



# IMPORTANT INFORMATION ABOUT TERMS AND CONDITIONS FOR TRADING IN FOREIGN EXCHANGE AND DERIVATIVE TRANSACTIONS (VERSION: NOVEMBER 2023) AND ANZ MARKETS CUSTOMER FORM

FTA Disclosure

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## 1. About this document

The aim of this document is to make you aware of some important terms contained in the Terms and Conditions for Trading in Foreign Exchange and Derivative Transactions (Version: November 2023) (“FXTCs”) which may govern some of your transactions with Australia and New Zealand Banking Group Limited ABN 11 005 357 522 (“ANZ”) and the ANZ Markets Customer Form.

This document does not cover all of the terms and conditions of the FXTCs or the ANZ Markets Customer Form. This document is not a substitute for, and does not form part of, any of the terms of your contract with ANZ. You should review the disclosure set out below, along with the FXTCs and the Markets Customer Form, before you sign the Markets Customer Form or enter into a transaction with ANZ. You should seek independent advice and guidance if you are unsure about any details.

Unless otherwise specified, defined terms used in this document have the meanings given to them in the FXTCs or the ANZ Markets Customer Form.

## 2. Obligations to make payment or delivery are subject to conditions

### Clauses 4.4 and 4.5 of FXTCs

ANZ’s obligation to make payment under a Transaction on a date is conditional on ANZ receiving payment in cleared and immediately available funds of all amounts payable by you to ANZ on or before that date.

Further, unless the other party to the Transaction has already satisfied in full all its payment and other obligations, your and ANZ’s obligation to make a payment or perform an obligation under a Transaction is subject to a pre-condition that no Event of Default has occurred and is continuing, or with time or notice would occur, in respect of the other party, and no early termination date has occurred or been designated in respect of the related Transaction.

### 3. Payments to be made without tax deduction or withholding (except for FATCA withholding tax) and by cut-off time

#### Clauses 4.3 and 4.7 of FXTCs

All payments will be made net of any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (“**FATCA withholding tax**”). The payer need not gross-up for FATCA withholding tax.

Otherwise, payments must be made by a party and received by the other party to the Transaction in cleared and immediately available funds, free from set-off or counterclaim and without deduction or withholding of any taxes, duties or charges.

Payment is required to be made by the relevant cut-off time as advised by ANZ from time to time on the due date.

### 4. What happens if an Event of Default or a Termination Event occurs?

#### Clauses 6, 7 and 8 of FXTCs

If an Event of Default is continuing with respect to you, ANZ may terminate all outstanding Transactions. You also have termination rights if an Event of Default is continuing with respect to ANZ.

An Event of Default will occur with respect to you if you or your Credit Support Provider:

- a) fail to pay or deliver any amount on the due date and such failure is not rectified within 1 Business Day after notice is given;
- b) fail to comply with or perform any other obligation and such failure is not remedied within 10 Business Days after notice is given;
- c) repudiate, disclaim or reject in whole or in part or challenge the validity of the agreement between you and ANZ, a Confirmation or any Transaction;
- d) make a representation that is untrue or misleading;
- e) default under any agreement in respect of money borrowed or raised or under certain other finance documents or financial markets transaction in an aggregate amount of more than the lesser of USD1,000,000 or 3% of your shareholder’s equity; or
- f) are dissolved, become insolvent or certain other events occur.

If an Event of Default has occurred and is continuing, the non-defaulting party (i.e. ANZ or the other party to the Transaction) may terminate all of the outstanding Transactions.



A Termination Event will occur (following the expiry of any applicable waiting period) with respect to you (the “Affected Party”) if:

- a) it would be unlawful for you to make or receive any payment or delivery or to comply with any other material provision;
- b) a force majeure event or act of state prevents you from making or receiving payment or delivery in respect of a Transaction or compliance with any other material provision or it becomes impossible or impracticable to do so;
- c) any facility or any other financial accommodation which ANZ provides to you, and which relates to any outstanding Transaction, is satisfied in full or otherwise terminated in full; or
- d) any Additional Termination Event specified in any Confirmation (and you are specified as an Affected Party for such event).

If a Termination Event occurs, ANZ or you may terminate some or all of the Affected Transactions (depending on the Termination Event).

Upon termination, an Early Termination Amount may be payable by you to ANZ or by ANZ to you. The Early Termination Amount is determined based on the losses incurred or gains realised if a replacement transaction economically equivalent to each terminated transaction is entered into, adjusted for Unpaid Amounts owing between the parties. The Early Termination Amount can be significant and you should seek independent advice and guidance before exercising any termination right you may have.

## 5. Set-off of amounts payable between the parties

### Clause 8.5 of FXTCs

The Non-defaulting Party (being the party which is not the party with respect to which an Event of Default occurs) or the Non-affected Party (being the party who is not the Affected Party) can choose to set-off an Early Termination Amount payable to one party (“ETA Payee”) by the other party (“ETA Payer”) against any other amounts payable by the ETA Payee to the ETA Payer.

## 6. You will indemnify ANZ in certain circumstances

### Clause 10 of FXTCs and section headed “Electronic Indemnity and Acknowledgement” in the Markets Customer Form

You will indemnify and make good all Loss incurred by ANZ and its agents and representatives in certain circumstances including in connection with (a) ANZ accepting, acting or declining to act on your instruction, request or Electronic Communication, (b) ANZ exercising, enforcing or preserving its rights and remedies, (c) any claim made against ANZ in connection with an obligation to a third party assumed by ANZ at your request or direction, and (d) any breach of any anti-money laundering, counter-terrorism financing or economic or trade



sanctions laws (other than by ANZ) arising in connection with the agreement between you and ANZ. You should read the full terms of the indemnity set out in clause 10 before entering into a Transaction.

## 7. ANZ will be the Calculation Agent

### Clause 18 of FXTCs

ANZ will be the Calculation Agent in respect of a Transaction under the FXTCs. The Calculation Agent is required to

- a) calculate any rates, amounts, periods and dates specified in the Confirmation, and any changes to them,
- b) give notice of those calculations; and
- c) give details of the method of those calculations.

The Calculation Agent is required to act in good faith and in a commercially reasonable manner.

## 8. You should check the Confirmation

### Clauses 3.4 and 3.5 of FXTCs

You are required to verify the details of a Transaction set out in the Confirmation within 3 Business Days of receiving it and to notify ANZ if you believe the details are not correct. Otherwise, unless ANZ makes a mistake, the Confirmation is automatically deemed to have correctly set out the details of that Transaction.

## 9. You should check Portfolio Data

### Clause 19 of FXTCs

ANZ may send Portfolio Data to you. If you do not notify ANZ of any discrepancies within five Business Days, you will be considered to have accepted and ANZ will deem, such Portfolio Data as accurate.

## 10. FXTCs may change with or without notice

### Clause 12 of FXTCs

ANZ may amend, modify or supplement the FXTCs by giving 30 days' notice. However, ANZ is not required to notify you of any amendment, modification or supplement to the FXTCs is required in certain circumstances including if the change is to (i) comply with law or any decision or recommendation or regulatory guidance of any court, regulator or other body, or (ii) simplify the terms of the agreement, correct a mistake or the change is of an administrative nature and the change is not detrimental to you. If you notify ANZ at least 5 Business Days before the amendment takes effect that you do not agree, the agreement between you and ANZ and all outstanding Transactions will not be affected, but you may not enter into any new Transactions from the date of your notice, and the agreement will automatically terminate when there are no outstanding Transactions under it.



## 11. Interest and fees may be charged by ANZ

Clauses 14.2 and 14.3 of FXTCs

Either party to the Transaction may be required to pay the other interest at 1% above the rate ANZ determines as ANZ's cost of funding on any amount not paid when due. ANZ may also charge reasonable fees, charges and expenses in connection with a Transaction as notified from time to time.

## 12. Restriction on assignment

Clauses 14.1 of FXTCs

Neither party to the Transaction may assign, mortgage, charge, declare a trust over or otherwise deal with any of its rights under the FXTCs without the other party's consent.

## 13. Collecting and using your information and providing your information to others

Clauses 11 and 16 of FXTCs and Appendix A to the Markets Customer Form

ANZ may collect and use Personal Information for the purposes described in the FXTCs and the Markets Customer Form, including in order to provide a product or service. In some circumstances, ANZ may disclose Personal Information or other information relating to you, someone else, the agreement between you and ANZ or any associated Transactions, products or services to other organisations, including ANZ's external service providers and recipients outside Australia. In some circumstances, ANZ may also disclose any information concerning you to any law enforcement or regulatory agency, and to any correspondent ANZ uses to make any payment. More information is available at [www.anz.com/privacy](http://www.anz.com/privacy).

## 14. You will be responsible for Electronic Communications (including actions of Authorised Users) and ANZ will not be liable in certain circumstances

Clause 9 of FXTCs and section headed "Electronic Indemnity and Acknowledgement" in the Markets Customer Form

Providing any communication by electronic means may be subject to fraud and security risk, including the risk that they may be incomplete or inaccurate or may be fraudulently or mistakenly given or may not be received in whole or in part by ANZ.



You must ensure that any instruction is correct, complete and authorised. Electronic Communication will be deemed effective as your notice, request or instruction, and if provided is irrevocable. ANZ may rely on the Electronic Communication without making any further enquiries unless ANZ is on notice that is unauthorised, not authentic or in breach of any relevant security measure in which case ANZ may refuse to act on it, or ANZ may (but is not obliged to) enquire about or attempt to verify the authenticity of any such communication. ANZ may act on any instruction even if such instruction is contrary or inconsistent with any other existing instruction received by it. ANZ may also refuse to act on any Electronic Communication in certain other circumstances, including if it would breach any agreement with ANZ or applicable law or ANZ's internal policy, or an Event of Default has occurred.

ANZ will not be liable to you for any Loss in connection with any Electronic Communication unless an exception applies. Neither party is liable to the other party for any Indirect Loss.

