

# ANZ TRADE TERMS NEW ZEALAND

FEB 2016

# ANZ TRADE TERMS

## 1. INTRODUCTION

### 1.1 Terms applying

These ANZ Trade Terms and each relevant Trade Country Addendum (together, the **Terms**) apply to all Trade Products used by, or provided by ANZ to, a Customer unless agreed otherwise in writing by ANZ.

### 1.2 Applications and forms

- (a) The Customer will apply or request to use a Trade Product by delivering to ANZ an application or request (as applicable):
  - (1) in a format specified or approved by ANZ from time to time;
  - (2) completed to the satisfaction of ANZ; and
  - (3) signed or made by one or more Authorised Representatives.
- (b) The Customer will also execute and deliver to ANZ any other documents ANZ may require in relation to a Trade Product.
- (c) ANZ will promptly notify the Customer if it will not accept and act upon an application or request of the Customer to use a Trade Product.

### 1.3 Uncommitted

Unless agreed otherwise in writing by ANZ, all Trade Products are provided to the Customer on an uncommitted basis and nothing in any Trade Agreement, the satisfaction of all or any requirements in it or any negotiations between the parties before the Trade Product is utilised obliges:

- (a) the Customer to use any Trade Product;
- (b) ANZ to accept and act upon the Customer's request to use a Trade Product or give the Customer any reasons for refusing to do so; or
- (c) ANZ to continue to make any Trade Product available to the Customer, and ANZ or the Customer may, at any time, give the other notice in writing immediately terminating the provision of the Trade Product.

### 1.4 Exchange rate movements

- (a) If the Customer uses a Trade Product in one currency and the Customer's receivables are in another currency and the exchange rate of the currencies fluctuates, the Customer may be exposed to exchange rate risk.
- (b) The Customer is solely responsible for monitoring and managing exchange rate risk and protecting itself against adverse exchange rate movements.
- (c) The Customer will, if required by ANZ, provide extra security or payment (including by way of cash cover) or reduce the drawn amount of the Trade Product if exchange rate fluctuations have caused the value of security provided or a payment made to ANZ to fall or actual or contingent payment obligations owed to ANZ to increase relative to the drawn amount of or limit provided for the Trade Product.

## 2. IMPORT CREDITS

### 2.1 Issuance

- (a) Each Import Credit will be irrevocable and issued subject to UCP and may be issued subject to URR and otherwise in a form and substance acceptable to ANZ.
- (b) ANZ is not obliged to check or ensure the accuracy of any information supplied to it for inclusion in any Import Credit.
- (c) ANZ will send a copy of each Import Credit to the Customer as soon as is practical after it is issued.
- (d) The Customer is solely responsible for ensuring that the terms of an Import Credit meet its requirements.
- (e) The Customer must notify ANZ of any objection to the Import Credit terms within 2 Business Days after receiving its copy. If it

does not do so, that will be conclusive evidence that it is completely satisfied with the terms of the Import Credit and it waives any right to raise objections to, or exercise any defence related to the validity, accuracy, and enforceability of the terms of the Import Credit and ANZ will be free from all claims in respect of those terms.

### 2.2 Third Party Import Credits

ANZ may issue, at the Customer's request, an Import Credit to facilitate the business transactions of another party with the beneficiary and with that other party named as the applicant or contracting party in that Import Credit. If ANZ does so, the Customer's reimbursement obligations to ANZ will still apply.

### 2.3 Correspondent Bank

ANZ may choose the Advising bank and Nominated bank for the Import Credit even if the Customer requests otherwise in the application.

### 2.4 Separate transaction

The Customer acknowledges that an Import Credit is by its nature a separate transaction from any contract between the Customer and any other party on which the Import Credit may be based. As such, ANZ is not required to:

- (a) notify the Customer that a presentation has been received or prior to honouring an Import Credit;
- (b) make reference to, enquiry into or to take account of statements or instructions from the Customer or any other party or any defence or claims the Customer may have against the Presenter; or
- (c) notify the Customer that a presentation is not compliant prior to dishonour.

### 2.5 Compliant presentation

- (a) ANZ will honour all presentations complying with the terms of the Import Credit.
- (b) If ANZ has restricted the negotiation of the Import Credit to its Correspondent Bank, ANZ may accept and pay all drafts drawn or purported to be drawn on that Correspondent Bank.

### 2.6 Non-compliant presentation

- (a) ANZ may refuse to honour any non-complying presentation under the Import Credit.
- (b) If ANZ notifies the Customer of discrepancies, the Customer must promptly notify ANZ in writing of whether or not it waives them. If the Customer does not do so, ANZ may at any time within 21 days of notifying the Customer of the discrepancies return the Trade Documents to the Presenter.
- (c) Any decision by ANZ to seek instructions from the Customer regarding discrepancies at any time does not oblige ANZ to seek instructions at any other time in respect of any other discrepancies.
- (d) ANZ may reject a non-compliant presentation under the Import Credit even if the Customer has instructed ANZ to waive all discrepancies advised to the Customer.
- (e) If the Customer requests ANZ to authorise the release or delivery of the Goods to it notwithstanding any discrepancies that may appear in the presentation, ANZ may treat that release or delivery of Goods as if it was a payment made by ANZ under the Import Credit and the Customer must reimburse ANZ in accordance with these Terms.

### 2.7 Responsibility

ANZ, its Correspondent Banks and agents are not liable or responsible for, nor will the Customer's obligations under these Terms or in relation to any Import Credit be reduced, terminated or affected in any way by:

- (a) the shippers' charges on the Goods;

# ANZ TRADE TERMS

- (b) any failure to obtain any governmental authorisation, licence or permit necessary or appropriate in connection with these Terms and or the Import Credit;
- (c) any impossibility or illegality in performance of these Terms or the Import Credit or any other agreement as result of any act of any Authority or court, or any Law, affecting these Terms or the Import Credit; or
- (d) any variations in the instructions agreed to by ANZ or any other bank relating to the Import Credit necessitated by the Law and/or commercial practice of the country in which any draft is negotiated or presented for acceptance or for payment.

## 2.8 Insurance

- (a) If it is the Customer's responsibility to insure the Goods or cause the Goods to be insured, the Customer will insure them or cause them to be insured for loss and damage and for an amount that a prudent and reasonable owner of the Goods would effect and maintain with a reputable insurance company.
- (b) The Customer will give a copy of the insurance policy and all receipts for current premiums to ANZ within 3 Business Days of being requested by ANZ to do so.
- (c) If the Customer fails to take out or maintain any insurance in accordance with these Terms or give ANZ a copy of the insurance policy, ANZ may take out and maintain, at the Customer's expense, insurance considered appropriate by it.

## 2.9 Reimbursement

- (a) The Customer will pay to ANZ an amount equal to and in the same currency as all amounts paid by ANZ in connection with an Import Credit, on the day on which ANZ makes or is required to or deemed to make that payment.
- (b) If ANZ specifies, the Customer will, on or shortly before the date on which ANZ makes (or is likely to make) a payment under an Import Credit, pay to ANZ a sum equal to such payment. ANZ may hold all or part of such sum in an account in ANZ's name, under ANZ's sole control and/or apply all or part of such sum against the Customer's reimbursement obligations to ANZ.

## 3. IMPORT COLLECTIONS

### 3.1 ICC rules

Each Collection (either documentary or clean) will be subject to URC.

### 3.2 Collecting bank

If ANZ acts as a collecting bank in respect of import Collections and Drafts for acceptance or payment:

- (a) ANZ may hold the Trade Documents until acceptance or reimbursement of the relevant Drafts, or payment, by the Customer; and
- (b) ANZ will outline in the correspondence to the Customer attached to the import Collection any additional terms applicable to any import Collection.

### 3.3 Guarantee (Aval)

- (a) ANZ may, at the Customer's request, add its guarantee (aval) to a Draft which the Customer has first accepted.
- (b) The Customer must pay ANZ the face value amount of the guaranteed (avalised) Draft on its maturity date.
- (c) If the Customer dishonours the Draft, the Customer must pay ANZ interest at an interest rate reasonably determined by ANZ from the time of dishonour until payment by the Customer of the face value amount of the Draft to ANZ and all charges incurred by ANZ.

- (d) The Customer must hold ANZ indemnified against, and pay to ANZ on demand, any Loss which ANZ may incur in guaranteeing payment of, or adding its aval to, the Draft.
- (e) The Customer absolutely, irrevocably and unconditionally authorises ANZ to pay immediately on demand by the exporter (and without any prior notice to the Customer) any money demanded by the exporter under or pursuant to any guaranteed (avalised) Draft on its maturity date. ANZ will not be under any obligation to enquire whether any claim, demand or drawing by the exporter is properly made or whether the Customer disputes the validity of any such claim by the exporter. Any action taken by ANZ in good faith pursuant to this clause will bind the Customer in respect of such action.

## 4. IMPORT CREDITS AND COLLECTION- PLEDGE AND TRUST RECEIPT

### 4.1 Pledge

The Customer pledges in favour of ANZ, as continuing security for payment and discharge on demand to ANZ of the Import Obligations, the Pledged Assets.

### 4.2 Risk

The Customer will hold all risk in any Pledged Asset. ANZ is not responsible for any Pledged Asset and will not be liable for any Loss in relation to, or depreciation in the value of, any Pledged Asset.

### 4.3 Pledge obligations

The Customer must:

- (a) have good title to each Pledged Asset and ensure that no person (other than ANZ) at any time has any Encumbrance or other interest in (or claim over) any Pledged Assets while the Pledge over that Pledged Assets exists;
- (b) deal with the Pledged Assets in accordance with any instructions ANZ may give the Customer from time to time;
- (c) take any step that ANZ reasonably requests which ANZ consider necessary or desirable to constitute, preserve or perfect the Pledge;
- (d) not sell or dispose of any Pledged Asset or its right, title or interest in any Pledged Asset unless permitted under these Terms or as otherwise agreed by ANZ in writing;
- (e) pay all costs and expenses in relation to any Pledged Assets, including the cost of insuring, storing or transporting them;
- (f) ensure that all Pledged Assets are kept separate from any other goods and are clearly marked as belonging to ANZ; and
- (g) ensure that any person who is in actual possession of any Pledged Assets acknowledges to ANZ in writing that they are held to ANZ's order.

### 4.4 Authority to perfect and dispose

The Customer irrevocably authorises (but does not oblige) ANZ (acting reasonably) and its agents and nominees to execute all documents and do all other acts and things ANZ considers necessary or desirable, to perfect the Pledge or to effect any disposal of any Pledged Assets, or to enforce any rights to which the Customer or ANZ is entitled in connection with any Pledged Assets.

### 4.5 Action on default

- (a) If the Customer fails to pay or discharge any of the Import Obligations when due or is otherwise in breach of its obligations under these Terms, ANZ may deal with and take any action in relation to any Pledged Assets, including selling, disposing, transporting, warehousing, landing or insuring any Pledged Assets or making a claim on any insurance policy.

# ANZ TRADE TERMS

- (b) The Customer must reimburse ANZ on demand in relation to any reasonable cost or expense ANZ incurs in relation to ANZ dealing with or taking action in relation to any Pledged Asset.
- (c) ANZ is not liable for any Loss suffered by the Customer as a consequence of that action.
- (d) The Customer will remain liable for and must pay any deficiency that may remain owing to ANZ after the sale or disposal of the Pledged Assets.

## 4.6 Trust Receipt

If, prior to the payment in full of the Import Obligations, ANZ releases any Pledged Assets to, or to the order of, the Customer, whether or not a Trust Receipt is signed and delivered to ANZ for that release the Customer will hold those Pledged Assets and any proceeds of their sale on trust for ANZ and failing that will hold them as ANZ's fiduciary and/or agent and in each case for ANZ's sole benefit (unless otherwise agreed by ANZ in writing) and the Customer agrees that:

- (a) those Pledged Assets are pledged to ANZ upon the terms of these Terms and that the Pledge will continue notwithstanding the release of those Pledged Assets by ANZ to the Customer;
- (b) those Pledged Assets are held at all times to the order of ANZ but at the expense and at the risk of the Customer; and
- (c) it has no claim, lien or set-off of any kind in respect of anything which the Customer holds on trust for ANZ and the Goods will remain the property of ANZ until sold or otherwise disposed of, and undertakes:
  - (d) if ANZ requests, to execute a Trust Receipt in respect of those Pledged Assets before they are released;
  - (e) to deal with those Pledged Assets with the sole purpose of the sale of the Pledged Goods comprising those Pledged Assets to buyers approved by ANZ, unless otherwise agreed with ANZ in writing;
  - (f) not to sell or otherwise dispose of any of those Pledged Assets on deferred terms (other than normal trade credit) or for any non-monetary consideration or for less than current market value;
  - (g) pending the sale of any Goods that form part of those Pledged Assets, to maintain the Goods in sellable condition, keep those Goods stored in the name of ANZ in warehouses approved by ANZ, separate from other goods and generally under conditions satisfactory to ANZ;
  - (h) insure the Goods against fire and any other risks that ANZ may reasonably require to their full insurable value and hold the policies on behalf of ANZ and in case of loss pay the insurance moneys to ANZ in the same manner as proceeds of sale and make good any deficiency;
  - (i) to hand to ANZ any warrants, receipts and documents (other than documents that are already pledged) relating to those Pledged Assets promptly on receipt;
  - (j) upon sale of any of those Pledged Assets:
    - (1) to promptly get in, recover and receive the sale proceeds in accordance with the contract of sale and remit to ANZ all sale proceeds immediately on receipt without set-off or deduction and without intermingling those proceeds with other moneys; and
    - (2) to hold all rights, title and interest in, and claims for payment under, the contract of sale and the proceeds from receipt until payment to ANZ in trust for ANZ and failing that will hold them as ANZ's fiduciary and/or agent and in each case for ANZ's sole benefit;
  - (k) not to permit the Goods to be processed or altered or incorporated in any other goods without ANZ's written consent which if given may be conditional; and

- (l) to notify ANZ immediately of any change, occurrence or circumstance affecting the value, state, condition, quality or quantity of any of those Pledged Assets.

## 4.7 Pledge and Trust Receipt Customer Obligations

- (a) The Customer will give ANZ periodical reports and other particulars concerning the Goods or the Trade Documents as ANZ may require from time to time in a manner satisfactory to ANZ.
- (b) ANZ may, at any time and without notice to the Customer, enter any premises for the purpose of inspecting or taking possession or custody of the Goods and also to take such steps as ANZ considers necessary or desirable to protect its interest in the Goods. ANZ will act reasonably in exercising its rights under this Clause.

## 5. SHIPPING GUARANTEE/INDEMNITY AND AIR WAYBILLS

### 5.1 Issuance

- (a) The Customer may request ANZ to provide a Carrier with a Shipping Guarantee or authority to facilitate the release by the Carrier of any Goods or the issuance of a duplicate set of the original Bills of Lading.
- (b) If ANZ agrees to provide a Shipping Guarantee to a Carrier, ANZ will only do so if the form of Shipping Guarantee required by the Carrier is in a form acceptable to it.

### 5.2 Release

The Customer must ensure that the relevant Carrier releases ANZ from the Shipping Guarantee in a manner satisfactory to ANZ and that ANZ's liability under the Shipping Guarantee is extinguished as soon as possible.

### 5.3 Trade Documents

If ANZ agrees to provide a Shipping Guarantee to a Carrier, the Customer:

- (a) must accept all import and other documents relating to the relevant goods regardless of any discrepancy or irregularity;
- (b) must waive all discrepancies or irregularities under the related Import Credit even if the discrepancy has not been notified, the required Trade Documents have not been presented or the Import Credit has expired;
- (c) authorises ANZ to honour any relevant drawings without examining the presented Trade Documents and will reimburse any payment made by ANZ under the relevant Import Credit irrespective of discrepancies that may appear on the Trade Documents; and
- (d) must comply with the terms of any Trade Documents and any undertaking to pay given to ANZ regardless of any dispute with its supplier or any third party.

### 5.4 Reimbursement

- (a) The Customer will pay to ANZ an amount equal to and in the same currency as all amounts paid by ANZ in connection with a Shipping Guarantee or authorising the release of Goods on the day on which ANZ makes or is required to or deemed to make that payment.
- (b) If ANZ specifies, the Customer will, on or shortly before the date on which ANZ makes (or is likely to make) a payment under a Shipping Guarantee, pay to ANZ a sum equal to such payment. ANZ may hold all or part of such sum in an account in ANZ's name, under ANZ's sole control and/or apply all or part of such sum against the Customer's reimbursement obligations to ANZ.

# ANZ TRADE TERMS

## 6. BACK-TO-BACK/FRONT-TO-BACK IMPORT CREDITS

### 6.1 Matching terms

- (a) The Customer must ensure that a BtB Import Credit and FtB Import Credit contains terms matching or compatible with the related Master Credit.
- (b) ANZ will notify the Customer of any mismatch or incompatibility between the BtB Import Credit or FtB Import Credit and the Master Credit.

### 6.2 Amendment

- (a) If the Master Credit is not advised by ANZ, the Customer will promptly notify ANZ upon becoming aware of any amendment proposed to the Master Credit and will not accept or reject any amendment to any Master Credit without the prior written consent of ANZ.
- (b) ANZ may, in its sole discretion, accept an amendment to the BtB Import Credit or FtB Import Credit. If it does, any amendment will not take effect until ANZ receives written consent from all other relevant parties to the BtB Import Credit or FtB Import Credit.

### 6.3 Full recourse

The Customer's liability to ANZ under any BtB Import Credit or FtB Import Credit is not dependent upon whether payment can or cannot be obtained under the Master Credit and ANZ retains full recourse to the Customer in respect of that liability.

### 6.4 Sufficiency of documents

If ANZ pays a drawing under any BtB Import Credit or FtB Import Credit that payment will not constitute any warranty or representation by ANZ that the Trade Documents received by ANZ under the BtB Import Credit or FtB Import Credit, with or without the substitution of invoices and possibly other documents supplied by the Customer, are sufficient to form a set of fully compliant Trade Documents for the purpose of obtaining payment under the Master Credit.

### 6.5 No assignment

The Customer will not assign the proceeds of any Master Credit to any other person without the prior written consent of ANZ.

### 6.6 ANZ is Presenting bank

- (a) The Customer irrevocably appoints ANZ as its presenting bank regarding the Master Credits.
- (b) After Trade Documents are presented under the BtB Import Credit or FtB Import Credit, the Customer must on ANZ's demand deliver to ANZ its invoice and any other document required to facilitate a complying presentation under the Master Credit.
- (c) ANZ may take any action in respect of the Master Credit including presenting the Trade Documents to obtain payment under the Master Credit and Financing the Master Credit.
- (d) ANZ may apply the proceeds under any drawing or collection under or Financing of the Master Credit to:
  - (1) pay the corresponding drawing under the BtB Import Credit or FtB Import Credit irrespective of any discrepancies in any document presented under the BtB Import Credit or FtB Import Credit; or
  - (2) discharge the Customer's obligations and liabilities (actual or contingent) in respect of any advance or loan provided by ANZ in connection with the BtB Import Credit or FtB Import Credit as ANZ thinks fit,in each case without first crediting those proceeds to the Customer's account with ANZ.

## 6.7 Authority

ANZ is authorised in respect of the Master Credit to (but need not):

- (a) execute, sign and/or complete any document, instrument or instruction; and
- (b) do any acts and things whatsoever which may, in ANZ's opinion, be necessary for the presentation and Financing of the Trade Documents under the Master Credit including the preparation, completing, dating and signing of any relevant Trade Documents in order to give effect to the appointment and authorities given to ANZ under this Clause 6.

## 7. EXPORT CREDITS

### 7.1 ICC rules

Any Financing of any Trade Document relating to an Export Credit will be subject to the version of UCP stated in the Export Credit. The presentation of any Trade Document for Collection will be subject to URC.

### 7.2 Advising

Upon receipt of an Export Credit from the Issuing bank, ANZ will advise its terms to the Customer in accordance with the Issuing bank's instruction and on the terms in UCP.

### 7.3 Payment Undertakings

#### Offer and acceptance and fees

- (a) The Customer may from time to time request ANZ to provide Payment Undertakings for Export Credits.
- (b) When ANZ receives the Customer's acceptance of ANZ's offer to provide a Payment Undertaking and/or ANZ and the Customer agree in writing the fees to be paid by the Customer in respect of the Payment Undertaking, the Export Credit has the benefit of the Payment Undertaking.

#### Payment Undertaking

- (c) If ANZ does not Finance an Export Credit in respect of which it has provided a Payment Undertaking:
  - (1) ANZ will pay the Customer the drawing amount when funds are received from the Issuing bank and the Confirming bank (if any) in accordance with the Export Credit reimbursement terms; or
  - (2) if the Issuing bank and the Confirming bank (if any) does not honour a complying presentation, ANZ will credit the account nominated in writing by the Customer with the drawing amount on the maturity date of the Export Credit drawing,

less any unpaid fees or charges due and payable to ANZ on the maturity date of the Export Credit drawing.

### 7.4 Financing Export Credit with Payment Undertaking

- (a) When the Customer presents Trade Documents called for under the Export Credit, it may request ANZ to Finance them.
- (b) If ANZ Finances Compliant Trade Documents of an Export Credit in respect of which it has provided a Payment Undertaking, ANZ will pay the Export Credit drawing(s) amount into the Customer's nominated account less:
  - (1) interest agreed in writing by ANZ and the Customer before ANZ Finances (unless ANZ has agreed with the Customer in writing, or the Export Credit states, that interest will be paid separately); and
  - (2) any unpaid fees due and payable to ANZ.
- (c) Any Payment Undertaking provided for an Export Credit will end upon the Customer's account being credited with the Financing proceeds for that Export Credit and ANZ will not be obliged to make any other payment to the Customer.

# ANZ TRADE TERMS

## 7.5 Financing Export Credit without Payment Undertaking Request

- (a) The Customer may request ANZ to Finance the Trade Documents it presents and credit its account specified in the document presentation form with the proceeds after ANZ:
- (1) determines that the Trade Documents comply with the Export Credit terms (**pre-acceptance Finance**); or
  - (2) receives a Document Acceptance (**post acceptance Finance**).

### Interest

- (b) The Customer must agree with ANZ interest for the pre or post acceptance Finance in writing at least 2 Business Days prior to Financing, unless ANZ agrees to a shorter period.

### Pre-acceptance Finance

- (c) If ANZ agrees to the Customer's request for pre-acceptance Financing and interest is agreed, ANZ will effect the Financing and credit the Customer's nominated account with the proceeds less interest, fees, costs and expenses owed to ANZ by the Customer under any relevant Trade Agreement.

### Post acceptance Finance

- (d) If ANZ agrees to the Customer's request for post acceptance Finance and interest is agreed, ANZ will effect the Financing and credit the Customer's nominated account with the proceeds (less interest, fees, costs and expenses owed to ANZ under any relevant Trade Agreement) not later than the Business Day following receipt of the Document Acceptance.

## 7.6 Recourse

### Payment Undertaking with subsequent Financing

- (a) If ANZ provides a Payment Undertaking for, and then Finances the Compliant Trade Documents of that Export Credit, both the Payment Undertaking and subsequent Financing are provided on a **without recourse** basis only if the Issuing bank and the Confirming bank (if any) fail(s) to, or is/are unable to, make payment because any one or more of the following situations has/have arisen:
- (1) Political Risk(s) in the country(ies) of the Issuing bank and the Confirming bank (if any);
  - (2) Transfer and Economic Risk(s) in the country(ies) of the Issuing bank and the Confirming bank (if any);
  - (3) Credit Risk(s) of the Issuing bank and the Confirming bank (if any); or
  - (4) Documentary Risk.
- (b) The Customer agrees that the without recourse arrangement specified above only applies if any one or more of the situations specified in Clause 7.6(a) occurs but not otherwise. In all other situations, including if any Recourse Event occurs, the Customer irrevocably agrees that:
- (1) if ANZ has not paid the Customer under the Payment Undertaking or having agreed to Finance ANZ has not yet advanced funds, ANZ does not have to pay the Customer and the relevant Payment Undertaking and commitment to Finance is cancelled; or
  - (2) if ANZ has paid under the Payment Undertaking or advanced funds under the Financing, it has full recourse against the Customer on demand for an amount referred to in clause 7.6(d) and ANZ may refuse to provide further Payment Undertakings and subsequent Finance of Exports Credits for the Customer.

### Financing without Payment Undertaking

- (c) If ANZ has not provided a Payment Undertaking:
- (1) any Financing of an Export Credit is with full recourse to the Customer in all circumstances (unless ANZ agrees

otherwise in writing);

- (2) the Customer will provide ANZ with the necessary funds on demand and in any event not later than the maturity date of the relevant Export Credit or Draft to reimburse ANZ in full for the Financing provided to the Customer, any unpaid interest and fees and reasonable costs and expenses which ANZ may incur or be liable for in connection with the Financing provided to the Customer; and
- (3) If ANZ agrees in writing to provide Financing to the Customer on a without recourse basis, ANZ always retains limited recourse to the Customer if a Recourse Event occurs for the amount referred to in clause 7.6(d) and ANZ may refuse to provide further Financing of Exports Credits for the Customer.

### Recourse Amount

- (d) If ANZ has recourse to the Customer under clauses 7.6(b)(2) or 7.6(c)(3) ANZ has full recourse against the Customer for, and the Customer must pay ANZ on demand, an amount equal to:
- (1) all amounts paid by ANZ to the Customer or to the Customer's order in connection with the Export Credit;
  - (2) any unpaid interest on those amounts; and
  - (3) any losses, damages, fees and reasonable costs and expenses ANZ suffers or incurs as a result of the Recourse Event occurring.
- (e) The Customer will notify ANZ promptly in writing if the Customer is aware that a Recourse Event has occurred or is likely to occur and the details of that Recourse Event.

## 7.7 Payment Undertaking and/or Finance Conditions Conditions

- (a) The Customer agrees that any Payment Undertaking for, and/or Financing of, an Export Credit is subject to the following terms and conditions:
- (1) The Issuing bank, the Confirming bank (if any) and all the terms and conditions (including the availability) of the Export Credit are (both in form and substance) at the sole discretion of ANZ acceptable to ANZ.
  - (2) All Trade Documents presented for the drawing of each Export Credit must be Compliant Trade Documents and must be sent to and received at the ANZ address provided for processing within the validity of the Export Credit.
  - (3) The Customer is the beneficiary of the Export Credit and the Export Credit is subject to UCP.
  - (4) If the Export Credit is available by:
    - (a) sight payment – ANZ is the nominated paying bank or the Export Credit is available with any bank by sight payment;
    - (b) negotiation – ANZ is the nominated negotiating bank or the Export Credit is available with any bank by negotiation;
    - (c) deferred payment – ANZ is the nominated deferred payment undertaking bank or the Export Credit is available with any bank by deferred payment; and
    - (d) acceptance – ANZ is the nominated accepting bank or the Export Credit is available with any bank by acceptance, in each case with draft(s) drawn on ANZ.
  - (5) ANZ may, at its absolute discretion, refuse to accept the above nomination without giving any reason.
  - (6) Neither ANZ, the Issuing bank nor the Confirming bank, if any, is prohibited or prevented for any reason whatsoever from providing Financing and/or making payment under the Export Credit whether arising from

# ANZ TRADE TERMS

statute, judgment, order, allegation of fraud, misrepresentation, falsification of document, misconduct or any other reasons.

- (7) If ANZ consents to an amendment which, in ANZ's opinion, increases the value or extends the validity of ANZ's existing commitment, the Customer must on written demand pay ANZ any further fees calculated on such increase and/or extension.
- (8) ANZ has received the original Export Credit and all amendments, if any.
- (9) The Customer has not previously received a Payment Undertaking for, or drawn and/or received any amount under, any Export Credit from any person including ANZ which is the subject of a Payment Undertaking and/or Financing made under these Terms.
- (10) The Customer has complied with all other additional terms and conditions imposed by ANZ from time to time.
- (11) The Customer will pay ANZ's standard or incidental fees, charges and out-of-pocket expenses relating to Payment Undertakings for, and Financing of Export Credits.
- (12) The Customer will pay to ANZ all applicable fees even if the Customer does not present Compliant Trade Documents to ANZ.
- (13) If the original Export Credit presented to ANZ contains details that are different from the details provided to ANZ at the time of the Payment Undertaking request, ANZ may renegotiate the fees agreed with the Customer or cancel the Payment Undertaking for that Export Credit.
- (14) The Customer must provide ANZ with any additional documents or information relating to the underlying trade transaction which ANZ may require.
- (15) Notwithstanding anything to the contrary, ANZ is not obliged to provide a Payment Undertaking for an Export Credit or Finance the Compliant Trade Documents of that Export Credit unless all the terms and conditions relating to Exports Credits in these Terms are duly observed by the Customer.

## Representations, warranties and undertakings

(b) The Customer represents, warrants and undertakes whenever a Payment Undertaking or Financing is requested or given and on each day that money is actually or contingently owing to ANZ that:

- (1) the Customer is duly incorporated and validly existing under the laws of jurisdiction of its place of incorporation and there is no order, petition, application or the like is outstanding for the winding-up of the Customer;
- (2) the presented Trade Documents are genuine, valid, bona fide, properly authorised and executed by the relevant parties;
- (3) the goods, specifications, quantity, quality, packing, shipping, insurance and all other terms conform with all requirements of the underlying contract relating to the Export Credit;
- (4) the Customer or the applicant has obtained all import and export licenses and other government authorisations or approvals whatsoever of any jurisdiction that are required for the underlying transaction (including sale, shipment and delivery of the goods to the applicant and payment for the same), and the transaction does not violate any applicable Law;
- (5) immediately prior to ANZ issuing a Payment Undertaking or Financing for the Export Credit, the Customer has good and marketable title to any and all the presented Trade

Documents and all rights to the proceeds of the Export Credit free and clear of any Encumbrance;

- (6) the Customer will sign, complete and/or deliver to ANZ any documents and do such acts and things and/or execute any instruments as ANZ will require whether to enable ANZ to obtain the proceeds of any Export Credit or otherwise in connection with these Terms;
- (7) the Customer will not, except with the written consent of ANZ create or agree to create any Encumbrance over any Export Credit and/or any interest in the proceeds of any Export Credit or accept or reject any amendment to any Export Credit once the Customer has accepted an offer;
- (8) the Customer must arrange for each Export Credit and every amendment to it to be delivered to ANZ for ANZ's retention promptly upon its receipt of the same;
- (9) if the Customer receives any payment from the Issuing bank, the Confirming bank (if any) or any other person in respect of any amounts payable under the Export Credit, the Customer will immediately inform ANZ of the same and to the extent that they relate to amounts ANZ has already paid the Customer, remit them to ANZ promptly and in the meantime hold them on trust for ANZ absolutely and failing that as ANZ's fiduciary and/or agent;
- (10) all payments by the Customer, the Issuing bank and/or the Confirming bank (if any) to ANZ will be made without set-off, counterclaim, deduction or condition of any kind and will be made in immediately available funds and the currency designated by ANZ except those expressly provided in an Export Credit;
- (11) the Customer will do all things necessary on ANZ's behalf to claim and obtain payment of all sums and/or damages due under the Export Credit and/or its Trade Documents, including:
  - (a) directing any bank to make payment under the Export Credit and/or its Trade Documents to ANZ; and
  - (b) in accordance with ANZ's instructions, commencing and continuing legal proceedings in the Customer's name or allowing ANZ to bring those legal proceedings in ANZ's name or ANZ's and the Customer's joint names (as ANZ may choose) and the Customer will fully co-operate with ANZ in the pursuit of any such claims and proceedings;
- (12) the Customer will co-operate with ANZ fully at ANZ's expense in anything that ANZ may lawfully do in order to:
  - (a) obtain payments under the Export Credits including to file any claims or take any legal actions or proceedings (either in ANZ's own name or ANZ's and the Customer's name jointly) against the Issuing bank, the Confirming bank (if any) or any other parties; and
  - (b) resolving any discrepancies alleged by the Issuing bank in any of the presented Trade Documents or any other disputes regarding such payment; and
- (13) the Customer will pay ANZ any other incidental fees and charges referred to in any applicable ANZ trade and supply chain tariffs or fees brochure in effect from time to time and as otherwise agreed in writing between the Customer and ANZ, when ANZ asks for them, unless the Export Credit states fees and charges are for the for the account of the applicant and all fees paid are non-refundable.

## Assignment to ANZ

- (c) Without prejudice to ANZ's rights to act as a Nominated bank under any Export Credit including to provide Financing under any Export Credit:

# ANZ TRADE TERMS

- (1) The Customer agrees to assign absolutely to ANZ all the present and future rights, title, interests and benefits of the Customer in and to the receivables and proceeds payable to the Customer under or in connection with each Export Credit (**Rights**).
- (2) The assignment is an outright assignment and will automatically take effect with respect to an Export Credit without further act at the time when ANZ provides a Payment Undertaking and/or Finance in respect of the relevant Export Credit.
- (3) If the ownership of all or any of the Rights fails to vest in ANZ, the Customer declares that until the date upon which they do vest in ANZ, the Customer will hold them on trust for ANZ and failing that will hold them as ANZ's fiduciary and/or agent and in each case for ANZ's sole benefit.
- (4) The Customer will pay to ANZ, on demand, any stamp duties or other duties or charges payable (if any) in respect of the assignment.
- (5) ANZ is entitled to, at any time without notice to the Customer, notify the persons liable in respect of the Export Credits of ANZ's interest in the Export Credits and give payment directions to such persons in respect of the Export Credits, including issuing notices to the Issuing banks (and/or the Confirming banks and/or the transferring banks, if applicable). The Customer will provide assistance to ANZ for the notifications and comply with all formalities, including executing any documents, which such persons may request.

## **Branches are separate banks**

- (d) An ANZ branch in one country may provide a Payment Undertaking, confirm under UCP, honour or Finance as Nominated bank under a Documentary Credit issued by an ANZ branch in another country without adversely affecting in any way, or extinguishing, the rights, liabilities and obligations under the Documentary Credit or the Customer's liability to ANZ in respect of that honouring or Financing of the Documentary Credit in accordance with these Terms.

## **7.8 Export Credit - Collection without honour or Finance**

- (a) The Customer may present Trade Documents under an Export Credit and request ANZ to dispatch those Trade Documents to the Issuing bank for payment without honour or Finance by ANZ.
- (b) If ANZ accepts and acts upon the Customer's request, it will credit proceeds to the Customer's account specified in the request when it is satisfied it has actually received payment from the Issuing bank.

## **7.9 Transfer of Export Credits**

### **UCP**

- (a) The relevant provisions of UCP which govern transferable Documentary Credits will apply in relation to the transfer of the Export Credit the Customer has requested ANZ to transfer.

### **Authorities**

- (b) If not already allowed, the Customer, as the first beneficiary, authorises ANZ to seek approval from the Issuing bank to allow ANZ to act as Transferring bank.
- (c) The Customer authorises ANZ to advise the second beneficiary of the terms of the Export Credit and the instructions in the application to transfer the Export Credit.

### **Format and delivery**

- (d) The Customer will ensure that the Export Credit to be transferred is in a form acceptable to ANZ.
- (e) The Customer represents and warrants that the details of each Export Credit and the terms of the transfer specified in its application are true and correct.

- (f) If not already held by ANZ, the Customer will deliver to ANZ the original transferable Export Credit and any amendments the Customer receives.

### **Amendment**

- (g) The Customer will not inform the Issuing bank or the second beneficiary of its acceptance of any amendment to the original transferable Export Credit without the prior written consent of ANZ.
- (h) If all the rights under the Export Credit are transferred, the Customer authorises ANZ to advise the second beneficiary of any amendments.

### **Transfer of rights**

- (i) The Customer waives in favour of the second beneficiary its rights and interests as the beneficiary of the Export Credit to the extent those rights and interests have been transferred to the second beneficiary pursuant to the transfer.

### **Substitution of documents**

- (j) The Customer will present at the counters of the relevant ANZ Office its own invoice and draft which may be needed to substitute for any of those of the second beneficiary as soon as they are available and at latest on a date which ANZ determines will allow it to process all required Trade Documents within the validity of the Export Credit.
- (k) Unless the Customer instructs ANZ to the contrary in its application, ANZ will:

- (1) substitute the Customer's Drafts and invoices for those presented by the second beneficiary; and
- (2) deliver to the Customer the invoices of the second beneficiary together with ANZ's payment advice for the amount by which the Customer's Drafts exceed the amount of the Drafts of the second beneficiary, less any fees, expenses or charges due to ANZ.

- (l) If the Customer fails to deliver its invoice and Draft to ANZ in conformity with the terms of the Export Credit, ANZ is authorised to forward the Trade Documents accompanying the Drafts of the second beneficiary without any responsibility on ANZ's part to pay the Customer the difference between the amount of the second beneficiary's Drafts and the amount authorised to be paid under the Export Credit.

- (m) If the Customer has transferred all of its rights in the transferable Export Credit to a second beneficiary, the Customer will not require substitution of Trade Documents and will permit the second beneficiary to present Trade Documents directly to the Issuing bank of the transferable Export Credit.

### **Payment**

- (n) For a transferable Export Credit that has been transferred and for which ANZ has not provided a Payment Undertaking, ANZ will:

- (1) only pay the Customer and the second beneficiary if ANZ receives the corresponding payment from the Issuing bank; and
- (2) upon receiving that payment will pay the second beneficiary the amount of the presentation and the Customer the remaining amount under the transferred Export Credit.

- (o) For a transferable Export Credit that has been transferred and for which ANZ has provided a Payment Undertaking, ANZ will:

- (1) pay the second beneficiary the amount of its presentation under the transferred Export Credit in accordance with the tenor of the Export Credit upon presentation of Compliant Trade Documents if the Issuing bank fails to pay; and

# ANZ TRADE TERMS

- (2) upon the Customer's substitution and presentation of compliant Trade Documents under the transferred Export Credit, ANZ will pay the Customer the remaining amount under the transferred Export Credit in accordance with the tenor of the Export Credit if the Issuing bank fails to pay.

## Responsibility

- (p) The Customer accepts full responsibility for the transfer of the Export Credit.
- (q) ANZ, its Correspondents Banks and agents will not be responsible for the description, quantity, quality or value of the Goods shipped and/or the Services performed under the transferred Export Credit or for the correctness, genuineness or validity of the Trade Documents.

## 8. EXPORT COLLECTION

### 8.1 ICC rules

ANZ will handle the collection of:

- (a) Trade Documents not under an Export Credit (either documentary or clean) under URC (even if URC is not referred to in the Customer's collection instructions); and
- (b) discrepant Trade Documents under an Export Credit under UCP.

### 8.2 Remitting bank

ANZ may (but need not) agree to the Customer's request to act as the remitting bank in respect of any Trade Documents to be sent on Collection.

### 8.3 Collecting or presenting bank

- (a) ANZ may instruct any Correspondent Bank of its choice to undertake a Collection even if the Customer requests otherwise in the application.
- (b) ANZ is not responsible for any act, omission or default on the part of any collecting or presenting bank involved in handling or processing a Collection.

### 8.4 No checking

ANZ is not obliged to check the documents before sending them to the collecting bank, Issuing bank or Confirming bank. If ANZ does agree to check documents, it will do so without any liability including if ANZ fails to identify any discrepancy or irregularities of any kind.

### 8.5 Proceeds payment

- (a) ANZ will only pay the Customer proceeds of a collection which have actually been received by ANZ from the collecting bank (or Issuing bank or Confirming bank (if any)) and will not be liable if it receives late advice of payment.
- (b) If payment or acceptance is not received from the relevant drawee within 60 days after ANZ receives the first Trade Documents from the Customer, ANZ is discharged from all further obligations under the Collection.

### 8.6 Advances, negotiation or finance

ANZ may, at the request of the Customer, provide advances against a Draft or other Trade Documents sent on Collection or negotiate the Customer's Draft or otherwise finance a drawing under an Export Credit notwithstanding discrepancies in the Trade Documents.

### 8.7 Full Recourse

If ANZ has advanced funds, negotiated or provided finance and on presentation the Draft is dishonoured or ANZ's claim under the Export Credit is not honoured or in respect of which payment has not been duly made to ANZ on the maturity date for any reason, the Customer must provide ANZ with the necessary funds on demand and in any event not later than the maturity date of the relevant Draft or Export Credit to:

- (a) reimburse ANZ in full for the advance, negotiation or financing provided to the Customer;
- (b) pay ANZ any unpaid interest and fees; and
- (c) pay ANZ any costs, charges and expenses which ANZ may incur or be liable for in connection with the advance, negotiation or financing provided to the Customer.

### 8.8 Interest and fees

Without affecting the Customer's obligation to pay ANZ, ANZ may deduct from advances all interest agreed with the Customer and any charges, commissions, fees or expenses incurred or suffered by ANZ or any Correspondent Bank relating to the Collection and pay the net proceeds to the Customer.

### 8.9 Supporting documents

The Customer must provide ANZ with any additional documents, including bills of lading, sales contracts, purchase orders and commercial invoices, relating to the underlying Trade Transaction which ANZ may require.

### 8.10 Representations and warranties

The Customer represents and warrants to ANZ that:

- (a) Trade Documents to be sent on Collection and/or financed or negotiated:
- (1) are not and will not be encumbered in any way to any person other than ANZ; and
- (2) relate to a genuine sale of the Goods or the provision of Services as described in those Trade Documents; and
- (b) the Goods are being shipped or have been shipped and delivered to, or the Customer has fully performed the Services for, the buyer.

### 8.11 Preservation of rights

Nothing done or omitted to be done by ANZ in respect of any advance, negotiation or financing in respect of Drafts or other Trade Documents after being dishonoured for payment or acceptance or not duly taken up on presentation will in any way prejudice ANZ's right of full recourse or, if agreed in writing by ANZ, ANZ's right of limited recourse to the Customer.

## 9. STANDBY LETTERS OF CREDIT AND GUARANTEES

### 9.1 Issuance

- (a) Unless ANZ agrees otherwise in writing:
- (1) each standby letter of credit will be issued subject to ISP or UCP; and
- (2) each demand guarantee, bond or undertaking to pay any person (other than the Customer) issued by ANZ will be subject to the URDG.
- (b) ANZ may issue an Instrument itself or arrange for the Instrument to be issued by its Correspondent Bank and may issue a counter-indemnity, on terms acceptable to ANZ, in favour of that Correspondent Bank in return for it doing so.
- (c) Each Instrument will be irrevocable and issued in form and substance acceptable to ANZ and, if applicable, its Correspondent Bank.
- (d) ANZ and its Correspondent Banks are not obliged to check or ensure the accuracy of any information supplied to it for inclusion in any Instrument.
- (e) The Customer is solely responsible for ensuring that the terms or requirements in an Instrument are effective, valid and enforceable and meet its requirements. ANZ and its Correspondent Banks are not responsible and have no duty whatsoever to advise the Customer on such issues.
- (f) ANZ may issue, at the Customer's request, an Instrument to facilitate the business transactions of another party with the beneficiary and with that other party named as the applicant

# ANZ TRADE TERMS

or contracting party in that Instrument. If ANZ does so, the Customer's reimbursement obligations to ANZ under these Terms will still apply.

## 9.2 Customer copy

- (a) ANZ will send a copy of each Instrument to the Customer as soon as is practical after it is issued.
- (b) The Customer must notify ANZ of any objection to any terms of the Instrument within 2 Business Days after receiving its copy. If it does not do so, that will be conclusive evidence that it is completely satisfied with the terms of the Instrument and it waives any right to raise objections to, make a claim or exercise any defence related to the validity, accuracy, and enforceability of the terms of the Instrument and ANZ will be free from all claims in respect of those terms.

## 9.3 Separate transaction

The Customer acknowledges that an Instrument is by its nature a separate transaction from any contract between the Customer and any other party on which the Instrument may be based. As such, ANZ is not required:

- (a) unless the terms of an Instrument states otherwise, to notify the Customer when it receives a demand or prior to paying a demand or accepting drafts, claims or drawings under the Instrument;
- (b) to make reference to, enquiry of or to take account of statements or instructions from the Customer or any other party;
- (c) to make any investigation or inquiry into, or raise or exercise, any defence or argument whether such defences or arguments relate to ANZ or the Customer or relate to the validity, accuracy, and enforceability of any provision under an Instrument or its underlying contract; or
- (d) to notify the Customer that a demand or document is not compliant prior to dishonour.

## 9.4 Examination of Demands

- (a) All demands and documents must be presented at the counters of the ANZ Office or Correspondent Bank issuing the Instrument.
- (b) ANZ and its Correspondent Banks will examine a demand and documents on their face alone, without further investigation or enquiry, to determine whether or not there has been a complying presentation under the Instrument.
- (c) ANZ and its Correspondent Bank are not responsible for the genuineness, correctness or validity of any demands, notices, instructions or other documents received by it.

## 9.5 Compliant demands

- (a) ANZ and its Correspondent Banks will pay all demands complying with the terms of the Instrument.
- (b) ANZ may make any payment or discharge any liability under an Instrument by way of an actual cash payment, book entry, transfer of funds or otherwise as determined by ANZ and a reference to 'pay' or 'payment' in these Terms is a reference to such payment.

## 9.6 Reimbursement obligation

- (a) The Customer will pay to ANZ an amount equal to and in the same currency as all amounts paid or discharged by ANZ in connection with an Instrument, on the day on which ANZ makes or is required to make that payment or discharges its liability.
- (b) If ANZ specifies, the Customer will on or shortly before the date on which ANZ makes (or is likely to make) a payment under an Instrument pay to ANZ a sum equal to such payment. ANZ may hold all or part of such sum in an account in ANZ's name, under ANZ's sole control and/or apply all or part of such sum against the Customer's reimbursement obligations to ANZ.

## 9.7 Non-compliant demand

- (a) ANZ may refuse to pay and may reject any demand or document presented to ANZ under the Instrument, if any such demand or document does not comply with the Instrument terms.
- (b) ANZ does not have to seek the Customer's waiver of any discrepancies before refusing to pay the demand. Any decision by ANZ to seek a waiver of discrepancies does not oblige ANZ to seek a waiver of other discrepancies at any other time.
- (c) ANZ may reject a non-compliant demand under the Instrument even if the Customer has instructed ANZ to waive all discrepancies advised to the Customer.

## 9.8 Payment without demand

ANZ may, at any time, discharge all its obligations under an Instrument by paying, whether or not ANZ has received a demand, the undrawn amount of the Instrument (or such lesser amount that the beneficiary requires) to the beneficiary and the Customer's reimbursement obligations to ANZ will still apply.

## 9.9 Assignment

If ANZ consents to a transfer of the rights under the Instrument to another person, the Customer's reimbursement obligations to ANZ will still apply in all respects to that Instrument as transferred.

## 9.10 Branches

If a branch of ANZ is the beneficiary of an Instrument issued by another branch of ANZ, the branches will be treated as separate legal entities.

## 10. TRADE FINANCE LOANS

### 10.1 Purpose

If ANZ agrees to the request of the Customer for a trade finance loan, those loans may finance:

- (a) Import Credits, import Collections or import invoices (including against the trust receipt provisions);
- (b) export invoices on an insured or uninsured basis (including freight, pre-shipment (packing) and post shipment loans); or
- (c) the Customer's other trade commitments as agreed with ANZ in writing.

### 10.2 Open account

If ANZ finances open account Trade Transactions:

- (a) the Customer must deliver evidence of the underlying Trade Transaction to ANZ of a type and in terms satisfactory to ANZ, including bills of lading, sales contracts, purchase orders and commercial invoices; and
- (b) unless ANZ agrees in writing otherwise, for pre-shipment financing ANZ will remit any proceeds of that financing direct to the Customer's seller or its order.

### 10.3 Representations and warranties

The Customer warrants and represents (on a continuing basis) and undertakes to ANZ that:

- (a) the Trade Documents when provided to ANZ with the trade finance loan application or documents presentation form and, when made, while they are the subject of a trade finance loan:
  - (1) are not and will not be encumbered in any way to any person other than ANZ; and
  - (2) represent a genuine sale and delivery of Goods and/or Services originated in the ordinary and usual course of the Customer's business, in good faith and without actual or alleged fraud, illegality or unauthorised act committed by any person; and

# ANZ TRADE TERMS

- (b) the Goods are being shipped or have been shipped and delivered to, or the Customer has fully performed the Services for, the buyer.

## 10.4 Prepayment

If the Customer wants to prepay all or any part of a trade finance loan it will:

- (a) notify ANZ in writing of the amount and the Business Day on which it will make the prepayment at least 1 Business Day before the prepayment date, unless otherwise agreed in writing by ANZ; and
- (b) make the prepayment on the day specified in the notice together with accrued interest on the amount prepaid (if any) and break funding costs or early repayment fees, if any, determined by ANZ and notified in writing to the Customer.

## 10.5 Repayment

The Customer will repay the trade finance loan in full together with unpaid interest and fees and reasonable costs and expenses on the maturity date of the trade finance loan in accordance with its repayment election in the relevant trade finance loan application or other Trade Agreement.

## 10.6 Full Recourse

ANZ has full recourse to the Customer in all circumstances for an amount equal to the sum of all trade finance loans made together with interest on such amount from and including the date or dates on which ANZ paid such amounts to the Customer and any unpaid interest, fees, costs and charges.

## 10.7 Incoming payments

Without affecting the Customer's obligation to pay ANZ, the Customer must ensure that any amount which is due to it by any person under or relating to the underlying Trade Transaction financed by ANZ is paid directly to ANZ and the Customer agrees to:

- (a) give an irrevocable payment instruction to that person if ANZ requests it to do so; and
- (b) provide all assistance ANZ requires to allow it to collect that amount.

## 10.8 Rollover

- (a) The Customer may apply to rollover all or part of an existing trade finance loan on its existing maturity date.
- (b) If ANZ agrees to make a new trade finance loan, accrued interest on the existing trade finance loan must be paid by the Customer to ANZ on the existing maturity date of the trade finance loan.

## 11. TRADE PRODUCTS - GENERAL TERMS AND CONDITIONS

### 11.1 Terms applying

Unless a contrary indication appears, Clause 11 applies to all Trade Products.

### 11.2 Interpretation and definitions

- (a) In these Terms, unless the context otherwise requires, terms will be interpreted in accordance with the interpretation provisions of the relevant Trade Agreement.
- (b) Unless ANZ notifies the Customer otherwise, any future revision of any ICC Rules will automatically apply when it is stated by the ICC to come into effect.
- (c) Terms not otherwise defined in the relevant Trade Agreement or applicable ICC Rules have the following meanings:  
**Affiliate** means, in relation to any person, a subsidiary of that person or any holding company of that person or any other subsidiary of any such holding company and any joint venture,

partnership or similar arrangement in which it holds a direct or indirect interest.

**AML/ETS Laws** mean any anti-money laundering, counter-terrorism financing or economic or trade sanctions laws or regulations.

**ANZ** means the ANZ Group Member (and all of its branches and offices) that provides the Trade Product to the Customer.

**ANZ Group Member** means Australia and New Zealand Banking Group Limited ABN 11 005 357 522 and its Affiliates.

**ANZ Office** means the branch or office of the ANZ Group Member that provides the Trade Product to the Customer. Generally, this will be specified in a Trade Agreement or the application completed by the Customer in relation to a Trade Product.

**Authority** means any local or foreign regulatory, administrative, government, quasi-governmental, law enforcement, supranational, judicial person or supervisory body, authority, court or tribunal and includes any self-regulatory organisation whether or not established under statute or any stock exchange.

**Authorised Representative**, in respect of a Customer, means a person whose identity has been verified to the satisfaction of ANZ who the Customer nominates from time to time to act on its behalf in giving Communications and in relation to whom ANZ has not received notice that the appointment has been revoked and includes any persons who are authorised by the Customer to use the Electronic Channel.

**BtB Import Credit** means a back-to-back Import Credit issued at or about the same time as a Master Credit, both Documentary Credits covering the same Goods purchased from a supplier and on sold to a buyer by the Customer.

**Business Day** means a day (other than a statutory or public holiday, a Saturday or Sunday) on which banks are open for general banking business in the Governing Jurisdiction and, in relation to any date for payment or purchase of funds, in the principal financial centre for the currency of those funds or the location in which the products are provided.

**Carrier** means any owner of a vessel, aircraft or other conveyance, forwarder, charterer and includes their agent, representatives or any person purporting to act on their behalf.

**Communication** means any instruction, notice, document, consent, request, approval, acceptance, confirmation, information or document.

**Correspondent Bank** means any bank (including any branch or office of ANZ or any ANZ Group Member) which provides any banking or other services in connection with a Trade Product to ANZ.

**Compliant Trade Documents** means Trade Documents under an Export Credit which, in ANZ's sole and absolute opinion, are in strict compliance with the Export Credit terms, provided that discrepant documents may, at ANZ's sole discretion and subject to such additional terms as the parties may agree, be treated as Compliant Trade Documents if the Issuing Bank has waived all such discrepancies and/or has accepted the relevant documents or draft(s).

**Credit Risk** means, in relation to the Issuing bank and the Confirming bank (if any), the inability to effect payments due to insolvency of the Issuing bank and the Confirming bank (if any), such as winding up, dissolution, administration or re-organisation of the Issuing bank and the Confirming bank (if any) or the appointment of receivers, receivers and managers, liquidators, administrators, custodians, trustees or similar officers of any or all of the assets of the Issuing bank and the Confirming bank (if any).

# ANZ TRADE TERMS

**Customer** means any person or entity that applies for, and is issued or provided with, any Trade Product covered by these Terms and includes a reference to a Borrower in any Trade Agreement.

**Document Acceptance** means, in relation to an Export Credit an authenticated SWIFT message or tested telex from the Issuing bank to ANZ confirming unconditional acceptance of the Documents and at maturity funds will be remitted according to ANZ's instructions.

**Customer Information** means information held or acquired by any ANZ Group Member relating to the Customer, any Trade Agreement or a transaction under or relating to a Trade Product and includes Personal Information but does not include publicly available information.

**Documentary Credit** means an irrevocable documentary credit that is subject to UCP and includes all extensions, renewals, amendments, modifications, replacements and variations to the documentary credit.

**Documentary Risk** means the non-compliance of any Trade Documents presented to ANZ with the terms of an Export Credit after ANZ has ascertained and certified that the Trade Documents do comply with the terms of that Export Credit.

**Draft** means a bill of exchange or other written payment instruction by one person (**drawer**) to another person (**drawee**) to pay the drawer or a third person (**payee**).

**Electronic Channel** means any internet/online or similar channel established by ANZ or a third party which enables the Customer to use any Trade Product and/or give any Communication.

**Electronic Communication** means a Communication sent by facsimile, E-mail or any other electronic way of sending, receiving and retrieving data now or in the future, whether provided by ANZ or any third party.

**E-mail** means information transmitted electronically over the internet or other electronic networks which is both delivered to an email or other electronic address and recovered or downloaded from that address using a post office protocol, internet message access protocol or similar system.

**Encumbrance** means any mortgage, charge, assignment, pledge, lien, rights of set-off, arrangements for retention of title or hypothecation or trust arrangement for the purpose of, or which has the effect of, granting or conferring security.

**Exchange Rate** means the rate for converting one currency into another currency determined by ANZ in its usual business and in accordance with its standard procedures for currency conversion at the time ANZ wants or is required to make the conversion (that determination to be conclusive and binding on the Customer) or the rate pre-arranged between ANZ and the Customer.

**Export Credit** means a Documentary Credit issued in favour of the Customer which ANZ advises, honours, negotiates, purchases, presents, transfers, collects, finances, discounts, commits to pay and/or confirms to, for or at the request of the Customer.

**Financing** means Negotiation, purchase of a draft accepted by ANZ (under an acceptance Export Credit) or prepayment of a deferred payment undertaking incurred by ANZ (under a deferred payment Export Credit), and the term **Finance** will be construed accordingly.

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

- (a) fire, flood, earthquake, storm or other natural event, strike or other labour dispute or war, insurrection, terrorism or riot;

- (b) acts of or failure to act by any Authority and changes in Law or any order of any Authority;

- (c) restriction or impending restriction on the availability, credit or transfer of foreign exchange;

- (d) failure, disruption or interference failures of any telecommunications, electricity supply and other utilities;

- (e) technical failure, disruptions, corruption or interference to any computer system; or

- (f) failure or disruption of or interference with any product or service provided by any third party, including Correspondent Banks or the acts of or failure to act of that third party.

**FtB Import Credit** means a front-to-back Import Credit issued before (and within a period which is acceptable to ANZ) a Master Credit, both Documentary Credits covering the same Goods purchased from a supplier and on sold to a buyer by the Customer.

**Goods** mean the goods or produce described in a relevant Documentary Credit, invoice or sales contract.

**Governing Jurisdiction** means, unless otherwise agreed in writing between ANZ and the Customer, the jurisdiction in which the ANZ Office is located.

**ICC** means the International Chamber of Commerce.

**ICC Rules** means any ICC rule published by the ICC relating to a Trade Product, including UCP, URR, URC, ISP and URDG.

**Import Credit** means a Documentary Credit issued by ANZ for or at the request of the Customer.

**Import Obligations** means, in relation to an Import Credit or import Collection, all present and future indebtedness and liabilities due, owing or incurred by the Customer to ANZ (in each case whether alone or jointly, or jointly and severally, with any other person, whether actual or contingent or whether as principal, surety or otherwise).

**Indirect Tax** means any goods and services tax, consumption tax, value added tax, stamp duty, transaction tax or tax of a similar nature.

**Instrument** means any kind of standby letter of credit, demand guarantee, bond or undertaking to pay any person (other than the Customer) and any counter-indemnity issued by ANZ in favour of its Correspondent Bank to facilitate the issuance of the Instrument in a particular jurisdiction and any amendment or replacement of any of them.

**ISP** means the ICC International Standby Practices in effect from time to time.

**Law** means any law, statute, rule, regulation, directive, code or standard of any Authority.

**Loss** means any losses, liabilities, costs and expenses (including legal costs on a full indemnity basis and taxes), claims, proceedings or damages of any kind arising out of contract, tort, statute or otherwise and whether foreseeable or not.

**Master Credit** means an Export Credit issued either at or about the same time as a related BtB Import Credit or after (and within a period which is acceptable to ANZ) a related FtB Import Credit.

**Negotiation** means the purchase by the Nominated bank of Compliant Trade Documents, by advancing or agreeing to advance funds to the Customer under an Export Credit on or before the Business Day on which reimbursement is due to the Nominated bank, and the term **negotiate** will be construed accordingly.

# ANZ TRADE TERMS

**Payment Undertaking** means, in respect of an Export Credit, the commitment to pay or honour as set out in Clause 7.3 (which includes, without limitation, a confirmation under UCP) subject to these Terms.

**Personal Information** means information about an individual which identifies an individual.

**Pledge** means any pledge security interest the Customer grants to ANZ over any Pledged Assets as contemplated in these Terms.

**Pledged Assets** means all Trade Documents and Goods which belong to the Customer and are at any time in ANZ's or ANZ's agent's, trustee's or representative's possession or where ANZ has issued an Import Credit, in the possession of a Nominated bank, where any such possession may be actual or constructive.

**Political Risk** means any extraordinary political events occur which prevent payments or procurement of funds and covers events such as acts of war, revolutions, change of government or political system, riots or civil unrest or the like in the country(ies) of the Issuing bank and the Confirming bank (if any).

**Post** means the input into the Electronic Channel by the Customer or ANZ and the initial processing of such input by the Electronic Channel so that the input is visible in the Electronic Channel.

**Recourse Event** means any one of the following events occurring in connection with an Export Credit:

- (a) a fraud, forgery, illegality or unauthorised act is or is alleged to have been committed by any person (other than ANZ);
- (b) ANZ is not paid in full or ANZ is required to reimburse any person for moneys received by it from any person as a result of:
  - (1) a commercial dispute between the Customer and any other person upon which that person or another person relies or purports to rely to deny payment or require reimbursement (whether or not subsequently settled); or
  - (2) any applicable Law, injunction, stop order or other court order (whether or not subsequently discharged);
- (c) the Customer is in breach of any of its representations, warranties, undertakings or obligations;
- (d) any restriction is placed or is impending on the availability, credit or transfer of foreign exchange;
- (e) it is or is likely to become unlawful in any jurisdiction for ANZ to perform its obligations or enforce its rights; or
- (f) at any time there is a breach of any AML/ETS Laws.

**Services** means the services described in the Documentary Credit, Instrument or other document which are performed, supplied or provided by the Customer to the beneficiary of the Documentary Credit, Instrument or other document.

**Shipping Guarantee** means a guarantee or indemnity to be issued or a shipping guarantee signed by the Customer and to be endorsed or countersigned by ANZ and given to a Carrier to enable the Customer to obtain replacement bills of lading and/or delivery of Goods.

**Trade Agreement** means any agreement, document, letter, schedule, booklet, brochure, flyer, manual, instruction, notice or application containing terms relating to any Trade Product, including any facility agreement or letter of offer (and any applicable trade specific terms) entered into by ANZ and the Customer and these Terms.

**Trade Country Addendum** means the addendum for each country in which ANZ operates containing the terms relating specifically to the provision by ANZ to, or use by the Customer in that country, of Trade Products.

**Trade Documents** mean any Documentary Credit, any Draft, any sale and purchase agreement, any bills of lading and all other documents of title and transport documents and any other insurance policies, invoices, certificates, reports, receipts, warrants or other documents in relation to a Trade Transaction, whether in a paper or electronic format.

**Trade Product** means any trade related product, Service, functionality or facility requested or applied for by the Customer and provided by ANZ to the Customer.

**Transfer and Economic Risk** means the inability to effect payments or to effect payments in the currency of the Export Credit as a consequence of any foreign exchange control in the country(ies) of the Issuing bank and the Confirming bank (if any) or the country of the Export Credit's currency.

**Trade Transaction** means the transaction (or related transactions) in connection with Goods and/or Services which is the subject of any Trade Product ANZ provides and includes the Financing, advances or other financial accommodation which ANZ makes available in relation to any such transaction.

**Trust Receipt** means a trust receipt in a format specified by ANZ.

**UCP** means the ICC Uniform Customs and Practice for Documentary Credits in effect from time to time.

**URDG** means the ICC Uniform Rules for Demand Guarantees in effect from time to time.

**URC** means the ICC Uniform Rules for Collections in effect from time to time.

**URR** means ICC Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits in effect from time to time.

## 11.3 Trade Agreements and inconsistency

- (a) The Trade Products applied for by the Customer will be provided by ANZ in accordance with and subject to these Terms and any other relevant Trade Agreement.
- (b) If these Terms and the terms in any applicable ICC Rules are inconsistent or conflict, these Terms will prevail.
- (c) If these Terms are inconsistent with any Trade Agreement, then where the relevant Trade Agreement states expressly that it prevails to the extent of the inconsistency, it will so prevail over these Terms and otherwise, these Terms prevail to the extent of the inconsistency.

## 11.4 Currencies

- (a) If the currency requested by the Customer for a Trade Product is not available to ANZ after exercising reasonable endeavours to obtain it, ANZ:
  - (1) is not obliged to, and will not, provide the Trade Product in that currency. If possible and practical, ANZ and the Customer may agree an alternative currency in which the Trade Product will be provided; and
  - (2) will not be responsible for any loss or liability which the Customer may suffer or incur by reason of or in connection with non-availability to ANZ of the relevant currency for the purpose of providing any Trade Product to the Customer.
- (b) Unless otherwise agreed in writing with ANZ, all payments to ANZ under any Trade Agreement must be made in the same currency as the drawing or obligation to which it relates (**Payment Currency**).
- (c) If ANZ determines that the Payment Currency is unavailable to the Customer, ANZ will notify the Customer in writing of an alternative currency and amount which the Customer must pay ANZ to satisfy its payment obligation. The Customer will pay that currency and amount to ANZ within 2 Business Days of the date of the notice.

# ANZ TRADE TERMS

(d) If the Customer pays ANZ, or monies to discharge the liability of the Customer to ANZ are received or available to be applied by ANZ against that liability, in a different currency from that of the Payment Currency, ANZ will convert the amount paid, received or applied into the Payment Currency using the Exchange Rate applicable on the date of receipt or application. The Customer must pay ANZ on demand for any shortfall arising from the conversion. The Customer acknowledges that it may be necessary for ANZ to purchase one currency with or through another currency.

(e) An equivalent amount in one currency (**first currency**) to an amount in another currency (**second currency**) will be that amount in the first currency converted into the second currency at the Exchange Rate at the time ANZ determines the equivalent amount.

## 11.5 Foreign exchange Laws

(a) The Customer will keep itself informed of and comply with all applicable foreign exchange Laws and any relevant regulatory and policy requirements and restrictions relating to the currency requested and its use of the Trade Product in that currency. ANZ is not responsible and has no duty to inform or advise the Customer on those issues.

(b) ANZ may terminate, revise or cancel any Trade Product in consultation with the Customer, in order to comply with any applicable foreign exchange Laws and any relevant regulatory and policy requirements and restrictions relating to the currency requested or in which a Trade Product is drawn.

(c) The Customer will keep and maintain accurate records and documents relating to each Trade Product and its use of that product.

(d) If requested by ANZ, the Customer will promptly provide to ANZ complete and accurate documents and/or information required to comply with any foreign exchange Laws applicable to the Trade Product used by it and authorises ANZ to provide those documents and that information to any relevant Authority.

(e) Without limiting any other consent that the Customer has given or may give ANZ, the Customer agrees that ANZ may disclose any Customer Information relating to it (including, for example, customer transaction data and details relating to any facility) to relevant Authorities, clearing or settlement banks or agents, professional bodies and other third parties in any country having functions or responsibilities in connection with the currency in which the Trade Product is provided to the Customer.

(f) The Customer will pay ANZ on demand any amount ANZ may be required to expend on account of any foreign exchange Laws applicable to the Trade Product used by the Customer.

(g) ANZ will not be liable in any way to the Customer and the Customer will on demand reimburse ANZ the amount of any Loss it may suffer or incur relating to any requirements imposed by, or the exercise of or conditions imposed under any applicable foreign exchange Laws by any Authority.

## 11.6 Laws, licences, permits and authorisations

(a) The Customer will, at all times, while any obligation is outstanding in respect of a Trade Product, hold all licences, permits and other authorisations relating to the Goods (including for the import and/or export of Goods) and/or Services.

(b) If ANZ needs to inspect the any such licence, permit or authorisation, the Customer will provide the original of that licence, permit or authorisation to ANZ at the time of making application for the relevant Trade Product. Otherwise, the Customer will promptly provide a copy (certified as a true and correct copy in a manner acceptable to ANZ) of any such licence, permit or authorisation to ANZ if requested to do so.

(c) The Customer will comply with: (1) in all material respects, all Laws binding on it and (2) the terms of any licence, permit or authorisation relating to the Goods and/or Services and the export or import of Goods.

## 11.7 Double use

When the Customer applies to use a Trade Product it warrants and represents (on a continuing basis) and undertakes to ANZ that the underlying Trade Transaction has not previously been, and will not while the subject of the requested Trade Product be, the subject of another Trade Product provided by ANZ (unless agreed by ANZ in writing) or a trade product (whether of the same or a similar effect or not) provided by any other person.

## 11.8 Payments generally

(a) The Customer must make all payments to ANZ under each Trade Agreement in immediately available, freely transferable funds to the accounts with the banks and in the currency as ANZ may notify to it, without any set-off, counterclaim, deduction or withholding of any kind including, to the extent permitted by Law, tax.

(b) If any deduction or withholding (including in respect of tax) is made to a payment to ANZ, whether from the Customer or another person, the Customer:

- (1) will pay ANZ, when the payment is due if the payment is from the Customer and on demand if the payment is from another person, whatever additional amount is needed so that the amount that ANZ actually receives, after taking into account the deduction or withholding, is the amount ANZ would have been entitled to receive if no deduction or withholding had been made; and
- (2) must provide ANZ with any evidence ANZ may require (including certified copies of receipts) that payment in full of the amount of the deduction or withholding has been made to the relevant Authority.

## 11.9 Interest

(a) If ANZ negotiates, finances, discounts or advances or lends money to or for the Customer in connection with a Trade Product, the Customer will pay interest on that amount at the rate and margin and paid in advance or arrears as specified in the relevant Trade Agreement or as otherwise agreed with ANZ.

(b) Interest will be calculated from (and including) the day on which the amount is credited or advanced up to (but excluding) the maturity date of the advance or day upon which ANZ anticipates receiving payment from the party responsible for making the payment (and interest may be adjusted by ANZ, and is payable by the Customer on demand by ANZ, if the actual payment date is different from the anticipated payment date).

(c) Interest accrues daily on the basis of either a 360 or 365 day year (depending on the currency) as determined by ANZ and may be fixed or variable for the drawing term and paid in advance or in arrears.

## 11.10 Late payment

(a) On any amount the Customer does not pay ANZ on the due date, the Customer must pay ANZ an overdue fee calculated at a rate being the aggregate of the cost to ANZ of that amount remaining unpaid from the due date until the date it is paid to ANZ (as determined by ANZ and expressed as a percentage per annum) and 4%, unless ANZ agrees in writing otherwise.

(b) The overdue fee:

- (1) is payable on demand or if ANZ does not make any demand, on the first Business Day of each month and on the date the overdue amount is paid;

# ANZ TRADE TERMS

- (2) accrues daily for the period it remains unpaid; and
- (3) if unpaid, may be compounded by ANZ weekly intervals or, if an applicable Law provides otherwise, at the minimum period allowed by that Law.

## 11.11 Fees, commissions, charges and expenses

- (a) The Customer will pay ANZ all fees, commissions and charges in respect of each Trade Product as stated, from time to time, in any relevant Trade Agreement.
- (b) The Customer will pay to ANZ, on demand, all commissions, fees, charges and expenses which are incurred or suffered by ANZ or levied on ANZ by any third party (including any Correspondent Bank or negotiating bank or its agent) in connection with any Trade Product.
- (c) The Customer will pay all:
  - (1) charges, duties (including stamp, documentary and transaction duties) and taxes (including Indirect Taxes) payable in connection with the Goods and/or Services, the export or import of Goods, any Trade Product, any assignment and any Trade Agreement; and
  - (2) freight and other amounts payable under any contract of carriage or otherwise in relation to a Trade Product.
- (d) All fees, commissions and charges paid to ANZ are non-refundable unless agreed otherwise in writing by ANZ.
- (e) The Customer will pay, on demand, all commissions, fees, charges and reasonable costs and expenses which are incurred or suffered by ANZ's Correspondent Bank in connection with any Trade Product.

## 11.12 Application of funds

ANZ may apply any amount received by it on the Customer's behalf or for the Customer's account from any person against any amount the Customer actually or contingently owes it, without prejudice to the rights of ANZ to recover any shortfall from the Customer. Any such application by ANZ will override any appropriation instruction given by the Customer.

## 11.13 Authority to debit

- (a) If the Customer has an account with ANZ, the Customer irrevocably authorises ANZ to debit the account with any amount payable by it under any Trade Product or Trade Agreement, including under any indemnity, although ANZ does not have to do so.
- (b) The Customer must still pay all amounts owing to ANZ under the Trade Product or Trade Agreement when due.
- (c) If ANZ requires the Customer to provide ANZ with authority to debit an account it holds with another financial institution with any payment or cost, the Customer will execute any document that ANZ requires to authorise ANZ to debit that account.

## 11.14 Cash cover

- (a) If ANZ requests, the Customer must pay ANZ a sum up to or equal to ANZ's contingent or unmatured liability (as determined by ANZ) under or in relation to any or all Trade Products.
- (b) ANZ can hold such sum in an account in ANZ's name, under ANZ's sole control, and may use such sum to satisfy the Customer's reimbursement obligations to ANZ under any Trade Agreement.
- (c) ANZ is not obliged to refund any cash cover unless the Customer's contingent or unmatured liability(ies) cease to exist before they mature or do not mature in full.
- (d) Unless ANZ agrees in writing otherwise, no interest will accrue on any such sum.

## 11.15 Drawing against funds

If ANZ permits the Customer to draw against funds to be collected or transferred from any account(s), the Customer will

on demand by ANZ reimburse ANZ in full the amount so drawn if ANZ does not receive the funds in full at the time when ANZ ought to have received the same or if, after ANZ has accepted the transfer, ANZ is prevented from collecting or freely dealing with the funds in accordance with usual banking practice.

## 11.16 Payment not final

- (a) If ANZ receives payment from any person in connection with a Trade Product which is not final and ANZ is subsequently required to repay that person or any third party all or any part of that payment:
  - (1) that payment will be deemed not to have discharged the liability of the person under the Trade Documents or applicable Trade Agreement; and
  - (2) despite any payment, release or any other settlement or discharge which may have been given on the faith of that payment, ANZ may exercise all the rights it was entitled to exercise prior to that payment being made, as if the payment had not been made and any payment, release and any other settlement or discharge had not been given.
- (b) The Customer will reimburse ANZ for any Loss and taxes suffered or incurred by ANZ as a result of the payment not being final.

## 11.17 Inadvertent payments

- (a) The Customer will immediately pay ANZ any moneys meant for ANZ which it inadvertently or otherwise receives or recovers in connection with a Trade Product.
- (b) Until the Customer makes that payment, those moneys will be kept separate from its other moneys and held by it on trust for ANZ and failing that as ANZ's fiduciary and/or agent and in each case for ANZ's sole benefit.

## 11.18 Discharge of ANZ's liability

If ANZ incurs any liability (including any actual, prospective or contingent or joint and several liability or a liability in any currency) in any country to any person (other than the Customer) on the instructions or otherwise on behalf of the Customer (**ANZ's Liability**) then:

- (a) the Customer will pay ANZ at the branch or office of ANZ in any country as ANZ may specify all amounts which ANZ may be liable to pay under ANZ's Liability; and
- (b) ANZ may discharge part or all of ANZ's Liability (at ANZ's election with or without notice to the Customer) at any branch or office of ANZ in any country and in any currency and any such discharge is a discharge of ANZ's Liability for which the Customer is liable to ANZ.

## 11.19 Variations

- (a) Unless otherwise agreed in writing, ANZ may change any of the terms of any Trade Agreement (including changing any, and introducing new, fees and commissions relating to any Trade Product) from time to time by written or Electronic Communication or making the change available on the Electronic Channel as specified in Clause 11.28(d) or by an advertisement in a major or national daily newspaper or by any other method permitted by any applicable Law.
- (b) ANZ will give 30 days' notice to the Customer of any change it makes to the terms of any Trade Agreement but if an applicable Law provides for:
  - (1) another period, the notice period will be the period specified by that applicable Law; or
  - (2) the change to take effect immediately, the change will take effect immediately.
- (c) If the changes are specific to the Customer, the changes will take effect by agreement only.

# ANZ TRADE TERMS

## 11.20 Anti-money laundering and sanctions

- (a) ANZ does not have to do anything if it considers doing so would breach any AML/ETS Laws applicable to it.
- (b) The Customer must provide to ANZ all information and documents that are within its possession, custody or control reasonably required by ANZ in order for ANZ to comply with any AML/ETS Laws.
- (c) The Customer will exercise its rights and perform its obligations under a Trade Agreement and any transaction related to a Trade Agreement in accordance with all applicable AML/ETS Laws.

## 11.21 Liability for Loss

- (a) ANZ will not be liable to the Customer for any Loss suffered or incurred or which may arise directly or indirectly in connection with any Trade Product, Trade Agreement or act or omission of ANZ (including breach of contract) other than to the extent that Loss is caused by ANZ's gross negligence, wilful misconduct or fraud.
- (b) Notwithstanding the above, ANZ will not in any circumstances be liable for any indirect or consequential Loss, including any loss of profit, data, goodwill or business, any interruption to business, any failure to realise anticipated savings, any consequential, indirect, special, punitive or incidental losses, costs or damages.

## 11.22 Exclusions

To the extent permitted by Law and unless otherwise stated in a Trade Agreement, all terms, conditions, warranties, undertakings, inducements or representations of ANZ whether express, implied, statutory or otherwise relating in any way to the Trade Products are excluded.

## 11.23 Responsibility

- (a) All instructions and correspondence by ANZ with any person (other than the Customer) relating to any Trade Product will be sent at the Customer's risk.
- (b) ANZ is not responsible and will not be liable for any Loss arising from:
  - (1) a Force Majeure event occurring and continuing;
  - (2) ANZ acting in accordance with:
    - (a) applicable Laws, regulations or rules; and
    - (b) ANZ's agreements with other financial institutions regarding the business dealings with those institutions, notwithstanding that the Customer may have given instructions to the contrary;
  - (3) the acts and omissions of Correspondent Banks;
  - (4) loss of Trade Documents in transit;
  - (5) any detention, loss of, or damage to, the Goods; or
  - (6) the Customer acting on advice received from ANZ whether or not such advice was requested by the Customer.
- (c) ANZ may suspend providing any Trade Product until a Force Majeure event has ended.
- (d) ANZ is not responsible for any Goods, Trade Documents or items in its possession beyond the exercise of reasonable care.

## 11.24 Indemnity

- (a) The Customer indemnifies ANZ, its Affiliates, agents, employees, officers and servants and will keep them indemnified against, and will pay on demand the amount of, any Loss which any of them may suffer or incur in connection with:
  - (1) ANZ providing the Trade Product to the Customer;
  - (2) ANZ acting and relying on any representations or warranties given by the Customer to ANZ relating to a Trade Product;

- (3) the Customer's use of the Trade Product, including any act or omission;
  - (4) the failure of the Customer or any agent of the Customer to comply with any Trade Agreement for any reason whatsoever;
  - (5) an Import Credit, Shipping Guarantee or Instrument (**payment instrument**), including any payment or claim made or purported to be made under or in connection with that payment instrument;
  - (6) any transfer by the Customer of a Documentary Credit;
  - (7) any determination or decision made to act or refusal to act by ANZ in connection with the Trade Product including because of a court order or other similar obligation (whether or not subsequently discharged);
  - (8) any claim made against ANZ by a third party relating to any Trade Product or Trade Agreement;
  - (9) it being unlawful in any jurisdiction for ANZ to perform its obligations or enforce its rights
  - (10) accepting and acting on any Communication from the Customer;
  - (11) any breach of any AML/ETS Law (other than by ANZ); or
  - (12) any transaction to which a Trade Product relates in any way being tainted by fraud or alleged fraud.
- (b) The Customer's obligations under this indemnity are:
    - (1) continuing, absolute, unconditional and irrevocable obligations, separate and independent from the Customer's other obligations and survive the termination or completion of any Trade Product; and
    - (2) not at any time affected by set-off, deduction, counter claim or defence, suspension or anything which, but for this subclause, might operate to relieve the Customer from all or any part of these obligations.
  - (c) It is not necessary for ANZ to incur expense or make payment before enforcing a right of indemnity under these Terms.

## 11.25 Trade Product disclosure

The Customer will only disclose the fact that ANZ provides it with a Trade Product or the terms upon which it does so to any other person if it has obtained ANZ's prior written consent or if it is compelled by Law to do so.

## 11.26 Information disclosure

A party must not disclose information provided by the other party that is not publicly available except:

- (a) to any of its Affiliates and any of its or an Affiliate's officers and employees with a genuine reason to see it;
- (b) to any of its agents, service providers or professional advisers who are under a duty of confidentiality;
- (c) any disclosure the disclosing party reasonably believes is required by any Law or Authority;
- (d) with the non-disclosing party's prior written consent; and
- (e) for ANZ only: (1) to any person with whom ANZ may enter into any transfer, assignment, participation, insurance or other agreement in connection with, or any Trade Product or transaction contemplated under, any Trade Agreement, (2) to any ratings agency, insurance broker or proposed or actual provider of credit protection, security or credit support, (3) to participants in any payment systems (such as financial institutions, correspondent banks, payment clearing entities and associations and SWIFT) and (4) to any regulator if ANZ believes it is necessary or appropriate to do so (even if it is not legally obliged to).

# ANZ TRADE TERMS

## 11.27 Communications generally

- (a) Communications must be:
- (1) sent to the address for the recipient set out in the relevant Trade Agreements or as most recently advised in writing. The Customer must keep its contact details updated;
  - (2) legible and in English or provided with a certified English translation if the original Communication is not in English. If there is a difference between the written Communication and the English translation, the English translation will apply unless ANZ agrees in writing otherwise or if a Law of the Governing Jurisdiction requires otherwise; and
  - (3) signed by an Authorised Representative of the Customer. Communications sent by email are taken to be signed by the named sender. Communications sent by Posting to the Electronic Channel are taken to be signed by the logged in user. If that person is not an Authorised Representative of the Customer, ANZ may ignore that Communication
- (b) A Communication is effective:
- (1) if sent by facsimile – from the time the transmission report shows it as having been sent successfully;
  - (2) if sent by post – when it is actually received;
  - (3) if sent by E-mail – at the time it is sent unless the sender receives an automated message that the E-mail has not been delivered; and
  - (4) if Posted in the Electronic Channel - at the time of Posting.
- Despite the above, if a Communication is received after 5:00pm or on a day which is not a Business Day, it is effective the following Business Day.

## 11.28 Verbal and Electronic Communications

- (a) If the Customer sends Electronic Communications or gives them verbally in person or by telephone:
- (1) the Customer acknowledges that there are risks in communicating in this manner and agrees that it is responsible for those risks;
  - (2) the Customer must comply with any security measures agreed with ANZ (**security procedures**);
  - (3) ANZ may accept or reject any verbal Communications;
  - (4) if ANZ receives a verbal Communication or Electronic Communication it believes to be genuine, complete and which complies with the security procedures (if any): (i) ANZ need not verify the authenticity or completeness of the Communication, even if the Communication instructs ANZ to make a payment; and (ii) any such Communication will be treated as authorised by the Customer and will be binding on it.
- (b) ANZ may give the Customer notice at any time that it will no longer accept any or specified verbal Communications or Electronic Communications. The notice is effective from when it is received by the Customer until ANZ advises the Customer in writing that it will accept verbal Communications or Electronic Communications again.
- (c) If the Law permits, ANZ may record ANZ's telephone conversations with the Customer and use the recorded conversations or transcripts in any dispute in connection with a Trade Product.
- (d) If the Customer has access to the Electronic Channel:
- (1) ANZ and the Customer may Post Communications in the Electronic Channel relating to a Trade Product accessed using the Electronic Channel;
  - (2) ANZ will promptly E-mail the Customer that the Communication has been Posted and describing what the Communication is unless otherwise agreed in writing; and

- (3) the Customer may request a paper copy of a Communication Posted on the Electronic Channel at any time within 6 months of ANZ advising the Customer that the Communication had been Posted.

## 11.29 Assignment

- (a) The Customer must not transfer, encumber or declare a trust over all or any part of its rights under a Trade Product provided to it by ANZ or these Terms without ANZ's prior written consent.
- (b) ANZ may transfer, encumber, declare a trust over, insure, sub-participate or otherwise deal with its interest under a Trade Product provided to the Customer by ANZ or these Terms without the Customer's consent. ANZ may receive fees or payments in connection with such dealings without disclosing them to the Customer.

## 11.30 Severability

If any provision of these Terms or any other Trade Agreement is or becomes illegal, invalid or unenforceable in a jurisdiction, that term is severed only for that jurisdiction. All other terms continue to have effect in that jurisdiction.

## 11.31 Further Assurance

The Customer will do all acts, matters and things including executing all agreements, instruments or documents as may be necessary or desirable to give full effect to the provisions of these Terms and the transactions contemplated by them.

## 11.32 Governing Law

Unless specified otherwise, these Terms and the transactions under or relating to a Trade Product will be governed by and construed in accordance with the Laws of the Governing Jurisdiction and the parties submit to the jurisdiction of the Courts of that Governing Jurisdiction and of any Courts competent to hear appeals from those Courts.

## 12. TRADE COUNTRY ADDENDUM

- 12.1 These ANZ Trade Terms and each Trade Country Addendum will be read and construed as one document.
- 12.2 Words used in the Trade Country Addendum if defined in these ANZ Trade Terms have the same meaning unless the context otherwise requires.
- 12.3 If these ANZ Trade Terms and a Trade Country Addendum are inconsistent then where these ANZ Trade Terms state that they prevail to the extent of the inconsistency, they will so prevail over the terms in the Trade Country Addendum and otherwise, the terms in the Trade Country Addendum prevail to the extent of the inconsistency.

# ANZ TRADE TERMS NEW ZEALAND - TRADE COUNTRY ADDENDUM

## NEW ZEALAND AS THE GOVERNING JURISDICTION

This document is the Trade Country Addendum for New Zealand. The provisions in this Trade Country Addendum form part of the Trade Terms and apply where New Zealand is the Governing Jurisdiction.

### 1. Definitions

The following entity is the ANZ Group Member providing the Trade Product(s) to the Customer in this jurisdiction:

**ANZ Bank New Zealand Limited.**

### 2. APS222 Disclosure

Deposits made with ANZ Bank New Zealand Limited are not deposits or liabilities of Australia and New Zealand Banking Group Limited. Australia and New Zealand Banking Group Limited does not stand behind or guarantee ANZ Bank New Zealand Limited.

The Australian Prudential Regulatory Authority (APRA) regulates all Authorised Deposit Taking Institutions ("ADI(s)") in Australia. Australia and New Zealand Banking Group Limited is an ADI, however ANZ Bank New Zealand Limited is not an ADI.

### 3. Representations, warranties and acknowledgements

The Customer represents, warrants and acknowledges to ANZ that:

- (a) the Trade Products provided under the Terms will be used solely for the purposes of the Customer's business and accordingly the provisions of the Consumer Guarantees Act 1993 will have no effect in relation to any transaction or any Trade Product provided by ANZ;
- (b) for the purposes of section 13 and in accordance with section 14 of the Credit Contracts and Consumer Finance Act 2003, the Trade Products provided to the Customer by ANZ will be used solely for business purposes; and
- (c) for the avoidance of doubt, to the fullest extent permitted by Law, ANZ excludes any and all liability to the Customer under sections 9, 12A, 13 and/or 14(1) of the Fair Trading Act 1986.

### 4. Financial Services Dispute Resolution Scheme

If the Customer has a complaint concerning any Trade Product or ANZ, the Customer can talk to its manager at ANZ. If the complaint cannot be resolved promptly, the Customer's manager (or their supervisor), will take responsibility and work with the Customer to address the matter quickly. ANZ will acknowledge receipt of a 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.

ANZ is a member of the Banking Ombudsman scheme. If the Customer is not satisfied with the steps taken by ANZ to resolve a complaint and is eligible, the Customer can contact the Office of the Banking Ombudsman at:

Address: Freepost 218002  
PO Box 25327  
Featherston Street  
Wellington 6146

Telephone number: 0800 805 950

Email address: [help@bankomb.org.nz](mailto:help@bankomb.org.nz)

### 5. Amendments

The clauses in the ANZ Trade Terms are amended as follows:

Clause 4: The heading is amended to read "**Import Credits, Import Collections and Export Credits – Pledge and Trust Receipt**".

Clause 4.1: Clause 4.1 is replaced with the following:

- "(a) As continuing security for the payment and discharge on demand to ANZ of the Import Obligations and the Export Obligations, the Customer grants to ANZ a Security Interest over and pledges in favour of ANZ, the Pledged Assets.

- (b) The Customer agrees to execute all documents and do all things necessary to enable ANZ to register its Security Interest in any Pledged Asset on the Personal Property Securities Register.
- (c) The Customer waives any right under section 148 of the PPSA to receive from ANZ a copy of any financing statement, financing change statement or verification statement that is registered, issued, or received at any time in relation to the Terms.
- (d) The Customer will pay all of ANZ's costs and expenses in relation to the compliance with any demand given by the Customer under section 162 of the PPSA, or in relation to any application for, or the obtaining of, a court order to maintain any registration in respect of the Security Interest created by the Terms and the servicing of any such court order on the Customer or the Registrar of Personal Property Securities."

Clause 4.2: Add to the end of clause 4.2 the following: "including while they are in the possession, custody or control of ANZ or its employees or agents".

Clause 4.6(a): Amend clause 4.6(a) to read: "those Pledged Assets are subject to a Security Interest and pledged in favour of ANZ upon the terms of these Terms and that the Pledge will continue notwithstanding the release of those Pledged Assets by ANZ to the Customer;"

Clause 4.6(c): Amend clause 4.6(c) by deleting the words "and the Goods will remain the property of ANZ until sold or otherwise disposed of".

Clauses 4.7(c), (d), (e) and (f): New clauses 4.7(c), (d), (e) and (f) are inserted to read as follows:

- "(c) If the Customer fails to observe any of its obligations to ANZ in respect of the Trade Product in connection with Goods to be exported, ANZ may at its absolute discretion and without notice to the Customer (and without prejudice to any of its other rights and remedies) cause the Goods (or any part thereof), to be landed, docked, stored, transported, insured, and/or sold (or sold without landing) or otherwise disposed of or the Trade Documents to be dealt with in any way on such terms and for such consideration, as ANZ considers appropriate, in which circumstance:
- (i) ANZ is not liable for any loss suffered by the Customer as a consequence of such action;
  - (ii) the Customer must pay to ANZ, on demand the costs and expenses incurred by ANZ in respect of any actual or attempted landing, docking, storage, insurance, transportation, sale or other disposal of the Goods or dealing with the Trade Documents;
  - (iii) the Customer will remain liable for and must pay any deficiency that may remain owing to ANZ after the sale or disposal of the Goods or dealing with the Trade Documents;
  - (iv) the Customer must do anything which includes endorse, assign, sign, execute and deliver any transfers, deeds or documents (or arrange any such matters) which ANZ requires in order to perfect ANZ's title to the Goods or to otherwise give effect to any proposed landing, docking, storage, insurance, sale or other disposal or dealing.
- (d) The Customer shall, upon request by ANZ, forthwith:
- (i) appear and defend at its own cost and expense any action which may be brought in connection with the Trade Product in connection with Goods to be exported; and/or
  - (ii) make any claim or take any action or institute any proceedings which ANZ may consider necessary or desirable to recover any proceeds, compromise or settle any dispute in connection with any Trade Documents or Goods over which ANZ has a Security Interest, Trade

# ANZ TRADE TERMS

## NEW ZEALAND - TRADE COUNTRY ADDENDUM

Product in connection with Goods to be exported, relevant documents, charged property, sales proceeds or insurance proceeds on such terms as ANZ may in its absolute discretion consider appropriate, failing which ANZ may do it in its name or the Customer's name at the Customer's cost.

- (e) For the purposes of clause 4.7, ANZ may:
  - (i) demand delivery and endorsement to ANZ of all Trade Documents; and
  - (ii) exercise all the Customer's rights (if any) as unpaid seller of the Goods.
- (f) Where the enforcement provisions of Part 9 of the PPSA apply to the enforcement by ANZ of the Security Interests created by the Terms, the Customer agrees that sections 114(1)(a), 133 and 134 shall not apply to such enforcement. The Customer also waives any rights it may have under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA on such enforcement."

Clause 7.10: A new clause 7.10 is inserted:

### "7.10 Payment of Assigned Export Credit Proceeds

- (a) This clause 7.10 applies if the Customer has assigned the proceeds of an Export Credit to a third party (Payee).

#### Assignment

- (b) An assignment by the Customer to the Payee must be an unconditional assignment of all or part of the Export Credit proceeds.
- (c) The Customer is solely responsible for ensuring the enforceability or effectiveness of the assignment between it and the Payee. ANZ is not responsible and has no duty whatsoever to advise the Customer on such issues.
- (d) The Customer undertakes not to assign any further rights to the Export Credit proceeds or issue additional instructions in relation to payment of those proceeds.
- (e) The Customer represents that (i) it has the power to make each assignment of the Export Credit proceeds referred to in each application and instruction it gives ANZ and (ii) to the best of its knowledge, no payment under the assignment of Export Credit proceeds could be avoided by law or will be encumbered or subject to any other claims.

#### Payment

- (f) All payment instructions given by the Customer to ANZ to pay the Export Credit proceeds to the Payee are irrevocable unless the Payee gives written authority to cancel them, and the Payee may request alternative disbursement arrangements.
- (g) ANZ relies on the information contained in all payment instructions delivered to ANZ and ANZ will make no further or independent enquiries into such matters.
- (h) ANZ will advise the Payee that payment will be made to it of the Export Credit proceeds in form and content acceptable to ANZ.
- (i) ANZ will only pay Export Credit proceeds to the Payee (i) if documentation is presented under the Export Credit and the subsequent reimbursement claim is honoured by the Issuing/reimbursing bank and (ii) after actual receipt of the Export Credit proceeds by ANZ from the Issuing/reimbursing bank.
- (j) ANZ does not add its commitment, either actual or implied, to the arrangements entered into between the Payee and Customer which have resulted in the assignment.
- (k) The Customer will pay to ANZ on demand any fees, charges and out of pocket expenses associated with the issuance of ANZ's advices in respect to, and the processing of, the payment instruction(s)."

Clause 9.10: Clause 9.10 is deleted.

Clause 11.2(c) Definitions: The following definitions are inserted in clause 11.2(c) in alphabetical order:

"**Export Obligations** means, in relation to an Export Credit, all present and future indebtedness and liabilities due, owing or incurred by the Customer to ANZ (in each case whether alone or jointly, or jointly and severally, with any other person, whether actual or contingent or whether as principal, surety or otherwise)."

"**PPSA** means Personal Property Securities Act 1999 (NZ)."

"**Security Interest** means a security interest as defined in the PPSA."

Clause 11.2(c): Amend the definition of Encumbrance to add the words "and includes, without limitation, a Security Interest."

Clause 11.2(c): Amend the definition of "Pledge" to read as follows:

"**Pledge** means any pledge or Security Interest the Customer grants to ANZ over any Pledged Assets".

Clause 11.6(c) is amended to read as follows:

- "(c) The Customer will comply with: (1) all Laws binding on it and (2) the terms of any licence, permit or authorisation relating to the Goods and/or Services and the export or import of Goods."

#### Privacy and disclosure of information

Clause 11.26 is supplemented by the following:

- (a) Customer Information which the Customer provides to ANZ will be kept strictly confidential and will be securely held by ANZ and/or by any ANZ Group Member. The Customer has a right to access its information by calling its ANZ relationship manager and may also request that the Personal Information be corrected. In each case, a fee may be payable by the Customer to ANZ.
- (b) ANZ will make every effort to keep Personal Information up to date.
- (c) How ANZ uses Customer Information will depend on the purpose for which that Customer Information was collected.
- (d) ANZ may collect and use Customer Information to:
  - (i) consider applications for facilities, products or services;
  - (ii) administer, manage and monitor any facilities, products or services provided to the Customer;
  - (iii) conduct market research, data processing and statistical analysis;
  - (iv) perform administrative and operational tasks (including risk management, debt recovery, exposure aggregation, systems development and testing, credit scoring, staff training and market or customer satisfaction research); and
  - (v) unless the Customer notifies ANZ otherwise in writing, provide the Customer with information about other facilities, products or services including certain third party products or services.
- (e) ANZ may use Customer Information for the purpose of data matching and in doing so may collect information about the Customer. 'Data matching' is the process of comparing Customer 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.
- (f) ANZ may disclose Customer Information to carefully selected third parties for the purposes of data matching, provided those third parties are subject to an obligation of confidentiality.
- (g) ANZ may obtain information and make such enquiries about the Customer as ANZ may consider warranted from any source including any ANZ Group Member and credit reference agencies for the above purposes.

# ANZ TRADE TERMS

## NEW ZEALAND - TRADE COUNTRY ADDENDUM

- (h) ANZ may disclose Customer Information to credit reference agencies for the purpose of obtaining credit reports. Those credit reference agencies may retain that information and provide it to their customers who use their credit reporting services. If the Customer defaults in any obligations to ANZ, then ANZ may disclose Customer 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.
- (i) 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 Customer Information.
- (j) Certain Laws also require ANZ to disclose Customer Information on request, for example the Tax Administration Act 1994.

Clause 12.4: A new clause 12.4 is inserted:

**"12.4** If there is any inconsistency between a facility agreement and the Trade Terms, the facility agreement shall prevail to the extent of the inconsistency."

