

TRADE AND SUPPLY CHAIN Terms and Conditions

February 2010

1. Introduction

1.1 Terms applying

- (a) These ANZ Trade and Supply Chain Terms and Conditions (**Terms**) contain specific and general terms and conditions which apply in respect of the following Trade Products or Services:
- (i) **Imports:** Import Documentary Credits and Import Collections.
 - (ii) **Exports:** Negotiation and presenting Documents, confirmation, transfer, payment of assigned of proceeds under Export Documentary Credits and Export Collection.
 - (iii) **Imports and Exports:** Shipping guarantees and letters of indemnity and air waybills, customs assessment notices and consignments release.
 - (iv) **Standbys and Guarantees:** Standby letters of credit, bid, performance and tender bonds and demand guarantees.
 - (v) **Trade Finance Loans**

1.2 Applications

- (a) If the Customer wants ANZ to provide a Trade Product or Service to it, it must deliver to ANZ:
- (i) a properly completed application, in the form specified by ANZ from time to time, signed by one or more authorised officers of the Customer who have been identified to ANZ in a manner acceptable to ANZ; and
 - (ii) such other documents as required by ANZ.
- (b) Notwithstanding anything else contained or implied in any Trade Agreement or these Terms or the satisfaction of any condition precedent, ANZ is not obliged to approve, accept and act upon any application of the Customer to utilise a Trade Product or Service and is not required to notify the Customer of any reasons for not doing so. This clause applies despite any negotiations between ANZ and the Customer before an application is made.
- (c) Nothing in these Terms shall oblige ANZ to continue to make any Trade Product or Service available to the Customer.

1.3 International Chamber of Commerce Rules

- (a) Each Documentary Credit shall be subject to the Uniform Customs and Practice for Documentary Credits (**UCP**) of the International Chamber of Commerce (**ICC**) and the ICC Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits (**URR**), in each case, as are in effect from time to time;
- (b) Each standby letter of credit shall be subject to International Standby Practices (**ISP**) or UCP of ICC (as stipulated in the relevant application form(s) or the text of the instrument) as are in effect from time to time;
- (c) Each demand guarantee, bond or payment undertaking issued by ANZ shall be subject to ISP or Uniform Rules for Demand Guarantees (**URDG**) of ICC as are in effect from time to time or the governing law as stipulated in the relevant application form(s) or the text of the instrument;



- (d) Each Collection (either documentary or clean) shall be subject to the Uniform Rules for Collections (**URC**) of ICC as are in effect from time to time; and
- (e) Without prejudice to the paragraphs above, if there is any conflict or inconsistency between these Terms and UCP, URR, ISP, URC, URDG or any other ICC rules, these Terms shall prevail.

1.4 Warning - Exchange Rate Movements

- (a) The Customer acknowledges fluctuations in the exchange rate of currencies occur from time to time and ANZ is not obliged to notify the Customer of those fluctuations. Those fluctuations may mean:
 - (i) if the Customer utilises a Trade Product or Service in one currency (e.g. Hong Kong dollars or Yuan (Renminbi)) and has receivables, deposits or funds in another currency (e.g. Australian dollars or Singapore Dollars) the Customer may face exchange rate risk; and
 - (ii) if the Trade Agreement provides the trade facility in one currency (e.g. Australian dollars or United States Dollars) (**base currency**) with the option of drawing an equivalent amount in another currency (e.g. Taiwan New Dollars or Indonesian Rupiah) the amount of the liability of the Customer to ANZ could be significantly more than the base currency equivalent of the original amount on the drawdown date.
- (b) The Customer is solely responsible for monitoring, managing and taking steps designed to protect the Customer's exposure to loss as a result of fluctuations in the exchange rate of currencies from time to time and should consider an appropriate mechanism to protect against adverse movements in the Customer's position. ANZ offers hedging methods to its customers, including forward foreign exchange contracts, to manage/hedge this risk. The Customer may contact its ANZ Manager for more information on hedging mechanisms.
- (c) In addition, if the Customer has granted security or made a payment for a Trade Product or Service, the value of that security or payment may fall relative to the amount of the Trade Product or Service as a result of exchange rate fluctuations and the Customer may be required to provide extra security or payment or, in some cases, reduce the amount of the Trade Product or Service.

2. Imports - Documentary Credits

2.1 Terms applying

The terms in this Clause 2 apply if, on the Customer's application, ANZ agrees to issue an Import Credit.

2.2 Import Credit issuance

- (a) Each Import Credit shall be irrevocable, issued in a form and subject to the applicable ICC Rules as specified by ANZ and subject to any other terms and conditions which are acceptable to ANZ. Subject to this clause, the Import Credit cannot be cancelled or altered without the written agreement of all relevant parties.
- (b) The Customer warrants and represents to ANZ that all and any applications to ANZ for the issue of any Import Credit are made for the purpose of facilitating the acquisition of the Goods or performance of Services and for no other purpose.
- (c) The Customer agrees it is the sole responsibility of the Customer to ensure the enforceability or effectiveness of any terms or requirements incorporated in any Import Credit and ANZ is not responsible and has no duty whatsoever to advise the Customer on such issues;
- (d) ANZ may restrict negotiations under any Import Credit to its own offices or to any correspondent or agent of its choice and in such case, ANZ is authorised to accept and pay all Documents drawn or purported to be drawn on any such office, correspondent or agent;



- (e) ANZ, without being obliged to do so, may suggest alterations to the Customer's requested wording of or other information contained in the Import Credit, if in ANZ's opinion, such alterations will clarify, correct or otherwise improve the wording of or other information contained in the Import Credit. ANZ will only make such alterations if the Customer consents in writing to them.
- (f) The Customer shall examine the customer copy of the Import Credit issued by ANZ and irrevocably agrees that failure to give a notice of objection about the terms of the Import Credit issued by ANZ within 2 calendar days after receipt of the customer copy of the Import Credit shall be conclusive evidence without further proof that the Customer is completely satisfied with the terms of the Import Credit and has agreed to waive any rights to raise objections or pursue any remedies against ANZ in respect thereof.

2.3 Making payments under the Import Credit

- (a) ANZ is entitled to pay any amount that it determines is properly demanded as payable under the Import Credit.
- (b) If the Import Credit terms stipulate that certain specific Documents required by the Customer, including title documents, be forwarded by the beneficiary direct to the Customer at or prior to the time the beneficiary makes any claim under such Import Credit all remaining Documents (which, if the Import Credit calls for title documents to be presented, must include at least one negotiable title document) relating to such Import Credit must be presented to ANZ in respect of any claim under such Import Credit.
- (c) Each Import Credit is by its nature a separate transaction from any contract or other dealing between the Customer and any other party in relation to which the Import Credit is issued and is binding on ANZ regardless of what may occur or be alleged in that contract or other dealing. As such, the Customer agrees:
 - (i) ANZ is not obliged to notify the Customer prior to making a payment or accepting drafts, claims or drawings under the Import Credit; and
 - (ii) ANZ is entitled to make any payment or accept any draft, claim or drawing under the Import Credit if it determines that the Documents comply with the terms of the Import Credit notwithstanding notice from the Customer of any claim or defence the Customer may have against the beneficiary of the Import Credit.
- (d) The Customer agrees that ANZ is entitled, at its discretion and at the Customer's cost to request any Nominated bank to notify ANZ by teletransmission or other expeditious means, of the amount negotiated and to pay such amount under the Import Credit on receipt of such notice.
- (e) The Customer agrees that ANZ may disclose information about the Customer to any person making a claim under the Import Credit.

2.4 Discrepant Documents

- (a) If ANZ determines that any Documents do not appear on their face to be in compliance with the terms of the Import Credit, ANZ may refuse to honour the Documents.
- (b) The Customer acknowledges that ANZ is not obliged to notify the Customer of any such determination or refusal or to seek the Customer's waiver of any discrepancies before refusing the Documents and any decision by ANZ to seek a waiver at any time does not oblige ANZ to seek a waiver at any other time in respect of any other discrepancies.
- (c) If ANZ decides to notify the Customer of a discrepancy in the Documents and the Customer requests ANZ and/or its correspondent or agent to comply with its payment obligations under the Import Credit the Customer must comply with the Customer's corresponding payment obligations to ANZ notwithstanding the discrepancy.
- (d) If the Customer requests ANZ to authorise release or delivery of the Goods to the Customer, the Customer agrees to reimburse ANZ for any payment made by ANZ under the Import Credit irrespective of discrepancies that may appear on the Documents.



2.5 Customer's liability in respect of the Import Credit

- (a) The Customer must pay to ANZ all amounts paid by ANZ under the Import Credit on the day on which ANZ makes or is required to make that payment.
- (b) The Customer indemnifies ANZ against and must pay ANZ on demand the amount of, all losses, liabilities, costs and expenses (including legal expenses on a full indemnity basis and taxes) incurred by ANZ in connection with the Import Credit issued under these Terms, including:
 - (i) in relation to any claim that is made or attempted to be made under the Import Credit; or
 - (ii) ANZ acting on any representations made by the Customer to ANZ relating to the Import Credit; or
 - (iii) any failure, inability or refusal on the part of ANZ to honour the Import Credit because of a court order or other similar obligation, or
 - (iv) in ANZ's opinion, a transaction to which the Import Credit relates in any way is tainted by fraud or alleged fraud; or
 - (v) any defence by ANZ of a claim under the Import Credit other than a claim which it is proved ANZ wrongfully failed to pay.
- (c) If the Customer takes delivery of the Goods before advice of negotiation or presentation of drafts or Documents, the Customer must pay to ANZ, on demand, an amount equivalent to the full invoice value of those Goods.

2.6 Insurance Buyer's Care

- (a) Where the Import Credit is opened on the basis of insurance buyer's care, the Customer agrees:
 - (i) to insure the Goods from loss or capture at sea in a manner satisfactory to ANZ; and
 - (ii) to provide a copy of that insurance policy and all receipts for current premiums to ANZ, on request.
- (b) If the insurance policy provided to ANZ is not acceptable to ANZ, the Customer agrees that ANZ may effect further or other insurance (including war risk) in respect of the Goods, and the Customer must reimburse to ANZ the cost of any such insurance.

2.7 Remedies

- (a) If the Customer fails to observe any of its obligations to ANZ in respect of the Import Credit or the Secured Indebtedness, ANZ may, without notice to the Customer (and without prejudice to any of its other rights and remedies) cause the Goods (or any part thereof), to be landed, docked, stored, transported, insured, and/or sold (or sold without landing) or otherwise disposed of or the Documents to be dealt with in any way on such terms and for such consideration, as ANZ considers appropriate, in which circumstance:
 - (i) ANZ is not liable for any loss suffered by the Customer as a consequence of such action;
 - (ii) the Customer must pay to ANZ, on demand the costs and expenses incurred by ANZ in respect of any actual or attempted landing, docking, storage, insurance, transportation, sale or other disposal of the Goods or dealing with the Documents;
 - (iii) the Customer will remain liable for and must pay any deficiency that may remain owing to ANZ after the sale or disposal of the Goods or dealing with the Documents; and



- (iv) the Customer must do any thing which includes endorse, assign, sign, execute and deliver any transfers, deeds or documents (or arrange any such matters) which ANZ requires in order to perfect ANZ's title to the Goods or to otherwise give effect to any proposed landing, docking, storage, insurance, sale or other disposal or dealing.
- (b) The Customer shall, upon request by ANZ, forthwith:
 - (i) appear and defend at its own cost and expense any action which may be brought in connection with the Import Credit; and/or
 - (ii) make any claim or take any action or institute any proceedings which ANZ may consider necessary or desirable to recover any proceeds, compromise or settle any dispute in connection with any pledged or mortgaged Documents, pledged or mortgaged Goods, Service, any documentary credit, relevant documents, charged property, sales proceeds or insurance proceeds on such terms as ANZ may in its absolute discretion consider appropriate, failing which ANZ may do it in its name or the Customer's name at the Customer's cost.

2.8 Responsibility and liability

- (a) All instructions and correspondence relating to the Import Credit will be sent at the Customer's risk and ANZ is not responsible for any omissions, errors or delays on the part of postal or teletransmission companies or authorities.
- (b) Any action taken or omitted by ANZ or any of its correspondents or agents under or in connection with any Import Credit, if taken or omitted by ANZ or them without negligence or material breach of these Terms, shall be binding on the Customer and shall not place ANZ or its correspondents or agents under any liability to the Customer.
- (c) Neither ANZ nor its correspondents or agents are liable or responsible for, nor shall the Customer's obligations under these Terms or in relation to any Import Credit be reduced, terminated or affected in any way by:
 - (i) any defect in or the genuineness, correctness or validity of the Documents received by it;
 - (ii) any misrepresentation or breach of condition or warranty by any person as to the description, quantity, quality or value of any Goods and/or Services;
 - (iii) any defect in, or invalidity or unenforceability of, any contract or other dealing between the Customer and any other party in relation to which the Import Credit is issued;
 - (iv) any delay in respect of, detention of, loss of, or damage to, the Goods;
 - (v) the shippers' charges on the Goods;
 - (vi) the granting of any time, credit, indulgence or other concession to any person by ANZ;
 - (vii) any failure to obtain any governmental approval or licence necessary or appropriate in connection with these Terms or the Import Credit;
 - (viii) any impossibility or illegality in performance of these Terms or the Import Credit or any other agreement as result of any act of any governmental authority or court, or any law, regulation or order affecting the terms of these Terms or the Import Credit; or
 - (ix) any variations in the instructions agreed to by ANZ or any other bank relating to the Import Credit necessitated by the law and/or commercial practice of the country in which any draft is negotiated or presented for acceptance or for payment.



3. Imports – Collection

3.1 Terms applying

The terms in this Clause 3 apply if ANZ undertakes an Import Collection.

3.2 Collecting/presenting bank

- (a) ANZ may from time to time act as a collecting bank in respect of collections and bills of exchange for acceptance or payment, or Documents on a cash against Documents basis (**inward collections**).
- (b) In connection with inward collections, ANZ may hold Documents until acceptance or reimbursement of the relevant bills of exchange, or payment, by the Customer.

3.3 Additional terms

Additional terms and conditions applicable to any Import Collection sent to the Customer by ANZ will be outlined in the relevant correspondence attached to the Import Collection.

4. Imports - Goods and Documents

4.1 Terms applying

The terms in this Clause 4 apply if, on the Customer's application, ANZ provides to the Customer a Trade Product or Service in connection with Goods to be imported or which have been imported.

4.2 Pledge

- (a) The Customer agrees that all Documents and Goods now or at any time delivered to or deposited with ANZ have been or will be so delivered or deposited by way of pledge as security (**Pledge**) for payment on demand to ANZ of all monies and liabilities in any currency which now or at any time may become due or owing or may be accruing or become due to ANZ by the Customer in connection with any Trade Product or Service provided to the Customer now or at any time (whether alone or with another person and whether or not contemplated at the date that or another Trade Product or Service is provided to the Customer by ANZ) (**Secured Indebtedness**).
- (b) The Goods will be dealt with by the Customer in accordance with such instructions as ANZ may give from time to time for the protection of ANZ's interest in them including, without limitation, keeping the Goods separate from any other property.
- (c) The Customer agrees the risks in the Goods shall be with the Customer and ANZ shall not be responsible for any loss or damage or depreciation in value of any Goods or Documents held by ANZ as security.

4.3 Trust Receipt

- (a) If, prior to the payment in full of the Secured Indebtedness, ANZ releases to the Customer the Documents or any of them to enable the Customer to obtain delivery of the Goods:

- (i) the Customer must:

- (1) hold the Documents, and the Goods when received, in safe custody and on trust for ANZ and in respect of those Goods exclusively for the purpose of their sale or other disposition approved by ANZ on normal trade terms at market value; and
 - (2) if required by ANZ, execute and deliver to ANZ a trust receipt (in form and substance satisfactory to ANZ) together with any other documents that ANZ may require,

and the Goods will remain subject to the Pledge;



- (ii) the Customer must until sale or delivery (if applicable), warehouse at the Customer's cost the Goods in the name of ANZ, maintain the Goods in sellable condition and at the Customer's cost and immediately deliver to ANZ the warrants or receipts for the Goods (if issued) and otherwise authorise ANZ (or any officer of ANZ) to enter any warehouse or other premises where the Goods may be located at any time for the purpose of viewing, inspecting, identifying or taking possession of the Goods;
 - (iii) the Customer must insure the Goods against fire and any other risks that ANZ may reasonably require to their full insurable value and to hold the policies on behalf of ANZ and in case of loss pay the insurance moneys to ANZ in the same manner as proceeds of sale and make good any deficiency;
 - (iv) the Customer must immediately upon receipt of the proceeds (or each portion of them) of any sale or other disposal of the Goods, pay such proceeds to ANZ, without deduction and until it does so the Customer will hold the proceeds in trust for ANZ;
 - (v) the Customer must if required by ANZ, do all things necessary to give ANZ full authority to receive from any purchaser, any outstanding proceeds of any sale or other disposal of the Goods;
 - (vi) the Customer must keep any transaction involving the Goods separate from all other transactions and to keep the Documents, the Goods and any proceeds from the sale of them separate and distinct from any other documents, goods or proceeds relating to or arising from any other transaction; and
 - (vii) the Customer must not permit the Goods to be processed or altered or incorporated in any other goods without ANZ's consent.
- (b) The Customer agrees that, where this clause applies:
- (i) the Customer has no claim, lien or set-off of any kind in respect of anything which the Customer holds on trust for ANZ under this clause;
 - (ii) the Goods shall remain the property of ANZ until sold or otherwise disposed of; and
 - (iii) any proceeds of sale or other disposal paid to ANZ in accordance with this clause, may be appropriated and applied by ANZ, as it thinks fit.

4.4 Goods while subject to Pledge (including under a trust receipt)

- (a) The Customer must give ANZ such periodical reports and other particulars concerning the Goods or the Documents as ANZ may require from time to time.
- (b) The Customer authorises ANZ at any time without notice to the Customer to enter any premises for the purpose of inspecting or taking possession or custody of the Goods and also to take such steps as ANZ considers necessary or desirable to protect its interest in the Goods. ANZ will act reasonably in exercising its rights under this clause.
- (c) The Customer must not mortgage, charge, pledge or otherwise encumber or allow to be encumbered the Goods (otherwise than in favour of ANZ or as agreed to by ANZ in writing) until ANZ has been paid in full.

5. Exports - Negotiation and/or Presentation under Documentary Credits

5.1 Terms applying

The terms in this Clause 5 apply if, on the Customer's application, ANZ agrees to negotiate and/or present Documents under an Export Credit.



5.2 Application

- (a) The application lodged by the Customer must be accompanied by all Documents called for, under the Export Credit and, if ANZ is not the Advising bank, the originals of the Export Credit and all amendments to the Export Credit in existence at that time no later than the expiry date of the Export Credit.
- (b) The Customer warrants and represents to ANZ that all Documents delivered or to be delivered to ANZ for negotiation and/or presentation relate to sale of the Goods or the provision of Services as described in those Documents and the Customer has shipped or delivered the Goods to, or fully performed the Services for, the buyer.

5.3 Honouring or negotiating and crediting proceeds

- (a) Depending on the request of the Customer to which ANZ has agreed, ANZ will either:
 - (i) honour or negotiate Documents and credit proceeds immediately to the account specified by the Customer;
 - (ii) honour or negotiate and credit proceeds to the account specified by the Customer on acceptance by the Issuing bank of the Documents (in form and content satisfactory to ANZ); or
 - (iii) present Documents to the Issuing/reimbursing bank for payment without honour or negotiation, and credit proceeds to account(s) specified by the Customer when payment is actually received from the Issuing/reimbursing bank,

after having deducted all charges, disbursements and/or expenses incurred by ANZ in relation to the negotiation or presenting of Documents.

- (b) In addition to any right of recourse ANZ may have against the Issuing/reimbursing bank under the provisions of UCP or other ICC rules, unless:
 - (i) ANZ has confirmed the Export Credit; or
 - (ii) has agreed in writing to discount on a 'without recourse' basis subject to Clause 13.17,

the Customer agrees ANZ will have full recourse against it and it will reimburse ANZ on demand, but in any event not later than the maturity date of the relevant Document, for:

- (iii) any advances by way of discounting a drawing under the Export Credit or against any Documents (including purchase, discounting, negotiation or financing of any bills of exchange or drafts) which have not been duly honoured on presentation or in respect of which payment has not been duly made to ANZ on the maturity date for any reason; and
 - (iv) any accrued interest, fees and charges.
- (c) Non-payment of or against any Export Credit or Documents shall be deemed to have occurred if, on demand or the maturity date of the relevant Export Credit or Document, funds have not been placed at ANZ's free disposal for the whole sum due.
 - (d) ANZ's acceptance of any Documents negotiated by ANZ for the Customer and nothing done or omitted to be done by ANZ in respect of any Documents negotiated by ANZ for the Customer after being dishonoured for payment or acceptance or not duly taken up on presentation shall in any way prejudice ANZ's right of full recourse to the Customer.

5.4 Interest

- (a) If ANZ agrees to make an advance by way of discounting a drawing under the Export Credit or against any Documents (including purchase, discounting, negotiation or financing of any bills), the Customer must pay interest and a margin, as agreed with ANZ, either:



- (i) in advance, by deducting interest from the proceeds before the net proceeds are provided to the Customer; or
 - (ii) in arrears when the amount is received by ANZ from the Issuing/reimbursing bank or Customer,
- (b) Interest will be calculated on the face value of the Documents, at the current rate and margin applicable to such advances, on the basis of either a 360 or 365 day year (depending on the currency) as determined by ANZ and:
- (i) if paid in advance, from (and including) the day on which the amount is credited up to (but excluding) the day upon which ANZ anticipates receiving payment from the Issuing/reimbursing bank (and interest may be adjusted by ANZ, and is payable by the Customer on demand by ANZ, if the actual payment date is different from the anticipated payment date); or
 - (ii) if paid in arrears, from (and including) the day on which the amount is credited to (but excluding) the day on which that amount is received by ANZ from the Issuing/reimbursing bank.
- (c) Details of applicable interest rates and margins are available by contacting the Customer's ANZ Manager.

5.5 Discrepant Documents

- (a) If ANZ or its correspondent or agent issues a discrepancy notice to the Customer noting certain discrepancies in or concerning the Documents presented under an Export Credit and the Customer provides instructions to ANZ or its correspondent or agent to proceed with a claim under the Export Credit (by either negotiating the Customer's draft or presenting Documents for acceptance) notwithstanding the discrepancies, the Customer agrees that if the draft is dishonoured or the any of the other Documents are not accepted and the claim is not honoured, the Customer shall repay ANZ on demand:
- (i) the amount of the draft or the amount of the claim in each case; and
 - (ii) interest on that amount at ANZ's current lending rate and margin from time to time for that currency, calculated from the date the draft or claim was negotiated until the date of repayment; and
 - (iii) all costs and charges incurred by ANZ.
- (b) The Customer shall indemnify ANZ on demand against all losses, liabilities, costs and expenses (including legal expenses on a full indemnity basis and taxes) whatsoever which ANZ may incur or be liable for as a result of negotiating the draft or claim as a result of the irregularities with the Documents presented under the Export Credit.

5.6 Negotiated bills of exchange or drafts

ANZ and its agents may, at its discretion and on such conditions as it thinks fit, in relation to any bill of exchange or draft it has negotiated:

- (a) take conditional acceptances, or acceptances for honour and to extend the due date for payment;
- (b) accept payment from the drawee or acceptor before maturity in whole or under rebate or discount;
- (c) accept part payment before maturity and to deliver a proportionate part of the Goods to the drawee or acceptor of the bill of exchange or draft or the consignee of the Goods;
- (d) at the request of the drawee, delay presentation of the bill for payment or acceptance without affecting the Customer's liability to ANZ in respect of such bill of exchange or draft; and
- (e) protest or note the bill of exchange or draft, institute proceedings and take steps for recovery from any acceptor or endorser of the bill or any amount due in respect of such bill, despite ANZ having debited the Customer's account with the amount of such bill of exchange or draft.



6. Exports – Confirmation of Documentary Credits

6.1 Terms applying

The terms in this Clause 6 apply if, on the Customer's application or at the request of the Issuing bank, ANZ agrees to add its confirmation to an Export Credit.

6.2 Confirmation

- (a) ANZ may, at the request of the Issuing bank or if allowed by the Issuing bank and requested by the Customer add its confirmation to the Export Credit under UCP. If the Issuing bank requests ANZ to confirm an Export Credit, the Customer will not be required to apply to and request ANZ to add its confirmation.
- (b) If the Export Credit indicates that the receiver of the Export Credit may add its confirmation or that the receiver is not requested by the Issuing bank to add its confirmation, the Customer must apply to ANZ and request ANZ to add its confirmation.
- (c) In each case if ANZ agrees to add its confirmation to the Credit, the confirmation will be on the basis stated in Clause 6.6(a) and made on a 'limited recourse' basis as set out in Clause 13.17.

6.3 Adding a confirmation

- (a) ANZ will only add a confirmation to an Export Credit:
 - (i) which is subject to UCP, complete and regular on its face and available with ANZ or freely negotiable with any bank or specifies ANZ as the sole paying bank; and
 - (ii) in respect of which the other terms of the Export Credit, the Issuing Bank, the country in which the Issuing bank is domiciled and if ANZ is not the Advising bank, the Advising bank are all acceptable to ANZ.
- (b) ANZ will advise the Customer in writing if it agrees to add its confirmation to the Export Credit.

6.4 Fees

- (a) When the confirmation is added to the Export Credit, the Customer will pay ANZ a non refundable confirmation fee as separately agreed in writing with ANZ, from time to time.
- (b) When the Customer presents the Documents to ANZ, the Customer will pay ANZ a non refundable negotiation fee in respect of those Documents as separately agreed in writing with ANZ, from time to time.
- (c) Without affecting the Customer liability to pay ANZ, the Customer authorises ANZ, at its discretion, to debit any of the Customer's accounts held with ANZ with any of the fees payable by the Customer on the date they are due for payment or to deduct them from the proceeds of the Export Credit.

6.5 Presentation of Documents

- (a) The Customer must present at the counters of its ANZ Office, as soon as they are available and not later than the expiry date of the Export Credit:
 - (i) if ANZ is not the Advising bank, the original Export Credit and all amendments to the Export Credit in existence at that time; and
 - (ii) all of the Documents called for in the Export Credit which fully comply with the terms of the Export Credit.



- (b) If the Export Credit expires without presentation of Documents, ANZ's confirmation ends on the date the Export Credit expires.

6.6 Compliant Documents

- (a) If the Documents fully comply with the terms of the Export Credit (and if ANZ is not the Advising bank ANZ is satisfied that the Export Credit is the same as the copy of the Export Credit upon which ANZ based its acceptance):
 - (i) ANZ will dispatch the Documents to the Issuing/reimbursing bank for acceptance and payment in accordance with the terms of the Export Credit; and
 - (ii) upon the Issuing bank's failure to pay all or any part of the amount claimed ANZ will pay the Customer the amount of the Documents not paid.
- (b) At the time fully compliant Documents are presented by the Customer, the Customer may request ANZ to honour and negotiate the Export Credit and/or Documents and to credit proceeds to the Customer's account (immediately or on acceptance of the Documents by the Issuing bank). If ANZ agrees to the request of the Customer (which it is not obliged to do) the confirmation of the Export Credit will end upon the Customer's account being credited with those proceeds and ANZ will be under no obligation to make any other payment to the Customer.

6.7 Discrepant Documents

- (a) If the original Export Credit is different from the copy of the Export Credit upon which ANZ based its acceptance or the Documents do not fully comply with the terms of the Export Credit, ANZ confirmation ends and ANZ has no obligation to make any payment to the Customer under the confirmation.
- (b) If the Documents do not fully comply with the terms of the Export Credit:
 - (i) ANZ will advise the Customer of the discrepancies.
 - (ii) The Customer may instruct ANZ to return the discrepant Documents to the Customer for correction and re-submission to ANZ. The Customer must re-submit the corrected fully compliant Documents before the expiry date of the Export Credit. If the resubmitted Documents fully comply with the terms of the Export Credit, ANZ's confirmation continues.
 - (iii) If the Customer instructs ANZ to dispatch discrepant Documents to the Issuing Bank, ANZ may agree (but is not obliged to do so) to a request from the Customer to negotiate the Export Credit and credit proceeds to the Customer's account on acceptance of the discrepant Documents for payment by the Issuing bank.

6.8 Amendment

- (a) ANZ will not be bound by the confirmation if the Export Credit is amended or an amendment is rejected without ANZ's written consent. ANZ's consent will not be unreasonably withheld or delayed.
- (b) If the amendment to which ANZ agrees increases the value or extends the validity of ANZ's existing commitment the Customer will pay ANZ a further fee calculated on such increase or extension.
- (c) The Customer will pay ANZ on demand any losses, liability, cost or expenses (including legal expenses on a full indemnity basis) whatsoever incurred or suffered by ANZ as a result of confirming a Credit while in possession of an incomplete original Export Credit and/or without a complete set of amendments.



6.9 Protection of rights

- (a) The Customer will not do any act or and will refrain from doing any act if to do so may waive, vary or diminish or adversely affect in any way the Customer's right, title or interest under the Export Credit or any related Documents or any contract or agreement in respect of the relevant Goods, Services or insurances or in the proceeds that may be derived from any of the them.
- (b) The Customer, in respect of each Export Credit to which ANZ adds its confirmation, represents and warrants on and from the earlier of the date of its application or the date ANZ Confirms the Credit that:
 - (i) it has not agreed, and undertakes that it will not at any time agree, to assign, encumber or otherwise deal with any of its right, title and interest under the Export Credit or any related Documents or any contract or agreement in respect of the relevant Goods, Services or insurances or in the proceeds that may be derived from any of the them, to any person other than ANZ and there is no restriction on the Customer doing so; and
 - (ii) to the best of its knowledge, any contract or agreement in respect of the Goods, Services and insurances is valid, legal, binding and enforceable under its governing law and under the laws of the jurisdiction in which ANZ (or the Customer on behalf of ANZ) may enforce those contracts or agreements, and that any claims made under those contracts or agreements will be without set-off and free of any counterclaims.
- (c) If ANZ has agreed to the request of the Customer to confirm an Export Credit, the Customer will only disclose the existence of the confirmation arrangement or any of its provisions to any other party if it has obtained ANZ's prior written consent or it is compelled by law to do so.

6.10 Assignment

- (a) If ANZ confirms an Export Credit:
 - (i) the Customer undertakes at the request of ANZ in terms acceptable to ANZ to; and
 - (ii) if ANZ subsequently makes any payment or enters into any other obligation for and at the request of the Customer in respect of the confirmed Export Credit the Customer,

assigns to ANZ absolutely all its right, title and interest in, and claims for payment under the Export Credit and related Documents and any contract or agreement in respect of the relevant Goods, Services and insurances and in the proceeds that may be derived from any of them.
- (b) If requested by ANZ, the Customer agrees to take all:
 - (i) action and execute any documents (including the endorsement of any drafts or other instruments and the giving of notice of the assignment) reasonably required by ANZ, at Customer's cost, to evidence and perfect the assignment under any applicable law or regulation; and
 - (ii) steps and provide all assistance as ANZ may reasonably require at ANZ's cost (those costs to be reasonable and agreed with ANZ) including:
 - (1) making demand;
 - (2) directing any relevant person to make payment under the Export Credit or the related Documents or any contract or agreement in respect of the relevant Goods, Services or insurances to ANZ;



- (3) initiating and continuing legal action in any Court or jurisdiction and conducting such legal proceedings in the Customer's name (or allowing ANZ to use the Customer's name, failing which ANZ may use ANZ's name) and in accordance with ANZ's instructions,

in connection with any claim by ANZ against any party in respect of the assigned Export Credit or related Documents or any contract or agreement in respect of the relevant Goods, Services or insurances.

- (c) If any right, title or interest of the Customer in the Export Credit or related Documents or any contract or agreement in respect of the relevant Goods, Services or insurances is not effectively assigned and transferred to ANZ, the Customer agrees and declares that until such date as the remaining interest is effectively assigned and transferred to ANZ, the Customer will hold the remaining interest on trust for the sole benefit of ANZ.
- (d) The Customer agrees it cannot assign, encumber or otherwise deal with its rights under the confirmation without the prior written consent of ANZ.

7. Exports - Transfer of Documentary Credits

7.1 Terms applying

- (a) The terms in this Clause 7 apply if, on the Customer's application, ANZ agrees to transfer an Export Credit from the first beneficiary to a second beneficiary (**Transferee**) in accordance with that application.
- (b) If ANZ transfers an Export Credit it will contain the terms set out in the application and otherwise specified by ANZ for a particular transfer.

7.2 Delivery of drafts and documents

- (a) The Customer will ensure that the Export Credit allows ANZ to act as the transferring bank. If not already allowed, the Customer authorises ANZ to seek approval from the Issuing bank to allow ANZ to act as transferring bank but ANZ is not obliged to do so.
- (b) The Customer undertakes to deliver to ANZ, at first request, its drafts and commercial invoices drawn in conformity with the terms of the Export Credit and any other documents which may be needed to substitute for any of the Transferee's documents which do not comply (for example, as to value) with the requirements of the original Export Credit.
- (c) Unless the Customer instructs ANZ to the contrary in its application, the Customer requests that ANZ substitute the Customer's drafts and invoices for those presented by the Transferee, and deliver to the Customer the invoices of the Transferee together with ANZ's payment advice for the amount by which the Customer's drafts exceed the amount of the drafts of the Transferee, less any expense or charges due to ANZ.
- (d) If the Customer fails to deliver its drafts and invoices to ANZ in conformity with the terms of the Export Credit, ANZ is hereby authorised to forward the documents accompanying the drafts of the Transferee without any responsibility on ANZ's part to pay the Customer the difference between the amount of the Transferee's drafts and the amount authorised to be paid under the Export Credit.

7.3 Waiver

If ANZ transfers an Export Credit, subject to Clause 7.2(c) the Customer waives and renounces its rights and interests as the beneficiary of the Export Credit and transfers them to the extent those rights and interests have been transferred to the Transferee pursuant to the transfer.



7.4 Responsibility

In consideration of ANZ transferring the Export Credit at the request of the Customer, the Customer accepts full responsibility for the transfer and:

- (a) agrees that neither ANZ nor its correspondents or agents shall be responsible for the description, quantity, quality or value of the Goods shipped and/or the Services performed under the transferred Export Credit or for the correctness, genuineness or validity of the Documents; and
- (b) shall hold ANZ harmless and indemnified against all losses, liabilities, costs and expenses (including legal expenses on a full indemnity basis and taxes) that may arise from or in connection with the transfer.

8. Exports – Payment of Assigned Documentary Credit Proceeds

8.1 Terms applying

The terms in this Clause 8 apply if, on the Customer's application and instruction, ANZ agrees to advise the third party of its acceptance of the application and instruction and that it will pay the Export Credit proceeds assigned to the third party in accordance with the instructions of the Customer upon receipt of the Export Credit proceeds from the Issuing/reimbursing bank.

8.2 Assignment instruction

- (a) An assignment by the Customer to the third party must be an unconditional assignment of all or part of (as notified in the assignment instruction) the proceeds of an Export Credit to a third party.
- (b) The Customer agrees it is the sole responsibility of the Customer to ensure the enforceability or effectiveness of any terms or requirements of the assignment arrangement between it and the third party and ANZ is not responsible and has no duty whatsoever to advise the Customer on such issues.
- (c) All payment instructions given by the Customer to ANZ are irrevocable unless the payee of the assignment gives written authority to cancel it, and the payee of the assignment may request alternative disbursement arrangements.
- (d) The Customer undertakes not to assign any further rights to the proceeds under the said Export Credit, nor issue additional instructions for payment thereof.
- (e) The Customer will pay to ANZ, on demand any fees, charges and out of pocket expenses associated with the issuance of ANZ's advices in respect to, and the processing of, the payment instruction.

8.3 Customer's acknowledgements

The Customer acknowledges that:

- (a) ANZ will only act upon the Customer's payment instruction regarding the proceeds of the Export Credit if documentation is presented under the Export Credit and the subsequent reimbursement claim is honoured by the Issuing/reimbursing bank of the Export Credit;
- (b) ANZ is not being asked to add ANZ's commitment, either actual or implied, to the arrangements entered into between the Payee and the Customer which have resulted in the assignment; and
- (c) if ANZ has, in its absolute discretion, provided to the Customer a "with recourse" drawing in respect of the Export Credit and the reimbursement claim under the Export Credit is subsequently not met by the Issuing/reimbursing bank for any reason, the Customer remains fully responsible to reimburse ANZ for all amounts paid under the payment instruction and will pay those amounts on demand.



8.4 Customer's representations

- (a) The Customer represents that:
 - (i) it has the power to make each assignment of the Export Credit proceeds referred to in each application and instruction it gives ANZ; and
 - (ii) to the best of its knowledge that no payment under the assignments of proceeds could be avoided by law or will be encumbered or subject to any other claims.
- (b) The Customer acknowledges that ANZ will rely on the Customer's representations and the information contained in all payment instructions delivered to ANZ (in written or electronic form) and that ANZ will make no further or independent enquiries into such matters.

9. Exports – Collection

9.1 Terms applying

The terms in this Clause 9 apply if ANZ accepts the Customer's application to act as remitting bank and undertake a Collection in respect of Documents.

9.2 Collection

- (a) If ANZ agrees to act on a request to send Documents for Collection pursuant to an application, ANZ will act in accordance with the instructions included in that application.
- (b) If a Collection is to be made under any Export Credit, ANZ shall have no duty whatsoever to examine and see whether the Documents received from the Customer meet the requirements of the relevant Export Credit.

9.3 Proceeds

- (a) ANZ will only pay the Customer proceeds of a Collection which have actually been received by ANZ from the collecting bank. Upon receipt, payment will be promptly made and, if not already paid, after having deducted all charges, disbursements and/or expenses incurred by ANZ in relation to the collection.
- (b) ANZ shall not be liable in any way including negligence for ANZ receiving late advice of payment, or for loss or delay in communication, or delays, errors or omissions in communication.
- (c) If ANZ receives payment of Collection proceeds from any bank or other party which is not final and ANZ is subsequently required to repay such bank or other party the proceeds or any part thereof, that payment will be deemed not to have discharged the liability of the bank or the other party under the Documents and despite any payment, release or any other settlement or discharge which may have been given on the faith of that payment to the Customer:
 - (i) ANZ may exercise all the rights it was entitled to exercise prior to that payment being made, as if the payment had not been made and any payment, release and any other settlement or discharge had not been given; and
 - (ii) the Customer indemnifies and shall pay on demand to ANZ any loss, liability, cost or expense (including legal expenses on a full indemnity basis and taxes suffered or incurred by ANZ as a result of the payment not being final.



9.4 Negotiation

- (a) If ANZ approves and acts on an application to negotiate a bill, or to advance against Document(s) sent on Collection then, unless ANZ has agreed in writing to discount on a 'without recourse' basis subject to Clause 13.17), the Customer agrees that, ANZ will have full recourse against it and it will reimburse ANZ on demand, but in any event not later than the maturity date of the relevant Document, for:
- (i) any advances (including purchase, discounting, negotiation or financing of any bills) against any Documents which have not been duly honoured on presentation or in respect of which payment has not been duly made to ANZ on the maturity date for any reason; and
 - (ii) any accrued interest, fees and charges.
- (b) Non-payment of or against any Documents shall be deemed to have occurred if, on demand or the maturity date of the relevant Document, funds have not been placed at ANZ's free disposal for the whole sum due.
- (c) Nothing done or omitted to be done by ANZ in respect of any Documents negotiated by ANZ for the Customer after being dishonoured for payment or acceptance or not duly taken up on presentation shall in any way prejudice ANZ's right of full recourse to the Customer.

9.5 Interest

- (a) If ANZ accepts an application to negotiate a bill, or to advance against document(s) sent on Collection the Customer must pay interest, as agreed with ANZ, either:
- (i) in advance, by deducting interest from the proceeds before the net proceeds are provided to the Customer; or
 - (ii) in arrears when the amount is received by ANZ from the collecting/presenting bank or Customer.
- (b) Interest will be calculated on the face value of the Documents, at the current rate and margin applicable to such advances, on the basis of either a 360 or 365 day year (depending on the currency) as determined by ANZ and:
- (i) if paid in advance, from (and including) the day on which the amount is credited to (but excluding) the day on upon which ANZ anticipates receiving payment from the collecting/presenting bank (and interest may be adjusted by ANZ, and is payable by the Customer on demand by ANZ, if the actual payment date is different from the anticipated payment date);
 - (ii) if paid in arrears, from (and including) the day on which the amount is credited to (but excluding) the day on which that amount is received by ANZ from the collecting/presenting bank.
- (c) Details of applicable interest rates and margins are available by contacting the Customer's ANZ Manager.

9.6 Collecting bank

- (a) ANZ shall not be liable for, and the Customer indemnifies ANZ against, any loss, liability, cost, or expense (including legal expenses on a full indemnity basis and taxes) incurred by ANZ or any, damages, claims, demands, suits or proceedings that may be brought due to any act, omission or default on the part of any collecting/settlement bank or other bank nominated or used by the Customer as its agent or resulting from the Customer selecting an incorrect collecting/settlement bank, or other bank as its agent.
- (b) ANZ accepts no responsibility for any act, omission or default on the part of any collecting/settlement bank nominated or recommended by the Customer, or in the absence of a nomination or recommendation on the part of the Customer, used by ANZ.



10. Shipping Guarantees/Letters of Indemnity and Air Waybills/Customs Assessment Notices/Consignments Release

10.1 Terms applying

The terms in this Clause 10 apply if, on the Customer's application, ANZ agrees to:

- (a) endorse, countersign or issue letters of guarantee or indemnity enabling the Customer to obtain replacement bills of lading or other transport or title documents and/or the release of Goods without production to shipping companies, carriers or forwarding agents of the relevant bills of lading, or other transport or title documents; or
- (b) authorise the release of goods covered by air waybills and customs assessment notices or control of consignments covered by these documents before ANZ receives payment.

10.2 Return of letters of guarantee or indemnity

- (a) The Customer shall make all reasonable endeavours to obtain the relevant bills of lading, transport or title documents.
- (b) The Customer undertakes, upon receipt of the bills of lading, transport or title documents, to deliver the same to the shipping company or its agent and procure the release of ANZ's liability from the letter of guarantee or indemnity and the return of the same to ANZ for cancellation.
- (c) The Customer will, on demand by ANZ, deposit with ANZ such sum of money and/or security equal to ANZ's obligations in respect of the letter of guarantee or indemnity given by ANZ until they are released and returned to ANZ for cancellation.

10.3 Dealing with documents

- (a) The Customer acknowledges that any request for ANZ to authorise release or delivery of a shipment of Goods will be treated as if it was payment made by ANZ.
- (b) If the Customer requests ANZ to authorise the release or delivery of a shipment of Goods drawn under an Import Credit, the Customer:
 - (i) waives all discrepancies that may appear in the Documents and accepts all such Documents presented under the relevant Import Credit;
 - (ii) shall reimburse any payment made by ANZ under the relevant Import Credit irrespective of discrepancies that may appear on the Documents; and
 - (iii) authorises ANZ to honour any relevant drawings without examining the presented Documents.

10.4 Customer's liability

- (a) The Customer must pay to ANZ on demand all amounts ANZ may be called upon to pay:
 - (i) as a result of endorsing, countersigning or issuing letters of guarantee or indemnity;
 - (ii) as a result of authorising the release of Goods covered by air waybills or customs assessment notices or consignments;
 - (iii) as a result of delivering air waybills or customs assessment notices or control of consignments to the Customer, on the day on which ANZ makes or is required to make that payment, and



- (iv) in respect of the consignor's or any carrier's invoices.
- (b) Before ANZ endorses or countersigns a letter of guarantee or indemnity, if requested by ANZ, the Customer will arrange for an issuer acceptable to ANZ to issue and deliver to ANZ a backing letter of guarantee or indemnity in terms acceptable to ANZ. If that backing letter of guarantee or indemnity is addressed and delivered to the Customer rather than ANZ, if requested by ANZ, the Customer will assign or transfer to ANZ all its rights, title and interest in that backing letter of guarantee or indemnity in terms acceptable ANZ as continuing security for the payment and discharge of the Customer's obligations and liabilities in Clause 10.4(a).
- (c) If the consignor's or any carrier's invoice is expressed in foreign currency, subject to applicable law or regulation, the Customer may make the payment of the amount of the invoice in that foreign currency or as otherwise permitted by ANZ.
- (d) The Customer acknowledges that if ANZ pays the amount of the consignor's or any carrier's invoices:
 - (i) subject to applicable law or regulation, title of the Goods the subject of the invoices passes to ANZ until such time as the Customer reimburses ANZ in full (together with any accrued interest); and
 - (ii) risk in the Goods the subject of the invoices remains with the Customer at all times.

10.5 Indemnity

- (a) The Customer indemnifies ANZ against, and must pay to ANZ on demand, the amount of all losses, liabilities, costs and expenses (including legal expenses on a full indemnity basis and taxes) incurred or suffered by ANZ:
 - (i) in connection with missing bills of lading or other transport or title documents, countersigning or issuing letters of guarantee or indemnity or the consignor's or any carrier's invoices; or
 - (ii) as a result of authorising the release of Goods covered by, air waybills or customs assessment notices or consignments or delivering air waybills or customs assessment notices or control of consignments to the Customer.
- (b) This indemnity is irrevocable and may only be cancelled at ANZ's discretion and shall not affect ANZ's rights as pledgee.

11. Standby Letters of Credit and Guarantees

11.1 Terms applying

The terms in this Clause 11 apply if ANZ accepts the Customer's application for the issue of an Instrument.

11.2 Instrument issuance

- (a) An Instrument is irrevocable. Subject to this clause, it cannot be cancelled or altered without the written agreement of all relevant parties.
- (b) The Customer agrees and acknowledges that it is the sole responsibility of the Customer to ensure the enforceability or effectiveness of any terms or requirements incorporated in any Instrument and ANZ is not responsible and has no duty whatsoever to advise the Customer on such issues.
- (c) ANZ, without being obliged to do so, may suggest alterations to the Customer's requested wording of or other information contained in the Instrument if in ANZ's opinion, such alterations will clarify, correct or otherwise improve the wording of or other information contained in the Instrument. ANZ will only make such alterations if the Customer consents in writing to them.



- (d) The Customer agrees and undertakes to examine the customer copy of the Instrument issued by ANZ and irrevocably agrees that failure to give a notice of objection about the contents of the Instrument issued by ANZ within 2 calendar days after receipt of the customer copy of the Instrument shall be conclusive evidence without further proof that the Customer is completely satisfied with the terms of the Instrument and has agreed to waive any rights to raise objections or pursue any remedies against ANZ in respect thereof.

11.3 Making payments under the Instrument

- (a) ANZ is entitled to pay (whether by way of actual cash payment, book entry, transfer or otherwise) to the beneficiary any amount (not exceeding, in aggregate, the maximum amount specified in the Instrument) that ANZ believes to have been properly demanded under the Instrument.
- (b) The Customer acknowledges that the Instrument is by its nature a separate transaction from any contract or dealing between the Customer and any other party on which the Instrument may be based and ANZ is not obliged to notify the Customer or make any enquiry of or to take account of or make reference to statements from the Customer or any other person prior to making a payment or accepting drafts, claims or drawings under the Instrument.
- (c) If ANZ determines that a demand, draft or other document presented under the Instrument is not in compliance with the terms of the Instrument, ANZ may refuse the demand by notice to the bank from which it received the demand and any draft or other documents or by notice to the beneficiary if it received the demand directly from the beneficiary. The Customer acknowledges that:
 - (i) ANZ is not obliged to notify the Customer of any such determination or refusal or to seek the Customer's waiver of any discrepancies before refusing the demand; and
 - (ii) any decision by ANZ to seek a waiver at any time does not oblige ANZ to seek a waiver at any other time in respect of any other discrepancies.
- (d) ANZ is entitled, at its discretion and at the Customer's cost:
 - (i) to request any bank presenting a claim under the Instrument to notify ANZ by teletransmission or other expeditious means, of the amount claimed; and
 - (ii) to pay such amount under the Instrument on receipt of such notice.
- (e) ANZ may, at any time, discharge all its obligations under the unexpired Instrument by paying, whether or not ANZ has received a demand and whether by way of actual cash payment, book entry, transfer or otherwise, the undrawn amount of the unexpired Instrument (or such lesser amount that the beneficiary requires) to the beneficiary or the successor in title to the beneficiary. On discharge of the unexpired Instrument by ANZ the Customer will be liable for (and must pay ANZ on demand) all amounts which ANZ has paid to the beneficiary.
- (f) ANZ may disclose information about the Customer to any person making a claim under the Instrument.

11.4 Documentary responsibility

- (a) All instructions and correspondence relating to the Instrument will be sent at the Customer's risk and ANZ is, and its correspondents or agents, are not responsible for any omissions, errors or delays on the part of the postal or teletransmission companies or authorities.
- (b) Neither ANZ nor any of its correspondents or agents are responsible for the genuineness, correctness or validity of any demands, notices, instructions, drafts or other documents received by it.
- (c) ANZ and its correspondents or agents may rely entirely on any demand, notice, instruction, draft or other document as presented to it by the beneficiary under the Instrument.



- (d) ANZ has and its correspondents or agents have no responsibility or obligation to investigate or satisfy itself as to the authenticity or correctness of the matters stated in, the signatures on, or the positions of such signatories stated in a demand, notice, instruction or other document or the capacity or entitlement of the beneficiary or any other person to give and execute the demand, notice, instruction or draft or other document.

11.5 Customer's liability in respect of the Instruments

- (a) The Customer must pay to ANZ an amount equal to all amounts paid or discharged (whether by way of actual cash payment, book entry, transfer or otherwise) by ANZ under the Instrument on the day on which ANZ makes or is required to make that payment or discharges its liability.
- (b) The Customer indemnifies ANZ against, and must pay ANZ on demand the amount of, all and any demands, claims, actions, proceedings, liabilities, payments (whether by way of actual cash payment, book entry, transfer or otherwise), interest, costs, charges and expenses (including legal expenses on a full indemnity basis and taxes) which ANZ may suffer, incur or make in connection with the Instrument issued under these Terms, including:
 - (i) in relation to any claim that is made or attempted to be made under the Instrument by the beneficiary;
 - (ii) in relation to any amount which ANZ may pay or be required to pay on termination of the Instrument to the beneficiary;
 - (iii) ANZ acting on any representations made by the Customer to ANZ relating to the Instrument; or
 - (iv) any failure, inability or refusal on the part of ANZ to honour the Instrument because of a court order or other similar obligation, or because ANZ is of the view that a transaction to which the Instrument relates in any way is tainted by fraud or alleged fraud.
- (c) If ANZ is required to issue in favour of its correspondent bank a counter guarantee/indemnity in consideration of the correspondent bank's issuance of an Instrument in favour of the beneficiary, the obligation to pay and indemnify ANZ in Clauses 11.5(a) and (b) shall also extend to and cover ANZ's liability and obligations under the counter guarantee indemnity.
- (d) The Customer acknowledges that a branch of ANZ may be the beneficiary of an Instrument issued by another branch of ANZ and agrees that, for the purposes of this Clause 11 and those Instruments, the branches will be treated as a separate legal entities and the Customer must pay and indemnify the ANZ branch issuing the Instrument in accordance with paragraphs (a) and (b) above in respect of payments (whether by way of actual cash payment, book entry, transfer or otherwise) to the ANZ branch which is the beneficiary of the Instrument.

12. Trade Finance Loans

12.1 Terms applying

The terms in this Clause 12 apply if ANZ accepts the Customer's application for a trade finance loan and any subsequent drawing by the Customer under the trade finance loan facility provided to the Customer.

12.2 Applications

- (a) The Customer may only make an application for a trade finance loan if the Customer has an approved trade finance loan facility. (To avoid doubt, the Customer's trade finance loan facility is also subject to the terms of the Customer's facility agreement or letter of offer issued by ANZ).
- (b) Unless otherwise agreed with ANZ in writing, all applications must be lodged by the Customer by mail or facsimile on the day the trade finance loan is required to be drawn.



- (c) The Customer warrants and represents (on a continuing basis) and undertakes to ANZ that the commercial invoices, contracts and transport documents to which the application for a trade finance loan and, when made, the trade finance loan relates:
- (i) have not been previously financed by ANZ or any other bank, financial institution or person and will not be financed by any bank, financial institution or person other than ANZ while they are the subject of a trade finance loan;
 - (ii) are not encumbered in any way to any bank, financial institution or person other than ANZ and will not be encumbered in favour of any bank, financial institution or person other than ANZ while they are the subject of a trade finance loan; and
 - (iii) have been originated in the ordinary and usual course of the Customer's business, in good faith and without fraud, illegality or unauthorised act committed by any person.

12.3 Crediting proceeds

If ANZ accepts such an application, the Customer has executed any other documents ANZ requires and complied with the terms of all relevant documentation, funds shall be paid in accordance with the disbursement instructions of the Customer in the relevant trade finance loan application.

12.4 Interest

- (a) The Customer will pay interest to ANZ on the date the trade finance loan is due to be repaid to ANZ (**Maturity Date**) (unless otherwise agreed in writing with the ANZ) at an interest rate equal to the sum of:
- (i) ANZ's interest rate for trade finance loans (in the currency and for the term of the trade finance loan) current on the date the trade finance loan is advanced to the customer (**Commencement Date**) for that trade finance loan; and
 - (ii) the margin agreed to by the Customer and ANZ in respect of that trade finance loan.
- (b) Interest will be calculated on the amount of the trade finance loan for an interest period from (and including) the Commencement Date that trade finance loan to (but excluding) the Maturity Date for that trade finance loan on the basis of either a 360 or 365 day year (depending on the currency) as determined by ANZ.
- (c) Details of applicable interest rates and margins will be specified in writing in the Customer's facility agreement, letter of offer or other applicable agreement or are available by contacting the Customer's ANZ Manager.

12.5 Repayment and prepayment

- (a) Unless otherwise agreed in writing with ANZ, the Customer must repay the trade finance loan and any outstanding interest, fees and expenses in the currency in which it is drawn on the Maturity Date and the Customer will do so in accordance with its repayment election in the relevant trade finance loan application.
- (b) The Customer shall not have the right to prepay any trade finance loan. If, at the Customer's request, ANZ agrees to the prepayment of the trade finance loan and any outstanding interest, fees and expenses in full or in part before the Maturity Date, the Customer shall fully indemnify ANZ for all losses and costs (including loss of profit and broken funding cost) which ANZ may incur in connection with the prepayment.

12.6 Trade Finance Loan rollover

- (a) The Customer may apply in writing to rollover all or part of an existing trade finance loan and request ANZ to make a new trade finance loan for that amount for a term to be agreed with ANZ.



- (b) If ANZ agrees to make a new trade finance loan, that trade finance loan will be subject to these Terms.
- (c) Notwithstanding an application by the Customer to rollover an existing trade finance loan, accrued interest on that existing trade finance loan must be paid by the Customer to ANZ on the Maturity Date for that existing trade finance loan.

12.7 Bills of Exchange

Subject to any applicable law or regulation and market practice:

- (a) At any time during the term of the trade finance loan, ANZ may arrange for the drawing and execution in the Customer's name, of a bill of exchange in the currency of the trade finance loan (each bill of exchange, a **Bill**) on any agency or office of ANZ or any other office of ANZ's subsidiary companies or correspondents, provided that:
 - (i) the total face amount of Bills prepared by ANZ and outstanding in relation to any trade finance loan must not at any time exceed the principal amount of that trade finance loan plus the total interest on that trade finance loan.
 - (ii) the maturity date of any Bill must not be later than the maturity date of the relevant trade finance loan;
 - (iii) ANZ pays any charges, fees or government imposts relating to the Bills; and
 - (iv) the Customer's responsibility to ANZ is limited to repaying the trade finance loan and accrued interest on or before the maturity date of the relevant trade finance loan.
- (b) The Customer appoints ANZ, and each authorised officer of ANZ appointed for this purpose, severally, as its attorney to sign and/or endorse each Bill drawn and executed by ANZ under this clause on the Customer's behalf, and to complete the Bill in accordance with this clause.
- (c) ANZ may realise or deal with any Bill prepared by it as it thinks fit.
- (d) If a Bill prepared by ANZ is presented to the Customer and the Customer discharges it by payment, the amount of that payment will be deemed to have been applied against the moneys payable to ANZ under the relevant trade finance loan.

13. Trade Products or Services - General Terms and Conditions

13.1 Terms applying

The following terms and conditions apply in respect of all of the Trade Products or Services referred to in all preceding Clauses.

13.2 Definitions

The following definitions apply throughout these Terms and the other Trade Agreements unless the context requires otherwise:

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

ANZBGL means Australia and New Zealand Banking Group Limited (ABN 11 005 357 522), including its successors, assigns and transferees and persons deriving title under any of them.

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



ANZ Manager means the Customer's relationship manager, trade officer or product specialist.

ANZ Office means the office of the ANZ Group Member (including any head office or branch of the ANZ Group Member) that provides the Trade Product and Service to the Customer. In general this will be specified in a trade agreement or the application form completed by the Customer in relation to a Trade Product or Service.

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

Customer Information means information acquired by any ANZ Group Member from and concerning the Customer in the course of the banker-customer relationship and includes personal information but does not include publicly available information.

Documentary Credit means an irrevocable documentary credit that is subject to UCP.

Documents mean all drafts, bills of exchange, bills of lading and all other documents of title, transport documents, insurance policies, invoices, certificates, reports, receipts, warrants or other documents representing or relating to the Goods and/or Services described in the relevant Documentary Credit or presented to or remitted by ANZ in connection with an import or export collection.

Exchange Rate means the rate for converting one currency into another currency on the basis of ANZ's ruling buying or selling rate of exchange (depending whether ANZ determines it must sell currency to or buy currency from the Customer, such determination to be conclusive and binding on the Customer) at the time ANZ is required to make the payment in the other currency or at a rate pre-arranged between ANZ and the Customer.

Export Credit means a Documentary Credit issued by another bank in favour of the Customer which ANZ honours, negotiates, purchases, presents, transfers, finances and/or confirms for or at the request of the Customer.

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

Governing Jurisdiction means the jurisdiction agreed in writing between ANZ and the Customer separately, or if no such jurisdiction is specified, the jurisdiction in which the ANZ Office is located.

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

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

Instrument means any one of a standby letter of credit or a performance, advance payment, bid bond/tender bond, counter, financial, direct pay, insurance or commercial standby or demand guarantee.

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

Privacy Law means the privacy laws and regulations applicable to the Customer Information, including privacy laws and regulations applicable in the Governing Jurisdiction.

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

Trade Agreements means any agreement, document, letter, schedule, booklet, manual, instruction or application containing terms and conditions applicable to the Trade Product or Service provided to the Customer by ANZ (including the terms of the Customer's facility agreement or letter of offer issued by ANZ) and these Terms.

Trade Product or Service means any trade related product or service provided by ANZ to the Customer in connection with the purchase, sale, storage, preparation or shipment of, or other dealings in, Goods or the performance of Services by, or the delivery or release of Goods or Documents to, or performance of Services for the Customer or any other third party or any other transaction between ANZ and the Customer which is made pursuant to or under any type of trade facility from time to time granted by ANZ to the Customer (including any purchase, negotiation, confirmation, discount, advance or financing of Goods and/or Documents and/or Services) in any Trade Agreement, irrespective of whether such products or services are specifically referred to in these Terms.



13.3 Interpretation

- (a) In these Terms unless the context otherwise requires:
- (i) A capitalised term that is used but not defined in these Terms will have the meaning given to it in any other Trade Agreements or the applicable ICC rules referred to in Clause 1.3
 - (ii) A reference to a person or entity includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing.
 - (iii) A reference to a particular person or entity (for example a customer, beneficiary or applicant) includes a reference to that person's executors, administrators, successors, substitutes (including by novation) and assigns.
 - (iv) The singular includes the plural and vice versa.
 - (v) A reference to an agreement, a document, a law or a regulation is a reference to the agreement, document, law or regulation (and, if applicable, any of its provisions) as amended, novated, supplemented or replaced for the time being.
 - (vi) A schedule to a document is a part of the document.
 - (vii) Section, clause and other headings and notes are for convenience only and do not affect interpretation.
 - (viii) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- (b) If these Terms are inconsistent with any Trade Agreement, then:
- (i) where the relevant Trade Agreement states that it prevails to the extent of the inconsistency, it shall so prevail over these Terms; and
 - (ii) otherwise, these Terms prevail to the extent of the inconsistency.

13.4 Foreign Currency

- (a) If any amount payable by ANZ or by the Customer in connection with a Trade Product or Service is payable in a currency (**Payment Currency**) other than the currency of the Customer's account from which or to which ANZ is entitled or instructed to debit or credit that payment (**Account Currency**), then:
- (i) ANZ will make the payment in the Payment Currency or credit equivalent amount in the Account Currency; and
 - (ii) the Customer must pay to ANZ and ANZ is entitled to debit an equivalent amount in the Account Currency,
- determined on the basis of ANZ's Exchange Rate.
- (b) The Customer acknowledges that to give effect to a currency conversion it may be necessary for ANZ to purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in accordance with ANZ's standard procedures at that time for currency conversion and authorises ANZ to do so.
- (c) ANZ shall not be responsible for any loss or liability which the Customer may suffer or incur by reason of or in connection with non-availability to ANZ (after exercising reasonable endeavours) of the relevant amounts of deposits in the relevant currency for the purpose of providing any Trade product or Service to the Customer.



(d) The provision and operation of the Trade Products or Services and these Terms are subject to applicable foreign exchange laws and regulations. ANZ shall not be liable in anyway to the Customer and the Customer shall indemnify ANZ against any third party claim for any loss, liability, cost, expense or delay whatsoever arising from any requirements imposed by, or the exercise of or conditions imposed under the applicable foreign exchange laws and regulations by any administering agencies.

(e) Details of ANZ's applicable Exchange Rate are available by contacting the Customer's ANZ Manager.

13.5 Compliance with laws relating to Goods and/or Services

The Customer must comply with all laws, regulations and the terms of any licence relating to the Goods and/or Services and the export or import of Goods. The Customer indemnifies ANZ in respect of any loss, liability, cost or expense (including legal expenses on a full indemnity basis and taxes) that may arise as a consequence of:

- (a) the importation of the Goods which may be prohibited by law from import into the country of destination;
- (b) the performance of Services which may be prohibited by law from performance in the country of destination; or
- (c) the export of Goods that may be prohibited by law from export from the country of origin.

13.6 Commissions, Fees and charges

- (a) The Customer must pay ANZ all commissions, fees and charges which apply in respect of each Trade Product or Service provided by ANZ to the Customer as stated in any relevant Trade Agreement.
- (b) ANZ will, upon request, provide information to the Customer concerning the current Trade Product or Service commissions, fees and charges.

13.7 Other expenses

- (a) The Customer must pay all:
 - (i) charges, duties and taxes (including Indirect Taxes) payable in connection with the Goods and/or Services and the export or import of Goods;
 - (ii) all freight and other amounts payable under any contract of carriage or otherwise in relation to a Trade Product or Service; and
 - (iii) charges levied on ANZ by any third party (including any correspondent or negotiating bank or its agent) in respect of the Trade Product or Service provided to the Customer by ANZ.
- (b) The Customer must comply with all governmental exchange regulations applicable to the Trade Product or Service provided by ANZ to the Customer and must pay ANZ on demand such amount as ANZ may be required to expend on account of such regulations.

13.8 Debit of the Customer's account

- (a) The Customer authorises ANZ to debit at any time from any account held by the Customer with ANZ all amounts payable by the Customer under or in connection with these Terms, including any amount payable under any indemnity in these Terms, whether or not a demand has been made for the amount.
- (b) The Customer must ensure that sufficient funds are available in the Customer's accounts held with ANZ (either as available credit funds or as approval or available overdraft funds) so that the debits can be made on time.
- (c) ANZ will tell the Customer if it makes such a debit.



- (d) Notwithstanding that ANZ is authorised to debit any of the Customer's account with any amount payable by the Customer under or in connection with these Terms, ANZ is not obliged to do so and nothing in these Terms relieves the Customer of its obligation to pay each amount to ANZ when it is due under these Terms.
- (e) If the Customer has no account with ANZ, the Customer must pay to ANZ on demand (and in the currency demanded) all sums paid or payable under or in accordance with these Terms or a Trade Agreement or in connection with any Goods and/or Services and any fees, commission and interest (at the rate specified in the relevant Trade Agreement, failing which the rate determined by ANZ in its absolute discretion).

13.9 Changes in fees and terms

- (a) Subject to any agreement to the contrary, ANZ may change the terms of any Trade Agreement (including varying any commissions, fees and charges and introducing new commissions, fees and charges) by written notice to the Customer or by any other method permitted by any applicable law, regulation or industry code.
- (b) The notice period before the change takes effect will be determined by ANZ. ANZ will give notice in accordance with any period of time specified by any applicable law, regulation or industry code unless:
 - (i) such changes are required by law to take immediate effect, in which case they will take effect immediately; or
 - (ii) the changes are specific to the Customer, in which case they will be by agreement only.

13.10 Anti-money laundering and sanctions

- (a) The Customer agrees that ANZ may delay, block or refuse to process any transaction in connection with a Trade Product or Service without incurring any liability and without informing the Customer of the reasons if ANZ suspects that:
 - (i) the transaction may breach any laws or regulations applicable to that transaction;
 - (ii) 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 Nations, the European Union or any country; or
 - (iii) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful.
- (b) The Customer must provide all information to ANZ which ANZ reasonably requires in order to process a transaction and to manage any risk contemplated by and to comply with, the requirements of Clause 13.10(a).
- (c) The Customer agrees that ANZ and any other ANZ Group Member and any third party referred to in clause 13.15(b) may disclose any information concerning the Customer to any law enforcement, regulatory agency or court where required by any law or regulation in any country, without informing the Customer.
- (d) Unless the Customer has disclosed that the Customer are acting in a trustee capacity or on behalf of another party, the Customer warrants that it is acting on its own behalf in entering into these Terms.
- (e) The Customer declares and undertakes to ANZ that the payment of monies and/or processing of any transaction by ANZ in accordance with the Customer's instructions will not breach any laws or regulations applicable to the transaction.

13.11 Liability

- (a) To the extent permitted by law and unless otherwise stated in the Trade Agreements:



- (i) All terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Trade Products and Services are excluded.
 - (ii) ANZ will only be liable for direct loss, cost or damage suffered or incurred by the Customer which arises from a material breach by ANZ of these Terms or any term of any other agreement applicable to the provision of the Trade Products or Services to the Customer or negligence by ANZ or any of its employees.
 - (iii) ANZ will not be liable in respect of the following categories of losses, costs and damages, any loss of profit, data, goodwill or business, any interruption to business, any failure to realise anticipated savings or any consequential, indirect, special, punitive or incidental losses, costs or damages.
- (b) Notwithstanding Clause 13.11(a)(ii), ANZ's liability will not be limited in respect of any personal injury or death arising from negligence by ANZ or its employees or any loss arising from fraud by ANZ or its employees; and
- (c) Subject to Clause 13.11(a)(ii), each transaction will be undertaken by the Customer solely in reliance on its own judgment and at its own risk and ANZ will not be liable in respect of losses, costs and damages arising from:
- (i) any technical failure or disruptions beyond the reasonable control of ANZ (including but not limited to, loss of data) attributable to a systems or equipment failure or due to reliance by ANZ on third party products, services or interdependencies including, but not limited to, electricity or telecommunications;
 - (ii) delays or errors caused by any financial institution other than ANZ when processing payments initiated by the Customer or providing services in connection with any Trade Product or Service used by the Customer;
 - (iii) the interruption of ANZ's business by acts of God, riots, civil commotions, insurrections, wars or any other causes beyond its control, or by strikes or lockouts;
 - (iv) the Customer acting on advice received from ANZ whether or not such advice was requested by the Customer;
 - (v) default by any other party or the insolvency of another party; or
 - (vi) ANZ acting in accordance with applicable laws, regulations or rules or with the terms of ANZ's agreements with other financial institutions regarding the business dealings with those institutions, notwithstanding that the Customer may have given instructions to the contrary.
- (d) ANZ is not responsible for any Goods, Documents or items in its possession beyond the exercise of reasonable care and shall not be held liable for the default or negligence of any selected correspondent or agent or for any losses incurred in transit.

13.12 Indemnity

To the extent:

- (a) permitted by law; and
- (b) the breach is not directly attributable to a breach by ANZ of these Terms or any other Trade Agreement or the negligence or fraud by ANZ or any of its employees,

ANZ is not liable for and the Customer indemnifies ANZ against any loss, liability, cost or expense (including legal expenses on a full indemnity basis and taxes) of whatever kind which ANZ may suffer or incur to any person as a result of:

- (c) the Customer's use of the Trade Product or Service;



- (d) any failure, delay or refusal by the Customer to comply with the Trade Agreements for any reason whatsoever;
- (e) any alteration of information by parties other than ANZ, that results in the amounts or terms of any transactions or outstandings between the Customer and ANZ being misstated or misrepresented;
- (f) ANZ acting or relying on any notice, request or instruction or document with respect to the Trade Products and Services which it reasonably believes to be genuine, correct and appropriately authorised; or
- (g) any enquiry, investigation, subpoena (or similar) or litigation with respect to the Customer or with respect to the Trade Product or Services or any other agreement applicable to the Trade Products or Services provided to the Customer by ANZ.

13.13 Indemnity Survival

- (a) Each indemnity under these Terms are the Customer's continuing obligations, separate and independent from the Customer's other obligations and survive the termination or completion of any Trade Product or Service.
- (b) It is not necessary for ANZ to incur expense or make payment before enforcing a right of indemnity under these Terms.

13.14 Dispute Resolution

- (a) If ANZ makes a mistake, or ANZ's service doesn't meet the Customer's expectations, ANZ wants to know. For the fastest possible resolution to any complaint the Customer should:
 - (i) talk to the Customer's ANZ Manager; or
 - (ii) if the Customer is unable to talk with the Customer's ANZ Manager, talk to the ANZ Manager's immediate supervisor.
- (b) If the complaint can't be resolved promptly, the Customer's ANZ Manager (or their supervisor), will take responsibility and work with the Customer to fix the matter quickly. ANZ's aim is to resolve the complaint within 14 calendar days. If this is not possible, ANZ will keep the Customer informed on the progress of the matter and how long ANZ expects it will take to resolve the complaint.

13.15 Disclosure of Customer Information

- (a) **The Customer agrees that ANZ may exchange with any of its or any other ANZ Group Member's branches or offices in any country any of the Customer Information for the purposes of:**
 - (i) **providing, managing or administering the Trade Product or Service;**
 - (ii) **performing administrative and operational tasks (including risk management, debt recovery, exposure aggregation, systems development and testing, credit scoring, staff training and market or customer satisfaction research);**
 - (iii) **promotion of other products or services; and**
 - (iv) **complying with regulatory requirements and prudential standards.**
- (b) **The Customer authorises ANZ and any of its and any other ANZ Group Member's branches or offices in any country to disclose any Customer Information collected by it in the course of the Customer's relationship with ANZ to:**



- (i) any contractor or service provider ANZ or any other ANZ Group Member engages to provide services connected with providing, managing or administering the Trade Product or Service (for example mailing houses or debt collection agencies);
 - (ii) participants in payments systems (including Correspondents, other financial institutions, merchants and payment organisations such as Hong Kong Interbank Clearing Limited, Australian Payments Clearing Association, Singapore Automated Clearing House and the Society for Worldwide Interbank Financial Telecommunication);
 - (iii) to its alliance partners (and any of its outsourced service providers) to promote their products or services;
 - (iv) credit reporting agencies;
 - (v) insurers and reinsurers;
 - (vi) any provider of a guarantee, security or other credit support for the Customer's obligations to ANZ;
 - (vii) the Customer's referee(s) (if the Customer has provided referees to ANZ); and
 - (viii) the Customer's representative (for example the Customer's lawyer, mortgage broker, attorney or executor).
- (c) Any contractor, agent or service provider engaged by ANZ or any other ANZ Group Member is contractually required to only use the Customer Information for ANZ purposes and to keep the Customer Information confidential.
- (d) Where the Customer does not want ANZ, other ANZ Group Members or their alliance partners in any country to tell the Customer about their products or services the Customer may withdraw its consent by calling the Customer's ANZ Manager.
- (e) ANZ and any other ANZ Group Member and their respective branches or offices may also provide the Customer Information in any country to:
- (i) regulatory bodies, government agencies, law enforcement bodies and courts; and
 - (ii) other parties ANZ or any other ANZ Group Member is authorised or required by law to disclose information to.

13.16 Personal Information

- (a) When the Customer deals with ANZ, ANZ is likely to collect and use some Personal Information about the Customer. ANZ explains below when and how ANZ may collect and use the Customer's Personal Information. If the Customer does not provide some or all of the Personal Information requested, ANZ may be unable to provide the Customer with a Trade Product or Service.
- (b) ANZ may collect the Customer's Personal Information:
- (i) to provide the Customer with information about a product or service;
 - (ii) to consider the Customer's request for a product or service;
 - (iii) to provide the Customer with a product or service;



- (iv) to tell the Customer about other products or services;
 - (v) to assist in arrangements with other organisations (such as loyalty partners) in relation to the promotion and provision of a product or service;
 - (vi) to perform administrative and operational tasks (including risk management, debt collection, systems development and testing, credit scoring, staff training and market or customer satisfaction research);
 - (vii) to prevent or investigate any fraud or crime (or a suspected fraud or crime); and
 - (viii) as required by relevant laws, regulations, codes and external payment systems.
- (c) Subject to applicable Privacy Law, the Customer may access its Personal Information at any time by calling the Customer's ANZ Manager or asking to do so at any ANZ Office. ANZ may charge the Customer a reasonable fee for access.
- (d) If the Customer can show that information about the Customer is not accurate, complete and up to date, ANZ must take reasonable steps to ensure it is accurate, complete and up to date.
- (e) If the Customer is an individual, ANZ will not collect sensitive information about the Customer, such as health information, unless it is necessary to provide the Customer with a Trade Product or Service and ANZ has the Customer's consent or, unless ANZ is legally required to collect, use or disclose that information.
- (f) If the Customer gives ANZ Personal Information about someone else or directs someone else to give their Personal Information to ANZ, the Customer will show that person a copy of this clause so that they may understand the manner in which their Personal Information may be used or disclosed by ANZ.
- (g) Where the Customer does not want ANZ, loyalty partners or other organisations to tell the Customer about their products or services the Customer may notify ANZ of this by calling the Customer's ANZ Manager.

13.17 Limited Recourse

- (a) Notwithstanding anything contained or implied in these Terms or any Trade Agreement (including an agreement by ANZ to provide the Trade Product or Service to the Customer on a "without recourse" basis) ANZ has no liability to pay the Customer or if already paid, ANZ will have full recourse to the Customer for repayment of the amount paid by ANZ, and payment of interest and any loss, cost or expense ANZ suffers or incurs, and the Customer must pay that amount to ANZ on demand, if:
- (1) there is a fraud, illegality or unauthorised act committed by any person (other than ANZ) in connection with the Goods and/or Services or any document, agreement, invoice, draft or instrument in connection with the Trade Product or Service; or
 - (2) there is non payment to ANZ or ANZ is required to reimburse any person for moneys received by ANZ, in whole or in part, from any person under any document, agreement, invoice, draft or instrument in connection with the Trade Product or Service because of:
 - (A) a commercial dispute between the Customer and its counterparty under any document, agreement, invoice, draft or instrument in connection with the Trade Product or Service upon which that counterparty relies or purports to rely to fully or partially deny payment or claim reimbursement; or
 - (B) of any injunction, stop payment order or other court order (whether or not subsequently discharged).



- (b) The Customer will notify ANZ in writing of any dispute between the Customer and the Customer's buyer, or if the Customer have reason or ought to have reason to consider that any act described in Clause 13.17(a) is, has been or is likely to be committed.

13.18 ANZ's liability and discharge

If ANZ at any time accepts and acts upon an application of the Customer and provides a Trade Product or Service under these Terms and incurs any liability (including any actual or contingent liability, joint or several liability, a liability in any currency, a liability arising now or in the future anywhere and any amendment or variation thereof) to any other entity or individual (**ANZ's Liability**) on the Customer's behalf:

- (a) the Customer will pay ANZ at such branch in any country as ANZ shall specify all amounts which ANZ may be liable to pay under ANZ's Liability; and
- (b) ANZ may discharge any liability of ANZ to the Customer at any branch of ANZ in any country, in any currency. Any such discharge shall release ANZ from such liability to the Customer.

13.19 Drawing against uncollected funds

If ANZ permits the Customer to draw against funds to be collected or transferred from any account(s), the Customer shall on demand reimburse ANZ in full the amount so drawn if ANZ does not receive the funds in full at the time when ANZ ought to have received the same or if, after ANZ has accepted the transfer, ANZ is prevented from collecting or freely dealing with the funds in accordance with usual banking practice.

13.20 Lien

Subject to any applicable law or regulation, ANZ shall have a lien on all property of the Customer coming into the possession or control of ANZ, for custody or any other reason and whether or not in the ordinary course of banking business, with power for ANZ to sell such property to satisfy any obligations owed by the Customer to ANZ.

13.21 Financial difficulty

The Customer should inform ANZ as soon as possible if the Customer is in financial difficulty. ANZ will, with the Customer's agreement, try and help the Customer to overcome its financial difficulties concerning any Product or Service, including for example, by developing a repayment plan.

13.22 Severability

If, in any jurisdiction, a provision of these Terms or any terms in any documents or agreements in connection with any Trade Products or Services is illegal or unenforceable, the relevant terms or provisions shall be interpreted, for the purpose of that jurisdiction only, as if it had never included the provision so far as the provision is illegal or unenforceable. The remaining provisions will not be affected and these Terms will be interpreted so as to most nearly give effect to the intentions of the parties as they were originally entered into.

13.23 Further Assurance

The Customer must do all such things and execute all such agreements, instruments or documents as may be necessary or desirable to give full effect to the provisions of these Terms and the transactions contemplated by them under the laws of the Customer's Governing Jurisdiction.

13.24 Governing law

Unless specified otherwise, these Terms shall be governed by and construed in accordance with the laws of the Governing Jurisdiction and the parties submit to the jurisdiction of the Courts of that Governing Jurisdiction and of any Courts competent to hear appeals from those Courts.



14. Trade Products or Services - Country Specific Addendums

14.1 Country specific terms

Terms which are specifically required for the use by the Customer of the Trade Product or Service or the provision of the Trade Product or Service by ANZ to the Customer in a particular country are contained in Addendum for that country.

14.2 One document

ANZ and the Customer agree that:

- (a) These Terms and the Addendum will be read in conjunction with the other and construed as one document.
- (b) The terms used in the Addendum, if defined in these Terms, have the meaning given to them in these Terms unless the context otherwise requires.
- (c) If these Terms and the terms in the Addendum are inconsistent then:
 - (i) where these Terms state that they prevail to the extent of the inconsistency, they shall so prevail over the terms in the Addendum; and
 - (ii) otherwise, the terms in the Addendum prevail to the extent of the inconsistency.

