



GENERAL CONDITIONS

1. These General Conditions

These General Conditions are part of the Merchant's Agreement with ANZ.

The Agreement consists of

- (i) the Letter of Offer;
- (ii) these General Conditions;
- (iii) the Secure Internet Site Declaration (where applicable); and
- (iv) any special conditions (including all applicable Merchant Operating Guides) accompanying the Letter of Offer or otherwise agreed in writing by the Merchant and ANZ to be special conditions,

as varied from time to time in accordance with these General Conditions.

Some words and expressions have special meanings in these General Conditions. The meanings are described in condition 40 and when you are reading these General Conditions you should refer to conditions 40 and 41.

2. Provision of Merchant Facilities

- (i) ANZ agrees to provide the Merchant with the Merchant Facilities in accordance with the Agreement. ANZ agrees to do this in exchange for the Merchant carrying out the Merchant's obligations under the Agreement.
- (ii) ANZ will provide the Merchant Facilities unless:
 - (a) the Agreement is terminated; or
 - (b) the Merchant Facilities are suspended in accordance with the Agreement; or
 - (c) there is a change in Law or to the regulations, by-laws or rules of a Nominated Card Scheme that prevents ANZ providing the Merchant Facilities.

3. Conditions Precedent

ANZ's obligation to make any of the Merchant Facilities available to the Merchant is conditional upon ANZ being satisfied that:

- (i) the Merchant has accepted ANZ's offer in accordance with the method of acceptance required by ANZ in the Letter of Offer;
- (ii) ANZ has received an account opening authority if the Merchant Account is held with ANZ or a properly completed periodical debit authority if the Merchant Account is held with another financial institution;
- (iii) if the Merchant is a company, ANZ has received all documents requested by ANZ in the Letter of Offer or otherwise at the time of the application for the Merchant Facilities;
- (iv) if the Merchant is a trustee of a trust, ANZ has received a copy of the trust deed, and any variations or amendments to the trust deed, each certified to be a complete, correct and up to date copy;
- (v) if the Merchant is a partnership, ANZ has received a copy of the partnership deed, and any variations or amendments to the partnership deed, each certified to be a complete, correct and up to date copy; and

(vi) any other conditions set out in the Letter of Offer have been fulfilled.

4. Nominated Cards

- (i) The Merchant must:
 - (a) accept Nominated Cards in accordance with the Agreement; and
 - (b) stop accepting a Nominated Card immediately if:
 - ANZ gives the Merchant a notice to do so; or
 - any of the events described in condition 2(ii) occur.
- (ii) To remove any doubt the Merchant must not accept a Nominated Card as payment for goods or services by:
 - (a) mail or telephone order; or
 - (b) if the Nominated Card is a credit card, payment for goods or services via the Internet,
 unless specifically authorised in writing by ANZ.

5. Honouring Nominated Cards and Permitted Uses

- (i) The Merchant must accept valid Nominated Cards.
- (ii) A Nominated Card is valid if:
 - (a) the Nominated Card has current validity dates;
 - (b) the Nominated Card has not been visibly altered or tampered with in any way;
 - (c) the Nominated Card is signed on the back in the designated area for card signatures;
 - (d) the Nominated Card is not on a current Warning Bulletin;
 - (e) the embossed account number on the Nominated Card corresponds with the number printed, encoded or otherwise shown on the Nominated Card;
 - (f) the signature on the reverse of the Nominated Card has not been altered or defaced; and
 - (g) the Nominated Card meets each of the criteria for validity set out in the Merchant Operating Guides.
- (iii) The Merchant must not:
 - (a) make any representation in connection with any goods or services or any Nominated Card which may bind ANZ;
 - (b) make any representations to any Cardholder concerning ANZ's products or policies;
 - (c) pledge the credit of ANZ in any way;
 - (d) take part in the preparation of any documents purporting to provide for credit to be provided by ANZ to the Cardholder;
 - (e) engage in any conduct which is false, misleading or deceptive concerning goods or services supplied by the Merchant, ANZ's products or policies, or in any other dealings with the Cardholder;
 - (f) use a Nominated Card in a Credit Transaction to give a Cardholder cash. The Merchant may use a Nominated Card in a Debit Transaction to give a Cardholder cash provided the Merchant has prominently displayed in the Premises the Merchant's policy on

cash out and partial cash out services including any applicable fees;
or

- (g) use a Nominated Card issued in the name of the Merchant in any Transaction to pay for goods or services or to provide cash where the Transaction is not a bona fide sale or where the Transaction is for the purpose of funding the working capital of the Merchant's business. Where the Merchant is a partnership, no Nominated Card issued in the name of a partner is to be used in any such Transaction. Where the Merchant is a company, no Nominated Card issued in the name of a director or secretary is to be used in any such Transaction.

Any Cardholder making enquiries concerning the matters raised in paragraphs (b) to (d) above must be directed to contact ANZ.

6. Processing Transactions

- (i) The Merchant must only use Transaction Vouchers, Card Imprinters and Electronic Terminals authorised by ANZ.
- (ii) If ANZ has agreed that the Merchant can process Transactions electronically, the Merchant must not use a Card Imprinter and Electronic Terminal to process the same Transaction. The Merchant may only process a Transaction manually using the Card Imprinter if the Electronic Terminal is malfunctioning or it is impossible for Transactions to be processed through it and the Merchant is instructed by ANZ to process the Transaction manually.
- (iii) In the event the Merchant is specifically authorised by ANZ in accordance with condition 4(ii)(b) to accept a Nominated Card that is a credit card as payment for goods or services ordered via the Internet the Merchant must not take Cardholder details via the Internet, unless specifically authorised in writing to do so by ANZ. The Merchant may take a Cardholder's details via mail, phone or facsimile.
- (iv) The Merchant must ensure any goods purchased via a mail, telephone or Internet order Transaction are despatched to the Cardholder immediately after processing that sales Transaction, either manually or through an Electronic Terminal, to ANZ.
- (v) The Merchant must not use two or more Transaction Vouchers to process one Transaction or process a Transaction where only part of the amount due is included on the Transaction Voucher except:
- (a) where the balance of the amount due is paid in cash or by cheque; or
- (b) where the goods or services are to be delivered or performed at a later date and one Transaction Voucher represents a deposit and the second Transaction Voucher represents payment of the balance. The second Transaction Voucher must not be presented or processed until the goods are delivered or the services performed.
- (vi) The Merchant must not process a Transaction on behalf of another person, including another merchant.
- (vii) The Merchant must use reasonable care in processing a Transaction to detect forged or unauthorised signatures or the unauthorised use or forgery of a Nominated Card. In particular, the Merchant must comply with specific requirements set out in the Merchant Operating Guides or otherwise notified by ANZ to the Merchant in writing.
- (viii) Following each Transaction (other than Internet and phone Transactions) the Merchant must immediately give the Cardholder a copy of the Transaction Voucher. When the Transaction is an Internet Transaction, the Cardholder must be able to print a Transaction Voucher from the Internet and when the Transaction is telephone Transaction, the Merchant must

provide the Cardholder with a receipt number for the Transaction, and the Merchant must maintain a record of that receipt number.

- (ix) Unless otherwise authorised by ANZ in writing, the information on the Transaction Voucher must be identical with information on any other copy of the Transaction Voucher and must include all information required by the Merchant Operating Guides.
- (x) The Merchant must not split the value of any proposed Credit Transaction into two or more separate Credit Transactions which would, when added together, be in excess of the Authorised Floor Limit.
- (xi) If ANZ determines that the conduct of a Merchant in processing Transactions in accordance with the Agreement may cause loss to the Merchant or ANZ (through fraudulent activities or otherwise) ANZ may:
 - (a) where the Merchant is using a Card Imprinter, require the Merchant to replace that Card Imprinter with an Electronic Terminal nominated by ANZ; and
 - (b) where the Merchant is authorised by ANZ to accept a Nominated Card as payment for goods or services ordered by mail or telephone or via the Internet, in accordance with condition 4(ii), withdraw that authorisation and require the Merchant to only process Transactions where the Nominated Card is presented by the Cardholder.
- (xii) The Merchant must prominently and clearly inform the Cardholder of the identity of the Merchant so that the Cardholder can readily distinguish the Merchant from any supplier of goods or services to the Merchant or other third party. The Merchant must also provide notice to the Cardholder that the Merchant is responsible for:
 - (a) the sales Transaction, including any goods or services that are the subject of the sales Transaction;
 - (b) all customer service relating to the sales Transaction;
 - (c) dispute resolution in connection with the sales Transaction; and
 - (d) performance of the terms and conditions of the sales Transaction.
- (xiii) In the event that the Merchant is specifically authorised by ANZ to accept a Nominated Card as payment for goods or services ordered by mail or telephone or via the Internet in accordance with condition 4(ii), or the Merchant processes recurring payments, the Merchant must ensure that the Transaction is correctly identified as a mail order, telephone order, Internet or recurring Transaction.

7. Authorisation

- (i) The Merchant must seek prior authorisation from the Authorisation Centre for any Transaction where:
 - (a) in the case of a Credit Transaction:
 - (i) the value is in excess of the Authorised Floor Limit; or
 - (ii) the Transaction is key-entered into an Electronic Terminal;
 - (b) the Merchant is aware that, or considers it is possible that, a signature is a forgery or is unauthorised or there is an unauthorised use or forgery of the Nominated Card;
 - (c) the Nominated Card is listed on a Warning Bulletin;
 - (d) the embossed account number on the Nominated Card does not correspond with the number printed, encoded or otherwise shown on the Nominated Card;

- (e) the Cardholder presents a Nominated Card at a time which is not within current validity dates shown on the Nominated Card;
 - (f) the signature panel on the Nominated Card is blank or the signature has been altered or defaced;
 - (g) the Electronic Terminal instructs the Merchant to contact the Authorisation Centre; or
 - (h) the Transaction is of a certain type or class which has been notified to the Merchant by ANZ as a type or class of Transaction requiring authorisation.
- (ii) When the Merchant seeks authorisation, the Merchant must ensure that the authorisation code or word "approved" appears on each Transaction Voucher applicable to a Transaction.
 - (iii) The Merchant should seek to retain the Nominated Card until authorisation is given. In the event the Nominated Card is listed on a Warning Bulletin or the Merchant is requested by the Authorisation Centre to retain the Nominated Card, the Merchant should use reasonably peaceful means to retain the Nominated Card and deal with the Nominated Card in accordance with the instructions of the Authorisation Centre.
 - (iv) In the case of a Transaction involving a mail, telephone or Internet order, authorisation is not a representation or warranty to the Merchant that the purchase is made by the Cardholder.
 - (v) Authorisation of a Transaction is not a representation or warranty by ANZ to the Merchant that a Transaction is not an Invalid Transaction or Unacceptable Transaction.
 - (vi) ANZ may at any time change the Merchant's Authorised Floor Limit by giving notice to the Merchant.

8. Refunds

The Merchant must:

- (i) establish a fair policy for giving Refunds and for exchanges or return of goods for sales Transactions;
- (ii) only give a Refund by means of a Transaction Voucher, a credit note issued by the Merchant or an exchange of goods, and not in cash or by cheque. The Merchant must disclose the Merchant's Refund policy to the Nominated Cardholder prior to the Transaction;
- (iii) where the Merchant is authorised to process Transactions via the Internet in accordance with condition 4(ii)(b), display the Merchant's Refund policy on its website; and
- (iv) at all times act in accordance with the Merchant Operating Guides in processing Refunds.

9. Transaction Information

- (i) The Merchant must lodge Transactions with ANZ for settlement in accordance with the Merchant Operating Guides, and:
 - (a) in the case of a Transaction processed manually within 3 Business Days after the Transaction;
 - (b) in the case of a Transaction processed through an Electronic Terminal other than a Credit Authorisation Terminal, immediately by entering the Transaction;
 - (c) in the case of a Transaction processed electronically by use of a Credit Authorisation Terminal, within 3 Business Days after the Transaction.

- (ii) The Merchant must retain information about a Transaction whether processed manually or electronically for a period of 18 months from the date of the Transaction or such other period required by Law or notified by ANZ. The Merchant Operating Guides set out the information about a Transaction which the Merchant must retain.
- (iii) At the end of the 18 month period, the Merchant must destroy any information about the Transaction. The Merchant must ensure that any document containing any Cardholder account number is securely destroyed in a manner which makes that information unreadable.
- (iv) The Merchant must provide information about a Transaction which is requested by ANZ within 5 Business Days of receipt of the request.

10. Settlement of Transactions

- (i) ANZ agrees:
 - (a) to accept all sales and cash Transactions processed by the Merchant in accordance with the Agreement and, subject to condition 10(iv), to credit the Merchant Account with the full amount of such Transactions on the basis that the debt due by the Cardholder to the Merchant in respect of the Transaction is extinguished;
 - (b) to accept all Refund Transactions processed by the Merchant in accordance with the Agreement and to debit the Merchant Account with the full amount of each Refund Transaction.
- (ii) ANZ will issue a monthly record of Transactions statement to the Merchant including a summary of the number of Debit Transactions and the number and total amount of all Credit Transactions processed by ANZ to the Merchant Account during the previous month.
- (iii) Where ANZ is aware or has reason to believe that a Transaction is fraudulent or a counterfeit Nominated Card has been used ANZ reserves the right for a period of 30 days to:
 - (a) withhold payment to the Merchant Account; and
 - (b) unless it otherwise agrees in writing, prevent the debit of that part of the balance of the Merchant Account or any other account held by the Merchant with ANZ, as is equal to the amount ANZ estimates may become owing to it by the Merchant in respect of that Transaction.

During that 30 day period ANZ will investigate the Transaction to determine whether ANZ:

- (c) will either:
 - (i) refuse to process the Transaction and return the Transaction to the Merchant; or
 - (ii) if the Transaction has been processed, charge that Transaction back to the Merchant, and
- (d) will set-off amounts owing to it by the Merchant in respect of that Transaction against funds standing to the credit of the Merchant Account or any other account held by the Merchant with ANZ.
- (iv) Where under the Agreement or any other agreement between ANZ and the Merchant, or under any Law or regulation, ANZ is entitled to any payment, repayment or reimbursement from the Merchant (including, but not limited to, any payment by indemnity), ANZ may set-off the payment, repayment or reimbursement against amounts due and payable to the Merchant under the Agreement.

11. Invalid Transactions

The Transaction is invalid if:

- (i) the Transaction is illegal;
- (ii) the date of the Transaction is a date after the Agreement was suspended in accordance with condition 30 or terminated in accordance with condition 31;
- (iii) the Merchant processed the Transaction knowing (or in circumstances where the Merchant should have known) that the signature on the Transaction Voucher is forged or unauthorised;
- (iv) the Merchant processed the Transaction knowing (or in circumstances where the Merchant would reasonably be expected to know) that the Nominated Card is used without the authority of the Cardholder or in the case of a mail, telephone or Internet order authorised by ANZ, the Transaction is not authorised by the Cardholder;
- (v) the Nominated Card used in the Transaction is listed on a Warning Bulletin sent to the Merchant;
- (vi) the Merchant was notified by ANZ not to accept the Nominated Card used in the Transaction;
- (vii) the Nominated Card used in the Transaction is not used within the current validity dates shown on the Nominated Card;
- (viii) the Transaction Voucher is not completed in accordance with the Agreement or is illegible;
- (ix) the particulars on the copy of the Transaction Voucher given to the Cardholder are not identical with the particulars on any other copy and the Merchant has not been authorised by ANZ in writing to accept copy vouchers which are not identical;
- (x) the Transaction is recorded in a currency other than Australian dollars;
- (xi) the price charged for the goods or services to which the Transaction relates is more than the Merchant's normal price which is charged to the general public;
- (xii) the Transaction value exceeds the Authorised Floor Limit, and the Merchant did not obtain authorisation for a Transaction above the Authorised Floor Limit;
- (xiii) the Transaction requires authorisation by ANZ and the Transaction Voucher does not contain either the authorisation code or the word "approved";
- (xiv) in ANZ's reasonable opinion the Transaction relates to one or more purchases made in the same Merchant establishment which have been split into 2 or more Transactions in an attempt to avoid the Authorised Floor Limit;
- (xv) the Merchant has arranged without ANZ's consent for a person other than the Merchant to supply goods, services or cash;
- (xvi) the Merchant processed the Transaction knowing (or in circumstances where the Merchant should have known) that the Transaction is fraudulent;
- (xvii) the Cardholder has not received the goods or service as required by the terms of the Transaction (and, in the case where the Merchant acts as agent, the services have not been provided by the principal) and the Merchant has failed to provide ANZ with proof of receipt of, and satisfaction with, goods or services by the Cardholder within 5 Business Days of ANZ's request to do so;

- (xviii) the goods or services to which the Transaction relates were supplied from outside Australia without ANZ's consent;
- (xix) in the case of a Transaction being a mail, telephone or Internet order authorised by ANZ, the Merchant did not record Reasonable Identification Details of the Cardholder and the expiry date of the Nominated Card;
- (xx) except in the case of a mail, telephone or Internet order authorised by ANZ, the Nominated Card was not presented to the Merchant;
- (xxi) in the case of a Transaction where the details are keyed into an Electronic Terminal the Merchant did not record on the Transaction Voucher Reasonable Identification Details of the Cardholder;
- (xxii) the Merchant has not otherwise complied with the Agreement in connection with the Transaction and ANZ is of the reasonable opinion that such non-compliance may result in it suffering a loss;
- (xxiii) the Transaction is processed by the Merchant on behalf of another person except under a bona fide agency arrangement;
- (xxiv) the Merchant has accepted a Nominated Card as payment for goods and services by mail, telephone or Internet order without specific authorisation in writing by ANZ pursuant to condition 4(ii);
- (xxv) the Merchant bills the amount of the Transaction direct to the Cardholder or receives payment through the use of another card or by any other means;
- (xxvi) the card number or truncated card number appearing on the Transaction Voucher does not correspond with the card number embossed, printed, encoded or otherwise shown on the Nominated Card used for the Transaction;
- (xxvii) the Merchant fails to lodge Transactions with ANZ for settlement in accordance with condition 9(i);
- (xxviii) the same Transaction is processed by the Merchant more than once;
- (xxix) the Merchant key-enters incorrect Transaction details into the Electronic Terminal or key-enters the Transaction otherwise than in accordance with the Merchant Operating Guides; or
- (xxx) the Merchant manually processes a Transaction using a damaged Nominated Card which is not a valid Nominated Card referred to in condition 5(ii) without obtaining prior approval from ANZ.

12. Unacceptable Transactions

A Transaction is not an acceptable Transaction if in ANZ's reasonable opinion the Cardholder justifiably:

- (i) disputes liability for the Transaction for any reason; or
- (ii) makes a claim for set off or counter claim in respect of the Transaction against ANZ.

13. Chargeback

- (i) If a Transaction is an Invalid Transaction or an Unacceptable Transaction, ANZ may, at its sole discretion:
 - (a) refuse to accept the Transaction; or
 - (b) if the Transaction has been processed, at any time within 12 months of the date of the Transaction charge that Transaction back to the Merchant by debiting the Merchant Account or otherwise exercising its rights under the Agreement.

- (ii) If ANZ receives a payment from a Cardholder relating to an Invalid Transaction or an Unacceptable Transaction that has been charged back to the Merchant, ANZ will pay an amount equal to that payment to the Merchant less any amount which ANZ is entitled to withhold or set-off under the Agreement.
14. Merchant's Account
- (i) The Merchant must maintain a Merchant Account for the term of the Agreement.
 - (ii) The Merchant authorises ANZ to debit and credit the Merchant Account for the purposes of the Agreement.
15. Information Disclosure
- (i) The Merchant must not sell, purchase, provide or exchange any information or document relating to a Cardholder, a Cardholder's account number or a Transaction to any person other than ANZ, the Nominated Card issuer or as required by Law. The Merchant may disclose such information or document to the Merchant's employees, contractors or agents in the course of conducting the Merchant's business.
 - (ii) The Merchant must ensure that information relating to any Cardholder accessed by the Merchant in connection with a Transaction is maintained in a secure environment with restricted access.
 - (iii) The Merchant consents to ANZ disclosing information relating to the Merchant or any Transaction to any person to enable ANZ to comply with any Law, ANZ's obligations pursuant to the Agreement or the rules, regulations or by-laws of any Nominated Card Scheme. In particular, the Merchant consents to ANZ disclosing, to the extent permitted by law:
 - (a) such information to Nominated Card issuers in the event ANZ is aware or forms a view that a Transaction has been debited or credited incorrectly to a particular Cardholder account;
 - (b) to participants in any Nominated Card Scheme, information in connection with the cause for termination of the Agreement or any information where ANZ knows or has reasonable grounds to suspect the Merchant has engaged in fraud when processing Transactions; and
 - (c) such information to any member of the ANZ Group, or any employee, agent or contractor of any member of the ANZ Group to be used or disclosed for credit assessment and administration purposes, or for marketing or product development purposes.

The obligations and consents contained in this condition 15 will survive the termination of the Agreement.

16. Audit

In the event of any dispute involving a Transaction or ANZ suspects that fraud is involved the Merchant authorises ANZ, or its' agent, to enter the Merchant's Premises during the Merchant's normal business hours to examine and take copies of the Merchant's books of account and records.

17. Fees and Charges

- (i) The Merchant must pay to ANZ the fees and charges described in the Application Form and the Letter of Offer at the times and in the manner set out in that Application Form and the Letter of Offer (as the case may be).
- (ii) The Merchant authorises ANZ to debit the Merchant Account, without notice for:

- (a) all fees, charges and costs owing to ANZ by the Merchant pursuant to the Agreement;
- (b) all over credits paid by ANZ in respect of Transactions due to errors and omissions;
- (c) all credits paid by ANZ in respect of Transactions which are Invalid Transactions or Unacceptable Transactions;
- (d) the full amount of any Refund Transaction less any amounts in respect of such Transaction already debited to the Merchant Account;
- (e) all Taxes incurred or payable by ANZ in connection with the Agreement, the Merchant Facilities, any transaction contemplated by the Agreement, the Merchant Account or any Electronic Terminal; and
- (f) all other amounts owing to ANZ by the Merchant pursuant to the Agreement.

If ANZ debits the Merchant Account, ANZ will give the Merchant written notice that ANZ has done this.

- (iii) The Merchant must pay on demand by ANZ any amount referred to in condition 17(ii) which remains unpaid by the Merchant because there are insufficient funds in the Merchant Account to satisfy the payment of that amount in full.
- (iv) ANZ reserves the right to combine or deduct money from any other ANZ account in the name of the Merchant to pay any amount which is due and payable by the Merchant to ANZ under the Agreement.
- (v) ANZ may continue to charge the Merchant the Terminal Rental Fee for an Electronic Terminal until the Merchant has returned that Electronic Terminal to ANZ, irrespective of whether the Agreement has been terminated or another Electronic Terminal has been provided to the Merchant by ANZ.

18. Merchant Websites

In the event that the Merchant is specifically authorised by ANZ in accordance with condition 4(ii)(b) to accept a Nominated Card that is a credit card as payment for goods or services ordered via the Internet:

- (i) the Merchant's website must contain all of the following information –
 - a complete description of the good or services offered;
 - a returned merchandise and refund policy;
 - a customer service contact, including electronic address and/or telephone number;
 - any export or legal restrictions (if known);
 - a delivery policy; and
 - a privacy policy;
- (ii) the transaction currency on the Merchant's website must be in Australian dollars only;
- (iii) the country of domicile of the Merchant must be Australia; and
- (iv) the Merchant must complete a Secure Internet Site Declaration to ANZ's satisfaction.

19. Electronic Terminals

This condition 19 applies in the event the Merchant has requested and ANZ has agreed the Merchant may process Transactions electronically, or where ANZ has nominated an Electronic Terminal for the Merchant to use in accordance with condition 6(xi).

19.1 General

- (i) Unless otherwise agreed the Merchant must arrange for an approved telecommunication supplier to install a telephone line to enable the use of the Electronic Terminal. ANZ is not responsible for maintaining the telephone line.
- (ii) The Merchant must arrange at the Merchant's cost for the preparation of the location of the Electronic Terminal in accordance with ANZ's requirements, including those requirements applicable to site security standards and suitable power supply described in the Merchant Operating Guides or as otherwise notified by ANZ in writing. The Electronic Terminal site must enable the Cardholder to use the Electronic Terminal instruction key pad without the Cardholder's use of the keypad being observed by either security cameras, observation mirrors, reflective surfaces or by any other person.
- (iii) The Merchant must notify ANZ immediately if any Electronic Terminal (or part of an Electronic Terminal) is not operating or is malfunctioning.
- (iv) The Merchant must use reasonable care and diligence to prevent and detect unauthorised use of any Electronic Terminal.
- (v) The Merchant must allow any properly authorised and suitably identified ANZ employee, agent or contractor free access to Electronic Terminals during normal business hours for the purposes of inspection or testing of Electronic Terminals and in the event ANZ has supplied the Electronic Terminal, for the purposes of installation, maintenance and removal of the Electronic Terminal.
- (vi) The Merchant must not, without ANZ's prior written consent (such consent not to be unreasonably withheld):
 - (a) remove or relocate an Electronic Terminal; or
 - (b) make any alteration or addition to an Electronic Terminal.

In the event ANZ provides such written consent, all costs applicable to the removal, relocation or change to the Electronic Terminal are payable by the Merchant.
- (vii) If ANZ determines that the continued use of the Electronic Terminal by the Merchant may cause loss to the Merchant or ANZ (through fraudulent activities or otherwise) ANZ may require the Merchant to replace that Electronic Terminal with another Electronic Terminal nominated by ANZ.

19.2 Electronic Terminals supplied by ANZ

- (i) In the event that an Electronic Terminal is supplied by ANZ, the Merchant must:
 - (a) use the Electronic Terminal for the purposes of the Agreement; and
 - (b) use the Electronic Terminal in accordance with the Agreement and any applicable manufacturer's manual, warranty or conditions of use;
- (ii) The Merchant agrees that the Electronic Terminal remains the property of ANZ and undertakes to protect, and not prejudice, ANZ's proprietary right to the Electronic Terminal.

- (iii) The Merchant must notify ANZ in the event that the Merchant is aware or should reasonably be aware that the Electronic Terminal is being used fraudulently or otherwise improperly.
- (iv) The Merchant is responsible for any loss, theft or damage to the Electronic Terminal at the Merchant's Premises. In the event of such loss, theft or damage, the Merchant must pay ANZ the actual cost of repairing or replacing the Electronic Terminal.
- (v) The Merchant must take proper care of and maintain regular servicing of the Electronic Terminal as directed by ANZ. The Merchant is responsible for all maintenance costs including payment for any repairs to the Electronic Terminal which are necessary because of the Merchant's neglect or misuse.

19.3 Electronic Terminals not supplied by ANZ

- (i) In the event that an Electronic Terminal is not supplied by ANZ the Merchant must:
 - (a) obtain ANZ's written consent before using the Electronic Terminal to process Transactions;
 - (b) use the Electronic Terminal for the purposes of the Agreement; and
 - (c) use the Electronic Terminal in accordance with the Agreement and the supplier's agreement with the Merchant.
- (ii) The Merchant must, at the Merchant's cost, comply with all security requirements reasonably requested by ANZ before, and as long as, the Electronic Terminal is used for processing Transactions under the Agreement.
- (iii) The Merchant must take proper care of and maintain regular servicing of the Electronic Terminal.

20. Electronic Terminals and Card Imprinters - Security

- (i) The Merchant must take all steps that are, in the circumstances, reasonable to ensure that each Electronic Terminal and each Card Imprinter is protected against loss, theft, unauthorised access or use, modification or other misuse. The Merchant agrees that such steps include, without limitation, ensuring that, at the start and at the close of business each day, each Electronic Terminal and each Card Imprinter is secure and has not been lost or stolen.
- (ii) The Merchant must notify ANZ in writing as soon as the Merchant becomes aware (or should reasonably have become aware) that an Electronic Terminal or Card Imprinter has been stolen, lost or may otherwise have been altered, tampered with or compromised.
- (iii) Any breach of this condition 20 by the Merchant may result in the Merchant being liable for any loss suffered by ANZ as a result of theft or loss of, or other breach of security in connection with, an Electronic Terminal or Card Imprinter, including, without limitation, any loss arising from any unauthorised or fraudulent use of an Electronic Terminal or Card Imprinter that occurs before the Merchant gives notice to ANZ in accordance with condition 20 (ii).

- (iv) If the Merchant:
 - (a) ceases trading; or
 - (b) no longer requires the Merchant Facilities,
 the Merchant must, within 7 days of either (a) or (b) above occurring, terminate the Agreement in accordance with condition 31 and return all stationery, promotional material, Transaction Vouchers, Card Imprinters or equipment (including Electronic Terminals) supplied in connection with the Agreement to a location designated by ANZ.

21. Merchant Operating Guides

ANZ will provide the Merchant with all applicable Merchant Operating Guides at ANZ's cost.

22. Training

The Merchant is responsible at the Merchant's cost for training the Merchant's employees, contractors or agents who are to operate Electronic Terminals or otherwise process Transactions so that those employees, contractors and agents are familiar with the Merchant's obligations under the Agreement and Transactions are processed in accordance with the Agreement.

23. Supply of Card Imprinters and Stationery

ANZ will supply the Merchant with Card Imprinters and Transaction Vouchers in accordance with the Letter of Offer or as otherwise agreed by ANZ from time to time in writing.

24. Indemnity

The Merchant indemnifies ANZ against all claims, damages, actions, losses and liabilities which ANZ or any of its employees, contractors or agents suffer or incur arising directly or indirectly from:

- (i) the negligence or fraud of the Merchant or an employee, contractor or agent of the Merchant;
- (ii) the failure of the Merchant, or an employee, contractor or agent of the Merchant, to observe any of the Merchant's obligations under the Agreement;
- (iii) any dispute arising between the Merchant and the Cardholder in respect of the supply, use, quality or fitness for purpose of goods or services or the provision of cash;
- (iv) any use of an Electronic Terminal or Card Imprinter by the Merchant or its employees, contractors or agents;
- (v) any representation, warranty or statement made by the Merchant or its employees, contractors or agents to the Cardholder; or
- (vi) any misrepresentation, breach of contract or failure of consideration relating to any contract for the supply of goods or services by the Merchant to a Cardholder,

except that the Merchant is not obliged to indemnify ANZ or its employees, contractors or agent against any claims, damages, actions, losses or liabilities which are solely the result of the fraud, wilful default or gross negligence of ANZ or its employees, contractors or agents.

This indemnity will survive the termination of the Agreement.

25. ANZ Liability

- (i) To the extent permitted by Law, ANZ will not be responsible for any loss or damage (including consequential loss or damage) suffered by the Merchant pursuant to the Agreement including, but not limited to, loss or damage suffered because an Electronic Terminal or telephone line is malfunctioning or not operating, except loss or damage attributable to the negligence or wilful default of ANZ.

To remove any doubt and without limiting the generality of this provision, ANZ services and Merchant Facilities are dependent on messaging, communications, processing and other systems which are subject to interruption or breakdown for a variety of reasons. ANZ will take all commercially reasonable steps to reduce the duration should such interruption or breakdown occur but will not otherwise have any liability for any failure, delay or other matter resulting from it.

- (ii) In the event an Electronic Terminal supplied by ANZ is malfunctioning or not operating ANZ's liability is only to repair or replace the Electronic Terminal.
- (iii) ANZ is not liable for any loss, liability or damage which a Merchant may suffer or incur resulting from ANZ's failure to credit the Merchant Account due to technical or administrative difficulties relating to the banking system used for the transfer of funds to the Merchant Account.

26. Third Party Bureau Services

ANZ is not responsible for the acts or omissions of any third party which provides services, including without limitation, processing services, to the Merchant in connection with the Merchant Facilities. For the avoidance of doubt, ANZ is not liable for any losses, claims, damages, costs, terms or expenses suffered by the Merchant (including consequential loss) arising from or in connection with any act or failure to act by such third party in connection with a Transaction.

27. Appointment of agent, subcontractor or other party

- (i) The Merchant must not appoint any agent or subcontractor or a person in any other capacity ("an Appointee") to carry out the performance of any of the Merchant's obligations under the Agreement without the specific written agreement of ANZ.
- (ii) In the event ANZ agrees to the appointment of an Appointee the Merchant will be responsible for any act or omission of that Appointee as if the Merchant had performed such act or omission.

28. Promotional Material

- (i) ANZ will supply the Merchant with Nominated Card signs, decals and other promotional material as agreed in the Letter of Offer or otherwise in writing from time to time.
- (ii) The Merchant must prominently display in the Merchant's Premises each Nominated Card decal and other promotional material supplied by ANZ or ANZ's authorised representative.
- (iii) Where the Merchant is authorised in writing by ANZ to accept Internet orders, the Merchant must display logos, signs or other promotional material supplied by ANZ or ANZ's authorised representative on the Merchant's website wherever payment options are presented to the Cardholder.
- (iv) The Merchant must not use any promotional material in relation to ANZ or any Nominated Card issuer except as authorised by ANZ. The Merchant cannot use the name, logo, any trademarks, brand names, business names or copyright belonging to ANZ without the prior written approval of ANZ.

- (v) The Merchant authorises ANZ to publish the name, address, telephone number, facsimile number and email address of the Merchant, and to use any logo applicable to the Merchant in any correspondence, circular or publication of ANZ.
- (vi) The Merchant must only advertise goods and services which can be purchased with a Nominated Card in Australian currency or any other currency authorised in writing by ANZ.

29. Representations and Warranties

- (i) When the Merchant supplies Transaction details to ANZ, whether the Transaction is processed electronically or manually, the Merchant represents and warrants to ANZ that:
 - (a) all Transaction details are true and correct;
 - (b) the Merchant has complied with the requirements of the Agreement applicable to processing of Transactions;
 - (c) the Merchant is not aware of any fact which would cause the Transaction to be an invalid Transaction or an Unacceptable Transaction; and
 - (d) the Merchant has complied with all applicable Laws in carrying out its obligations in connection with the Transaction under the Agreement.
- (ii) The Merchant represents and warrants to ANZ that the Merchant has power to enter into and perform its obligations under the Agreement and that the Agreement is valid, binding and enforceable against the Merchant.
- (iii) The issue of a Nominated Card to a Cardholder is not a representation or warranty by ANZ or the Nominated Card issuer as to the Cardholder's credit worthiness or identity.

30. Suspension of Merchant Facility

- (i) ANZ reserves the right to suspend the Merchant Facilities immediately upon notice to the Merchant if:
 - (a) ANZ believes that continued use or non-use of the Merchant Facility may cause loss to the Merchant or ANZ; or
 - (b) if the Merchant has breached any of its material obligations under the Agreement.

When exercising this right ANZ is not required to notify the Merchant of the date upon which the suspension will end.

- (ii) When ANZ suspends the Merchant Facilities:
 - (a) the Merchant must not accept any Nominated Cards as payment for goods or services; and
 - (b) ANZ is not obliged to accept any Transactions processed by the Merchant after notification of suspension.
- (iii) ANZ may during the period of suspension terminate the Merchant Facilities pursuant to condition 31.

31. Termination

- (i) Either the Merchant or ANZ may at any time terminate the Agreement by giving the other notice in writing. The notice does not need to include any reason and will take effect 30 days after the date on which it is given.
- (ii) ANZ may terminate the Agreement immediately by notice to the Merchant should any of the following occur:
 - (a) an Insolvency Event occurs in relation to the Merchant;

- (b) the Merchant breaches any of its material obligations under the Agreement;
 - (c) the Merchant does not process any Transactions with ANZ for a continuous period of six months;
 - (d) it becomes illegal or impossible in practice for ANZ to continue to provide the Merchant Facilities to the Merchant;
 - (e) the Agreement becomes wholly or partly void, voidable or unenforceable or a claim is made to that effect;
 - (f) the Merchant processes a Transaction that the Merchant knew, or ought to have known, was fraudulent; or
 - (g) ANZ reasonably determines that the continued provision of the Merchant Facilities to the Merchant may damage the reputation of ANZ.
- (iii) Termination of the Agreement or any part of it does not affect any rights or obligations of the Merchant or ANZ that arose prior to termination. In particular, any obligation the Merchant has under the Agreement to indemnify ANZ or to pay ANZ any amounts (including costs), is a continuing and independent obligation and survives even if the Agreement is terminated. All Transactions made prior to termination are subject to the terms of the Agreement.
- (iv) In the event that ANZ receives a Transaction Voucher after termination of the Agreement, ANZ reserves the right, at its option, to return the Transaction Voucher to the Merchant or to retain the Transaction Voucher. If ANZ decides to retain the Transaction Voucher, the Merchant is not entitled to any payment for the Transaction in respect of the Transaction Voucher until such time as ANZ has received payment and no chargeback claim can be made by the issuer of the Nominated Card in connection with the Transaction Voucher.
- (v) Upon termination of the Agreement, the Merchant must immediately return to ANZ all stationery, promotional material, Transaction Vouchers, Card Imprinters or equipment (including Electronic Terminals) supplied in connection with the Agreement.

32. Variation

ANZ may vary all or any of the provisions of the Agreement at any time by giving the Merchant notice in writing. Where ANZ changes or introduces fees and charges the variation is effective 30 days after such notification. Any other variation is effective upon such notification.

33. Notice

- (i) A notice must be in writing and is taken to be received:
 - (a) if delivered personally, at the time of delivery;
 - (b) if sent by pre-paid post, on the third day after the posting;
 - (c) if sent by facsimile transmission, on the date the transmitting machine records transmission of the complete document.
- (ii) The address or facsimile number to be used for notices is the last address or facsimile number advised by a party. The Merchant must inform ANZ immediately of any change of the Merchant's address or facsimile number.

34. Relationship of the Parties

Nothing in the Agreement creates a relationship of joint venture, partnership or principal and agent between ANZ and the Merchant. The Merchant must not act as if, or represent or attempt to represent to any person that, any such relationship exists.

35. Assignment

This Agreement is binding upon the parties, their executors, administrators, successors and permitted assigns. The Merchant must not transfer any of the Merchant's rights or obligations under the Agreement unless ANZ consents in writing. ANZ may transfer any of its rights or obligations under the Agreement upon giving 14 days prior notice to the Merchant. To remove any doubt ANZ may at any time arrange with a third party to provide any of the services ANZ is obliged to provide to the Merchant pursuant to the Agreement.

36. Severability

If in any jurisdiction, a provision of the Agreement is illegal or unenforceable, the Agreement is to be interpreted for the purposes of that jurisdiction only, as if it had never included the provision so far as the provision is illegal or unenforceable.

37. Waiver

The rights ANZ has under the Agreement cannot be waived except by ANZ giving the Merchant written notice waiving the particular rights. In particular, ANZ does not waive any right that ANZ has in connection with the Agreement merely because ANZ does not exercise it or does not exercise it as soon as ANZ can.

38. Change in Merchant Circumstances

The Merchant must notify ANZ:

- (i) in the event that circumstances arise which may have a material adverse effect on the Merchant's business, assets or financial conditions or the Merchant's ability to perform the Merchant's obligations under the Agreement; or
- (ii) if the Merchant sells, leases or transfers its business or any of the Premises; or
- (iii) if a Merchant changes the address where it carries on business or starts carrying on business at any other place.

39. Governing Law

This Agreement is governed by the Law in force in the State or Territory where ANZ's office shown in the Letter of Offer is located. ANZ and the Merchant agree to submit to the non exclusive jurisdiction of the courts having jurisdiction under that Law in relation to any proceedings about or in connection with the Agreement.

40. Meanings of Words and Expressions

In the Agreement:

"ANZ" means Australia and New Zealand Banking Group Limited ABN 11 005 357 522.

"ANZ Group" means ANZ and all ANZ's related bodies corporate (within the meaning of section 9 of the Corporations Law).

"Application Form" means the application form completed, and submitted to ANZ, by the Merchant for the Merchant Facilities.

"Authorisation Centre" means the authorisation centre approved by ANZ for the purposes of the Agreement and the details of which are notified to the Merchant by ANZ.

"Authorised Floor Limit" means the total value of sales or payment which the Merchant is authorised to make to a Cardholder in any one Transaction without ANZ's consent.

"Business Day" means a day on which ANZ's office shown in the Letter of Offer is open for general banking business.

"Cardholder" means a person issued with a Nominated Card or authorised to use a Nominated Card.

"Card Imprinter" means any card imprinter to be used to process Transactions manually.

"Chargeback" means a Transaction that ANZ charges back to the Merchant in accordance with condition 13(i)(b);

"Credit Authorisation Terminal" means a device which facilitates authorisation of sale Transactions and Refund Transactions using a Nominated Card (being a credit card), which captures Transaction information, and which can be used by the Merchant at a later time or date to initiate the credit or debit of funds to facilitate the settlement of those Transactions.

"Credit Transaction" means a Transaction where payment is made by ANZ or another card issuer of a Nominated Card (being a credit card) on behalf of the Cardholder pursuant to a credit card contract between ANZ and the Cardholder or the Cardholder and the other Nominated Card issuer (as the case may be) in discharge of the Cardholder's debt for goods or services supplied by the Merchant to the Cardholder.

"Debit Transaction" means a Transaction where payment is made by debiting funds in an account which is authorised for access by the Cardholder's Nominated Card.

"Electronic Terminal" means:

- (a) any electronic device or equipment (including where applicable a portable electronic device or equipment but not including an automatic telling machine), for processing Transactions using Nominated Cards and for initiating the credit or debit of funds to facilitate the settlement of those Transactions ; or
- (b) any Credit Authorisation Terminal.

"Insolvency Event" means any of the following:

- (a) the Merchant has a receiver, receiver and manager, mortgagee in possession or voluntary administrator appointed to the Merchant or any of the Merchant's assets; or
- (b) the Merchant becomes subject to any other form of external administration; or
- (c) a resolution is passed for winding up of the Merchant or an order is made for winding up of the Merchant;
- (d) an application for winding up of the Merchant is presented, which relates to an amount of money owed by the Merchant which is not bona fide in dispute;
- (e) if the Merchant is a partnership, the partnership is dissolved or the Merchant resolves to dissolve the partnership; or
- (f) if the Merchant is an individual, the Merchant becomes, or is declared, bankrupt or dies.

"Internet" means the public narrowband on-line computer network of that name or any successor of it.

"Invalid Transaction" means a transaction that is invalid under condition 11.

"Law" includes any law, statute, regulation, ordinance, proclamation, by-law or statutory instrument or order;

"Letter of Offer" means the letter in which ANZ made the offer of Merchant Facilities to the Merchant.

"Merchant" means the person named as Merchant in the Letter of Offer.

"Merchant Account" means the bank account or accounts nominated by the Merchant for the purposes of the Agreement.

"Merchant Facilities" means the services and facilities ANZ makes available to the Merchant under the Agreement.

"Merchant Operating Guide" means each current merchant operating guide which is provided by ANZ to the Merchant.

"Nominated Card" means each card being a debit card or credit card or both described in the Letter of Offer and any other card authorised by ANZ for the purposes of the Agreement and notified to the Merchant in writing.

"Nominated Card Scheme" means any scheme established to manage and establish standards and procedures for the issuance and acceptance of Nominated Cards and the settlement of Transactions.

"Premises" means the various locations or location where the Merchant conducts business and is authorised by ANZ to accept Nominated Cards.

"Reasonable Identification Details" means:

- (a) the Cardholder's name (as it appears on the card);
- (b) the Cardholder's home address (not a PO Box);
- (c) delivery address (if not same as home address);
- (d) the Cardholder's signature (unless the order is made by telephone or via the Internet); and
- (e) a contact telephone number.

"Refund" means, in respect of a sales Transaction, the reversal in accordance with the Merchant Operating Guides of that sales Transaction.

"Secure Internet Site Declaration" means the declaration completed by the Merchant in accordance with condition 18(iv).

"Taxes" means all taxes, levies, imposts, duties and charges, including, but not limited to, stamp duty, financial institutions duty, goods and services tax, consumption tax, value added tax or similar tax.

"Terminal Rental Fee" means the amount specified in the Letter of Offer as the terminal rental fee.

"the Agreement" means the agreement constituted by the Merchant's acceptance of ANZ's offer on the terms and conditions set out in the Letter of Offer and comprising the documents referred to in condition 1.

"Transaction" includes a sales transaction (being the supply of goods or services or both), Refund transaction or cash transaction in which a Nominated Card or a Card number of a Nominated Card is used and which is processed by the Merchant manually or electronically.

"Transaction Voucher" includes a sales voucher or transaction record or Refund voucher or transaction record (as applicable) or any transaction record used in processing Transactions manually or electronically.

"Unacceptable Transaction" means a transaction that is unacceptable under condition 12.

“Warning Bulletin” means any bulletin issued by ANZ which lists Nominated Cards which must not be accepted by the Merchant in any Transaction.

41. Interpretation

- (i) If the Merchant consists of more than one person, the liability of those persons under the Agreement is joint and several.
- (ii) If there is an inconsistency between the documents forming the Agreement the following order prevails:
 - (a) Letter of Offer;
 - (b) Special Conditions; and
 - (c) General Conditions.

In the event there is an inconsistency between the General Conditions or the Special Conditions and the Merchant Operating Guides, the Merchant Operating Guides prevail.

- (iii) A reference to an individual or person includes a reference to a company and any other entity the Law recognises.
- (iv) The singular includes the plural and vice versa.
- (v) A reference to the Agreement or any document forming part of the Agreement, or any Law is a reference to the Agreement, document or Law as amended, novated, supplemented, replaced or re-enacted.
- (vi) A reference to “you” is a reference to the Merchant.
- (vii) A reference to “mail” includes information sent or received by facsimile.