

# TERMS AND CONDITIONS FOR TRADING IN FOREIGN EXCHANGE AND DERIVATIVE TRANSACTIONS

WARNING  
TRANSACTIONS COVERED BY THIS AGREEMENT INVOLVE THE RISK OF LOSS (FOR EXAMPLE DUE TO MOVEMENTS IN MARKET RATES). YOU SHOULD NOT ENTER INTO THESE TRANSACTIONS IF YOU DO NOT UNDERSTAND THE RISKS. IT IS YOUR RESPONSIBILITY TO MONITOR YOUR TRANSACTIONS. ANZ WILL NOT BE LIABLE FOR ANY LOSSES YOU INCUR AS A RESULT OF ENTERING INTO TRANSACTIONS WITH ANZ. ANZ RECOMMENDS THAT YOU SEEK PROFESSIONAL ADVICE ABOUT ANYTHING YOU DO NOT UNDERSTAND.

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
(ABN 11 005 357 522)

833 COLLINS STREET  
DOCKLANDS VICTORIA 3008

VERSION: NOVEMBER 2018

This document will govern all transactions entered into between you and ANZ at any time after you receive this document.

However, if you have previously entered into transactions with ANZ under prior versions of these terms and conditions, this amended document ("amended document") will govern all transactions entered into between you and ANZ (whether entered into before, at or after the time you receive this amended document) if you enter into a transaction with ANZ 30 days or more after you receive this amended document, or if you agree in writing to be bound by this amended document, whichever occurs earlier.



# TERMS AND CONDITIONS FOR TRADING IN FOREIGN EXCHANGE AND DERIVATIVE TRANSACTIONS

## 1 MEANING OF WORDS

1.1 The following terms have the following meaning when used in these terms and conditions and in other parts of this agreement unless a contrary intention appears:

this **agreement** has the meaning set out in clause 2.3.

**ANZ** means Australia and New Zealand Banking Group Limited (A.B.N. 11 005 357 522) and its successors and assigns.

**ANZ FX Online** means the electronic service of that name that may be provided to you on your request to facilitate the entry into and acceptance of foreign exchange transactions and currency transfers and your provision of instructions in connection with such foreign exchange transactions and currency transfers.

**ANZ FX Online Terms and Conditions** means the terms and conditions applicable to your use of ANZ FX Online as set out in the ANZ FX Online Terms and Conditions schedule or as otherwise provided to you from time to time by ANZ.

**ANZ website** means the site(s) delivering content on or through the internet, accessible at the internet address [www.anz.com](http://www.anz.com) or at such other internet address as ANZ may designate from time to time.

**business day** means, except as set out in a confirmation in respect of the relevant transaction, a day on which commercial banks are open for business (including dealings in foreign exchange) in Sydney.

**currency transfer** means the transfer of funds from an account you hold with ANZ to an account nominated by you, where the funds to be transferred are of the same currency as those held in the account from which the transfer is made, and where the transfer is not made in connection with another transaction under this agreement. The transfer cannot be made in Australian dollars.

**currency transfer instruction** means instructions from you to ANZ to enable ANZ to make payments in relation to currency transfers on the required date.

**discrepancy notice** means a notice in writing which states that it is a discrepancy notice and which sets out in reasonable detail the transaction(s) and the portfolio data to which the discrepancy relates.

**early termination amount** means an amount payable in respect of terminated transactions in accordance with clause 5.4.

**early termination event** means an event described in clause 5.1.

**nominated email address** means the email address that is notified by one party to the other from time to time.

**party** means each of you and ANZ.

**person** includes an individual, a firm, a corporation or any other body corporate, an unincorporated association or an authority.

**personal information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable.

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

**settlement instructions** means instructions from you to ANZ to enable ANZ to settle transactions on the required date.

**terminated transaction** means a transaction which has been terminated in accordance with these terms and conditions.

**transactions** include:

- (a) foreign exchange transactions and currency transfers; and
- (b) forward rate agreements; and
- (c) forward transactions; and
- (d) option transactions; and
- (e) swap transactions; and
- (f) swaption transactions; and
- (g) inflation derivative transactions; and
- (h) equity derivative transactions; and
- (i) commodity transactions; and
- (j) any combination, synthesis or derivative of any of the above.

**you** means a party to these terms and conditions other than ANZ. If there are more than one, "you" means each of them individually and every two or more of them jointly. **You** includes your successors and assigns.

1.2 A reference to a party acting **reasonably** means acting in a commercially reasonable manner and in good faith.

1.3 Unless the contrary intention appears, in this agreement:

- (a) headings are for convenience only and do not affect the interpretation of this agreement; and
- (b) a reference to a time of day is a reference to Sydney time; and
- (c) a reference to **dollars** or **\$** is a reference to the lawful currency of Australia; and
- (d) the singular includes the plural and vice versa; and

- (e) the word **"including"** is not to be taken as limiting the meaning of the words to which it relates.

## 2 SCOPE OF TERMS AND CONDITIONS

- 2.1 These terms and conditions govern all transactions entered into between you and ANZ at any time after you receive these terms and conditions.

However, if you have previously entered into transactions with ANZ under prior versions of these terms and conditions, these amended terms and conditions (in this paragraph, the **"amended document"**) will govern all transactions entered into between you and ANZ (whether entered into before, at or after the time you receive this amended document) if you enter into a transaction with ANZ 30 days or more after you receive this amended document, or if you agree in writing to be bound by this amended document, whichever occurs earlier.

This clause 2.1 applies even if no reference is made to these terms and conditions in a confirmation of a transaction.

- 2.2 Despite clause 2.1, you and ANZ may agree in writing that a particular transaction (or class of transactions) is not to be governed by these terms and conditions.
- 2.3 These terms and conditions (including any schedule) and all transactions constitute a single agreement between you and ANZ (collectively referred to as **"this agreement"**).

## 3 ENTERING TRANSACTIONS

- 3.1 You and ANZ may agree to enter into transactions from time to time. Transactions are normally entered into orally or electronically. You and ANZ are bound by the terms of a transaction from the moment:
  - (a) (if the transaction is entered into orally) you orally communicate your acceptance of those terms to ANZ's dealing personnel; or
  - (b) (if the transaction is entered into electronically, via an electronic service or system agreed to by ANZ, including ANZ FX Online (**"electronic service"**)) ANZ is deemed to have received your electronic acceptance in accordance with any agreed terms or commonly accepted market practice.
- 3.2 You may provide a **"rate order"** in respect of a foreign exchange transaction to ANZ from time to time. A rate order must set out a target exchange rate at the level you wish to transact (**"target rate"**) and such other information in relation to the foreign exchange transaction as ANZ requires from time to time. A rate order may be provided orally to ANZ's dealing personnel or via an electronic service. Where a rate order is provided via an electronic service, ANZ may wish to verify the rate order (eg by call-back).

If you provide a rate order:

- (a) you are offering to enter into the foreign exchange transaction with ANZ:
  - (i) at or after the time that ANZ determines that the market has reached a level (including any margin) at which it can fill your order to enter into a transaction with you at or close to the target rate; and
  - (ii) at the transacted exchange rate determined by ANZ in accordance with paragraph (c) below; and
- (b) ANZ may choose to accept your offer at any time (unless it has already received notice that you have cancelled your rate order). ANZ has no obligation to accept your offer, or enter into a foreign exchange transaction with you, in respect of a rate order even if ANZ has determined that the target rate has been reached or it would be able to transact at the target rate; and
- (c) if ANZ accepts your offer, then the exchange rate applicable to the foreign exchange transaction entered into between you and ANZ (**"transacted exchange rate"**) is determined by ANZ at the time the order is filled by reference to the exchange rate applicable to transactions which ANZ enters into in connection with the rate order. ANZ agrees to use reasonable endeavours to ensure that the transacted exchange rate is as close as reasonably practicable to the target rate, but ANZ is under no obligation to ensure that the transacted exchange rate is equal to the target rate and you are bound by the foreign exchange transaction at the transacted exchange rate (even if the transacted exchange rate is less favourable to you than the target rate); and
- (d) ANZ will notify you of its acceptance of your rate order offer and the transacted exchange rate as soon as is practicable. However, you and ANZ are bound by the foreign exchange transaction from the moment that ANZ accepts the offer, whether or not ANZ's acceptance is communicated to you.

**You acknowledge that in providing a rate order you are agreeing to enter into (and be bound by) a foreign exchange transaction with ANZ at an exchange rate determined by ANZ in accordance with this clause without you having any prior notice of, or opportunity to consider or negotiate, that exchange rate.**

- 3.3 ANZ will provide you with (by post, fax or electronically (including by email or other form of electronic service or method) a confirmation setting out certain details of the transaction entered into between you and ANZ. **Within one business day of receiving the confirmation, you must either:**

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- (a) **notify ANZ that you believe that the details of the transaction are not correctly set out in the confirmation; or**
  - (b) **acknowledge that the confirmation is correct:**
    - (i) **by signing a copy and delivering it to ANZ; or**
    - (ii) **by using any other method of acknowledgment (including by email or other electronic service or method) that has been agreed to by ANZ.**
- 3.4 The confirmation will be deemed to correctly set out the details of that transaction unless you have notified ANZ in accordance with clause 3.3(a) of any error you believe the confirmation contains. If you notify ANZ in accordance with clause 3.3(a), each party agrees to discuss in good faith to try to reach agreement on the details of the transaction.
- 3.5 The existence of a binding transaction is not conditional on:
- (a) ANZ's issuance of a confirmation; or
  - (b) your receipt of a confirmation; or
  - (c) your acknowledgment that the confirmation is correct in accordance with clause 3.3(b).
- Accordingly, your failure to receive a confirmation or acknowledge that the confirmation is correct does not invalidate or otherwise prejudice the existence of a transaction.
- 3.6 In the event of any inconsistency between a confirmation and these terms and conditions, the confirmation will prevail for the purpose of the relevant transaction.
- 3.7 Each confirmation may incorporate definitions published by the International Swaps and Derivatives Association, Inc ("**ISDA**"). Each party undertakes to obtain and review a copy of any such definitions incorporated into a confirmation. For the purpose of construing those definitions, these terms and conditions are taken to be the "ISDA Master Agreement". Each party represents that it understands that a copy of the relevant definitions can be obtained from ISDA, through its website (which at the date of these terms and conditions, has the address [www.isda.org](http://www.isda.org)).
- 3.8 If you request, and ANZ agrees to provide you with, access to ANZ FX Online then the terms and conditions set out in the ANZ FX Online Terms and Conditions govern your use of and access to ANZ FX Online. If there is any inconsistency between the terms of the ANZ FX Online Terms and Conditions and the other terms set out in these terms and conditions, then the terms of the ANZ FX Online Terms and Conditions prevail to the extent of the inconsistency.

## 4 PAYMENTS AND OTHER OBLIGATIONS

- 4.1 You and ANZ must make the payments and perform other obligations required under each transaction in the places and in the manner agreed, or if it has not been agreed, as ANZ nominates. Any payments to be made by you under a transaction or otherwise in connection with this agreement must be made and received by ANZ in cleared and immediately available funds. Unless this agreement or a relevant confirmation specifies otherwise, each payment required to be made by you under this agreement must be made by 3pm (Sydney time) on the due date.
- Without limiting clause 4.3, ANZ's obligation to make a payment to you under a transaction on a date is conditional on ANZ receiving payment in cleared and immediately available funds of all amounts which are payable by you to ANZ on or before that date.
- 4.2 If you and ANZ are obliged to pay each other amounts under this agreement in respect of transactions of the same product type, in the same currency, on the same day, and ANZ agrees with you to net the amounts owing between you and ANZ (ANZ may withdraw any such agreement to net under this clause at any time) the party owing the higher amount must pay the other the difference between those amounts. In those circumstances the other party would not make a payment in respect of those amounts.
- 4.3 Each of your and ANZ's obligations to make a payment or perform an obligation referred to in clause 4.1 is subject to the condition precedent that no early termination event has occurred and is continuing in respect of the other party or would occur with the lapse of time or giving of notice. However, this condition precedent does not apply to a payment owing by either party or an obligation to be performed by either party if the other party has satisfied in full all of its payment and other obligations in connection with this agreement (including present, future and contingent obligations).
- 4.4 ANZ may agree with you from time to time in writing, or as otherwise determined by ANZ, the manner of providing instructions (including payment and settlement instructions) in connection with this agreement. Unless subsequently agreed by ANZ and despite clause 6.13 (Notices), currency transfer instructions may not be provided by facsimile, letter or email.
- 4.5 Prior to the settlement of transactions where ANZ is required to make a payment, you must provide your settlement instructions to ANZ, including details of any accounts to which the payment is to be made. If you fail to provide this information ANZ may in its sole discretion take such action as it considers appropriate in the circumstances (acting reasonably), including as set out in clause 4.6(a). This may result in a loss to you.

- 4.6 Without limiting any of ANZ's other rights (whether under this agreement or otherwise) if ANZ has not received your payment in respect of a transaction on the date on which the payment is due or has not received your settlement instruction before a payment to you is due under this agreement, ANZ may (but is not obliged to) choose to:
- (a) by notice to you, terminate the transaction so that clause 5.3 applies to it and an early termination amount becomes payable in respect of the terminated transaction in accordance with clause 5.4. Such notice must specify the early termination date; or
  - (b) rollover the transaction on such terms as ANZ, in its sole discretion and in good faith, considers appropriate in the circumstances, including on the original terms that applied at the time the parties initially entered into the transaction (including at the original rate). ANZ agrees to notify you of these terms of the rollover of the transaction as soon as is practicable.

This clause does not limit or restrict any of ANZ's rights under clause 5 (Early Termination), or any other part of this agreement or otherwise at law.

- 4.7 You authorise ANZ to debit (or arrange to debit) any of your accounts from time to time with any sum of money that is payable by you in connection with this agreement (including any amount payable by you under a transaction, under clause 4.6, under clause 5 (Early Termination), and any fees payable to ANZ).
- 4.8 It will be an illegality event ("**Illegality**") if, at any time, due to an event or circumstance (other than any action taken by a party) occurring after a transaction is entered into, it becomes unlawful under any applicable law (including the laws of any country in which payment, delivery or compliance is required by either party) on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (other than as a result of the party failing to maintain in full force and effect all necessary consents of any governmental or other authority) for the office through which such party (which will be the "**affected Party**") makes and receives payments or deliveries with respect to such transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such transaction, to receive a payment or delivery in respect of such transaction or to comply with any other material provision of this agreement relating to such transaction. If an illegality occurs, an affected party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that illegality and each affected transaction, and will also give the other party such other information about that illegality as the other party may reasonably require.
- 4.9 It will be a force majeure event ("**force majeure event**") if at any time, by reason of force majeure or act of state occurring after a transaction is entered into, on any day, the office through which such party (which will be the "**affected party**") makes and receives payments or deliveries with respect

to such transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such transaction, from receiving a payment or delivery in respect of such transaction or from complying with any other material provision of this agreement relating to such transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such office so to perform, receive or comply (or it would be impossible or impracticable for such office so to perform, receive or comply if such payment, delivery or compliance were required on that day), so long as the force majeure or act of state is beyond the control of such office or such party and such office or party could not, after using all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability. If a force majeure event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that force majeure event, and will also give the other party such other information about that force majeure event as the other party may reasonably require.

- 4.10 If an illegality or force majeure event has occurred and is continuing, ANZ may postpone the date for performance of the obligations affected until such date as ANZ reasonably determines (being a date no later than the 4th business day after receipt of the notice provided under clause 4.8 or the 9th business day after receipt of the notice provided under clause 4.9, as applicable or in either case, if earlier, the business day following the date on which the event or circumstance constituting or giving rise to that illegality or force majeure event ceases to exist). If ANZ elects to postpone the date of performance of an obligation under this clause 4.10, ANZ may, acting reasonably, make such adjustments to the terms of the affected transaction as ANZ determines are necessary to deal with the postponement in the performance of the obligation.
- 4.11 If either (i) an illegality or force majeure event has occurred and is continuing and ANZ has not elected to postpone the performance of an obligation under clause 4.10 a reasonable time before the time an affected obligation falls due for performance or (ii) an illegality or force majeure event has occurred and ANZ has elected to postpone the performance of an obligation under clause 4.10 and following the expiry of the period of postponement under clause 4.10 the event or circumstance constituting or giving rise to that illegality or force majeure event continues to exist, either party may, by notice to the other party, terminate all (and not less than all) of the affected transactions so that clause 5.3 applies to it and an early termination amount becomes payable in accordance with clause 5.4. The notice must specify an early termination date for the terminated transactions (which may not be before the date of the notice nor later than the date which is 20 days after the date of the notice).



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## 5 EARLY TERMINATION

5.1 Each of the following events is an “**early termination event**” in respect of a party:

- (a) the party does not pay or deliver on time any amount due under this agreement and the failure to pay or deliver is not rectified for a period of 1 business day after notice of the failure is given to the party; or
- (b) the party does something it agrees not to do, or does not do something it agrees to do (other than an obligation to make a payment or delivery covered by paragraph (a) above), under or in connection with this agreement and the failure is not remedied for a period of 10 business days after notice of the failure is given to the party by the other party; or
- (c) the party defaults:
  - (i) if the party is you, in an amount that exceeds AUD1,000,000; or
  - (ii) if the party is ANZ, in an amount that exceeds 3% of ANZ’s total shareholders’ equity as specified from time to time in ANZ’s most recently published consolidated financial statements, on one or more payments or other obligations that it owes to any person in respect of money borrowed or raised or under any finance lease, redeemable preference share, letter of credit, guarantee, indemnity, transaction or any other financial markets transaction (after giving effect to any applicable grace period); or
- (d) the party breaches any term of any other agreement with the other party (after giving effect to any applicable grace period); or
- (e) a representation made by the party in connection with this agreement is untrue or misleading in any material respect; or
- (f) the party becomes insolvent or an insolvent under administration (each as defined in the Corporations Act 2001), or is in receivership, in receivership and management, under administration, in liquidation, in provisional liquidation, or is subject to statutory management or judicial management, is wound up, subject to any arrangement, assignment or composition for the benefit of its creditors, or dissolved or becomes subject to any proceedings which is analogous to any of the above under foreign law; or
- (g) the party disclaims, repudiates or challenges the validity of this agreement (or any part of it); or
- (h) any facilities which ANZ provides to you for the borrowing of money or raising of finance by you or any other financial accommodation which ANZ provides to you is repaid or satisfied in full or otherwise terminated or discharged; or

- (i) the party dies, if the party is an individual.

The party in respect of whom the early termination event happens is called the “affected party” (in the case of the event described in (h), the affected party is you, not ANZ). An affected party must notify the other if it becomes aware of the occurrence of an early termination event in respect of it. In this agreement, an early termination event is “continuing” in respect of the affected party if it has not been waived in writing, or remedied to the satisfaction of the other party.

5.2 If an early termination event occurs and is continuing in respect of a party, the party who is not the affected party (the “**terminating party**”) may, by notice to the affected party, terminate all (and not less than all) of the parties’ outstanding obligations in respect of transactions so that an early termination amount becomes payable in accordance with clause 5.4. The notice must specify an early termination date for the terminated transactions (which may not be before the date of the notice nor later than the date which is 20 days after the date of the notice).

5.3 If a transaction has been terminated in accordance with these terms and conditions then neither party need make further payments or perform obligations for that terminated transaction under clause 4.1. Instead, the early termination amount is to be calculated and becomes payable in accordance with clause 5.4.

5.4 On or about the early termination date of terminated transactions ANZ must calculate each of the following in Australian dollars (or any other currency ANZ selects in good faith):

- (a) the mark-to-market value of each terminated transaction as at the early termination date using prevailing market rates chosen by ANZ in good faith. ANZ determines the mark-to-market value having regard to what ANZ determines another person would pay ANZ (expressed as a negative number), or what ANZ determines ANZ would have to pay another person (expressed as a positive number), for that other person to take over your rights and obligations under the terminated transactions that would, but for the occurrence of the termination of the terminated transactions have been required after the early termination date (assuming, if applicable, the satisfaction of the condition precedent in clause 4.3).

ANZ is not required to use mid-market quotations or mid-market valuations in determining any mark-to-market values. While ANZ may choose to obtain firm or indicative quotations in order to determine a mark-to-market value, ANZ is not obliged to and ANZ can base ANZ’s determination on other information such as market data or information from ANZ’s own sources. ANZ will act reasonably in calculating mark-to-market values.

- (b) the unpaid amounts in respect of each terminated transaction as at the early termination date, being the amount of all payments which fell due for payment by you or ANZ in respect of the terminated transaction under this agreement on or before the early termination date but which have not been paid. In making this calculation, ANZ may include unpaid early termination amounts in respect of transactions which were previously terminated, plus any interest in respect of them. Any unpaid amounts payable by ANZ are expressed as a negative number and any such amounts payable by you are expressed as a positive number.
- (c) a single net amount in respect of the terminated transactions. This is calculated by ANZ netting the sum of all positive mark-to-market values and unpaid amounts against the sum of all negative mark-to-market values and unpaid amounts so that a single net amount is obtained.

If the single net amount calculated under (c) is positive, then that amount is the early termination amount and you must pay it to ANZ. Alternatively, if the single net amount calculated under (c) is negative, then the early termination amount is the absolute value of that amount and ANZ must pay it to you. Any early termination amount payable by ANZ is subject to the other provisions of this agreement, including clause 6.7 (Set-off).

ANZ must notify you of the result of those calculations as soon as practicable after making those calculations. Upon written request, ANZ will provide reasonable details of how the amount was calculated. Payments due under this clause must be made on the business day on which ANZ gives this notice.

## 6 MISCELLANEOUS

- 6.1 **(No assignment)** You may not assign, mortgage, charge, declare a trust over or otherwise deal with any of your rights under this agreement without ANZ's prior written consent.
- 6.2 **(Authority and understanding)** Each party represents and warrants that:
  - (a) it has the power to enter into this agreement, including each transaction; and
  - (b) this agreement, including each transaction, is (or, in the case of future transactions, once entered into will be) binding on it; and
  - (c) it enters into this agreement, including each transaction, as a principal and not as a trustee, unless the contrary is disclosed in writing to the other party before a transaction is entered into; and
  - (d) it has made its own independent decisions to enter into each transaction and whether that transaction is appropriate or proper for it based on its own judgement and on advice from such

advisers that it has considered necessary. It is not relying on any communication from the other party as advice or a recommendation or guarantee of result in respect of any transaction and the other party is not seeking a fiduciary or advisor to it in respect of this agreement or any transaction.

Each of these representations and warranties is deemed to be repeated on each date on which a transaction is entered into.

- 6.3 **(Partnership representations)** If you are one of the partners of a partnership, without limiting clause 6.2 (Authority and understanding), you represent and warrant that:
  - (a) you have the power to enter into this agreement, including each transaction, and to bind all partners to this agreement; and
  - (b) by entering into this agreement, including each transaction, all partners are (or, in the case of future transactions, once entered into will be), bound jointly and severally.
- 6.4 **(Trustee representations)** If you are the trustee of a trust and enter into transactions in your capacity as trustee of that trust, without limiting clause 6.2 (Authority and Understanding), you represent and warrant on the date of each transaction that:
  - (a) you are not in breach of trust; and
  - (b) you are the sole trustee of that trust; and
  - (c) you have a right to be indemnified out of the assets of the trust for all your obligations under this agreement.
- 6.5 **(Superannuation Trustee representation)** If you are the trustee of a superannuation entity or trust regulated by the "Superannuation Industry (Supervision) Act 1993" as amended from time to time ("**SIS Act**") and you enter into transactions in your capacity as trustee of that entity or trust, without limiting clause 6.2 (Authority and Understanding), you represent and warrant on the date of each transaction that:
  - (a) the entry into and performance of your obligations under this agreement do not contravene the SIS Act or regulations under it; and
  - (b) you are in compliance with all capital and prudential rules and guidelines issued by the Australian Prudential Regulation Authority (or any successor body).
- 6.6 **(Authorised persons)** On request you must give ANZ a list of persons authorised to act on your behalf under this agreement and to sign confirmations and other documents in connection with this agreement on your behalf and promptly notify ANZ of any subsequent changes to the list of authorised persons provided under this clause. Any such notification will not be effective until received and processed by ANZ.

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- 6.7 **(Set-off)** At any time that ANZ owes you an amount under this agreement, ANZ may choose to set off that amount against any money you owe ANZ (whether or not under this agreement).
- 6.8 **(Interest).** Either party must pay the other, on demand, interest on any amounts not paid by a party to the other when due under this agreement. The interest accrues from the due date until the overdue amount is paid. Interest is calculated by ANZ (acting reasonably) from time to time at a rate equal to 2% p.a. above the rate ANZ determines as ANZ's cost of funding the overdue amount. Each month (or any other period the party owed the amount chooses) the party may add to an amount owing to it, any interest payable under this clause that is overdue (i.e. "capitalise" the interest). The party which owes the other an amount will then be liable for interest under this clause on the total amount.
- 6.9 **(Fees, costs and other expenses)** You must pay ANZ, on demand, ANZ's fees, charges and expenses in connection with transactions as notified to you from time to time by ANZ. You must pay ANZ for costs and expenses in enforcing or taking any other action in connection with ANZ's rights if ANZ becomes entitled to take action under this agreement.
- 6.10 **(Consent to telephone recording)** You consent to ANZ's recording ANZ's telephone conversations with you or your authorised personnel, agree to obtain any necessary consent of and give necessary notice of such recording to your relevant personnel and agree, to the extent permitted by law, that recordings may be used in evidence in any proceedings.
- 6.11 **(ANZ's certificate)** A certificate by ANZ (including, but not limited to, a certificate stating the mark-to-market value of a terminated transaction or an early termination amount) about a matter or about a sum payable in connection with this agreement is sufficient evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be incorrect. Upon written request ANZ will give reasonable details to you of the matter or about a sum payable in connection with this agreement.
- 6.12 **(No consequential losses)** If one party breaches its obligations under this agreement, the other party cannot recover any loss or damage resulting from the breach which may not fairly and reasonably be considered to arise naturally or in the usual course of things from that breach. However, this does not affect the calculation of, or obligation to pay amounts under, clauses 4.6, 5.4 or 6.8 (Interest).
- 6.13 **(Notices)** Without limiting clause 3 (Entering Transactions), a notice, confirmation, instruction, request, approval, consent or other communication in connection with this agreement:
- (a) must be in writing or as otherwise agreed, which includes electronically (for example by email or other electronic service) where, if sent by ANZ, ANZ has obtained any consent required by law or, if sent by you, ANZ has agreed to the method; and
  - (b) may be:
    - (i) left at, or sent by regular ordinary post (airmail if posted to or from a place outside Australia) to, or sent by facsimile to, the address or facsimile number that is notified by one party to the other from time to time; or
    - (ii) sent by email to the email address that is notified by one party to the other from time to time ("**nominated email address**") or sent by any other electronic service or other method of delivery that has been agreed between you and ANZ; or
    - (iii) made available, by ANZ, at ANZ's website or other electronic address that ANZ notifies to you from time to time.
- 6.14 **(Receipt of notices)** Without limiting clause 3 (Entering Transactions), notices, confirmations, instructions, requests, approvals, consents or other communications in connection with this agreement are taken to be received by the recipient:
- (a) if delivered in person or by courier, on the date it is delivered; and
  - (b) if sent by post, six business days after posting (or ten business days after posting if sent to or from a place outside Australia); and
  - (c) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; and
  - (d) if sent by email on the date and time it is delivered to the recipient's nominated email address and when the sender receives an automated message confirming delivery or four hours after the time sent (as recorded on a device from which the sender sent the email), whichever happens first; and
  - (e) if sent by an agreed electronic service at the date and time that it was received at the recipient's address for service of that electronic service; and
  - (f) If made available, by ANZ, at ANZ's website or other electronic address, on the date and time that ANZ notifies to you that it is made available on ANZ's website or other electronic address in accordance with clause 6.13(b)(i) and 6.13(b) (ii); and
  - (g) if sent by any other method of delivery that has been agreed between you and ANZ in accordance with the agreed method of receipt; and



- (h) despite (a), (b), (c), (d), (e), (f) and (g) above, if they are received after 5pm in the place of receipt or on a non-business day, at 9am on the next business day.

For the purposes of this clause:

**“recipient”** means a person who is intended to receive a notice, confirmation, instruction, request, approval, consent or other communication.

**“sender”** means a person who sends a notice, confirmation, instruction, request, approval, consent or other communication.

#### 6.15 (Electronic indemnity and acknowledgement)

ANZ may accept or provide a document, notice, confirmation, instruction, request, approval, consent or other communication in connection with this agreement transmitted by facsimile, email, being made available by ANZ at ANZ’s website or other electronic address that ANZ notifies to you from time to time or by any other form of electronic service or method (an **“electronic communication”**). You agree that:

- (a) you must comply with the security procedure or measure (if any) agreed between you and ANZ; and
- (b) if ANZ receives an electronic communication that purports to have been transmitted or authorised by you, ANZ has no actual knowledge that the electronic communication is incomplete, inaccurate, fraudulently or mistakenly given or not otherwise authorised by you or has not been received in whole, and the communication appears to be in compliance with the security procedure or other measure (if any) as agreed between you and ANZ:
  - (i) ANZ may rely on that electronic communication without making any further enquiries; and
  - (ii) the electronic communication will be deemed effective as your notice, request or instruction; and
  - (iii) you will indemnify ANZ, and keep ANZ indemnified, against each cost, loss, expense or other liability (together with any interest thereon) sustained or incurred by ANZ, other than as arising from ANZ’s wilful misconduct or negligence, as a result of ANZ accepting and acting on the electronic communication, and you will pay to ANZ on demand, the amount of all such costs, losses, expenses (including all reasonable legal expenses on a full indemnity basis) and other liabilities incurred by ANZ.

If the indemnity in sub-clause (iii) is given by more than one person, the obligations under the indemnity are joint and several. The indemnity in sub-clause

(iii) is unconditional and irrevocable and shall survive the termination of all dealings between you and ANZ and shall not be impaired by any act, omission, matter or thing that might otherwise impair or discharge the indemnity but for this sentence.

#### 6.16 You acknowledge and agree that:

- (a) you are aware of and accept the security risk involved in with electronic communications, including the risk that they may be incomplete or inaccurate or may be fraudulently or mistakenly given or altered or not otherwise authorised by the person purporting to send them or may not be received in whole but may be received in part by the intended recipient, and that ANZ may nevertheless accept and rely on them even where they are for value; and
- (b) ANZ will be relying on any security procedures or measures (if any) agreed between you and ANZ when providing, accepting and acting upon any notice, confirmation, instruction or other communication; and
- (c) making your security procedures or measures available to other people increases the risk of fraud; and
- (d) ANZ shall not be liable for any loss or damage arising in any way as a result of a notice, confirmation instruction, request, approval, consent or other communication in connection with this agreement being sent via electronic communication other than as directly caused by ANZ’s wilful misconduct or gross negligence; and
- (e) ANZ may give a revocable notice to you that it will not accept further communication by electronic communication from you at any time and that such notice is effective on receipt by you until ANZ revokes that notice.

#### 6.16A You acknowledge and agree that ANZ may refuse to act on any communication if:

- (a) it is incorrect, incomplete, unclear or inconsistent or does not comply with the format specified by ANZ or agreed with ANZ; or
- (b) it appears to ANZ to be unauthorised, not authentic or in breach of any relevant security measure; or
- (c) accepting or acting upon an instruction in an electronic communication would require any action or information from ANZ on a day that is not a business day; or
- (d) acting on it would cause a breach of any other agreement between you and ANZ or any applicable law, sanction, requirement of any competent authority or any internal policy relating to corporate governance, risk management or audit.

## TERMS AND CONDITIONS FOR TRADING IN FOREIGN EXCHANGE AND DERIVATIVE TRANSACTIONS

### 6.17 (Privacy and Disclosure of Information)

#### 6.17.1 (Privacy)

- (a) If you do not provide ANZ with some or all of the personal information that ANZ requests, ANZ may be unable to provide you with any product or service (including entering into transactions with you).
- (b) ANZ may collect and use personal information: (a) to provide you with information about a transaction, product or service; (b) to consider and process your request for a transaction, product or service; (c) to provide a product or service to you; (d) to tell you about other transactions, products and services; (e) to assist in arrangements with other organisations in relation to the promotion or provision of a transaction, product or service; (f) to manage transactions, products and services and perform administrative and operational tasks; (g) to consider any concerns or complaints raised by you against ANZ and/or to manage any legal action involving ANZ; (h) to identify, prevent or investigate any actual or suspected fraud, unlawful activity or misconduct; (i) to identify you or establish your tax status under any Australian or foreign legislation, regulation or treaty or pursuant to an agreement with any tax authority; and (j) as required by relevant laws, regulations, codes of practice and external payment systems.
- (c) ANZ's Privacy Policy (available at [anz.com/privacy](http://anz.com/privacy)) contains information about: (a) any laws that require or authorise ANZ to collect certain personal information and why those laws require ANZ to collect such personal information; (b) the circumstances in which ANZ may collect personal information from other sources (including from a third party); and (c) how an individual may: (i) access their personal information and seek correction of their personal information; (ii) instruct ANZ that the individual does not want to receive information about other products and services; and (iii) raise concerns that ANZ may have breached the Privacy Act 1988 (Cth) or related code, and how ANZ will deal with these matters.

#### 6.17.2 (Disclosure of information)

- (a) ANZ may disclose any information (including personal information) relating to you, this agreement or any associated transactions, products or services to: (a) any related entity of ANZ which may use the information to: carry out ANZ's functions and activities; promote its own transactions, products and services, unless you advise otherwise; assess your application for transactions, products or services; manage your transaction, product or service; perform administrative and operational tasks (including debt recovery); or comply with laws, regulatory requirements and prudential standards; (b) an organisation that is in an arrangement

with ANZ to jointly offer products or services and/or has an alliance with ANZ to share information for marketing purposes (and any of its outsourced service providers or agents); (c) any agent, contractor or service provider ANZ engages to carry out or assist with its functions and activities; (d) an organisation that assists ANZ to identify, prevent or investigate fraud, unlawful activity or misconduct; (e) regulatory bodies, government agencies, law enforcement bodies and courts; (f) participants in payments systems (including payment organisations and merchants) and other financial institutions; (g) other credit providers; (h) insurers (including mortgage insurers) and reinsurers; (i) any person who introduces you to ANZ; (j) your referee(s), employer or representative (including any authorised agent, executor, administrator or trustee in bankruptcy, legal representative or anyone else acting for you in connection with your transaction, product or service); (k) joint account holders; (l) any provider of a guarantee, security or other credit support for your obligations to ANZ; (m) other parties ANZ is authorised or required by law or court/tribunal order to disclose information to; (n) any professional advisors of ANZ who are under a duty of confidentiality to keep such information confidential; and (o) any credit reporting bodies (for more information about credit reporting in relation to personal information, including the name and contact details of credit reporting bodies and the circumstances in which ANZ may disclose personal information to them, refer to [www.anz.com/privacy](http://www.anz.com/privacy)).

- (b) In making the disclosures described above, ANZ may disclose information to recipients (including service providers and related entities of ANZ) (a) located outside Australia and/or (b) not established in or not carrying on business in Australia. Details regarding the location of such recipients may be found at [www.anz.com/privacy](http://www.anz.com/privacy).

6.17.3 (Information about others) If you give ANZ personal information about someone else or direct someone else to give their personal information to ANZ, you must show that person a copy of this clause 6.17 (Privacy and Disclosure of Information) so that they understand the manner in which their personal information may be used or disclosed.

6.18 (Governing law) This agreement is governed by the law in force in Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

6.19 (Code of Banking Practice) If you are an individual or if you are using ANZ's products and services in connection with a small business (as defined by the Australian Code of Banking Practice), ANZ is bound by the Australian Code of Banking Practice when ANZ provides ANZ's products and services to you. A copy of the Australian Code of Banking Practice is available at [www.anz.com](http://www.anz.com).

- 6.20 **(Confidentiality)** ANZ's standard obligations in respect of customer confidentiality apply to any transactions except as otherwise agreed with by you.
- 6.21 **(Financial Difficulty)** ANZ recommends that you promptly notify ANZ if you encounter any financial difficulty.
- 6.22 **(Conflict of interest)** ANZ's rights and remedies in connection with this agreement may be exercised even if this involves a conflict of duty or ANZ has a personal interest in their exercise.
- 6.23 **(Remedies cumulative)** ANZ's rights and remedies in connection with this agreement are in addition to other rights and remedies given by law independently of this agreement.
- 6.24 **(Exercise of rights)** ANZ may exercise a right or remedy in connection with this agreement in any way ANZ considers appropriate. If ANZ does not exercise a right of remedy in connection with this agreement fully or at a given time, ANZ may still exercise it later.
- 6.25 **(Agreement prevails)** To the extent permitted by law, this agreement prevails to the extent it is inconsistent with any law.
- 6.26 **(Prompt Performance)** If this agreement specifies when you must perform an obligation, you must perform it by the time specified. You must perform all other obligations promptly.
- 6.27 **(Variation)** ANZ may offer to vary this agreement and will provide you with 30 days' prior notice of any proposed variations.
- 6.28 **(Waiver)** A provision of this agreement, or right created under it, may not be waived except in writing signed by the party or parties to be bound.

## 7 ANZ AS A MARKET MAKER

You acknowledge and agree that ANZ and/or ANZ's affiliates may from time to time take proprietary positions, make a market or undertake proprietary activities (including hedging transactions) related to the initiation or termination of a transaction with you. This may adversely affect the market price, rate or other market factor(s) underlying a transaction entered into with you and consequently the value of the transaction. ANZ has policies and procedures designed to minimise the risk that officers and employees are influenced by any conflicting interest or duty and that confidential information is improperly disclosed or made available.

## 8 ANTI-TERRORISM/ MONEY LAUNDERING

- 8.1 You agree that ANZ may delay, block or refuse to process any transaction without incurring any liability if ANZ suspects that:
- (a) the transaction may breach any laws or regulations in Australia or any other country; or

- (b) the transaction involves any person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is sanctioned under economic and trade sanctions imposed by the United States, the European Union or any other country; or
- (c) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful in Australia or any other country.
- 8.2 You must provide all information to ANZ which ANZ reasonably requires in order to manage money-laundering risk or terrorism-financing risk or economic and trade sanctions risk or to comply with any laws or regulations in Australia or any other country. You agree that ANZ may disclose any information concerning you to:
- (a) any law enforcement or regulatory agency where requested, or where required by any court, law or regulation, in Australia or any other country; and
- (b) any correspondent ANZ uses to make any payment for the purpose of compliance with any law or regulation.
- 8.3 You declare and undertake to ANZ that the processing of any transaction by ANZ in accordance with your instructions will not breach any laws or regulations in Australia or any other country.

## 9 COMPLAINT RESOLUTION PROCEDURE

- 9.1 **(Dispute handling procedure)** If ANZ makes a mistake or ANZ's service doesn't meet your expectations, ANZ wants to know.

For the fastest possible resolution of your complaint, ANZ recommends you:

- talk to your Relationship Manager or Product Specialist; or
- if unable to do so, talk to your Relationship Manager's or Product Specialist's immediate supervisor.

If the complaint cannot be resolved promptly your Relationship Manager or Product Specialist's immediate supervisor will take responsibility and work with you to fix the matter quickly. ANZ's aim is to resolve any complaint within 10 working days.

If this is not possible, ANZ will keep you informed of the progress of the matter and how long ANZ expects it will take to resolve your complaint. If your complaint is not resolved to your satisfaction, you can ask to have it reviewed by ANZ's Customer Advocate who will provide a free independent review of more difficult complaints to help achieve a prompt solution.

## TERMS AND CONDITIONS FOR TRADING IN FOREIGN EXCHANGE AND DERIVATIVE TRANSACTIONS

### 9.2 (Financial Services Dispute Resolution Schemes)

If the Australian Code of Banking Practice applies to you and you are not satisfied with the steps taken by ANZ to resolve your complaint, or with the result of ANZ's investigation, you may wish to contact the Australian Financial Complaints Authority ("AFCA"). AFCA is the new external dispute resolution scheme for the financial service industry. From 1 November 2018, AFCA replaces the Financial Ombudsman Service (FOS), Credit and Investments Ombudsman (CIO) and the Superannuation Complaints Tribunal (SCT). ANZ is a member of AFCA.

You can contact AFCA:  
Online: [www.afca.org.au](http://www.afca.org.au)  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Telephone: 1800 931 678  
Mail: Australian Financial Complaints Authority  
GPO Box 3  
Melbourne Vic 3001

## 10 CALCULATION AGENT

- 10.1 The "calculation agent" in respect of a transaction will be ANZ unless otherwise specified in the relevant confirmation.
- 10.2 The calculation agent will, subject to the terms of the relevant confirmation, be responsible for:
- calculating any rates, amounts, periods and dates (including changes to such rates, amounts, periods and dates) specified in the confirmation or relevant to the transaction or as designated by the parties; and
  - giving notice to the relevant party of such rates, amounts, periods and dates; and
  - giving reasonable details to the relevant party of the method of calculation of such rates, amounts, periods and dates; and
  - if necessary, determining the manner of application of definitions published by ISDA to a particular transaction and confirmation.

When the calculation agent is required to act or to exercise judgment, it will do so in good faith and in a commercially reasonable manner. However, the calculation agent is not acting as a fiduciary for or as an advisor to you in connection with any transaction.

## 11 RECONCILIATIONS

- 11.1 ANZ is subject to laws and regulations which may require ANZ to reconcile the data it holds about certain transactions between you and ANZ with data you hold about those transactions. This is known as 'portfolio reconciliation'.
- 11.2 For the purpose of portfolio reconciliation, ANZ may, from time to time send portfolio data to you in relation to certain transactions between you and ANZ.

### 11.3 (Portfolio Reconciliation) You acknowledge that:

- ANZ will determine when ANZ will send portfolio data to you and what the portfolio data will consist of; and
- the portfolio data will be sent to you by email.

### 11.4 (Discrepancies) You agree that:

- if you, acting reasonably, identify any material discrepancies in the portfolio data, you will as soon as possible notify ANZ of such discrepancies by email to [MOPortfolioReconcili@anz.com](mailto:MOPortfolioReconcili@anz.com) (or such other email address as advised by ANZ);
- ANZ and you will promptly consult in good faith to resolve any material discrepancies notified to ANZ as soon as possible;
- if you have not notified ANZ of any discrepancies by the fifth Business Day following the day ANZ sent the portfolio data to you, you will be considered to have accepted the portfolio data sent to you by ANZ as accurate.

### 11.5 (Discrepancy identification and dispute resolution procedure) You and ANZ agree that the following procedure will be used to identify and resolve discrepancies between them in relation to the portfolio data that have not been resolved under the previous paragraph five (5) Business Days after being notified to ANZ:

- either you or ANZ may deliver a discrepancy notice to the other party;
- you will send any discrepancy notice to ANZ by email to [APRADisputes@anz.com](mailto:APRADisputes@anz.com) (or such other email address as advised by ANZ);
- ANZ will send any discrepancy notice to you by email;
- on receipt by either party of a discrepancy notice, you and ANZ will promptly consult in good faith to resolve the discrepancy as soon as possible by exchanging relevant information and discussing the basis of the discrepancy and the corresponding portfolio data. ANZ is not obliged to disclose or discuss the calculations or methodologies underlying any portfolio data.

### 11.6 (No early termination event) It is not an early termination event if you or ANZ does not perform any obligation under this clause 11.

### 11.7 (Other portfolio reconciliation agreement) This clause 11 does not apply to you or ANZ if you and ANZ have entered into any other agreement in relation to reconciliation of portfolio data.

# SCHEDULE: TERMS AND CONDITIONS GOVERNING ANZ FX ONLINE

All users of ANZ FX Online should read Part A and Part C of this schedule.

You should also read Part B of this schedule if you have agreed with ANZ that the additional features in Part B apply to you.

## PART A - USING ANZ FX ONLINE

Part A applies if you use ANZ FX Online.

### 1 ACCESSING ANZ FX ONLINE

- 1.1 ANZ may make available to you a service known as "ANZ FX Online" in order to facilitate electronic:
  - (a) trading of foreign exchange transactions, including Currency Transfers; and
  - (b) supply of other goods and services.
- 1.2 ANZ FX Online services will be supplied through the ANZ's website, the internet or any website, wide area network, wireless data network, intranet or any other electronic link which ANZ may designate from time to time.
- 1.3 ANZ will provide you with the computer software or materials ANZ deems necessary to enable you to access ANZ FX Online. The sub-licensing of this computer software by ANZ to you is subject to the terms of ANZ's licence agreement with the copyright owners.
- 1.4 ANZ will provide you with instructions for the operation and use of ANZ FX Online and you agree to use ANZ FX Online strictly in accordance with these instructions and this schedule.
- 1.5 ANZ may act on and process all Electronic Instructions issued or transmitted through ANZ FX Online using the password, encryption keys or other access procedures and security information referable to you without your further consent, reference or notice.
- 1.6 ANZ may treat Electronic Instructions as authentic and ANZ is under no obligation to investigate the authenticity or authority of persons issuing or transmitting Electronic Instructions or verify the accuracy and completeness of Electronic Instructions.
- 1.7 ANZ will provide you with the computer software and instructions for use of ANZ FX Online referred to above on receipt from you of any information that ANZ requires.

### 2 ENTRY INTO TRANSACTIONS USING ANZ FX ONLINE

- 2.1 The parties may enter into transactions by ANZ making an electronic offer to you, and you electronically communicating your acceptance of that offer to ANZ, via ANZ FX Online. A binding

transaction exists when ANZ receives your electronic acceptance. ANZ will be deemed to have received your acceptance of our electronic offer only when:

- (a) the Electronic Instruction containing your acceptance enters the ANZ FX Online database; and
  - (b) a deal record is created by the ANZ FX Online database; and
  - (c) a deal number is generated by the ANZ FX Online database.
- 2.2 Where an indicative rate is provided to you, this does not constitute an electronic offer and we are not bound to transact with you at that rate.
  - 2.3 For the avoidance of doubt, ANZ will not be bound by the terms of a transaction entered into using ANZ FX Online until the Electronic Instruction containing your acceptance of our electronic offer has been received by ANZ in the manner specified in paragraph 2.1.
  - 2.4 You acknowledge that the transmission of your acceptance through an Electronic Instruction may not be received by ANZ in accordance with paragraph 2.1 for reasons beyond either party's reasonable control including but not limited to mechanical, software, computer, telecommunications or electronic failure. You further acknowledge that, to the extent permitted by law, ANZ is not liable to you in any way for any loss or damage arising directly or indirectly in connection with the transmission of an Electronic Instruction through ANZ FX Online or any failure to receive an Electronic Instruction for whatever reason unless directly caused by the gross negligence or wilful misconduct of ANZ and ANZ's officers or employees.
  - 2.5 Where a transaction is entered into using ANZ FX Online in the manner specified in paragraph 2.1, an electronic deal acknowledgment will be issued by ANZ to you via ANZ FX Online. The electronic deal acknowledgment does not constitute a "confirmation" as referred to in clause 3.3 of the Terms and Conditions for Trading in Foreign Exchange and Derivative Transactions.
  - 2.6 You must notify your ANZ's relationship dealer or other ANZ contact if you do not receive an electronic deal acknowledgement within 1 business day of the date on which you sent an acceptance by Electronic Instruction to us.



## TERMS AND CONDITIONS FOR TRADING IN FOREIGN EXCHANGE AND DERIVATIVE TRANSACTIONS

### 3 EXTENDING A TRANSACTION

- 3.1 You may request ANZ to extend the term of an existing transaction to a future settlement date ("**extension request**") by making a request using ANZ FX Online.
- 3.2 ANZ may, in ANZ's sole discretion, decide at any time to make an electronic offer to enter into an extension request, made under clause 3.1, via ANZ FX Online which may be made and accepted in accordance with clauses 2.1 and 2.3.
- 3.3 If ANZ does not intend on making an offer for an extension request ANZ will give you notice as soon as practicable (which may be given electronically via ANZ FX Online).
- 3.4 Clauses 2.2, 2.3, 2.4, 2.5 and 2.6 apply to this clause 3, except that reference to clause 2.1 in clauses 2.3, 2.4 and clause 2.5 is to be replaced with reference to clause 3.2.

### 4 PRE DELIVERY TRANSACTIONS

- 4.1 You may request ANZ to reduce the term of an existing transaction and bring forward the settlement date of a transaction ("**pre delivery request**") by making a request through ANZ FX Online.
- 4.2 ANZ may, in ANZ's sole discretion, decide at any time to make an electronic offer to enter into a pre delivery request, made under clause 4.1, via ANZ FX Online which may be made and accepted in accordance with clause 2.1 and 2.3. ANZ's offer may reflect the whole or part of the pre delivery request.
- 4.3 If ANZ does not intend on making an offer for a pre delivery request ANZ will give you notice as soon as practicable (which may be given electronically via ANZ FX Online).
- 4.4 Clauses 2.2, 2.3, 2.4, 2.5 and 2.6 apply to this clause 4, except that reference to clause 2.1 in clauses 2.3, 2.4 and 2.5 is to be replaced with reference to clause 4.2.

## PART B ADDITIONAL FEATURES

Part B only applies if ANZ has agreed that the following features will apply to you.

### 5 CURRENCY TRANSFERS

- 5.1 You may request ANZ to make a currency transfer on your behalf ("**currency transfer request**").
- 5.2 Currency transfer instructions or currency transfer requests must only be made by an electronic method or service agreed by ANZ. They may not be provided by facsimile, letter or email.
- 5.3 ANZ may, in ANZ's sole discretion, decide at any time not to accept your currency transfer request. ANZ will give you notice as soon as practicable when ANZ decides not to accept such a currency transfer request (and such notice may be given electronically via ANZ FX Online).

- 5.4 Where ANZ has accepted your currency transfer request, ANZ will use all reasonable endeavours to execute your currency transfer.
- 5.5 At the time that you give ANZ a currency transfer request under clause 5.1, you authorise and instruct ANZ to:
- (a) debit your nominated account held with ANZ (that is held in the same currency as the currency required for the currency transfer), with the amount of the requested transfer; and
  - (b) to debit your Australian currency account held with ANZ with the amount of all fees, commissions or other charges or expenses payable by you to ANZ in respect of ANZ's performance of the currency transfer request.
- 5.5 You must provide all information and complete documentation which ANZ reasonably requires in respect of the currency transfer request.
- 5.6 A confirmation under clause 3.3 of the Terms and Conditions for Trading in Foreign Exchange and Derivative Transactions will not be provided for a currency transfer.

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

ANZ will provide you with a payment advice for transactions, including currency transfers. This payment advice does not constitute a confirmation for the purposes of clause 3.3 of the Terms and Conditions for Trading in Foreign Exchange and Derivative Transactions.

## PART C - COMMON PROVISIONS

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

### 7 PAYMENTS TO AN ACCOUNT NOMINATED BY YOU

- 7.1 Payments to accounts nominated by you, including currency transfers (only available where agreed with ANZ), will not be made until ANZ has satisfied ANZ's "know your customer" process. If ANZ has not been able to satisfy the "know your customer" process it will exercise its rights in accordance with clauses 4.8 to 4.11 of the Terms and Conditions for Trading in Foreign Exchange and Derivative Transactions.
- 7.2 Where ANZ is instructed by you to transfer funds to an account nominated by you, including a currency transfer, ANZ will seek to make delivery at the time and in the manner specified in your Electronic Instruction or if that is not reasonably practicable for ANZ, in the manner ANZ considers appropriate (acting reasonably) in all the circumstances.
- 7.3 If ANZ cannot send a payment directly to an account nominated by you, then ANZ will use ANZ's correspondent to make the payment. In that event, ANZ may receive a commission or other benefit from the correspondent, the amount of which will depend upon various factors.

- 7.4 A correspondent may charge commission, fees or other charges in making a payment to an account nominated by you. Those commissions, fees or charges will be deducted by the correspondent from the funds paid to the beneficiary account, or their cost passed on to ANZ.
- (a) Where such a deduction is made, the account nominated by you will receive less than the payment amount specified in the Electronic Instruction.
  - (b) If the cost of any commissions, fees or other charges are passed on to ANZ, then you will be required to reimburse ANZ for these costs.
  - (c) Should you request ANZ to do so, ANZ will seek to obtain, within 10 business days, details of the commissions, fees and charges applied by specified correspondents that ANZ use. ANZ's ability to obtain such details from ANZ's correspondents is, however, dependant on the cooperation of the individual correspondents.

## **8 AVAILABILITY OF ANZ FX ONLINE**

- 8.1 As electronic services are subject to interruption or breakdown for a variety of reasons, access to and use of ANZ FX Online is offered on an "as is, as available basis" only.
- 8.2 You should ensure that you have adequate contingency plans to enable you to transact transactions by other means if there is any interruption to, delay in, or suspension or withdrawal of, the operation of ANZ FX Online.
- 8.3 ANZ may impose specific limits and restrictions on your use of ANZ FX Online and ANZ may alter or withdraw ANZ FX Online on a permanent basis at any time. ANZ will give you 14 days' prior notice of such action (which may be given electronically). ANZ may also, where there has been a change in law, requirement of any competent authority, or where it is reasonably required to protect your interests (including, but not limited to, the removal of inactive Authorised Users), withdraw or restrict ANZ FX Online without having to give you any prior notice.
- 8.4 You acknowledge that any software provided by us to you or downloaded by you for the use of ANZ FX Online will, from time to time, be upgraded. You must ensure that such software, including any upgrades, is suitable for use on, and does not adversely affect, your information systems.

## **9 AUTHORISED USERS**

- 9.1 You must nominate individuals to act as your Authorised Users of the ANZ FX Online service as required by ANZ
- 9.2 You are responsible for the appointment and administration of your Authorised Users in accordance with this clause and you must ensure that each Authorised User is given the appropriate authorisation as required by you to use ANZ FX Online.

- 9.3 Where you nominate a new Authorised User, ANZ will endeavour to contact the Authorised User within 5 business days in order to carry out any "know your customer" procedures and provide necessary access procedures and security information for the use of ANZ FX Online to allow the Authorised User to access ANZ FX Online.
- 9.4 Any termination of appointment of your Authorised Users will not be effective until processed by ANZ. ANZ will endeavour to process such instructions promptly but it may take up to 5 business days.
- 9.5 You must ensure that each Authorised User complies strictly with all obligations imposed on you and Authorised Users by these terms and conditions.
- 9.6 You acknowledge that you remain liable for all acts and transactions of each Authorised User during the period that your Authorised User has been granted access to ANZ FX Online and you acknowledge that it is your responsibility to ensure that each Authorised User has the appropriate authority as required by you and acts within this authority.
- 9.7 You warrant that each Authorised User is competent to use ANZ FX Online and, accordingly, can access, operate and use ANZ FX Online from time to time and that any action taken by an Authorised User through ANZ FX Online will bind you.

## **10 FRAUD AND SECURITY**

- 10.1 You are responsible for the accuracy and authorisation of all your Electronic Instructions.
- 10.2 If ANZ receives an Electronic Instruction that purports to have been given by you or one of your Authorised Users and your security procedures or measures were provided in conjunction with your Electronic Instruction:
- (a) ANZ may rely on and/or accept that Electronic Instruction without making any enquiries; and
  - (b) that Electronic Instruction will be deemed effective as your Electronic Instruction.
- 10.3 You must ensure that all passwords, encryption keys or other access procedures and security information for the use of ANZ FX Online are kept completely secure and confidential and are used in accordance with any instructions ANZ provide. You agree to notify our relevant relationship dealer immediately if you or any of your Authorised Users suspect that the security of any such access procedure or security information (or any part of it) may have been compromised or any unauthorised use may have occurred. Despite this, you remain liable for all Electronic Instructions that are processed by ANZ before such notification.
- 10.4 You acknowledge that ANZ is not responsible for any breach by you of clause 10.3 or any loss or damage you incur arising from the interception of any instructions or information transmitted by or to you via ANZ FX Online or any unauthorised use of ANZ FX Online by persons purporting to act on your behalf.

## TERMS AND CONDITIONS FOR TRADING IN FOREIGN EXCHANGE AND DERIVATIVE TRANSACTIONS

### 11 LIABILITY

- 11.1 To the extent permitted by law, ANZ will not be liable for any loss or damage that you suffer in connection with this schedule and your use of ANZ FX Online unless directly caused by the gross negligence or wilful misconduct of us, our officers or our employees.
- 11.2 Where ANZ has acted on an Electronic Instruction in good faith ANZ will not be liable for any costs, losses or damages if, in relation to an Electronic Instruction, a delayed payment occurs.
- 11.3 All warranties, conditions and other terms implied by law or otherwise in connection with this schedule and any use by you of ANZ FX Online are to the extent possible, excluded. Liability for breach of any warranty, condition or term implied by law or otherwise, which cannot be excluded, is limited to the extent possible at our option to:
- (a) the supply of the goods or services again; or
  - (b) the payment of the cost of supplying the goods or services again.

### 12 USE OF DATA

- 12.1 You acknowledge that our information systems will record and track your use of ANZ FX Online. You acknowledge that, unless you notify us otherwise, ANZ or any of our branches in any jurisdiction may use such information for our internal business purposes and the internal business purposes of our related entities including but not limited to:
- (a) providing you with information about products and services that may be of interest to you; and
  - (b) enhancing the services offered through ANZ FX Online to you.
- 12.2 You acknowledge that ANZ may disclose information supplied by you to third parties provided that ANZ will only disclose such information to third parties:
- (a) in general terms where you cannot be specifically identified;
  - (b) where ANZ has given you notification of the intended disclosure and you have not objected to that disclosure;
  - (c) where ANZ believes disclosure is reasonably necessary to assist a law enforcement agency or an agency responsible for national security in the performance of their functions; or
  - (d) where ANZ is authorised, required or permitted by law to disclose the information.
- 12.3 Without limiting the application of this clause 12, personal information provided through ANZ FX Online is also subject to clause 6.17 (Privacy and Disclosure of Information) of the Terms and Conditions for Trading in Foreign Exchange and Derivative Transactions.

### 13 ANZ WEBSITE TERMS FORM PART OF AGREEMENT

All transactions entered into using ANZ FX Online are entered into on the basis that this schedule will be deemed to include, where the ANZ website is used, the ANZ website Terms of Use and Privacy and Security Statement and where applicable the Electronic Channel Terms & Conditions as amended from time to time, and such agreements together will be deemed to form a single agreement between you and us. If there is any inconsistency between the ANZ website Terms of Use and Privacy and Security Statement on the one hand and the other terms of this agreement on the other, then the other terms of this agreement will prevail to the extent of the inconsistency.

### 14 DEFINITIONS

In this schedule:

**"AML/CTF Act"** means the Anti Money Laundering and Counter Terrorism Financing Act 2006 (Cwlth).

**"ANZ website"** means the site(s) delivering content on or through the internet, accessible at the internet address [www.anz.com](http://www.anz.com) or at such other internet address as ANZ may designate from time to time.

**"Authorised User"** means a person nominated by you to use ANZ FX Online.

**"Currency Transfer"** has the meaning given to "currency transfer" in the Terms and Conditions for Trading in Foreign Exchange and Derivative Transactions.

**"currency transfer instructions"** has the meaning given to it in the Terms and Conditions for Trading in Foreign Exchange and Derivative Transactions.

**"Electronic Instruction"** means any electronic instruction including a payment instruction for a transaction or a Currency Transfer, information, message or communication issued or transmitted through ANZ FX Online.

**"know your customer"** obligations mean obligations that ANZ may have under applicable law (including the AML/CTF Act) to collect, analyse and (in some circumstances) disclose information about you, your Authorised Users and your managers "Know your customer" obligations may also include ongoing monitoring of transactions carried out by you or on your behalf using the ANZ's electronic banking services.

