manual	14 Days	Direct communication, i.e. In writing or by electronic communication.
		Displaying information in all ANZ branches.
		Statement in the media or by public statement.

- (b) Notwithstanding the above, ANZ may notify You of a change with immediate effect if:
- (i) the change relates to an interest rate or other change subject to market fluctuations; or
  - (ii) the change is required by Law or requirement of any competent Agency,
- except to the extent such notification is otherwise required by Law or the NZBA Code of Banking Practice.
- (c) All changes are binding on You from the date advised by ANZ.

## 11. COMMUNICATIONS

### 11.1 Contact Information

- (a) You will provide ANZ with up to date and complete contact details for receipt of all Communications in connection with the Documents and the Direct Debit Service. Your contact details are any

mail address or facsimile number of Yours, or any nominated electronic address, known to ANZ.

- (b) ANZ's address, fax number and contacts details for any Communications to be made or delivered by You are set out in the relevant Manual or as otherwise notified to You from time to time.

### 11.2 Form of Notices and Communications

- (a) All Communications will be in the English language and, if applicable, in the form prescribed by ANZ.

### 11.3 Electronic Notices and Communications

- (a) You agree that any Communication from ANZ may be provided by:

- (i) electronic communication to Your nominated electronic address; or
- (ii) being made available on the ANZ Website for retrieval by electronic communication with You, on the condition that ANZ, (A) promptly notifies You by electronic communication to Your nominated electronic address that the information is available for retrieval on the ANZ Website, and the nature of the information; and (B) provides You with the ability to readily retrieve the information by electronic communication.

- (b) You may vary Your nominated electronic address or terminate Your agreement to electronic communication by providing written notice to ANZ.

### 11.4 Effective Delivery

- (a) Unless otherwise provided, Communications sent to You from ANZ will be effective if:

- (i) sent by facsimile, at the time shown on the transmission report as being successfully sent;
- (ii) delivered personally, at the time of delivery;
- (iii) sent by post, three Business Days after posting (or seven Business Days after posting if sent from one country to another); and
- (iv) sent by electronic communication, at the time sent to the relevant recipient unless the sender receives an automated message that the email has not been delivered.

- (b) Your Communications are effective when actually received by ANZ.

- (c) Any Communication sent to one trustee, partner or person in an entity comprising more than one person, shall be deemed to be received by all trustees, partners and persons jointly.

### 11.5 Telephone & Channel Communications

- (a) You accept any risks in initiating and sending Communications verbally, by telephone or through any ANZ Electronic Channel and agree to comply with the security measures agreed with ANZ (if

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any). ANZ may act on such Communications if ANZ believes them to be genuine and complete without making any enquiries. ANZ may accept or reject any verbal or telephone Communication at its sole discretion.

- (b) Subject to any applicable Law, ANZ may record and hold Your telephone conversations and use the recorded conversations or transcripts in any dispute.

## 12. INTELLECTUAL PROPERTY

- (a) You acknowledge and agree that all IP Rights in any document, software, thing or process forming part of or used in relation to the Direct Debit Service (including any modification, adaptation or development) are owned by either ANZ or its third party service providers and that You do not have, and use of the Direct Debit Service does not give You, any right, title or interest in any such IP Rights.
- (b) You must not do anything which interferes with, tampers with, or otherwise adversely affects, any IP Rights forming part of, or used in relation to, the Direct Debit Service or Documents.

## 13. TERMINATION AND SUSPENSION

### 13.1 Termination by either party

- (a) Either party may terminate the Direct Debit Service (in whole or in part) on at least 30 Days written notice for any reason.
- (b) Either party may immediately terminate the Direct Debit Service if the other party is Insolvent.

### 13.2 Termination by ANZ

- (a) ANZ may immediately and without notice terminate the Direct Debit Service if:
- (i) You have materially breached any terms and conditions of a Document which, if it can be remedied, has not been remedied within 10 Business Days of receiving a notice from ANZ to do so;
  - (ii) You do not pay any fees and expenses which are due and payable within 10 Business Days of You receiving a notice from ANZ to do so;
  - (iii) You have acted unlawfully, fraudulently, negligently, abusively or without due regard to the interests of the Acceptors;
  - (iv) an event or change occurs which affects Your assets, affairs or financial condition and gives ANZ reasonable grounds to conclude that You may not be able to perform Your obligations under the Documents;
  - (v) acting under the Documents or providing the Direct Debit Service would cause ANZ to be in breach of any applicable Law, Sanction or requirement of any competent Agency; or

- (vi) ANZ is required to do so in order to comply with any Law, Sanction, and requirement of any competent Agency or internal policy.

(each a Termination Event).

### 13.3 Suspension

- (a) ANZ may suspend Your use of the Direct Debit Service while it is investigating whether a Termination Event may have occurred or, acting reasonably, to protect the interests of either party. ANZ will, subject to the extent permitted by Law, notify You as soon as practicable if it suspends Your use of the Direct Debit Service.

### 13.4 Effect of Termination

- (a) All provisions of the Documents which in order to give effect to their meaning need to survive termination will remain in full force and effect, including to the following clauses of these Direct Debit Terms and Conditions - New Zealand, clause 8 (Confidentiality), clause 9 (Fees and Taxes), clause 11 (Communications), clause 14 (Liability), and clause 17 (Jurisdiction and Governing Law).
- (b) On the termination of the Documents, or the Direct Debit Service, You must return to ANZ all documents, software, stationery and equipment (if any) that ANZ has made available to You in connection with the Direct Debit Service and take any other such action as ANZ may reasonably request of You.
- (c) The termination of the Direct Debit Service will not affect rights or liability of either party which had accrued prior to the termination and shall not:
- (i) relieve You or ANZ of any obligations to pay any amount payable in respect of the Direct Debit Service as at the date of termination;
  - (ii) release You or ANZ from any liability arising from any breach of the Documents which occurred prior to termination; or
  - (iii) entitle You to receive any rebate or refund of the whole or any part of the fees and charges pursuant to the Documents.
- (d) Where You have terminated the Direct Debit Services in whole You will cancel all existing Direct Debit Authorities.

## 14. LIABILITY

### 14.1 Limitation of Liability

- (a) ANZ will not be liable to You for any Loss suffered or incurred or which may arise directly or indirectly in connection with the Direct Debit Service or any Transaction or any act or omission of ANZ (including breach of contract) other than to the extent such Loss is caused by ANZ's gross negligence, wilful misconduct or fraud.

#### **14.2 Indirect Loss**

- (a) Notwithstanding the above, ANZ will not in any circumstances be liable for any indirect or consequential categories of Loss, including:
- (i) any loss of profit, data, goodwill or business;
  - (ii) any interruption to business;
  - (iii) any failure to realise anticipated savings; or
  - (iv) any consequential, indirect, special, punitive or incidental losses, costs or damages.

#### **14.3 Force Majeure**

- (a) ANZ will not be liable in respect of Loss arising from an event of Force Majeure.

#### **14.4 Exclusions**

- (a) To the extent permitted by Law and unless otherwise stated in the Documents all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Direct Debit Service are excluded.

#### **14.5 Indemnity**

- (a) You will indemnify and hold ANZ harmless against any Loss (including, for the avoidance of doubt, Loss suffered by ANZ by reason of the indemnity given by ANZ to the other Participating Banks in relation to the operation of the Direct Debit System) arising as a result of:
- (i) Your use or operation of the Direct Debit Service;
  - (ii) ANZ providing the Direct Debit Service to You;
  - (iii) ANZ acting or refusing to act on Your Direct Debit Instruction;
  - (iv) ANZ exercising or performing any of its rights or obligations in respect of You, any Documents or the Direct Debit Service;
  - (v) any failure, delay or refusal by You to comply with the Documents or other obligations in respect of the use of the Direct Debit Service for any reason whatsoever;
  - (vi) ANZ acting or relying on any Communication or Direct Debit Instruction with respect to the Direct Debit Service which it reasonably believes to be genuine, correct and appropriately authorised;
  - (vii) any act or omission by any third party, including any Participating Bank, which directly or indirectly relates to Your use of the Direct Debit Service (including any alteration of information by parties other than ANZ, that results in the amounts or terms of any Transactions or

outstandings between You and ANZ being misstated or misrepresented);

- (viii) any enquiry, investigation, subpoena (or similar) or litigation with respect to You or with respect to the Direct Debit Service, and Transactions or the Documents;
- (ix) the administration, and any actual or attempted preservation or enforcement, of any rights ; or
- (x) any amendment to, or any consent, approval, waiver, release or discharge of or under the Documents.

#### **14.6 On demand**

- (a) Any amount payable by You to ANZ under any of the indemnities in this clause 14 is payable on demand by ANZ.

#### **14.7 Implied Terms**

- (a) Certain legislation may imply warranties or conditions or impose obligations upon ANZ which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. The terms and conditions applicable to the Direct Debit Service must be read subject to such statutory provisions. If the statutory provisions referred to above apply, to the extent to which ANZ is entitled to do so, ANZ limits its liability in respect of any claim under those provisions to, at ANZ's option, the supply of the services again or the payment of the cost of having the services supplied again.

### **15. FORCE MAJEURE**

- (a) If, as a result of an event of Force Majeure, ANZ becomes unable, wholly or in part, to perform any of its obligations under the Documents or provide the Direct Debit Service, ANZ will:
- (i) give You prompt notice of the relevant event of Force Majeure with reasonably full particulars and, in so far as known to it, the probable extent to which it will be prevented from or be delayed in providing the Direct Debit Service;
  - (ii) suspend the Direct Debit Service until the relevant event of Force Majeure has ceased to affect the availability of the Direct Debit Service; and
  - (iii) use reasonable endeavours to overcome or remove the relevant event of Force Majeure as quickly as practicable.
- (b) You acknowledge and agree ANZ is not required to:
- (i) settle any strike or other labour dispute on terms contrary to its wishes; or
  - (ii) contest the validity or enforceability of any Law, regulation or legally enforceable order by way of legal proceedings.

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- (c) ANZ's obligation to make available the Direct Debit Service resumes as soon as it is no longer affected by the relevant event of Force Majeure.

## 16. SET-OFF

- (a) You acknowledge and agree that ANZ may set-off any amount You owe to ANZ against any amount due from ANZ to You or against any credit balance in any account You hold with ANZ regardless of the relevant location or currency of either obligation and whether or not such obligation is matured or unmatured, actual or contingent or present or future.

## 17. JURISDICTION AND GOVERNING LAW

### 17.1 Governing law

- (a) The Documents will be governed by and construed in accordance with the Laws of New Zealand.

### 17.2 Jurisdiction

- (a) The parties submit to the jurisdiction of the courts of New Zealand and of any courts competent to hear appeals from those courts.
- (b) Notwithstanding the above, ANZ may take proceedings in any country where You have assets or conduct Your business activities.

### 17.3 Waiver of Immunity

- (a) You irrevocably waive any sovereign and other immunity You may have in any jurisdiction from legal proceedings, attachment before or after judgment or execution of judgment.

### 17.4 Complaints

- (a) If You have a complaint concerning the Direct Debit Service or ANZ's performance of the Direct Debit Service, You should talk to Your ANZ Manager or, if they are unavailable, their immediate supervisor.
- (b) If Your complaint cannot be resolved promptly, Your ANZ Manager (or their supervisor), will take responsibility and work with You to address the matter quickly. ANZ will acknowledge receipt of Your complaint as soon as reasonably practicable. ANZ will undertake a review of the complaint under its complaints review procedures. On request, ANZ will promptly provide details of its complaints review procedures.
- (c) If You are not satisfied with the steps taken by ANZ to resolve the complaint, or with the result of ANZ's investigation, You may wish to refer the complaint for independent review to:

New Zealand Banking Ombudsman  
PO Box 10573,  
The Terrace  
Wellington 6000

Telephone: 0800 805 950  
Fax: 064 4 471 0548  
Internet: <http://www.bankombudsman.org.nz/>

## 18. MISCELLANEOUS

### 18.1 Change of name or merger

- (a) You will notify ANZ in advance of any legal name change or merger involving You.

### 18.2 Assignment and Transfer by You

- (a) You will not assign, transfer or otherwise dispose of Your rights and/or obligations under the Documents without ANZ's prior written consent.

### 18.3 Assignment and Transfer by ANZ

- (a) ANZ may at any time transfer and/or assign or novate any or all or part of its rights, benefits and/or obligations under the Documents or in respect of the Direct Debit Service. To facilitate such transfer, assignment or novation, ANZ is authorised to disclose any of Your information to such actual or prospective assignee, transferee or novatee and You agree to take such actions and sign such documents as ANZ may reasonably require to complete any approval, filing or registration formalities which are necessary for such transfer, assignment and/or novation.

### 18.4 Agents and Trustees

- (a) You warrant that You are acting on Your own behalf in using and operating the Direct Debit Service unless You have disclosed that You are acting on behalf of another entity.
- (b) Where You are acting on behalf of another entity in using and operating the Direct Debit Service, You hereby:
- (i) agree to be subject to the same obligations under the Documents as if You were using and operating the Direct Debit Service on Your own behalf; and
  - (ii) warrant and represent to ANZ that You have the full capacity and authority to use and operate the Direct Debit Service in the manner You use it.

### 18.5 Trustees

- (a) If You are a trust, You agree:
- (i) not to allow the trust deed to be amended unless ANZ agrees;
  - (ii) to advise ANZ of the resignation or appointment of any trustees or of any director of a company that is a trustee; and

- (iii) to ensure that all new trustees accept Your liability to ANZ under the Documents and ANZ may treat all new trustees as authorised to act on behalf of the trust in respect of any Documents, Transactions and Direct Debit Service.

#### **18.6 Partnerships**

- (a) If You are a partnership with one or more persons, You agree:
  - (i) each partner is jointly and severally responsible to ANZ for any liability owed by You;
  - (ii) if a partner dies or retires (or, if incorporated, ceases to exist) ANZ may in its discretion treat the balance of Your liabilities as owned by any surviving partners;
  - (iii) if requested, to provide ANZ with the names of the current partners from time to time; and
  - (iv) to ensure that all new partners accept Your liability to ANZ under the Documents and ANZ may treat all new partners as authorised to act on behalf of the partnership in respect of any Documents, Transactions or Direct Debit Service.

#### **18.7 Electronic Signatures**

- (a) You hereby confirm that electronically signed contracts are binding and enforceable in Your country of incorporation, establishment or constitution.

#### **18.8 Waiver**

- (a) If either party does not fully exercise a right or remedy under the Documents, or delays in exercising such a right or remedy, that party may still exercise it later. The waiver by any party of a breach of any provision of the Documents will not be deemed:
  - (i) a waiver of any subsequent breach of that provision; or
  - (ii) a waiver of a breach of any other provision in the Documents.

#### **18.9 Severability**

- (a) Any provision that is illegal, invalid, or unenforceable will be severed from the Documents and the remaining provisions (and parts thereof) will continue in full effect.

#### **18.10 Entire Agreement & Non-reliance**

- (a) These Documents constitute the entire agreement and understanding between the parties about the relevant subject matters and hereby substitute and replace all previous agreements, arrangements, representations and understandings between the parties on that subject matter.

#### **18.11 Counterparts**

- (a) These Documents may be executed and delivered in any number or counterparts, all of which, taken together, shall constitute one and the same agreement.

#### **18.12 Third Party Rights**

- (a) No person who is not a party to any Document shall have any right to enforce or to enjoy the benefit of any provision of the Documents.

#### **18.13 Remedies Cumulative**

- (a) The rights, powers and remedies provided in the Documents are cumulative and not exclusive of any rights, powers or remedies provided at Law.

#### **18.14 Joint & Several Liability**

- (a) If You are a trust, partnership or other entity comprising more than one person, each partner, trustee or person will be joint and severally liable for Your obligations under the Documents and references to You in the Documents means each of those persons.

#### **18.15 Interpretation & References**

- (a) Unless the contrary intention appears, in the Documents:
  - (i) a reference to any thing (including an amount) is a reference to the whole and each part of it;
  - (ii) a reference to a document (including any Document) includes any variation or replacement of it;
  - (iii) a reference to a person includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and includes that person's successors in title, permitted assigns and permitted transferee;
  - (iv) the word "including" shall not be interpreted narrowly but shall be interpreted to mean "including without limitation", "including (but not limited to)" or "including without prejudice to the foregoing";
  - (v) the word "original" may include an electronic communication or copy generated by a method which enables the information contained in the original document to be readily accessible so as to be useable for subsequent reference and which provides a reasonable means of assuring the integrity of the information contained in that document, except to the extent that the validity of that means of electronic communication is otherwise limited by any applicable Law;

## **DIRECT DEBIT TERMS AND CONDITIONS**

- (vi) an agreement, representation or warranty by, or in favour of, two or more persons binds them, or is for the benefit of, (as the case may be), jointly and each of them severally;
  - (vii) a provision of law is a reference to that provision as amended or re-enacted;
  - (viii) a gender includes all other genders, and the singular includes plural and vice versa;
  - (ix) the singular includes the plural and vice versa;
  - (x) unless otherwise stated, a time of Day is a reference to the time of Day in New Zealand.
- (b) Clause and schedule headings are inserted for convenience only and shall not affect the interpretation of any of the provisions of any Documents.

### **19. SERVICE SCHEDULES**

- (a) Additional terms and conditions relating specifically to the provision by ANZ of the Preferred Service (as defined therein) are contained in the Preferred Service Schedule.
- (b) Additional terms and conditions relating specifically to the provision by ANZ of the Paperless Service (as defined therein) are contained in the Paperless Service Schedule.
- (c) These Direct Debit Terms and Conditions - New Zealand and each applicable Service Schedule will be read and construed as one document.



