

## This document sets out your facility's terms and conditions

In this document we've explained the terms and conditions applying to your ANZ Business Flexible Facility. It includes key information about the repayments you'll need to make, how we'll charge interest, and what happens if you break your facility agreement.

We're happy to help if you have any questions. We have more information about us, including the branch nearest you, on our website [anz.co.nz](http://anz.co.nz) or call 0800 269 249.

## Contents of these terms and conditions

A glossary of the terms we use in your facility summary, these facility terms and conditions, and variation letters.....	2
We agree to lend you money, and you agree to repay it.....	4
You can access your facility from the draw-down date.....	4
You must keep your facility amount under your credit limit.....	4
We will charge you interest on your facility.....	5
We can charge fees and other amounts on your facility.....	5
You can repay your facility at any time.....	5
You must repay your facility amount when we ask you to.....	6
Your repayments must be in cleared funds.....	6
Any security you give us secures your facility.....	7
We can change the terms and conditions of your facility agreement.....	8
What happens if you break your facility agreement.....	9
You must pay any costs we incur.....	12
Our right to transfer your facility.....	12
How we'll contact you about your facility.....	13
Some general matters applying to your facility agreement.....	13



As part of our commitment to you, this document meets the WriteMark Plain English Standard. If you have any questions about this document, please ask at any branch, phone us on 0800 269 249 or send us an email from our website.

# A glossary of the terms we use in your facility summary, these facility terms and conditions, and variation letters

## **ANZ Business Flexible Facility**

In these facility terms and conditions, we use the term 'ANZ Business Flexible Facility'. We mean any of the following types of loans – ANZ Business Flexible Facility, ANZ Agri Current Account Facility, ANZ Commercial Flexible Facility. We've said what type of facility you have in your facility summary.

## **Break**

In your facility summary, these facility terms and conditions, and variation letters we use the term 'break'. We also talk about what will happen if you break your facility agreement or another agreement with us. You'll break your facility agreement or another agreement with us if you don't do something you agreed to do. Or, you do something you agreed not to do. You'll also break your facility agreement or another agreement with us if other events happen that we've said will cause you to break your facility agreement or another agreement with us.

For example, you'll break your facility agreement if you become insolvent.

## **Business day**

'Business days' are any days except Saturdays, Sundays, or New Zealand national public holidays.

## **Credit limit**

The credit limit set out in your facility summary or variation letter is the maximum facility amount you are allowed to access on your facility. You can repay your facility amount at any time. You can also borrow the money again, up to your credit limit.

## **Draw-down date**

The 'draw-down date' is the date we make the money we're lending to you, or your credit limit, available for you to use.

## **Facility**

In your facility summary, these facility terms and conditions, and variation letters we talk about 'your facility' or 'this facility'. We mean the money we've agreed to lend you as set out in your facility summary or variation letter, and the money you've agreed to pay us. The money you've agreed to pay us includes interest we charge you on the facility amount and other amounts, like fees.

## **Facility agreement**

In your facility summary, these facility terms and conditions, and variation letters we talk about 'your facility agreement'. We have different terms and conditions for the different loans and facilities we offer, for example, home, personal, and business and agri loans. We'll tell you in your facility summary which version of our terms and conditions applies to your facility. Your facility summary, each variation letter, and the version of the terms and conditions described in your facility summary form your facility agreement with us.

These facility terms and conditions can apply to more than one facility you have with us. Each facility summary and the terms and conditions described in that facility summary forms a separate facility agreement with us.

# Business Flexible Facility **Terms and Conditions**

## Facility amount

The 'facility amount' is the amount owing under your facility from time to time – it is how much of your available credit limit you've used. The facility amount includes money we're lending you to pay fees for your facility. Other amounts can also be included in your facility amount. For example, interest we've charged until you pay it.

## Guarantor

A 'guarantor' is a person who agrees to pay the amounts you owe us if you break your facility agreement. The person giving us a guarantee may also give us security for that guarantee. For example, the person giving us a guarantee may also give us a mortgage over property they own as security for that guarantee. This means we can sell their property if they don't pay us money we ask for under the guarantee.

## Insolvent

You're 'insolvent' if any of the following apply:

- you can't pay your debts when they're due
- you're made bankrupt
- you go into receivership, administration, liquidation, or statutory management
- you enter arrangements with the people you owe money to reduce the amount you have to pay, or to pay it on different terms because of your financial difficulties.

If you're a limited partnership, as well as any of the events above, you're also insolvent if any of the following happen:

- any of the events set out in section 86 of the Limited Partnerships Act 2008 happen to you
- you or others end or deregister your limited partnership or you don't have a general partner for any reason
- your limited partnership agreement has lapsed for any reason.

## Variation letter

We may confirm changes we make to your facility by sending or giving you a 'variation letter'. For more information about the changes we can make to your facility and how we'll give you information about those changes, see the sections 'We can change the terms and conditions of your facility agreement' and 'How we'll contact you about your facility'.

## We

When we talk about 'we', 'us', and 'our', we mean ANZ Bank New Zealand Limited. If we assign or transfer our rights or obligations under your facility agreement, when we talk about 'we', 'us', and 'our', we mean the person we've assigned or transferred any of our rights or obligations under your facility agreement to.

## You

When we talk about 'you', we mean the person or people named as the borrower on your facility summary.

When more than one person is the borrower:

- 'you' means each person individually, and any two or more of those people
- each person must comply with the facility agreement
- each person must repay the facility, by themselves, or with the other borrowers, including where the borrowers are trustees of a trust, or partners of a partnership.

If you're a limited partnership under the Limited Partnerships Act 2008, then:

- all partners, including the general partner, are bound by the facility agreement
- references to 'you' are also references to the general partner of the limited partnership.

### We agree to lend you money, and you agree to repay it

We agree to lend you the facility amount up to your credit limit set out in your facility summary or variation letter, and in return you agree to:

- repay us that facility amount, pay any interest we charge on it, and other amounts we charge, like fees
- comply with your facility agreement, and other agreements with us
- let us use any rights set out in your facility agreement, and rights we have at law as a lender.

### You can access your facility from the draw-down date

We may have set conditions in your facility summary or letter of offer for your facility. You'll need to meet those conditions before we'll give you access to your ANZ Business Flexible Facility.

We'll agree with you which ANZ transaction account you'll use to access your facility. You can access your facility, up to your credit limit, from the draw-down date. Unless we've said otherwise in your facility summary or variation letter, you can access your facility, in the same way you can access other funds in your ANZ transaction account.

For example, unless we've said otherwise in your facility summary or variation letter, you can access your facility by electronic payment, debit card, ANZ Phone Banking or ANZ Internet Banking.

Fees can apply when you use your ANZ transaction account or services like ANZ Phone Banking, ANZ Internet Banking, or ATMs. For example monthly account and transaction fees could apply. See our 'Fees and Charges' document or our website, [anz.co.nz](http://anz.co.nz), for more information.

You can also reborrow amounts you've repaid and you don't have to repay your facility amount by a set date or make scheduled repayments, as long as you keep under your credit limit.

But it's important to know that we can write to you and ask you to repay some or all of your facility amount, at any time and for any reason. We can also choose to reduce your credit limit. See the section 'You must repay your facility amount when we ask you to'.

### You must keep your facility amount under your credit limit

If you have an ANZ Business Flexible Facility, you don't have regular repayments, but you must pay any interest charges or any other amounts, like fees, to keep within your credit limit.

You must not let your facility amount go above the credit limit. To keep under your credit limit you should regularly check your facility amount.

You must have enough money in your ANZ transaction account or enough credit limit available to pay interest we charge you on the facility amount or other amounts we charge you on your facility, like fees. If you deposit more than the interest or fees we charge, your facility amount will reduce and you'll be charged less interest – saving you money.

### We may let you withdraw money above the credit limit

If you try to access money that will take you above your credit limit, we may stop you doing so and we can charge you a Dishonour fee of \$20.

But we understand that sometimes you may need access to extra money. So, we may choose to let you go above your credit limit. If we let you go above your credit limit, we're not increasing the credit limit. Instead, we're lending you the extra money you don't have and you must repay it as soon as possible or when we ask you to.

## Business Flexible Facility **Terms and Conditions**

We can charge you interest on any amounts over your credit limit until you repay those amounts. We'll charge interest on these amounts at the excess interest rate set out in your facility summary. We can also charge you an Unarranged Overdraft fee.

For example, we can choose to decline a transaction that would take you above your credit limit. Or, we might let the transaction go through, and you must repay us the extra money we allow you to withdraw. We may also charge you an Unarranged Overdraft fee and excess interest.

## We will charge you interest on your facility

We'll charge you interest on your facility from the draw-down date until you've repaid it in full.

The interest rate for your facility and how we'll set it is in your facility summary. The interest rate may include a discount or a margin. A 'discount' is an amount we take off what your interest rate might otherwise be to make it lower. A 'margin' is an amount we add to what your interest rate might otherwise be to make it higher.

To calculate interest, we'll multiply your interest rate, as a percentage, by the amount you owe on your facility at the end of each day. We then divide that amount by 365 to get the amount of interest you owe us for that day. We decide the end of day, and we assume the year will always have 365 days.

We'll charge you interest we've calculated every month, in arrears, on the last business day of the month. We'll charge this interest to your ANZ transaction account. You must have enough money in your ANZ transaction account, or enough credit limit available, to pay any interest and fees we charge.

'In arrears' means you owe an amount now, but we'll charge it to you later. For example, we charge you interest on the last business day of the month. Because we charge interest in arrears, when we charge you interest on the 31st January it includes interest from 1st January through to 31st January.

If the last business day of the month isn't the last calendar day of the month, we'll charge you interest for the remaining days of that month. We process any transactions you do on a non-business day on the next available business day.

## We can charge fees and other amounts on your facility

We've set out in your facility summary what fees you'll need to pay when we provide access to your credit limit. If we've agreed to lend you money to pay any fees, we'll include them in your facility amount, and you'll pay interest on these amounts until you've repaid them.

We can charge you fees or other amounts if particular events happen while you have your facility. These fees and how we calculate them may change over time. We'll let you know what has changed and when it takes effect. Where we can, we'll give you 14 days' notice before we change a fee. We've explained how we do this in the section 'How we'll contact you about your facility'. Contact us to discuss what fees could apply to particular transactions.

## You can repay your facility at any time

You can repay some or all of your facility amount at any time. You can also:

- Ask us to reduce the credit limit
- Ask us to cancel the credit limit if you've repaid your facility amount and any interest or fees owing in full
- Ask us to change your ANZ Business Flexible Facility into an ANZ Business loan instead – our lending criteria and fees may apply

### You must repay your facility amount when we ask you to

If you have an ANZ Business Flexible Facility, we can review your use of your facility at any time and for any reason.

We can write to you at any time and ask you to repay some or all of your facility amount. We can also ask you to pay interest and other amounts you owe us, like fees. We can ask you to repay these amounts even if you haven't broken your facility agreement.

Nothing prevents or limits our right to ask you to repay some or all of your facility at any time and for any reason. But we'll give you a reasonable time to repay those amounts.

If you don't repay us when we've asked you to, you will break your facility agreement. If that happens, we can take any of the steps set out in the section 'What happens if you break your facility agreement'.

We can also choose to decrease your credit limit at any time. We'll generally only do this if we're concerned about how you're using your facility, including if we believe you're no longer able to afford it or are often going over your credit limit. Or, we can choose to ask you to start repaying your facility by scheduled repayments. If we choose to do this, we'll write to you and will tell you the amounts your scheduled repayments need to be. We'll also tell you how often you'll need to make them.

We don't have to give you a reason why we're asking you to repay your facility or reducing your credit limit. However, we'll act fairly and reasonably, following the Code of Banking Practice and any relevant legislation, like the Credit Contracts and Consumer Finance Act 2003.

### Your repayments must be in cleared funds

You must repay the facility amount, pay interest we charge on the facility amount, and other amounts you owe us, like fees. You must repay these amounts in full and without using any right of set-off you may have. Your repayments must be in cleared funds.

'Cleared funds' are money in your account, available for you to use, which won't be reversed or dishonoured, for any reason.

'Set-off' is the right that may arise if you owe us money and we also owe you money, or you have a claim against us. In some situations, set-off could result in the money one party owes the other being reduced. For example, you have a term deposit with us and we will pay you interest at the end of the deposit's term. You are not able to deduct the amount of the interest we will pay you on your term deposit from the amount of any facility repayment you need to make.

### We'll process repayments you make on a weekend on the next business day

If you want to repay any of your facility amount after 5pm on a Friday, on a weekend, or on a New Zealand national public holiday, we'll process the repayment on the next business day instead. You may still be charged interest on any facility amount over the weekend or public holiday.

### We'll apply repayments in any order we choose

We'll apply your repayments to the amounts you owe us in any order we choose. We may not repay the oldest amounts you owe first. We may pay interest we've charged you or fees and other amounts you owe us first, before the rest of your facility amount.

### Any security you give us secures your facility

Security is anything we can rely on if you break your facility agreement and we need to recover money you owe us.

For example, security could include a mortgage over a property which gives us the right to sell that property to repay any loans or other amounts you owe us, like fees.

Here are some important things to know about the security we take.

- We'll have a separate security agreement for any security we take for your facility. Security agreements include the terms and conditions applying to the security. Security agreements also include what you or the person giving us the security agrees to do or not do, and the rights that we have. For example, for mortgages you must keep the property insured and not sell it to anyone else unless we agree to it first.
- You or the person giving us the security must always get our prior written agreement before giving the same security to someone else, like another lender. If you don't, you may break your security agreement and this facility agreement and we may ask you to repay any money you owe us.
- If the amount we recover from any security we have is less than the amount you owe us, then you'll still be responsible for paying the amount of any shortfall to us.

For example, you break your facility agreement, and we have to sell the house you have given us a mortgage over. When we sell your house, you owe us \$500,000. But your house sells for \$400,000. You will still owe us the shortfall of \$100,000 and we can take other steps to recover this amount from you.

- We may agree to limit the liability of a guarantor under their guarantee. For example we may limit the guarantor's liability to a set amount or to the house they've given us a mortgage over. If we limit a guarantor's liability, we'll set this out in your facility summary and their guarantee. If the amount you owe us is more than what we've limited your guarantor's liability to, then your guarantor won't be responsible for paying any shortfall. Instead, you'll be responsible for the difference between how much you owe and how much we recover from your guarantor.

For example, you break your facility agreement and you owe us \$500,000. We agreed to limit your guarantor's liability to \$400,000. Your guarantor pays us the \$400,000 under the terms of their guarantee. You will still owe us the shortfall of \$100,000, and we can take other steps to recover this amount from you.

### Any security you give us secures your facility, any existing loans you have, and loans you get in the future

Unless we've said otherwise in your loan or facility summary, here is how our security works.

- When we decide to lend to you, we make sure we'll have enough security. We lend because we'll be able to use all of the security you've given or will give us to secure all your loans with us now, or in the future. We don't rely on particular security you've given us being security only for a particular loan or facility.
- Any existing security you have already given us for other loans will now secure your facility, and other loans you get in future.
- Any new security you give us secures your facility and any existing loans you already have with us. Any new security also secures other loans you get in future, and any guarantees you have given us or will give us in future.
- Listing any new security in your facility summary or variation letters changes your existing loan and facility agreements automatically. Describing the new security in your loan, facility summary or variation letters is disclosure of the changes to your existing loan and facility agreements.

'Disclosure' happens when we give you information about this facility. We must disclose certain information about your facility, including changes to it, under some laws.

For example, you borrowed money from us and gave us a mortgage over the house you bought using that loan. Five years later, you borrow more money to buy a holiday home and give us a mortgage over the holiday home too. The mortgage over your house secures your new loan, and the mortgage over your holiday home also secures your original loan.

## Business Flexible Facility **Terms and Conditions**

### **You must give any security before the draw-down date**

If we've asked you to, you must give any security for your facility before or on the draw-down date.

### **We can ask for extra security**

We can ask you to give new or extra security if any of the following apply:

- we believe the value of any security we have for your loans has materially reduced
- we can't rely on any security we have for your loans for some reason
- your facility amount or credit limit increases, for example because you've asked us to top-up your facility, increase your credit limit, or you get other new loans with us
- a guarantor tells us they are terminating, or withdrawing, the guarantee they gave us as security for your facility
- we released any security we held for any reason, and need replacement security for your facility.

If we decide to ask you for new or extra security, we'll act fairly and reasonably, and will give you a reasonable time to meet our request. Where we need to, we'll comply with the Code of Banking Practice and relevant legislation, for example the Credit Contracts and Consumer Finance Act 2003.

You must do everything reasonable to give us the new or extra security within the time we've given you. If you don't give us the new or extra security within the time we've given you, you'll break your facility agreement.

For example, we may ask you to give us new or extra security for your facility if your guarantor tells us they are terminating, or withdrawing, the guarantee they gave us as security for your facility.

### **We'll hold the security until you repay amounts you owe or might owe us**

We'll continue to hold any security we have for your facility until you repay:

- any loans you have with us, including all facility amounts
- other amounts you owe us or might owe us in the future – if there's an agreement that we'll lend you or you'll owe us those amounts.

For example, you might owe us amounts in the future if you've given a guarantee for someone else's loan.

Once you've repaid these amounts, contact us to arrange for that security to be released.

### **We can give information about your facility to someone who has given us security**

You agree that we can give information about you to anyone who has given us security for your facility. This information includes a copy of your facility summary, these facility terms and conditions, variation letters, and information about your facility and you, including your financial position. You agree we can do this without contacting you.

## **We can change the terms and conditions of your facility agreement**

We can change any of the terms and conditions of your facility agreement, including any term in your facility summary or these facility terms and conditions. We can:

- change the frequency, amount, or date of interest charges
- increase, decrease, or remove interest rate margins or discounts
- change the interest rate, the name of any interest rate, and how we calculate or charge it
- change, add, or remove any fees you have to pay under your facility or change how we calculate any fee
- decrease or remove the credit limit – see 'You must repay your facility when we ask you to'.



## Business Flexible Facility **Terms and Conditions**

For example, we can move your ANZ Business Flexible Facility interest rate up or down, generally depending on what is happening in the market, both here in New Zealand and overseas. If your interest rate goes up, your interest charges will go up.

When deciding whether to change the terms and conditions of your facility agreement, we'll act fairly and reasonably. Where we need to, we'll comply with the Code of Banking Practice and relevant legislation, for example the Credit Contracts and Consumer Finance Act 2003.

### You can also ask us to make changes to your facility

If we agree, you can ask us to:

- change the type of loan you have, for example from an ANZ Business Flexible facility to an ANZ Business loan
- change your draw-down date
- increase, decrease, or remove your credit limit.

We may only agree to some changes if you meet our lending criteria – we'll let you know if this is the case.

For example, our lending criteria will apply if you ask us to increase your credit limit.

We may also charge a fee for changes you ask us to make – see 'We can charge you fees and other amounts on your facility'.

For example, we may charge you an Application fee if you ask us to increase your credit limit, and we agree to do that.

So that we can make changes to your facility promptly when you ask us, you agree that, if more than one person is the borrower under your facility:

- any of those people alone or together can ask us to make changes to your facility, including to your credit limit
- we can assume that any person asking us to make changes to your facility has the agreement of all other people who make up the borrower and we don't have to confirm this first.

If you've asked us to change your facility, you will protect us from any claims any other borrower makes because we didn't confirm you had their agreement before we made that change. We recommend before you ask us to make any changes to your facility you always get the agreement of all of the borrowers.

### We'll contact you if we make any changes

We'll let you know in writing what has changed and when it takes effect – see the section 'How we'll contact you about your facility'. If we change an interest rate or fee, we can choose to publish a public notice instead or include information on our website.

### You can change the account you use to access your facility

You must use an ANZ transaction account to access your facility. You can change the ANZ transaction account you use to access your facility – contact us to arrange this. You agree we don't have to confirm this change in writing.

## What happens if you break your facility agreement

### Talk to us if you're having difficulties with your facility

It's important you always comply with your facility agreement. If you break your facility agreement, the results for you can be serious. We can use any of our rights under your facility agreement or under any security we have for your facility.

For example, we could ask you to repay all of the money you owe us. If you've given us a mortgage, we could sell your property to recover money you owe us.

## Business Flexible Facility **Terms and Conditions**

Talk to us immediately if you're having or expect to face difficulties with your facility. Things you can talk to us about include:

- Keeping your facility amount at a level you can afford
- Reducing your facility amount over time
- Complying with your facility agreement.

We may be able to work with you, or give you support and information that could help you get back on track.

### **When you will break your facility agreement**

You will break your facility agreement if any of the following happen:

- you break any of the terms in the facility agreement or another agreement with us, like a security agreement
- you don't pay money owing when due
- we believe any information you've given us is untrue or is wrong, or you've not given us all the information we've asked you for, and that information was material to us deciding to give you this facility
- your facility agreement becomes invalid or we aren't allowed to enforce it, for any reason.

For example, you'll break your facility agreement if you don't do something you agreed to do or you do something you agreed not to do, like not paying any fees we charge.

### **You will also break your facility agreement if your financial position changes for the worse**

You will also break your facility agreement if any of the following happen:

You become 'insolvent'.

- your financial position is materially affected for any reason, and we believe you can't or won't be able to pay us all of the money you owe us
- the financial position of anyone who guarantees any money you owe is materially affected for any reason, and we believe they can't or won't be able to pay us all of the money you owe us
- we believe the value of any security we hold for your facility has materially reduced, including before the draw-down date.

For example, you can't pay your debts you owe or someone you owe money to has you declared bankrupt.

We've used the term 'materially' above. We will consider your financial position or the value of security to be materially affected if there is a significant or large effect on them. The effect must be more than minor. However, it will depend on your individual circumstances and our assessment of these. The value of security will also be materially affected if any guarantor tells us they're terminating, or withdrawing, their guarantee, restricting how much they'll be liable for under it, or if they break the terms of their guarantee.

### **If you break your facility agreement, we can ask you to repay money owing**

If you break your facility agreement, we can do one or more of the following:

- write to you, requiring you to comply with the terms and conditions of the facility agreement, or other agreements with us
- write to you, requiring you to repay some or all of your facility by a specific date, including interest, and other amounts you owe us, like fees, where we believe it is necessary to protect our interests
- cancel or refuse to allow you to access your available credit limit
- charge you default interest in certain circumstances
- take amounts you owe us from your accounts or add these amounts to the facility amount, which means you'll pay interest and possibly default interest on them.

If we write to you, requiring you to repay some or all of your facility immediately, we have this right even if some money owing isn't yet due. We'll give you a reasonable time to repay those amounts.

## Business Flexible Facility **Terms and Conditions**

### **We can also change the terms of your facility agreement if you break it**

If you break your facility agreement, we can also choose to:

- reduce the credit limit and ask you to repay any amount you need to bring the facility amount under this new credit limit as soon as possible
- remove the credit limit and ask you to repay any amounts overdrawn on your ANZ transaction account by a specific date
- require you to start repaying your facility by scheduled repayments.

If we require you to start repaying your facility by scheduled repayments, we'll write to you and will tell you the amounts your scheduled repayments need to be. We'll also tell you how often you'll need to make them. If we remove or reduce your credit limit, we may charge excess interest on any amounts overdrawn on your ANZ transaction account and Unarranged Overdraft fees may apply until you've repaid those amounts in full.

### **If you break your facility agreement, we can also take any steps we choose to recover amounts you owe us**

If you break your facility agreement, we can also take any steps we choose to recover any amounts you may owe us, including:

- selling any property you've given us as security, or using our rights under any security agreement, to recover amounts you owe us
- writing to anyone who gave us a guarantee for your facility, and requiring them to pay some or all the amounts you owe us
- taking other action against you to recover the amounts you owe us, including Court proceedings.

If you gave us security, we can use that security to repay amounts you owe us. For example, if you gave us a mortgage over your property, we can sell that property if you don't repay us the money you owe us.

The person who gave us a guarantee for your facility may also have given us a mortgage over their property as security for that guarantee. We can sell that property if they don't pay us when we ask them to. We can also use any of our rights under the security agreement if they don't pay us when we ask them to.

### **Our rights if you break this agreement don't limit our right to ask you to repay your facility**

The rights we have above if you break your facility agreement do not limit or restrict our right to ask you to repay some or all of your facility at any time, and for any reason. For more information, see the section 'You must repay your facility amount when we ask you to'.

### **We have to comply with rules under legislation**

We have to comply with the rules applying under legislation about how we recover amounts you owe, and what notices we have to give you.

### **We'll charge default interest on amounts you haven't paid when due**

If we choose to charge default interest, we'll calculate it on all amounts you haven't paid when they were due. The default interest rate we'll use is set out in your facility summary. We calculate default interest at the end of each day, from the day the payment was due until the day you repay those amounts, including where we've obtained a Court judgment against you. We'll charge that default interest on the last business day of the month.

### **We'll charge excess interest on amounts over your credit limit**

If we choose to charge excess interest, we'll calculate it on all amounts over your credit limit on your facility. The excess interest rate we'll use is set out in your facility summary. We calculate excess interest at the end of each day, from the day you went over your credit limit until the day you repay those amounts, including where this is after we've obtained a Court judgment against you. We'll charge excess interest on the last business day of the month.

## Business Flexible Facility **Terms and Conditions**

### **We can take money you owe us from your accounts**

If you still owe money after we've asked you to repay your facility amount, we can take this amount from any of your accounts with us. Or, we can continue to charge you interest on the amount you owe. We'll let you know if we have to do this.

If we owe you money, we'll credit this amount into any of your accounts with us, and let you know. For example, we'll credit any fees or charges we've reversed to your account.

### **We have certain legal rights if you owe us money**

You agree the law gives us certain other rights if you owe us money. We have the right to use amounts we owe you to pay amounts you owe us – this right is called 'set-off'. We also have the right to move money from one account into another account you have to pay amounts you owe us – this right is called 'combination'. We don't have to ask you to repay some or all the facility amount first before using these rights. If we use or move amounts in your accounts, we'll advise you in writing afterwards.

For example, if you have money in a bank account with us, this is an amount we owe you. We can take that money and use it to pay amounts you owe us, including under your facility agreement.

## You must pay any costs we incur

You must pay any costs or losses we incur when we use or protect our rights under your facility agreement, any security, or other agreements with us.

For example, you must pay any costs or losses we incur if we have to recover any amounts you owe under your facility agreement. You must also pay any costs if we have to sell or recover any security we hold for your facility.

Our costs depend on the type and complexity of the transaction and your circumstances. They include all our legal costs, real estate agent or registered valuer's fees, other professional advisor fees, auction fees, and taxes.

### **We can take any costs we incur from your accounts**

We can take any costs or losses we incur from any of your accounts with us. We'll tell you the amount of any legal charges before we take that amount from your account. Otherwise, we'll advise you in writing afterwards if we take any costs or losses we've incurred from your accounts.

## Our right to transfer your facility

We can assign or transfer any of our rights and obligations under your facility agreement to anyone we choose and you agree not to object if we do this. If we choose to assign or transfer any of our rights and obligations under your facility agreement:

- unless we have to under any laws, you agree we don't have to tell you if we assign or transfer any of our rights and obligations under your facility agreement
- the person we've assigned or transferred your facility agreement to can use our rights under your facility agreement
- you agree we can share information we have about you, your facility, and your other agreements with us to allow the assignment or transfer to happen.

### **You can't transfer your facility agreement**

You must not transfer or assign any of your rights or obligations under your facility agreement, unless we've agreed first in writing. In giving you this facility, we're relying on you, personally, being responsible for all repayments and any obligations in your facility agreement.

### How we'll contact you about your facility

We may need to give you information about your facility, or changes to your facility, including under laws that apply.

Other than where specific laws set out how we must contact you, you agree we can choose how we give you that information. We can choose to:

- give you a letter or notice
- call you or text you, using the telephone numbers or cellphone numbers you've given us
- write to you, or send you an email, using the addresses you've given us
- include the information on a website you can access, like ANZ Internet Banking
- publish a public notice or display the information in ANZ branches or on our website if we need to give some borrowers the same information.

Where specific laws require us to give you information in writing, you agree we can give you that information electronically. You agree we can give you the information by sending you an email, using an address you've given us, or including the information on a website you can access, like ANZ Internet Banking.

You're considered to have received letters or notices from us on the day we gave it to you, posted it to you, sent you an email, or made it available for you to access on a website, like ANZ Internet Banking. But if we're writing to you asking you to repay your facility, you're considered to have received the letter or notice we send you three business days after we send it.

If more than one person is the borrower under your facility, we can give or send a letter or notice to only one of those people. If we do give or send a letter or notice to only one person, each person making up the borrower agrees they receive that letter or notice too.

Errors or omissions in any letter or notice we give or send you won't affect whether we can enforce them or your facility agreement unless those errors or omissions are material.

We've set out in your facility summary how we'll send you statements about your facility.

### Some general matters applying to your facility agreement

#### You agree to give us any information we ask for

If we ask you to, you'll need to give us information about you and your financial position. We'll only do this in the following circumstances:

- we reasonably believe we need the information to help us understand whether you've broken or may break your facility agreement
- we've asked you to give us the information as a condition of us giving you your facility in your facility summary or any letter of offer for your facility.

For example, we may need to know whether your financial position has materially changed.

In some cases, we may ask you for reports about your financial position from specialist advisors. If we've asked you for specialist's reports because you've broken your facility agreement, you must pay for those reports.

#### We don't have to use our rights under your facility agreement immediately

We don't have to take any action or use our rights under your facility agreement. If we choose not to take any action under your facility agreement, we can still use our rights later. We can also use our rights in different ways at different times. We'll only be prevented from using our rights or changing your facility agreement if we've agreed to it in writing.

## Business Flexible Facility **Terms and Conditions**

### **If your facility becomes unlawful, you may need to repay it early**

It's unlikely, but if your facility becomes unlawful, we can ask you to repay the facility amount. We can also ask you to pay any interest we charge on the facility amount, and other amounts we charge you or you owe us, like fees. If this happens, we'll write to you, explaining what has happened and when you must repay your facility.

If a term in your facility agreement isn't allowed under law or doesn't meet any compulsory responsibilities we have at law, you agree that we can change that term. Or, we can use any rights we have under your facility agreement as if that term was excluded. We'll only change or exclude that term to the extent we need to comply with the law. We'll let you know if we need to change or exclude any term for this reason.

### **We can decide which term should apply if there are inconsistencies**

We'll decide which term applies if the terms of your facility agreement are inconsistent with other agreements you have with us.

For example, if there is a term in your facility agreement that's inconsistent with a term in a mortgage you've given us, we can decide which term will apply.

### **Some guarantees apply if you're a consumer**

Certain guarantees are given under the Consumer Guarantees Act 1993 – usually to consumers only. If these guarantees apply to you, we have to comply with the rules under the Consumer Guarantees Act 1993.

To the extent the law allows it, you agree none of the warranties or guarantees imposed on us by custom or law will apply to us.

### **You agree you have made your own decision when entering your facility agreement**

You agree the following:

- You've made your own decision about whether to take out a facility with us and enter into your facility agreement and any security agreement you give us to secure your facility.
- You haven't relied on any advice we've given you when entering your facility agreement.
- Your facility agreement and any security agreement you give us to secure your facility sets out the entire agreement between us.

### **We can collect and use information about you**

We can collect information from you or anyone else and use the information to manage your facility or use any of the rights we have under your facility agreement.

We can also share this information with anyone we believe we need to, including anyone who provides security for your facility, credit reporters, or debt recovery agencies.

We've explained our full rights to collect and use information about you in our General Terms and Conditions, which you have already received a copy of. We've also published a copy on our website.

### **We refer to New Zealand law in your facility agreement**

New Zealand law applies to your facility agreement and all references are to New Zealand laws – this includes New Zealand legislation. The references include any replacements or amendments to those laws. New Zealand dates, times, and currency also apply to your facility agreement. You agree you won't use any rights or legal defences you have to avoid us enforcing your facility agreement if you break your facility agreement.