

INSTRUCTIONS

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ANZ TRADE TERMS

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VANUATU

ANZ TRADE TERMS

09.10

ANZ TRADE TERMS

1. INTRODUCTION

1.1 Terms applying

These ANZ Trade Terms (**Terms**) contain specific and general terms which the Customer agrees apply if ANZ accepts and acts upon its application for the provision or use of a Trade Product or Service.

1.2 Applications

- (a) If the Customer wants ANZ to provide a Trade Product or Service to it, it will deliver to ANZ a properly completed application, in the form specified by ANZ from time to time, signed by one or more authorised officers of the Customer who have been identified to ANZ in a manner acceptable to ANZ and such other documents as required by ANZ.
- (b) ANZ may (but need not) accept and act upon the Customer's application. ANZ is not required to notify the Customer of any reason it may have for refusing to accept and act upon the Customer's application. This clause applies despite any negotiations between ANZ and the Customer before an application is made. Nothing in these Terms will oblige ANZ to continue to make any Trade Product or Service available to the Customer.

1.3 International Chamber of Commerce Rules

- (a) Each Documentary Credit will be subject to the Uniform Customs and Practice for Documentary Credits (**UCP**) of the International Chamber of Commerce (**ICC**) and the ICC Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits.
- (b) Each standby letter of credit will be subject to the ICC International Standby Practices (**ISP**) or UCP as specified in the relevant application or the instrument.
- (c) Each demand guarantee, bond or payment undertaking issued by ANZ will be subject to ISP or the ICC Uniform Rules for Demand Guarantees or the governing law specified in the relevant application or the instrument.
- (d) Each Collection (either documentary or clean) will be subject to the ICC Uniform Rules for Collections.
- (e) The ICC rules above which are applicable to each Documentary Credit, Instrument or Collection are those which are in effect from time to time.
- (f) Unless ANZ notifies the Customer otherwise, any future revision of any ICC rules above will automatically apply when it is stated by the ICC to come into effect.
- (g) If these Terms and the terms in the ICC rules above or any other ICC rules are inconsistent or conflict, these Terms will prevail.

1.4 Warning - Exchange Rate Movements

- (a) If the Customer utilises a Trade Product or Service in one currency and the Customer's receivables are in another currency the Customer will face exchange rate risk. The Customer is solely responsible for monitoring and

managing exchange rate risk and should consider an appropriate mechanism to protect against adverse exchange rate movements.

- (b) If the Customer has granted security or made a payment for a Trade Product or Service, the value of that security or payment may fall relative to the amount of the Trade Product or Service as a result of exchange rate fluctuations and the Customer may be required to provide extra security or payment or, in some cases, reduce the amount of the Trade Product or Service.

1.5 APS222 Disclosure

The Customer acknowledges that where ANZ is a subsidiary of ANZBGL, it is a separate entity to ANZBGL and the obligations of ANZ under any Trade Agreement and these Terms do not constitute deposits or other liabilities of ANZBGL and ANZBGL is not required to meet the obligations of ANZ.

2. IMPORTS

2.1 Terms applying

The terms in this Clause 2 apply to the issue of Import Credits and import Collections.

2.2 Import Credit issuance

- (a) Each Import Credit will be irrevocable, issued in a form acceptable to ANZ and is a separate transaction from any contract or other dealing between the Customer and any other party in relation to which the Import Credit is issued and is binding on ANZ regardless of what may occur or be alleged in that contract or other dealing.
- (b) The Customer is solely responsible for ensuring that the terms or requirements in an Import Credit are effective and enforceable and ANZ is not responsible and has no duty whatsoever to advise the Customer on such issues.
- (c) ANZ may restrict negotiations under any Import Credit to its own offices or to any Correspondent Bank of its choice.
- (d) ANZ will only make alterations to the wording or other information in an Import Credit if the Customer consents in writing to them.
- (e) The Customer will examine the customer copy of the Import Credit issued by ANZ and must notify ANZ of any objection about the terms of the Import Credit within 2 Banking days after receipt of the customer copy of the Import Credit otherwise it will be deemed to have waived any rights to raise objections or pursue any remedies against ANZ in respect thereof.

2.3 Import Credit claim

- (a) ANZ is entitled to make any payment or accept any draft, claim or drawing under the Import Credit if it determines that the Documents comply with the terms of the Import Credit and ANZ is not obliged to notify the Customer prior to making a payment or accepting drafts, claims or drawings under the Import Credit.

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- (b) ANZ is not obliged to take into consideration any notice from the Customer of any claim or defence the Customer may have against the beneficiary of the Import Credit.
- (c) If ANZ has restricted the negotiation of the Import Credit to its Correspondent Bank, ANZ is authorised to accept and pay all Documents drawn or purported to be drawn on any such Correspondent Bank.
- (d) The Customer will pay to ANZ all amounts paid by ANZ under the Import Credit on the day on which ANZ makes or is required to make that payment.

2.4 Discrepant Documents

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

2.5 Import Credit insurance

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

2.6 Import Credit remedies and responsibility

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

may remain owing to ANZ after the sale or disposal of the Goods or dealing with the Documents and (iv) the Customer will do anything including endorsing, assigning, signing, executing and delivering any transfers, deeds or documents (or arrange any such matters) which ANZ requires in order to perfect ANZ's title to the Goods or to otherwise give effect to any proposed landing, docking, storage, insurance, sale or other disposal or dealing.

- (c) The Customer will, upon request by ANZ, forthwith appear and defend at its own cost and expense any action which may be brought in connection with the Import Credit and/or make any claim or take any action or institute any proceedings which ANZ may consider necessary or desirable to recover any proceeds, compromise or settle any dispute in connection with any pledged or mortgaged Documents, pledged or mortgaged Goods, Service, any documentary credit, relevant documents, charged property, sales proceeds or insurance proceeds on such terms as ANZ may in its absolute discretion consider appropriate, failing which ANZ may do it in its name or the Customer's name at the Customer's cost.
- (d) In addition to the disclaimer on the effectiveness of documents in UCP neither ANZ nor its correspondents or agents are liable or responsible for, nor will the Customer's obligations under these Terms or in relation to any Import Credit be reduced, terminated or affected in any way by (i) the shippers' charges on the Goods, (ii) the granting of any time, credit, indulgence or other concession to any person by ANZ, (iii) any failure to obtain any governmental approval or licence necessary or appropriate in connection with these Terms or the Import Credit, (iv) any impossibility or illegality in performance of these Terms or the Import Credit or any other agreement as a result of any act of any governmental authority or court, or any law, regulation or order affecting the terms of these Terms or the Import Credit or (v) any variations in the instructions agreed to by ANZ or any other bank relating to the Import Credit necessitated by the law and/or commercial practice of the country in which any draft is negotiated or presented for acceptance or for payment.

2.7 Import Collections

- (a) If ANZ acts as a collecting bank in respect of import Collections and bills of exchange for acceptance or payment, or Documents on a cash against Documents basis, ANZ may hold the Documents until acceptance or reimbursement of the relevant Bills of Exchange, or payment, by the Customer.
- (b) Any additional terms applicable to any import Collection sent to the Customer by ANZ will be outlined in the correspondence attached to the import Collection.

2.8 Pledge

- (a) All Documents and Goods now or at any time delivered to or deposited with ANZ have been or will be so delivered or deposited by way of pledge as security (**Pledge**) for payment on demand to ANZ of the Secured Moneys.

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- (b) The Goods will be dealt with by the Customer in accordance with such instructions as ANZ may give from time to time for the protection of ANZ's interest in them including, without limitation, keeping the Goods separate from any other property.
- (c) The risks in the Goods will be with the Customer and ANZ will not be responsible for any loss or damage or depreciation in value of any Goods or Documents held by ANZ as security.

2.9 Trust Receipt

- (a) If, prior to the payment in full of the Secured Moneys, ANZ releases to the Customer the Documents or any of them to enable the Customer to obtain delivery of the Goods, the Customer will:
 - (i) hold the Documents, and the Goods when received, in safe custody and on trust for ANZ and in respect of those Goods exclusively for the purpose of their sale or other disposition approved by ANZ on normal trade terms at market value;
 - (ii) if required by ANZ, execute and deliver to ANZ a trust receipt, on terms satisfactory to ANZ, together with any other documents that ANZ may require and the Goods will remain subject to the Pledge;
 - (iii) until sale or delivery (if applicable), warehouse at the Customer's cost the Goods in the name of ANZ, maintain the Goods in sellable condition and at the Customer's cost and immediately deliver to ANZ the warrants or receipts for the Goods (if issued);
 - (iv) insure the Goods against fire and any other risks that ANZ may reasonably require to their full insurable value and to hold the policies on behalf of ANZ and in case of loss pay the insurance moneys to ANZ in the same manner as proceeds of sale and make good any deficiency;
 - (v) immediately upon receipt of the proceeds (or each portion of them) of any sale or other disposal of the Goods, pay such proceeds to ANZ, without deduction and until it does so the Customer will hold the proceeds in trust for ANZ;
 - (vi) if required by ANZ, do all things necessary to give ANZ full authority to receive from any purchaser, any outstanding proceeds of any sale or other disposal of the Goods;
 - (vii) keep any transaction involving the Goods separate from all other transactions and to keep the Documents, the Goods and any proceeds from the sale of them separate and distinct from any other documents, goods or proceeds relating to or arising from any other transaction; and
 - (viii) not permit the Goods to be processed or altered or incorporated in any other goods without ANZ's consent.
- (b) Where this clause applies (i) the Customer has no claim, lien or set-off of any kind in respect of anything which

the Customer holds on trust for ANZ under this clause, (ii) the Goods will remain the property of ANZ until sold or otherwise disposed of and (iii) any proceeds of sale or other disposal paid to ANZ in accordance with this clause, may be appropriated and applied by ANZ, as it thinks fit.

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

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

3. BACK-TO-BACK CREDIT/FRONT-TO-BACK CREDIT

3.1 Terms applying

The terms in this Clause 3 apply (in addition to the applicable terms in Clauses 2, and 4) to the issue of a Back-to-Back Import Credit (**BtB Credit**) or Front-to-Back Import Credit (**FtB Credit**) in respect of a related Export Credit (**Master Credit**).

3.2 Form

- (a) ANZ has no duty to ensure that a BtB Credit contains terms and requirements matching or compatible with the Master Credit.
- (b) ANZ is not obliged to notify the Customer of any mismatch or incompatibility between the BtB Credit and the Master Credit before any BtB Credit is issued for the Customer.
- (c) The Customer acknowledges that a FtB Credit is issued before the Master Credit is issued and it is the Customer's responsibility to ensure that the Master Credit is compatible with and, for all practicable purposes, matches to the FtB Credit and is delivered to ANZ within a period which is acceptable to ANZ.

3.3 Amendment

- (a) If the Master Credit is not advised by ANZ and the Customer receives any amendment issued in respect of the Master Credit, the Customer shall notify ANZ immediately.
- (b) The Customer shall not accept or reject any amendment to any BtB Credit, FtB Credit or Master Credit without the prior consent of ANZ.

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3.4 Liability

- (a) The liabilities of the Customer in relation to any BtB Credit or FtB Credit shall not be dependent upon whether payment can or cannot be obtained under the Master Credit and ANZ retains full recourse to the Customer in respect of those liabilities.
- (b) The payment by ANZ under any BtB Credit or FtB Credit shall not constitute any warranty or representation on the part of ANZ that the Documents received by ANZ under the BtB Credit or the FtB Credit, with or without the substitution of invoices and possibly other documents supplied by the Customer, are sufficient to form a set of fully compliant Documents for the purpose of obtaining payment under the Master Credit.
- (c) The Customer undertakes not to assign the proceeds of any Master Credit to any other person without the prior written consent of ANZ.

3.5 Appointment and authority

- (a) The Customer irrevocably appoints ANZ to be its presenting bank regarding the Master Credits with the right for ANZ to negotiate the Master Credits in accordance with the term hereof if ANZ deems fit.
- (b) ANZ may in its absolute discretion utilise Documents presented under the BtB or FtB Credit for the drawing of the Master Credit.
- (c) If the Documents have duly been accepted by the Issuing bank or Confirming bank or other Nominated bank of any Master Credit as in compliance with its terms, ANZ is authorised to (but need not) (i) accept and effect payment against the Documents presented under the corresponding BtB Credit or FtB Credit as if they are in full compliance with the terms thereof (although they may not be so and/or discrepancies may have been raised), without prior reference or notice to the Customer and (ii) upon receipt of the proceeds under the Master Credit, directly apply all or any part of the same to settle the corresponding drawing(s) under, and/or to discharge the Customer's obligations and liabilities (actual or contingent) in respect of any advance or loan provided by ANZ in connection with, the BtB Credit or FtB Credit as ANZ may think fit without first crediting such proceeds to the Customer's account with ANZ.
- (d) ANZ is authorised to (but need not) (i) execute, sign and/or complete any document, instrument or instruction and (ii) do any acts and things whatsoever which may, in ANZ's sole and absolute opinion, be necessary for the presentation and negotiation of the Documents under the Master Credit including the preparation, dating, signing of any relevant Documents in order to give effect to the appointment and authorities given to ANZ under this Clause 3.

4. EXPORTS - NEGOTIATION AND/OR PRESENTATION AND COLLECTION

4.1 Terms applying

The terms in this Clause 4 apply to the negotiation and/or presentation of Documents under an Export Credit or an export Collection.

4.2 Export Credits

- (a) The Customer may make application to and request ANZ to either (i) honour or negotiate Documents and credit proceeds immediately or upon acceptance of the Documents by the Issuing bank to the account specified by the Customer or (ii) present Documents to the Issuing/reimbursing bank for payment without honour or negotiation, and credit proceeds to account(s) specified by the Customer when payment is received from the Issuing/Reimbursing bank.
- (b) The application lodged by the Customer will be accompanied by all Documents called for, under the Export Credit and, if ANZ is not the Advising bank, the originals of the Export Credit and all amendments to the Export Credit in existence at that time.
- (c) ANZ or its Correspondent Bank may notify the Customer of any discrepancy in or concerning the Documents presented under an Export Credit.
- (d) If the Customer provides instructions to ANZ or its Correspondent Bank to proceed with a claim under the Export Credit notwithstanding the discrepancies and the draft is dishonoured or any of the other Documents are not accepted and the claim is not honoured, the Customer will repay ANZ on demand (i) the amount of the draft or the amount of the claim in each case and (ii) interest on that amount at ANZ's current lending rate and margin from time to time for that currency, calculated from the date the draft or claim was negotiated until the date of repayment and (iii) all costs, fees and charges incurred by ANZ.

4.3 Export Collection

- (a) At the request of the Customer ANZ may (but need not) negotiate a bill of exchange or draft or provide advances against the Document(s) to be sent on Collection.
- (b) ANZ is not obliged to check the Documents before sending them to the collecting bank.
- (c) ANZ will only pay the Customer proceeds of a Collection which have actually been received by ANZ from the collecting bank and will not be liable if it receives late advice of payment.
- (d) ANZ is not responsible for any act, omission or default on the part of any collecting/settlement bank nominated or recommended by the Customer, or in the absence of a nomination or recommendation on the part of the Customer, used by ANZ.

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4.4 Negotiation and/or advances against Documents

- (a) The Customer warrants and represents to ANZ that all Documents delivered or to be delivered to ANZ for negotiation and/or presentation or Collection relate to sale of the Goods or the provision of Services as described in those Documents and the Customer has shipped or delivered the Goods to, or fully performed the Services for, the buyer.
- (b) If not already paid, all charges, commissions, fees or expenses incurred by ANZ in relation to the negotiation or presenting of Documents, the Collection or any advance against Documents sent on Collection will be deducted by ANZ from the proceeds before payment to the Customer.
- (c) Unless otherwise agreed in writing, ANZ has full recourse to the Customer and the Customer will provide ANZ with the necessary funds on demand and in any event not later than the maturity date of the relevant Document to reimburse ANZ for (i) any advances by way of discounting or financing a drawing under the Export Credit or providing an advance against Document(s) presented for payment under the Export Credit or sent on Collection (including purchase, discounting, negotiation or financing of any Bills of Exchange or drafts) which have not been duly honoured on presentation or in respect of which payment has not been duly made to ANZ on the maturity date for any reason and (ii) any unpaid and accrued interest, fees and charges.
- (d) Notwithstanding that ANZ may (but need not) negotiate, finance or discount or provide advances against Documents on a 'without recourse' basis, ANZ always retains limited recourse to the Customer as provided in Clause 11.14.
- (e) Nothing done or omitted to be done by ANZ in respect of any Documents negotiated by ANZ for the Customer after being dishonoured for payment or acceptance or not duly taken up on presentation will in any way prejudice ANZ's right of full recourse or, if otherwise agreed, limited recourse to the Customer.
- (f) ANZ and its agents may, at its discretion and on such conditions as it thinks fit, in relation to any bill of exchange or draft it has negotiated (i) take conditional acceptances or acceptances for honour and to extend the due date for payment, (ii) accept payment from the drawee or acceptor before maturity in whole or under rebate or discount, (iii) accept part payment before maturity and deliver a proportionate part of the Goods to the drawee or acceptor of the bill of exchange or draft or the consignee of the Goods, (iv) at the request of the drawee, delay presentation of the bill for payment or acceptance without affecting the Customer's liability to ANZ in respect of such bill of exchange or draft and (v) protest or note the bill of exchange or draft, institute proceedings and take steps for recovery from any acceptor or endorser of the bill or any amount due in respect of such bill, despite ANZ having debited the Customer's account with the amount of such bill of exchange or draft.

5. CONFIRMATION OF EXPORT CREDITS

5.1 Terms applying

The terms in this Clause 5 apply to a confirmation by ANZ of an Export Credit on either an open or silent basis.

5.2 Confirmation

- (a) If the Issuing bank requests or allows ANZ to confirm an Export Credit, the Customer need not request ANZ to add its confirmation.
- (b) If the Issuing bank does not request or allow ANZ to confirm an Export Credit, the Customer may request ANZ to do so and will provide to ANZ any documents required by ANZ in order for ANZ to assess the request.
- (c) If ANZ adds its confirmation to the Export Credit it does so only on the 'limited recourse' basis as set out in Clause 11.14.
- (d) ANZ will only add a confirmation to an Export Credit which is subject to UCP, complete and regular on its face and available with ANZ as the Nominated bank or freely negotiable with any bank and in respect of which the other terms of the Export Credit, the Issuing Bank, the country in which the Issuing bank is domiciled and, if ANZ is not the Advising bank, the Advising bank are all acceptable to ANZ.
- (e) ANZ will advise the Customer in writing if it is willing to add its confirmation to the Export Credit. Upon receipt by ANZ of the Customer's acceptance and, if necessary, performance, of the terms in that advice, ANZ adds its confirmation to the Export Credit.

5.3 Amendment

- (a) ANZ will not be bound by the confirmation if the Export Credit is amended or an amendment is rejected without ANZ's written consent. ANZ's consent will not be unreasonably withheld or delayed.
- (b) The Customer will pay ANZ on demand any losses, liability, cost or expenses whatsoever incurred or suffered by ANZ as a result of confirming an Export Credit while in possession of an incomplete original Export Credit and/or without a complete set of amendments.

5.4 Fees

- (a) The Customer will pay ANZ a confirmation fee and negotiation fee, as separately agreed in writing with ANZ, from time to time.
- (b) If an amendment to which ANZ agrees increases the value or extends the validity of ANZ's existing commitment the Customer will pay ANZ a further fee calculated on such increase or extension.
- (c) Without affecting the Customer's liability to pay ANZ, the Customer authorises ANZ, at its discretion, to debit any of the Customer's accounts held with ANZ with any of the fees payable by the Customer on the date they are due for payment or to deduct them from the proceeds of the Export Credit.

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5.5 Presentation of Documents

- (a) The Customer will present at the counters of its ANZ Office the original Export Credit and all amendments to the Export Credit in existence at that time, if ANZ does not already hold them, together with all of the Documents called for in the Export Credit which fully comply with the terms of the Export Credit.
- (b) The Customer will present the Documents called for in the Export Credit as soon as they are available and not later than a date (as determined by ANZ) which will allow the Documents to be processed within the validity of the Export Credit.
- (c) If the Export Credit expires without presentation of Documents, ANZ's confirmation ends on the date the Export Credit expires.

5.6 Compliant Documents

- (a) If the Documents fully comply with the terms of the Export Credit and if ANZ based its agreement to confirm the Export Credit on a copy of the Export Credit, and is satisfied that the original Export Credit is the same as the copy of it (i) ANZ will dispatch the Documents to the Issuing/reimbursing bank for acceptance and payment in accordance with the terms of the Export Credit and (ii) if the Issuing bank fails to pay all or any part of the amount claimed within 21 calendar days of the maturity date of the Export Credit, ANZ will pay the Customer the amount of the Documents not paid.
- (b) At the time fully compliant Documents are presented by the Customer, the Customer may request ANZ to honour and negotiate the Export Credit and/or Documents and to credit proceeds to the Customer's account (immediately or on acceptance of the Documents by the Issuing bank). If ANZ agrees to the request of the Customer (which it is not obliged to do) the confirmation of the Export Credit will end upon the Customer's account being credited with those proceeds and ANZ will be under no obligation to make any other payment to the Customer.

5.7 Discrepant Documents

- (a) If the Documents do not fully comply with the terms of the Export Credit ANZ will advise the Customer of the discrepancies.
- (b) If the Documents do not fully comply with the terms of the Export Credit or the original Export Credit is different from the copy of the Export Credit upon which ANZ based its confirmation, ANZ confirmation ends and ANZ has no obligation to make any payment to the Customer under the confirmation.
- (c) If the Customer instructs ANZ to dispatch discrepant Documents to the Issuing Bank, ANZ may (but need not) agree to a request from the Customer to negotiate the Export Credit and credit proceeds to the Customer's account on acceptance of the discrepant Documents for payment by the Issuing bank.

5.8 Protection of rights

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

5.9 Assignment

- (a) When ANZ confirms an Export Credit at the request of the Customer, until ANZ subsequently makes a payment or enters into any other obligation for or at the request of the Customer in respect of that confirmed Export Credit and/or the Documents, the Customer will, at ANZ's request, assign to ANZ absolutely all the Export Credit Rights in terms satisfactory to ANZ.
- (b) If ANZ subsequently makes a payment or enters into any other obligation for or at the request of the Customer in respect of that confirmed Export Credit and/or the Documents, the Customer immediately prior to and in return for ANZ making that payment or incurring that obligation assigns to ANZ absolutely all the Export Credit Rights.
- (c) If requested by ANZ, the Customer will take all action and execute any documents (including the endorsement of any drafts or other instruments and the giving of notice of the assignment) reasonably required by ANZ, at the Customer's cost, to evidence and perfect the assignment of the Export Credit Rights under any applicable law or regulation.
- (d) If requested by ANZ, the Customer will take all action and steps and provide all assistance as ANZ may reasonably require at ANZ's cost (those costs to be reasonable and agreed with ANZ) including (i) making demand, (ii) directing any relevant person to make

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payment under the Export Credit or the related Documents or any contract or agreement in respect of the relevant Goods, Services or insurances to ANZ, (iii) initiating and continuing legal action in any Court or jurisdiction and conducting such legal proceedings in the Customer's name (or allowing ANZ to use the Customer's name, failing which ANZ may use its name) and in accordance with ANZ's instruction; and (iv) in connection with any claim by ANZ against any party in respect of the assigned Export Credit or related Documents or any contract or agreement in respect of the relevant Goods, Services or insurances.

- (e) If any of the Export Credit Rights are not effectively assigned and transferred to ANZ, the Customer agrees and declares that until such date as the remaining interest is effectively assigned and transferred to ANZ, the Customer will hold the remaining interest on trust for the sole benefit of ANZ.
- (f) The Customer cannot assign, encumber or otherwise deal with its rights under the confirmation without the prior written consent of ANZ.

6. TRANSFER OF EXPORT CREDITS

6.1 Terms applying

The terms in this Clause 6 apply if, on the Customer's application, ANZ agrees to transfer an Export Credit from the first beneficiary to a second beneficiary (Transferee) in accordance with that application.

6.2 Transfer

- (a) The Customer will ensure that the Export Credit is in a form acceptable to ANZ.
- (b) The Customer undertakes to deliver to ANZ, at first request, any documents which may be needed to substitute for any of the Transferee's documents which do not comply with the requirements of the original Export Credit.
- (c) Unless the Customer instructs ANZ to the contrary in its application, ANZ will substitute the Customer's drafts and invoices for those presented by the Transferee, and deliver to the Customer the invoices of the Transferee together with ANZ's payment advice for the amount by which the Customer's drafts exceed the amount of the drafts of the Transferee, less any expense or charges due to ANZ.
- (d) If the Customer fails to deliver its drafts and invoices to ANZ in conformity with the terms of the Export Credit, ANZ is authorised to forward the documents accompanying the drafts of the Transferee without any responsibility on ANZ's part to pay the Customer the difference between the amount of the Transferee's drafts and the amount authorised to be paid under the Export Credit.
- (e) Subject to Clause 6.2(c) the Customer waives and renounces its rights and interests as the beneficiary of the Export Credit and transfers them to the extent those rights and interests have been transferred to the Transferee pursuant to the transfer.

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

7. PAYMENT OF ASSIGNED EXPORT CREDIT PROCEEDS

7.1 Application and instruction

The terms in this Clause 7 apply if the Customer has assigned the proceeds of an Export Credit to a third party (Payee).

7.2 Assignment

- (a) An assignment by the Customer to the Payee must be an unconditional assignment of all or part of the Export Credit proceeds.
- (b) The Customer is solely responsible for ensuring the enforceability or effectiveness of the assignment between it and the Payee and ANZ is not responsible and has no duty whatsoever to advise the Customer on such issues.
- (c) The Customer undertakes not to assign any further rights to the Export Credit proceeds or issue additional instructions for payment thereof.
- (d) The Customer represents that (i) it has the power to make each assignment of the Export Credit proceeds referred to in each application and instruction it gives ANZ and (ii) to the best of its knowledge, no payment under the assignment of Export Credit proceeds could be avoided by law or will be encumbered or subject to any other claims.

7.3 Payment

- (a) All payment instructions given by the Customer to ANZ to pay the Export Credit proceeds to the Payee are irrevocable unless the Payee gives written authority to cancel them, and the Payee may request alternative disbursement arrangements.
- (b) ANZ relies on the information contained in all payment instructions delivered to ANZ and ANZ will make no further or independent enquiries into such matters.
- (c) ANZ will advise the Payee that payment will be made to it of the Export Credit proceeds in form and content acceptable to ANZ.
- (d) ANZ will only pay Export Credit proceeds to the Payee (i) if documentation is presented under the Export Credit and the subsequent reimbursement claim is honoured by the Issuing/reimbursing bank and (ii) after actual

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- receipt of the Export Credit proceeds by ANZ from the Issuing/reimbursing bank.
- (e) ANZ does not add its commitment, either actual or implied, to the arrangements entered into between the Payee and the Customer which have resulted in the assignment.
 - (f) The Customer will pay to ANZ, on demand any fees, charges and out of pocket expenses associated with the issuance of ANZ's advices in respect to, and the processing of, the payment instruction.

8. SHIPPING GUARANTEE/INDEMNITY AND AIR WAYBILLS

8.1 Terms applying

The terms in this Clause 8 apply to endorsement, countersigning or issue of letters of guarantee or indemnity by ANZ to shipping companies (or their agents), carriers or consignors of Goods to enable the Customer to obtain replacement bills of lading and/or delivery of Goods.

8.2 Dealing with documents

- (a) The Customer will make all reasonable endeavours to obtain the relevant bills of lading, transport or title documents and, upon receipt, will deliver the same to the shipping company or its agent and procure the release of ANZ's liability from the letter of guarantee or indemnity and the return of the same to ANZ for cancellation.
- (b) The Customer will, upon the request of ANZ, deposit with ANZ such sum of money and/or security equivalent to ANZ's obligations in respect of the letter of guarantee or indemnity given by ANZ until it is released and returned to ANZ for cancellation.
- (c) If the Customer requests ANZ to authorise the release or delivery of a shipment of Goods drawn under an Import Credit, that request will be treated as if it was payment made by ANZ and the Customer (i) waives all discrepancies that may appear in the Documents and accepts all such Documents presented under the relevant Import Credit, (ii) will reimburse any payment made by ANZ under the relevant Import Credit irrespective of discrepancies that may appear on the Documents and (iii) authorises ANZ to honour any relevant drawings without examining the presented Documents.

8.3 Customer's liability

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

- (b) Before ANZ issues, endorses or countersigns a letter of guarantee or indemnity, if requested by ANZ, the Customer will arrange for an issuer acceptable to ANZ to deliver to ANZ a backing letter of guarantee or indemnity in favour of and in terms acceptable to ANZ. If that backing letter of guarantee or indemnity is addressed and delivered to the Customer, if requested by ANZ, the Customer will assign or transfer to ANZ all its right, title and interest in that backing letter of guarantee or indemnity in terms acceptable to ANZ.
- (c) If ANZ pays the amount of the consignor's or any carrier's invoices, the Customer will pay to ANZ on demand the amount paid by ANZ and, subject to applicable law or regulation, title of the Goods the subject of the invoices passes to ANZ until such time as the Customer reimburses ANZ in full (together with any accrued interest) and risk in the Goods the subject of the invoices remains with the Customer at all times.

9. STANDBY LETTERS OF CREDIT AND GUARANTEES

9.1 Terms applying

The terms in this Clause 9 apply to the issue of Instruments.

9.2 Instrument issuance

- (a) Each Instrument will be irrevocable, issued in a form acceptable to ANZ and is a separate transaction from any contract or other dealing between the Customer and any other party in relation to which the Instrument is issued and is binding on ANZ regardless of what may occur or be alleged in that contract or other dealing.
- (b) The Customer is solely responsible for ensuring that the terms or requirements in an Instrument are effective and enforceable and ANZ is not responsible and has no duty whatsoever to advise the Customer on such issues.
- (c) ANZ may arrange for the Instrument to be issued by its Correspondent Bank on such terms as ANZ or its Correspondent Bank may decide and may issue a counter-indemnity in favour of such Correspondent Bank.
- (d) ANZ will only make alterations to the wording or other information contained in the Instrument if the Customer consents in writing to them.
- (e) The Customer will examine the customer copy of the Instrument issued by ANZ and must notify ANZ of any objection about the terms of the Instrument within 2 Banking days after receipt of the customer copy of the Instrument otherwise it will be deemed to have agreed to waive any rights to raise objections or pursue any remedies against ANZ in respect thereof.

9.3 Payments under the Instrument

- (a) ANZ may make any payment or discharge any liability in respect of an Instrument by way of an actual cash payment, book entry, transfer of funds or otherwise as determined by ANZ and a reference to 'payment' in this Clause 9 is a reference to such a payment.

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- (b) ANZ is entitled to pay to the beneficiary an amount not exceeding, in aggregate, the maximum amount specified in the Instrument that ANZ believes to have been properly demanded under the Instrument.
- (c) ANZ is not obliged to notify the Customer when it receives a demand or to notify the Customer or make any enquiry of or to take account of or make reference to statements from the Customer or any other person prior to making a payment or accepting drafts, claims or drawings under the Instrument.
- (d) If ANZ determines that a demand, draft or other document presented under the Instrument does not comply with the terms of the Instrument, (i) ANZ may refuse the demand by notice to the party from which it received the demand and any draft or other documents and (ii) ANZ is not obliged to notify the Customer of any such determination or refusal or to seek the Customer's waiver of any discrepancies before refusing the demand and any decision by ANZ to seek a waiver at any time does not oblige ANZ to seek a waiver at any other time in respect of any other discrepancies.
- (e) ANZ may, at any time, discharge all its obligations under an unexpired Instrument by paying, whether or not ANZ has received a demand, the undrawn amount of the unexpired Instrument (or such lesser amount that the beneficiary requires) to the beneficiary or the successor in title to the beneficiary. On discharge of the unexpired Instrument by ANZ the Customer will be liable for (and will pay ANZ on demand) all amounts which ANZ has paid to the beneficiary.

9.4 Documentary responsibility

- (a) Neither ANZ nor any of its Correspondent Banks are responsible for the genuineness, correctness or validity of any demands, notices, instructions, drafts or other documents received by it.
- (b) ANZ and its Correspondent Banks may rely entirely on the face alone of any demand, notice, instruction, draft or other document presented to it under the Instrument in order to determine whether or not to act or there has been a complying presentation under the Instrument.

9.5 Customer's liability in respect of the Instruments

- (a) The Customer will pay to ANZ an amount equal to all amounts paid or discharged by ANZ under the Instrument on the day on which ANZ makes or is required to make that payment or discharges its liability.
- (b) The Customer indemnifies ANZ against, and will pay ANZ on demand the amount of, all and any demands, claims, actions, proceedings, liabilities, payments, interest, costs, charges and expenses (including legal expenses on a full indemnity basis and taxes) which ANZ may suffer, incur or make in connection with the Instrument issued under these Terms, including (i) in relation to any claim that is made or attempted to be made under the Instrument by the beneficiary, (ii) in relation to any payment to its Correspondent Bank under a counter-indemnity, (iii) in relation to any amount which ANZ may pay or be required to pay on termination of the Instrument to the

beneficiary, (iv) ANZ acting on any representations made by the Customer to ANZ relating to the Instrument or (v) any failure, inability or refusal on the part of ANZ to honour the Instrument because of a court order or other similar obligation, or because ANZ is of the view that a transaction to which the Instrument relates in any way is tainted by fraud or alleged fraud.

- (c) If a branch of ANZ is the beneficiary of an Instrument issued by another branch of ANZ, for the purposes of Clauses 9 and 11 (including the indemnities) and those Instruments, the branches will be treated as separate legal entities.

10. TRADE FINANCE LOANS

10.1 Terms applying

The terms in this Clause 10 apply to trade finance loans.

10.2 Trade Finance Loan requirements

- (a) If the Customer has executed all documents ANZ requires and complied with the terms of all relevant documentation, funds will be paid in accordance with the disbursement instructions of the Customer in the relevant trade finance loan application.
- (b) The Customer warrants and represents (on a continuing basis) and undertakes to ANZ that the commercial invoices, contracts and transport documents to which the application for a trade finance loan relates and, when made, while they are the subject of that trade finance loan (i) have not been previously financed by ANZ or any other person and will not be financed by any person other than ANZ, (ii) are not and will not be encumbered in any way to any person other than ANZ and (iii) have been originated in the ordinary and usual course of the Customer's business, in good faith and without fraud, illegality or unauthorised act committed by any person.

10.3 Repayment and rollover

- (a) Unless otherwise agreed in writing with ANZ, the Customer will repay the trade finance loan and any outstanding interest, fees and expenses in the currency in which it is drawn on the maturity date of the trade finance loan so in accordance with its repayment election in the relevant trade finance loan application.
- (b) The Customer may apply to rollover all or part of an existing trade finance loan and request ANZ to make a new trade finance loan for that amount for a term to be agreed with ANZ.
- (c) If ANZ agrees to make a new trade finance loan accrued interest on the existing trade finance loan must be paid by the Customer to ANZ on the existing maturity date of the trade finance loan.

10.4 Bills of Exchange

Subject to any applicable law or regulation and market practice:

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

11. TRADE PRODUCTS OR SERVICES - GENERAL TERMS

11.1 Terms applying

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

11.2 Definitions

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

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

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

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

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

ANZ Office means the branch or office of the ANZ Group Member that provides the Trade Product or Service to the Customer. Generally, this will be specified in a Trade Agreement or the application completed by the Customer in relation to a Trade Product or Service.

Correspondent Bank means any bank (including any branch or ANZ Group Member) which provides any banking or other services in connection with a Trade Product or Service at the request of ANZ.

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

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

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

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

Exchange Rate means the rate for converting one currency into another currency on the basis of ANZ's ruling buying or selling rate of exchange at the time ANZ is required to make the payment in the other currency as determined by ANZ (such determination to be conclusive and binding on the Customer) or at a rate pre-arranged between ANZ and the Customer.

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

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

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

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

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

Instrument means any one of a standby letter of credit or a performance, advance payment, bid bond/tender bond, counter, financial, direct pay, insurance or commercial standby or demand guarantee and any counter-indemnity issued by ANZ in favour of its

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Correspondent Bank to facilitate the issuance of the Instrument in a particular jurisdiction.

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

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

Secured Moneys means all monies and liabilities in any currency which now or at any time may become due or owing or may be accruing or become due to ANZ by the Customer in respect of any Trade Product or Service provided to the Customer now or at any time (whether alone or with another person and whether or not contemplated at the date that or another Trade Product or Service is provided to the Customer by ANZ) in connection with Goods to be, or which have been, imported.

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

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

Trade Product or Service means any trade related product, service or facility provided by ANZ to the Customer in connection with the purchase, sale, storage, release, preparation or shipment of, or other dealings in, Goods or the performance of Services.

11.3 Interpretation

- (a) Terms not defined in these Terms will have the meaning given to them in the relevant Trade Agreement or applicable ICC rules.
- (b) In these Terms, unless the context otherwise requires, terms will be interpreted in accordance with the interpretation provisions of the relevant Trade Agreement.
- (c) If these Terms are inconsistent with any Trade Agreement, then where the relevant Trade Agreement states that it prevails to the extent of the inconsistency, it will so prevail over these Terms and otherwise, these Terms prevail to the extent of the inconsistency.

11.4 Foreign Currency

- (a) If any amount payable by ANZ or by the Customer in connection with a Trade Product or Service is payable in a currency (**Payment Currency**) other than the currency of the Customer's account from which or to which ANZ is entitled or instructed to debit or credit that payment (**Account Currency**), then as determined on the basis of the Exchange Rate (i) ANZ will make the payment in the

Payment Currency or credit equivalent amount in the Account Currency and (ii) the Customer will pay to ANZ and ANZ is entitled to debit an equivalent amount in the Account Currency.

- (b) The Customer acknowledges that to give effect to a currency conversion it may be necessary for ANZ to purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in accordance with ANZ's standard procedures at that time for currency conversion and authorises ANZ to do so.
- (c) ANZ will not be responsible for any loss or liability which the Customer may suffer or incur by reason of or in connection with non-availability to ANZ (after exercising reasonable endeavours) of the relevant amounts of deposits in the relevant currency for the purpose of providing any Trade Product or Service to the Customer.
- (d) The Customer will comply with all foreign exchange laws and regulations applicable to the Trade Product or Service provided by ANZ to the Customer and will pay ANZ on demand such amount as ANZ may be required to expend on account of such regulations.
- (e) ANZ will not be liable in anyway to the Customer and the Customer will indemnify ANZ against any third party claim for any loss, liability, cost, expense or delay whatsoever arising from any requirements imposed by, or the exercise of or conditions imposed under the applicable foreign exchange laws and regulations by any administering agencies.
- (f) Details of ANZ's applicable Exchange Rate are available by contacting the Customer's ANZ Manager.

11.5 Compliance with laws relating to Goods and/or Services

The Customer will comply with all laws, regulations and the terms of any licence relating to the Goods and/or Services and the export or import of Goods and will provide a copy (certified as a true and correct copy in a manner acceptable to ANZ) of any such licence to ANZ if requested to do so.

11.6 Interest

- (a) If ANZ makes any trade loan in connection with any Trade Product or Service including advances by way of discounting a drawing under an Export Credit or against any Document(s) (including the purchase, discounting, negotiation or financing of any Bills of Exchange or drafts), the Customer will pay interest and a margin, as agreed with ANZ, either (i) in advance, by deducting interest and margin from the proceeds before the net proceeds are provided to the Customer or (ii) in arrears when the amount is received by ANZ from the party responsible for making the payment.
- (b) Interest will be calculated on the amount of the advance or loan, at the interest rate and margin applicable to such advances, on the basis of either a 360 or 365 day year (depending on the currency) as determined by ANZ.

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- (c) If interest is paid in advance, interest will be calculated from (and including) the day on which the amount is credited up to (but excluding) the day upon which ANZ anticipates receiving payment from the party responsible for making the payment (and interest may be adjusted by ANZ, and is payable by the Customer on demand by ANZ, if the actual payment date is different from the anticipated payment date).
- (d) If interest is paid in arrears, interest will be calculated from (and including) the day on which the amount is credited to (but excluding) the day on which that amount is received by ANZ from the party responsible for making the payment.
- (e) The Customer may obtain details of applicable interest rates and margins by contacting its ANZ Manager.

11.7 Commissions, fees, charges and expenses

- (a) The Customer will pay ANZ all fees, commissions and charges which apply in respect of each Trade Product or Service provided by ANZ to the Customer as stated in any relevant Trade Agreement.
- (b) ANZ will, upon request, provide information to the Customer concerning the current Trade Product or Service fees, commissions and charges.
- (c) All fees, commissions and charges paid to ANZ are non refundable unless stated in writing otherwise.
- (d) The Customer will pay all (i) charges, duties and taxes (including Indirect Taxes) payable in connection with the Goods and/or Services and the export or import of Goods, (ii) freight and other amounts payable under any contract of carriage or otherwise in relation to a Trade Product or Service and (iii) charges levied on ANZ by any third party (including any correspondent or negotiating bank or its agent) in respect of the Trade Product or Service provided to the Customer by ANZ.

11.8 Reimbursement by the Customer

- (a) The Customer (i) authorises ANZ to debit at any time from any account held by the Customer with ANZ (if any) all amounts payable by the Customer in connection with these Terms or any Trade Product or Service, including any amount payable under any relevant indemnity, whether or not a demand has been made for the amount and (ii) will ensure that sufficient funds are available in the Customer's accounts held with ANZ (either as available credit funds or as approval or available overdraft funds) so that the debits can be made on time.
- (b) ANZ will tell the Customer if it makes such a debit.
- (c) The authority to debit given to ANZ does not oblige ANZ to do so or relieve the Customer of its obligation to pay each amount to ANZ when due under a Trade Agreement.
- (d) Upon the request of ANZ, the Customer will pay ANZ on or shortly before the date upon which ANZ makes (or is likely to make) payment under any obligation to make payment to any person (other than the Customer)

incurred on the instructions or otherwise on behalf of the Customer (**Payment Obligation**) a sum equal to such Payment Obligation and (i) ANZ may hold such sum in an account in its name under its complete and unfettered control, (ii) ANZ may apply all or any part of such sum against the Customer's obligation to reimburse ANZ for any payment made by it by under the Payment Obligation, (iii) ANZ is not obliged to refund any such sum unless the Customer's contingent or unmatured liability ceases to exist before they mature or do not mature in full and (iv) unless ANZ agrees otherwise, no interest will accrue on any such account.

11.9 Drawing or release against funds

- (a) If ANZ permits the Customer to draw against funds to be collected or transferred from any account(s), the Customer will on demand reimburse ANZ in full the amount so drawn if ANZ does not receive the funds in full at the time when ANZ ought to have received the same or if, after ANZ has accepted the transfer, ANZ is prevented from collecting or freely dealing with the funds in accordance with usual banking practice.
- (b) If ANZ receives payment from any person in connection with a Trade Product or Service utilised by the Customer which is not final and ANZ is subsequently required to repay such person all or any part of that payment, that payment will be deemed not to have discharged the liability of the person under the Documents or applicable Trade Agreement and despite any payment, release or any other settlement or discharge which may have been given on the faith of that payment, ANZ may exercise all the rights it was entitled to exercise prior to that payment being made, as if the payment had not been made and any payment, release and any other settlement or discharge had not been given and the Customer will reimburse ANZ for any loss, cost or expense (including legal expenses) and taxes suffered or incurred by ANZ as a result of the payment not being final.

11.10 Changes in fees and terms

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

11.11 Anti-money laundering and sanctions

- (a) ANZ may delay, block or refuse to process any transaction in connection with a Trade Product or

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Service without incurring any liability and without informing the Customer of the reasons if ANZ suspects that (i) the transaction may breach any laws or regulations (including anti-money laundering or similar laws), (ii) the transaction involves any person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is sanctioned under economic and trade sanctions imposed by the United Nations, the European Union, the United States of America or any other country or (iii) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful.

- (b) The Customer will provide all information to ANZ which ANZ reasonably requires in order to process a transaction and to manage any risk contemplated by and to comply with, the requirements of Clause 11.11(a).
- (c) ANZ and any other ANZ Group Member and any third party referred to in clause 11.15(c) may disclose any information concerning the Customer to any law enforcement, regulatory agency or court where required by any law or regulation in any country, without informing the Customer.
- (d) Unless the Customer has disclosed that the Customer is acting in a trustee capacity or on behalf of another party, the Customer warrants that it is acting on its own behalf in entering into these Terms.
- (e) The Customer declares and undertakes to ANZ that the payment of monies and/or processing of any transaction by ANZ in accordance with the Customer's instructions will not breach any laws or regulations applicable to the transaction.

11.12 Responsibility

- (a) All instructions and correspondence relating to any Trade Product or Service utilised by the Customer will be sent at the Customer's risk.
- (b) ANZ is not responsible for and will not be liable for any loss, cost or damage arising from (i) any service failures or disruptions (including but not limited to, loss of data) attributable to a systems or equipment failure or due to reliance by ANZ on third party products or interdependencies including, but not limited to, electricity or telecommunications, (ii) ANZ acting in accordance with applicable laws, regulations or rules, (iii) ANZ acting in accordance with ANZ's agreements with other financial institutions regarding the business dealings with those institutions, notwithstanding that the Customer may have given instructions to the contrary, (iv) the acts and omissions of Correspondent Banks or (v) the Customer acting on advice received from ANZ whether or not such advice was requested by the Customer.
- (c) ANZ accepts no liability or responsibility for the consequences arising out of the interruption of its business by acts of God, riots, civil commotions, insurrections, wars or any other causes beyond its control, or by strikes or lockouts.

- (d) ANZ is not responsible for any Goods, Documents or items in its possession beyond the exercise of reasonable care and will not be held liable for the default or negligence of any Correspondent Bank or for any losses incurred in transit.

11.13 Liability and indemnity

- (a) To the extent permitted by law and unless otherwise stated in a Trade Agreement all terms, conditions, warranties, undertakings, inducements or representations of ANZ whether express, implied, statutory or otherwise relating in any way to the Trade Products and Services are excluded.
- (b) ANZ will only be liable for direct loss, cost or damage suffered or incurred by the Customer which arises from a material breach by ANZ of these Terms or any other Trade Agreement or the fraud, negligence or wilful misconduct by ANZ.
- (c) If ANZ incurs any liability (including any actual, prospective or contingent liability, joint or several liability or a liability in any currency) in any country to any person (other than the Customer) on the instructions or otherwise on behalf of the Customer (**ANZ's Liability**) then (i) the Customer will pay ANZ at such branch or office of ANZ in any country as ANZ may specify all amounts which ANZ may be liable to pay under ANZ's Liability and (ii) ANZ may discharge part or all of ANZ's Liability (at ANZ's election with or without notice to the Customer) at any branch or office of ANZ in any country and in any currency and any such discharge is a discharge of ANZ's Liability for which the Customer is liable to ANZ.
- (d) The Customer indemnifies ANZ against, and will pay on demand, any loss, liability, cost or expense (including legal costs on a full indemnity basis and taxes) of whatever kind which ANZ may suffer or incur in connection with:
 - (i) ANZ providing the Trade Product or Service to the Customer;
 - (ii) the Customer's use of the Trade Product or Service;
 - (iii) the failure of the Customer or any agent of the Customer to comply with any Trade Agreements or these Terms;
 - (iv) the failure of the Customer or any agent of the Customer to comply with any law or regulation relating to the import or export of Goods or the performance of Services;
 - (v) any determination or decision made or act or refusal to act by ANZ in connection with the Trade Product or Service; or
 - (vi) a transaction to which the Trade Product or Service relates in any way being tainted by fraud or alleged fraud.
- (e) Each indemnity under these Terms are the Customer's continuing obligations, separate and independent from the Customer's other obligations and survive the

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termination or completion of any Trade Product or Service. It is not necessary for ANZ to incur expense or make payment before enforcing a right of indemnity under these Terms.

11.14 Limited Recourse

- (a) Notwithstanding anything contained or implied in these Terms or any Trade Agreement (including an agreement by ANZ to provide the Trade Product or Service to the Customer on a "without recourse" basis), ANZ has no liability to pay the Customer or if already paid, ANZ will have full recourse to the Customer for repayment of the amount paid by ANZ, and payment of interest, fees and charges and any loss, cost or expense ANZ suffers or incurs, and the Customer will pay that amount to ANZ on demand, if (i) there is a fraud, illegality or unauthorised act committed by any person (other than ANZ) in connection with the Goods and/or Services or any document, agreement, invoice, draft or instrument in connection with the Trade Product or Service or (ii) there is, in whole or in part, non payment to ANZ by any person or ANZ is required to reimburse any person for moneys received by ANZ, under any document, agreement, documentary credit, invoice, draft or instrument in connection with the Trade Product or Service because of (1) a commercial dispute between the Customer and any other person upon which that person or another person relies or purports to rely to not pay ANZ or claim reimbursement from ANZ or (2) any injunction, stop payment order or other court order (whether or not subsequently discharged).
- (b) The Customer will notify ANZ in writing if the Customer is aware that any act, event or circumstance described in Clause 11.14(a) has occurred or is likely to occur and the details of that act, event or circumstance.

11.15 Disclosure of Customer Information

- (a) ANZ may disclose Customer Information to any person making a claim under an Import Credit or an Instrument.
- (b) ANZ may exchange with any of its or any other ANZ Group Member's branches or offices in any country any of the Customer Information for the purposes of (i) providing, managing or administering the Trade Product or Service, (ii) performing administrative and operational tasks (including risk management, debt recovery, exposure aggregation, systems development and testing, credit scoring, staff training and market or customer satisfaction research), (iii) promotion of other products or services and (iii) complying with regulatory requirements and prudential standards.
- (c) ANZ and any of its and any other ANZ Group Member's branches or offices in any country may disclose any Customer Information collected by it in the course of the Customer's relationship with ANZ to (i) any contractor or service provider ANZ or any other ANZ Group Member engages to provide services connected with providing, managing or administering the Trade Product or Service (for example mailing houses or debt collection agencies), (ii) participants in

payments systems (including Correspondent Banks, other financial institutions, merchants and payment organisations such as Hong Kong Interbank Clearing Limited, Australian Payments Clearing Association, Singapore Automated Clearing House and the Society for Worldwide Interbank Financial Telecommunication), (iii) its alliance partners (and any of its outsourced service providers) to promote their products or services, (iv) credit reporting agencies, (v) insurers and reinsurers, (vi) any provider of a guarantee, security or other credit support for the Customer's obligations to ANZ (vii) the Customer's referee(s) (if any) and (viii) the Customer's representative (for example the Customer's lawyer, mortgage broker, attorney or executor).

- (d) Any contractor, agent or service provider engaged by ANZ or any other ANZ Group Member is contractually required to only use the Customer Information for ANZ purposes and to keep the Customer Information confidential.
- (e) Where the Customer does not want ANZ, other ANZ Group Members or their alliance partners in any country to tell the Customer about their products or services the Customer may withdraw its consent by calling the Customer's ANZ Manager.
- (f) ANZ and any other ANZ Group Member and their respective branches or offices may also provide the Customer Information in any country to regulatory bodies, government agencies, law enforcement bodies and courts and other parties ANZ or any other ANZ Group Member is authorised or required by law to disclose information to.

11.16 Personal Information

- (a) When the Customer deals with ANZ, ANZ is likely to collect and use some Personal Information.
- (b) If the Customer does not provide some or all of the Personal Information requested, ANZ may be unable to provide the Customer with a Trade Product or Service.
- (c) ANZ may collect the Personal Information (i) to provide the Customer with information about a product or service, (ii) to consider the Customer's request for a product or service, (iii) to provide the Customer with a product or service (iv) to tell the Customer about other products or services (v) to assist in arrangements with other organisations (such as loyalty partners) in relation to the promotion and provision of a product or service (vi) to perform administrative and operational tasks (including risk management, debt collection, systems development and testing, credit scoring, staff training and market or customer satisfaction research) (vii) to prevent or investigate any fraud or crime (or a suspected fraud or crime) and (viii) as required by relevant laws, regulations, codes and external payment systems.
- (d) Subject to applicable Privacy Law, the Customer may access its Personal Information at any time by calling

ANZ TRADE TERMS

the Customer's ANZ Manager or asking to do so at any ANZ Office. ANZ may charge the Customer a reasonable fee for access.

- (e) If the Customer can show that information about the Customer is not accurate, complete and up to date, ANZ will take reasonable steps to ensure it is accurate, complete and up to date.
- (f) If the Customer is an individual, ANZ will not collect sensitive information about the Customer, such as health information, unless it is necessary to provide the Customer with a Trade Product or Service and ANZ has the Customer's consent or, unless ANZ is legally required to collect, use or disclose that information.
- (g) If the Customer gives ANZ Personal Information about someone else or directs someone else to give their Personal Information to ANZ, the Customer will show that person a copy of this clause so that they may understand the manner in which their Personal Information may be used or disclosed by ANZ.
- (h) If the Customer does not want ANZ, loyalty partners or other organisations to tell the Customer about their products or services the Customer may notify ANZ of this by calling the ANZ Manager.

11.17 Dispute Resolution

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

11.18 Security

- (a) If ANZ requires the Customer to give ANZ any security, the Customer must execute such documentation and/or take such action as ANZ may require to grant, perfect, preserve or enforce that security.
- (b) Subject to any applicable law or regulation, ANZ will have a lien on all property of the Customer coming into the possession or control of ANZ, for custody or any other reason and whether or not in the ordinary course of banking business, with power for ANZ to sell such property to satisfy any obligations owed by the Customer to ANZ.

11.19 Financial difficulty

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

11.20 Severability

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

11.21 Further Assurance

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

11.22 Governing law

Unless specified otherwise, these Terms 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.

12. TRADE PRODUCTS OR SERVICES - COUNTRY SPECIFIC ADDENDUMS

- (a) Terms relating specifically to the provision of or use by the Customer of Trade Products or Services in a particular country are contained in an Addendum for that country.
- (b) These Terms and the Addendum will be read and construed as one document.
- (c) Words used in the Addendum if defined in these Terms have the same meaning unless the context otherwise requires.
- (d) If these Terms and the terms in the Addendum are inconsistent then where these Terms state that they prevail to the extent of the inconsistency, they will so prevail over the terms in the Addendum and otherwise, the terms in the Addendum prevail to the extent of the inconsistency.

ANZ TRADE TERMS SELECT COUNTRY ADDENDUM

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