



# Specific Terms

(Standby Letter of Credit or Guarantee Facility)

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September 2021

(Australia only)

## Specific Terms (Standby letter of credit or guarantee facility)

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### 1. Interpretation

#### 1.1 Interpretation and definitions

- (a) In these Specific Terms, unless the context otherwise requires, terms will be interpreted in accordance with the interpretation provisions of the relevant Trade Agreement.
- (b) Terms not otherwise defined in a relevant Trade Agreement or to be construed in accordance with clause 1.2(e) have the following meanings:

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**Affiliate** means, in relation to any person, a subsidiary of that person or any holding company of that person or any other subsidiary of any such holding company and any joint venture, partnership or similar arrangement in which it holds a direct or indirect interest.

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

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**ANZ** means the ANZ Group Member (and all of its branches and offices) that provides or will provide the Facility to the Borrower and/or an Instrument at the request of the Borrower.

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

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

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or request, or give any Communications and in relation to whom ANZ has not received notice that the appointment has been revoked and includes any persons who are authorised by the Borrower to use the Electronic Channel.

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

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

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

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

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

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

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**Electronic Communication** means a Communication sent by facsimile, E-mail or any other electronic way of sending, receiving and retrieving data now or in the future, whether provided by ANZ or any third party. It also means a Communication by ANZ made by publishing it on ANZ's website.

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

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**Exchange Rate** means the rate for converting one currency into another currency determined by ANZ in accordance with its standard procedures for currency conversion or the rate pre-arranged between ANZ and the Borrower.

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**Facility** means a facility pursuant to which, at the Borrower's request, ANZ may issue Instruments to Beneficiaries.

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

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

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**ICC Rules** means any ICC rule published by the ICC relating to an Instrument, including UCP, ISP and URDG.

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**Indirect Loss** means any indirect or consequential loss including loss of profits or anticipated savings, loss of business opportunity, loss of goodwill or reputation, business interruption, unauthorised access to or loss of data, economic loss or any special, indirect or consequential damage and includes any costs arising in connection with any of them. The parties agree that Indirect Loss does not include any Loss that arises in the usual course of things from the relevant act or omission.

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

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

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**Law** means any treaty, law, statute, rule, regulation, decision, order, request or directive, code or standard, or guideline, notice, or statement of policy or practice of any Authority, having the force of law or, if not having the force of law, in respect of which compliance in the relevant jurisdiction is customary..

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**Loss** means any damage, loss, liabilities, costs and expenses (including legal costs on a full indemnity basis and taxes), delay or diminution of value.

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

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**Trade Agreement** means any agreement, deed, document, letter, schedule, booklet, brochure, flyer, manual, instruction, notice or application containing terms relating to any Facility and/or Instrument, including, without limitation, any facility agreement, finance document, facility document, letter of offer, standard terms or common terms (and any applicable

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trade specific terms) entered into by ANZ and the Borrower and these Specific Terms.

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

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

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## 1.2 Trade Agreements, ICC Rules and inconsistency

- (a) An Instrument applied for by the Borrower will be provided by ANZ in accordance with and subject to these Specific Terms and any other relevant Trade Agreement.
- (b) If these Specific Terms are inconsistent with any Trade Agreement, then where the relevant Trade Agreement states expressly that it prevails to the extent of the inconsistency, it will so prevail over these Specific Terms and otherwise, these Specific Terms prevail to the extent of the inconsistency.
- (c) ICC Rules are referenced in these Specific Terms, and may also be referenced in other Trade Agreements, but they do not form part of these Specific Terms or any Trade Agreement.
- (d) Unless ANZ notifies the Borrower otherwise, any future revision of any ICC Rules will automatically apply when it is stated by the ICC to come into effect.
- (e) The meaning of words used in these Specific Terms or a Trade Agreement that are given a particular meaning in the ICC Rules (but are not otherwise specifically defined in these Specific Terms or a Trade Agreement) are to be construed in a manner that is consistent with the meaning given in the applicable ICC Rules, unless the context otherwise requires.
- (f) When doing something in connection with a Trade Agreement or an Instrument that is regulated or otherwise affected by ICC Rules, the Borrower agrees to do that thing in a manner that accords with the relevant ICC Rules.
- (g) If a party is required by these Specific Terms or a Trade Agreement to do something in accordance with ICC Rules, and any applicable ICC Rule is inconsistent or conflicts with these Specific Terms or that Trade Agreement, then the party's obligations under these Specific Terms or that Trade Agreement override its obligation to act in accordance with the applicable ICC Rule to the extent of the inconsistency or conflict. This clause 1.2(g) operates despite anything to the

contrary in these Specific Terms or a Trade Agreement.

- (h) If the Borrower requires a copy of the ICC Rules to which certain provisions of these Specific Terms refer, the Borrower should request a copy from its relevant ANZ contact point.

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## **2. Purpose**

A Facility and any Instrument requested by the Borrower must be used wholly or predominantly for business purposes.

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## **3. Uncommitted**

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

- (a) the Borrower to use the Facility;
- (b) ANZ to accept and act upon the Borrower's request to use the Facility and/or issue an Instrument or give the Borrower any reasons for refusing to do so; or
- (c) ANZ to continue to make the Facility available to the Borrower,

and ANZ or the Borrower may, at any time, terminate, cancel or withdraw the provision of the Facility.

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## **4. Applications and currency**

### **4.1 Applications and forms**

- (a) The Borrower will request ANZ to issue an Instrument by delivering to ANZ an application:
  - (i) in a format specified or approved by ANZ from time to time;
  - (ii) completed to the satisfaction of ANZ; and
  - (iii) signed or made by one or more Authorised Representatives.
- (b) The Borrower will also execute and deliver to ANZ any other documents ANZ may require in relation to an Instrument.
- (c) ANZ will promptly notify the Borrower if it will not accept and act upon an application or request of the Borrower to issue an Instrument.

### **4.2 Exchange rate movements**

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

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## **5. Standby Letters of Credit and Guarantees**

### **5.1 Issuance**

- (a) Unless ANZ agrees otherwise in writing:
  - (i) each standby letter of credit will be issued subject to ISP or UCP; and
  - (ii) each demand guarantee, bond, work cover bond or undertaking to pay any person (other than the Borrower) issued by ANZ will be subject to the URDG.
- (b) ANZ may issue an Instrument itself or arrange for the Instrument to be issued by its Correspondent Bank and may issue a counter-indemnity, on terms acceptable to ANZ, in favour of that Correspondent Bank in return for it doing so.
- (c) Each Instrument will be irrevocable and issued in form and substance acceptable to ANZ and, if applicable, its Correspondent Bank.
- (d) ANZ and its Correspondent Banks are not obliged to check or ensure the accuracy of any information supplied to it for inclusion in any Instrument.
- (e) The Borrower is solely responsible for ensuring that the terms or requirements in an Instrument are correct and meet its requirements. ANZ and its Correspondent Banks are not responsible and have no duty whatsoever to advise the Borrower on such issues.

- (f) ANZ may issue, at the Borrower's request, an Instrument to facilitate the business transactions of another party with the beneficiary and with that other party named as the applicant or contracting party in that Instrument. If ANZ does so, the Borrower's reimbursement obligations to ANZ under these Specific Terms will still apply.

#### 5.2 Borrower copy

- (a) ANZ will send a copy of each Instrument to the Borrower as soon as is practical after it is issued.
- (b) The Borrower must notify ANZ of any objection to any terms of the Instrument within 2 Business Days after receiving its copy of the Instrument. If no objections are raised within that period, the Borrower is deemed to have waived any right to raise objections to the form of the Instrument, make any claim or exercise any defence related to the contents, validity or accuracy, of the Instrument, and ANZ will be free from all claims by the Borrower in respect of that Instrument.

#### 5.3 Separate transaction

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

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

#### 5.4 Examination of Demands

- (a) Unless otherwise specified in the Instrument, all demands and documents must be presented at the counters of the ANZ Office or Correspondent Bank issuing the Instrument.

- (b) ANZ and its Correspondent Banks (as applicable) will examine any demand and required documents on their face alone, without further investigation or enquiry, to determine whether or not there has been a complying presentation under the Instrument.

- (c) ANZ and its Correspondent Bank are not responsible for the genuineness, correctness or validity of any demands, notices, instructions or other documents received by it.

#### 5.5 Compliant demands

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

#### 5.6 Reimbursement obligation

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

#### 5.7 Non-compliant demand

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

## 5.8 Payment without demand

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

## 5.9 Assignment

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

## 5.10 Branches

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

## 5.11 Expiry of Instrument

If for any reason (including but not limited to for legal or regulatory reasons) ANZ's obligations under an Instrument continue beyond the stated expiry date or expiry event, or the relevant Instrument is rendered void, voidable and/or unenforceable in any manner under any applicable Laws, the Borrower agrees:

(a) for so long as the relevant beneficiary specified in the Instrument (the "Relevant Beneficiary") has not returned the relevant original Instrument to ANZ and/or the Correspondent Bank on or after the expiry date specified in the relevant Instrument (the "Relevant Expiry Date"), to pay ANZ such fees and charges agreed in or in accordance with the relevant Trade Agreement (as if such relevant expiry date had not occurred). The Borrower further agrees to provide cash cover to ANZ promptly upon provision of reasonable notice, if the Relevant Beneficiary has not, on or after the date falling 60 days after the Relevant Expiry Date, returned the original Instrument to ANZ and/or the Correspondent Bank. The cash cover shall be an amount equal to the maximum amount specified in the relevant Instrument (the "Relevant Maximum Amount") or, where part payment of such Relevant Maximum Amount has been made under the relevant Instrument on or prior to the Relevant Expiry Date specified on the Instrument, the remaining balance outstanding under such Instrument, or such other amount as ANZ may (in its sole discretion) reasonably require;

(b) if there is any dispute, controversy, or claim ("Dispute") arising in connection with any Instrument or the underlying contract or arrangement (in connection with which the Instrument may have been provided), and ANZ and/or its Correspondent Banks are caused (for any reason) to participate in any such Dispute, the Borrower agrees to indemnify ANZ, and keep ANZ indemnified against, and will pay on demand the amount of, any reasonable costs or losses which any of ANZ and/or its Correspondent Bank may suffer or incur, including (without limitation), any reasonable costs and expenses incurred by any of its professional advisors (legal or otherwise) in connection with such Dispute other than to the extent such costs or losses are due to the negligence, fraud or wilful default of ANZ, its employees, officers, contractors, agents, or any Receiver appointed by ANZ. ANZ and its Correspondent Banks reserve the right to determine whether or not to participate in any Dispute. The Borrower agrees to waive its rights (if any) to claim any damages against ANZ and/or its Correspondent Bank;

(c) to waive any right (if any) to protest or object to any payment made or to be made by ANZ and its Correspondent Bank in connection with any Instrument (including any payments made after the Relevant Expiry Date specified on the relevant Instrument, or any Instrument which is subsequently rendered void, voidable and/or unenforceable in any manner under any applicable Laws), and agrees to endorse any action performed and taken by ANZ and its Correspondent Bank under any Instrument. The Borrower further waives any rights, arguments or any other kind of benefit that it may have under any applicable Law against ANZ and its Correspondent Bank, including (without limitation) any defence it may have on the validity and enforceability of any underlying contract or arrangement in connection with any Instrument; and

(d) to indemnify ANZ against, and will pay ANZ on demand the amount of, all and any demands, claims, actions, proceedings, liabilities, payments, interest, reasonable costs, charges and expenses (including legal expenses on a full indemnity basis and any taxes) which ANZ and/or its Correspondent Banks may directly suffer, incur or make in connection with any Instrument, (other than to the extent they are due to the negligence, fraud or wilful default of ANZ, its employees, officers, contractors, agents or any receiver appointed by ANZ) including, (i) in relation to any payment made or to be made

by ANZ and/or its Correspondent Bank under any Instrument (including, any payments made after the Relevant Expiry Date specified on the relevant Instrument, or any Instrument which is subsequently rendered void, voidable and/or unenforceable in any manner under any applicable Laws) and/or (ii) any failure, inability or refusal on the part of ANZ and/or its Correspondent Banks to honour any Instrument because of a court order or other similar obligation.

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## **6. General**

### **6.1 Currencies**

- (a) If the currency requested by the Borrower for an Instrument is not available to ANZ after exercising reasonable endeavours to obtain it, ANZ:
  - (i) is not obliged to, and will not, provide the Instrument in that currency. If possible and practical, ANZ and the Borrower may agree an alternative currency in which the Instrument will be provided; and
  - (ii) will not be responsible for any loss or liability which the Borrower may suffer or incur by reason of or in connection with non-availability to ANZ of the relevant currency for the purpose of providing any Instrument to the Borrower.
- (b) Unless otherwise agreed in writing with ANZ, all payments to ANZ under any Trade Agreement must be made in the same currency as the drawing or obligation to which it relates ("Payment Currency").
- (c) If ANZ reasonably determines that the Payment Currency is unavailable to the Borrower, ANZ will notify the Borrower in writing of an alternative currency and amount which the Borrower must pay ANZ to satisfy its payment obligation. The Borrower will pay that currency and amount to ANZ within 2 Business Days of the date of the notice.
- (d) If the Borrower pays ANZ, or monies to discharge the liability of the Borrower to ANZ are received or available to be applied by ANZ against that liability, in a different currency from that of the Payment Currency, ANZ will convert the amount paid, received or applied into the Payment Currency using the Exchange Rate applicable on the date of receipt or application. The Borrower must pay ANZ on demand for any shortfall arising from the conversion. The Borrower

acknowledges that it may be necessary for ANZ to purchase one currency with or through another currency.

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

### **6.2 Payments generally**

- (a) The Borrower must make all payments to ANZ under each Trade Agreement in immediately available, freely transferable funds to the accounts with the banks and in the currency as ANZ may notify to it, without any set-off, counterclaim, deduction or withholding of any kind including, to the extent permitted by Law, tax.
- (b) If any deduction or withholding (including in respect of tax) is made to a payment to ANZ, whether from the Borrower or another person, the Borrower:
  - (i) will pay ANZ, when the payment is due if the payment is from the Borrower and on demand if the payment is from another person, whatever additional amount is needed so that the amount that ANZ actually receives, after taking into account the deduction or withholding, is the amount ANZ would have been entitled to receive if no deduction or withholding had been made; and
  - (ii) must provide ANZ with any evidence ANZ may require (including certified copies of receipts) that payment in full of the amount of the deduction or withholding has been made to the relevant Authority.

### **6.3 Late payment**

- (a) On any amount the Borrower does not pay ANZ on the due date, the Borrower must pay ANZ an overdue fee calculated:
  - (i) at a rate of 2% p.a. applied to the period from the due date to the date it is paid to ANZ, unless ANZ agrees in writing otherwise; and
  - (ii) on the basis of actual days elapsed and a year of 360 or 365 days (depending on the relevant currency), as reasonably determined by ANZ.

- (b) The overdue fee:
  - (i) is payable on demand or if ANZ does not make any demand, on the first Business Day of each month and on the date the overdue amount is paid;
  - (ii) accrues daily for the period it remains unpaid; and
  - (iii) if unpaid, may be compounded by ANZ monthly unless otherwise agreed or, if an applicable Law provides otherwise, at the minimum period allowed by that Law.

#### 6.4 Fees, commissions, charges and expenses

- (a) The Borrower will pay ANZ all fees, commissions and charges in respect of the Facility and each Instrument as stated, from time to time, in any relevant Trade Agreement.
- (b) The Borrower will pay to ANZ, on demand, all commissions, fees, charges and expenses which are incurred or suffered by ANZ or levied on ANZ by any third party (including any Correspondent Bank) in connection with any Instrument.
- (c) All fees, commissions and charges paid to ANZ are non-refundable unless agreed otherwise in writing by ANZ.
- (d) The Borrower will pay, on demand, all commissions, fees, charges and reasonable costs and expenses which are incurred or suffered by ANZ's Correspondent Bank in connection with any Instrument.

#### 6.5 Application of moneys received

ANZ may apply any amount received by it on the Borrower's behalf or for the Borrower's account in respect of any Facility and/or Instrument from any person against any amount the Borrower actually or contingently owes it in any manner it reasonably chooses.

#### 6.6 Authority to debit and set-off

- (a) The Borrower authorises ANZ to debit from its accounts any amount due and payable to ANZ in respect of a Facility or an Instrument in accordance with this Clause 6.6 and apply the amount so debited in payment of the amount due and payable.
- (b) If ANZ reasonably requires the Borrower to provide ANZ with authority to debit an account it holds with another financial institution for any

amount due and payable to ANZ, the Borrower agrees to execute any document necessary to authorise ANZ to debit that account.

- (c) ANZ may debit any amount payable in respect of a Facility or Instrument, including any interest, fees or indemnified amounts, which are not paid when due from any of the Borrower's accounts held with ANZ or as required by Law.
- (d) ANZ does not have to debit any Borrower account and may require the Borrower to pay the relevant amount to it.
- (e) If ANZ does debit any Borrower account it will notify the Borrower that it has done so (but the efficacy of the debit is not affected by any failure or delay by ANZ in doing so).
- (f) Without limiting the above, ANZ may, at any time, where permitted by Law and without notice to the Borrower, set-off any debts owed by the Borrower to ANZ under or in connection with a Trade Agreement or an Instrument against any debts owed by ANZ to the Borrower. This right applies irrespective of the currency in which such debts are owed and whether or not ANZ's or the Borrower's debts are present or future, matured or unmatured, actual or contingent and whether such liability is several or joint with another or as principal or surety. Where the exercise of a right of set-off involves a currency conversion, ANZ shall apply a currency conversion rate that it considers reasonable. If any debt is unascertained, ANZ may, in good faith, value that debt. Nothing in this clause will be effective to create a charge or other security interest. This clause will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

#### 6.7 Cash cover

- (a) Unless otherwise agreed under a Trade Agreement, if ANZ requests (acting reasonably), the Borrower must pay ANZ a sum up to or equal to ANZ's contingent or unmatured liability (as determined by ANZ) under or in relation to an Instrument.
- (b) ANZ is not obliged to refund any cash cover unless the Borrower's contingent or unmatured liability(ies) cease to exist before they mature or do not mature in full.



- (c) Unless ANZ agrees in writing otherwise, no interest will accrue on any such sum.

**6.8 Payment not final**

- (a) The parties agree that where ANZ receives a payment from any person in connection with a Facility and/or Instrument (the "Relevant Payment") which ANZ is subsequently required under law relating to insolvency to repay to that person or its estate, whether in whole or in part:

- (i) all of ANZ's rights in respect of the Relevant Payment will be reinstated as if the Relevant Payment had never been made or accepted;
- (ii) the underlying liability that would have been discharged by the Relevant Payment will not have been extinguished; and
- (iii) any release, discharge or settlement provided by ANZ in consideration of the Relevant Payment will be of no force or effect.

- (b) The Borrower's obligations under this Clause 6.8 are continuing obligations, independent of the any other obligations under these Specific Terms or Trade Agreement and continue despite the termination of any Trade Agreement or discharge of any Instrument.

**6.9 Discharge of ANZ's liability**

- (a) The Borrower agrees that where ANZ incurs a liability to a third party at the request, or otherwise on behalf, of the Borrower, ANZ may discharge all or part of that liability at any branch or office of ANZ in any country and in any currency at ANZ's discretion (acting reasonably).

- (b) If ANZ intends to discharge a liability otherwise than in accordance with the terms of a Trade Agreement, ANZ will notify the Borrower prior to discharging the liability unless it is prevented from doing so by Law or any relevant regulation.

- (c) Where ANZ discharges a liability, the Borrower will pay ANZ the relevant amount at the branch or office in the country and in the currency which ANZ directs.

**6.10 Variations**

- (a) Unless agreed otherwise with the Borrower, ANZ may change the terms of any Trade Agreement as provided in this clause 6.10 by notifying the Borrower of the relevant change in writing, or by

Electronic Communication, or making the change available on the Electronic Channel as specified in clause 6.17(d), or (except for clauses 6.10(b)(ii) and 6.10(b)(iii) below) by publication in the local or national media.

- (b) ANZ may, in any Trade Agreement, make changes from time to time to:

- (i) any applicable interest rate or margin;
- (ii) introduce a new fee, commission or charge;
- (iii) how interest is calculated or the frequency with which interest is debited or credited;
- (iv) repayment amounts or any existing non-statutory fee, commission or charge;
- (v) the method of calculation, frequency of, or payment date for, such repayments or fees commissions or charges;
- (vi) correct an error, inconsistency or omission or make a change that is administrative in nature;
- (vii) reflect ANZ's business, communications or technological systems or processes;
- (viii) comply with applicable Law or any change in Law, or any decision, recommendation, regulatory guidance or standard of any court, tribunal, ombudsman service or any other similar body;
- (ix) in ANZ's reasonable opinion, protect any person from the risk of fraud, loss or illegal activity;
- (x) add, change or remove any Borrower discounts, benefits or concessions;
- (xi) simplify the terms of any Trade Agreement;
- (xii) reflect changes in how ANZ offers Instruments or ensure the terms of any Trade Agreement remain consistent with ANZ operational processes;
- (xiii) benefit the Borrower;
- (xiv) reflect current industry or market practice or conditions.

- (c) ANZ will give 30 days' prior notice to the Borrower of any change it makes to the terms of any Trade Agreement but:
  - (i) if the changes are beneficial to the Borrower, outside ANZ's control or in ANZ's reasonable opinion required to address the risk of fraud, illegal activity or to protect the interests of the Borrower, then the change may take effect immediately, except to the extent prior notification is required by an applicable Law; or
  - (ii) if an applicable Law provides for:
    - (1) another period, the notice period will be the period specified by that applicable Law; or
    - (2) the change to take effect immediately, the change will take effect immediately.
- (d) If ANZ notifies a Borrower of a change to the terms of that Borrower's Facility or Trade Agreement the Borrower may cancel their Trade Agreement by giving ANZ written notice, paying all amounts owing to ANZ and complying with any remaining obligations under the terms of the relevant Trade Agreement.
- (e) Changes specific to the Borrower will take effect only by agreement with that Borrower, despite anything to the contrary in this clause 6.10.

#### 6.11 Anti-money laundering and sanctions

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

#### 6.12 Liability

##### (a) Liability for Loss

- (i) ANZ will not be liable to the Borrower for any Loss suffered or incurred in connection with any Facility, Instrument or act or omission of ANZ (including breach of contract) other than to the extent that Loss is caused by ANZ's gross negligence, wilful misconduct or fraud.
- (ii) No party is liable to any other party for any Indirect Loss other than as expressly provided for in a relevant Trade Agreement.

##### (b) Limitation of liability

If statutory provisions limit the extent to which ANZ is entitled to limit its liability in respect of any claim ANZ limits its liability in respect of such claims to, at ANZ's option:

- (i) the supply of the services again; or
- (ii) the payment of the cost of having the services supplied again.

#### 6.13 Responsibility

- (a) All instructions and correspondence sent by ANZ at the request or on behalf of the Borrower to any person) relating to any Facility or any Instrument will be sent at the Borrower's risk.
- (b) Subject to and without limiting Clause 6.12, ANZ is not responsible and will not be liable for any Loss arising from:
  - (i) ANZ acting in accordance with applicable Laws, regulations or rules; and
  - (ii) the acts and omissions of Correspondent Banks.

#### 6.14 Indemnity

- (a) The Borrower must on demand indemnify ANZ (and, for the avoidance of doubt, any Correspondent Bank that is a branch or office of ANZ or an ANZ Group Member) against and make good any reasonable cost (including any cost incurred in connection with advisers and any legal costs on a full indemnity basis), loss or liability that any of them may suffer or incur in connection with any one or more of the following:

- (i) any Instrument, including, without limitation, any payment or claim made or purported to be made under or in connection with any Instrument;
  - (ii) any inability of ANZ to collect or freely deal with funds which it receives in relation to an amount owing by, or advanced to, the Borrower;
  - (iii) any determination or decision made to act or refusal to act by ANZ, or ANZ being prevented from acting, in connection with a Trade Agreement or any Instrument because of a court order or other similar obligation (whether or not subsequently discharged);
  - (iv) doing anything in connection with a subpoena, notice, order or enquiry by an Authority involving the Borrower, its business or assets, the Facility, Instrument or anything in connection with them;
  - (v) exercising, enforcing or preserving rights, powers or remedies in connection with these Specific Terms, a Trade Agreement or an Instrument;
  - (vi) any claim made against ANZ by a third party relating to any Instrument;
  - (vii) it being unlawful in any jurisdiction for ANZ to perform its obligations or enforce its rights;
  - (viii) ANZ reasonably relying on any Communication that it reasonably believes to have been sent by the Borrower or an Authorised Representative;
  - (ix) any breach of any AML/ETS Law (other than by ANZ);
  - (x) any breach by the Borrower of a Law or requirement of any Authority; or
  - (xi) any transaction to which a Facility or Instrument relates in any way being tainted by fraud or alleged fraud (other than ANZ's fraud).
- (b) ANZ will give the Borrower written notice of the amount it must pay ANZ under this Clause 6.14. The Borrower must make that payment on the date and in the manner reasonably specified by ANZ in the notice.
- (c) Any indemnity, reimbursement or similar obligation in these Specific Terms or any Trade Agreement:
    - (i) is a continuing obligation despite any intervening payment, settlement or other thing;
    - (ii) independent of the Borrower's other obligations;
    - (iii) survives the termination or discharge of any Facility and the satisfaction of any payment or obligation secured by any security provided in relation to the Facility or any Instrument; and
    - (iv) is in addition to any other rights that ANZ has under these Specific Terms, any Trade Agreement or given independently by law.
  - (d) It is not necessary for ANZ to incur expense or make payment before enforcing a right of indemnity in connection with these Specific Terms.
  - (e) The costs, expenses, losses and liabilities referred to in this Clause 6.14 do not include any cost, expense, loss or liability to the extent that they arise from the negligence, fraud or wilful default of ANZ or its officers, employees, contractors or agents or any receiver appointed by ANZ.
- 6.15 Information disclosure**
- A party must not disclose information provided by the other party that is not publicly available except:
- (a) to any of its head offices, branches, or Affiliates ("Group Members") and any of its or a Group Members' officers and employees with a genuine reason to see it;
  - (b) to any of its or its Group Members' agents, service providers or professional advisers who are under a duty of confidentiality;
  - (c) any disclosure the disclosing party reasonably believes is required by any Law or Authority;
  - (d) in connection with the perfection, preservation or enforcement of rights under a Trade Agreement or otherwise in respect of an Instrument;
  - (e) with the non-disclosing party's prior written consent; and

- (f) for ANZ only: (i) to any person with whom an ANZ Group Member may enter, or is contemplating entering, into any transfer, assignment, participation, derivative transaction, insurance or other agreement in connection with, or any Trade Product or transaction contemplated under, any Trade Agreement, (ii) to any ratings agency, insurance broker or proposed or actual provider of credit protection, security or credit support, (iii) to participants in any payment systems (such as financial institutions, correspondent banks, payment clearing entities and associations and SWIFT) and (iv) to any regulator if ANZ believes it is necessary or appropriate to do so (even if it is not legally obliged to).

#### 6.16 Communications generally

- (a) Communications must be:
  - (i) sent to the address for the recipient set out in the relevant Trade Agreements or as most recently advised in writing. The Borrower must keep its contact details updated;
  - (ii) legible and in English or provided with a certified English translation if the original Communication is not in English. If there is a difference between the written Communication and the English translation, the English translation will apply unless ANZ agrees in writing otherwise or if a Law of the Governing Jurisdiction requires otherwise; and
  - (iii) signed by an Authorised Representative of the Borrower. Communications sent by email are taken to be signed by the named sender. Communications sent by Posting to the Electronic Channel are taken to be signed by the logged in user. If that person is not an Authorised Representative of the Borrower, ANZ may ignore that Communication.
- (b) A Communication is effective:
  - (i) if sent by facsimile – from the time the transmission report shows it as having been sent successfully;
  - (ii) if sent by post – 7 Business Days after it is posted;
  - (iii) if sent by E-mail – at the time it is sent unless the sender receives an automated message that the E-mail has not been delivered; and

- (iv) if Posted in the Electronic Channel at the time of Posting.

Despite the above, if a Communication is received after 5:00pm or on a day which is not a Business Day, it is effective the following Business Day.

#### 6.17 Verbal and Electronic Communications

- (a) If the Borrower sends Electronic Communications or gives them verbally in person or by telephone:
  - (i) the Borrower acknowledges that there are risks in communicating in this manner and agrees that it is responsible for those risks;
  - (ii) the Borrower must comply with any security measures agreed with ANZ (security procedures);
  - (iii) ANZ may accept or reject any verbal Communications; and
  - (iv) if ANZ receives a verbal Communication or Electronic Communication it reasonably believes to be genuine, complete and which complies with the security procedures (if any): (i) ANZ need not verify the authenticity or completeness of the Communication, even if the Communication instructs ANZ to make a payment and (ii) any such Communication will be treated as authorised by the Borrower and will be binding on it.
- (b) ANZ may give the Borrower notice at any time that it will no longer accept any or specified verbal Communications or Electronic Communications.
 

The notice is effective from when it is received by the Borrower until ANZ advises the Borrower in writing that it will accept verbal Communications or Electronic Communications again.
- (c) If the Law permits, ANZ may record ANZ's telephone conversations with the Borrower and use the recorded conversations or transcripts in any dispute in connection with an Instrument.
- (d) If the Borrower has access to the Electronic Channel;

- (i) ANZ and the Borrower may Post Communications in the Electronic Channel relating to an Instrument accessed using the Electronic Channel;
- (ii) ANZ will promptly E-mail the Borrower that the Communication has been Posted and describing what the Communication is unless otherwise agreed in writing; and
- (iii) the Borrower may request a paper copy of a Communication Posted on the Electronic Channel at any time within 6 months of ANZ advising the Borrower that the Communication had been Posted.

#### **6.18 Assignment**

- (a) The Borrower must not transfer, grant security over or declare a trust over any of its rights arising under these Specific Terms, any Trade Agreement or in respect of Facility and/or Instrument without ANZ's prior written consent. ANZ may transfer, grant security over or declare a trust over any of its rights under these Specific Terms, any Trade Agreement or in respect of any Facility and/or Instrument without the Borrower's consent.
- (b) ANZ may receive fees or payments in connection with such dealings without disclosing them to the Borrower.

#### **6.19 Severability**

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

#### **6.20 Further Assurance**

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

#### **6.21 Governing Jurisdiction**

Unless specified otherwise, these Specific Terms and the transactions relating to an Instrument will be governed by and construed in accordance with the Laws of the Governing Jurisdiction and the parties submit to the jurisdiction of the courts of that Governing Jurisdiction and of any courts competent to hear appeals from those courts.

#### **6.22 Third party benefit**

If an undertaking, obligation, indemnity or promise by the Borrower in any Trade Agreement is, by its terms, to the benefit or in favour of an ANZ Group Member that is not a party to that document, then each ANZ Group Member that is a party to that document holds that undertaking, obligation, indemnity or promise on trust for that other ANZ Group Member to that extent and may enforce it on their behalf and at their direction.