

# THE NATIONAL BANK TRADE TERMS

Version: July 2010



# 1. INTRODUCTION

## 1.1 Terms applying

These National Bank Trade and Supply Chain Terms and Conditions (**Terms**) contain specific and general terms which the Customer agrees apply if The National Bank 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 The National Bank to provide a Trade Product or Service to it, it will deliver to The National Bank a properly completed application, in the form specified by The National Bank from time to time, signed by one or more authorised officers of the Customer who have been identified to The National Bank in a manner acceptable to The National Bank and such other documents as required by The National Bank.
- (b) The National Bank may (but need not) accept and act upon the Customer's application. The National Bank is not required to notify the Customer of any reason it may have refusing to accept and act upon the Customer's application. This clause applies despite any negotiations between The National Bank and the Customer before an application is made. Nothing in these Terms will oblige The National Bank 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 The National Bank 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 The National Bank 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 The National Bank is a subsidiary of ANZBGL, it is a separate entity to ANZBGL and the obligations of The National Bank 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 The National Bank.**

# 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 The National Bank 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 The National Bank 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 The National Bank is not responsible and has no duty whatsoever to advise the Customer on such issues.
- (c) The National Bank may restrict negotiations under any Import Credit to its own offices or to any Correspondent Bank of its choice.
- (d) The National Bank 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 The National Bank and must notify The National Bank 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 The National Bank in respect thereof.

## 2.3 Import Credit claim

- (a) The National Bank 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 The National Bank is not obliged to notify the Customer prior to making a payment or accepting drafts, claims or drawings under the Import Credit.
- (b) The National Bank 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 The National Bank has restricted the negotiation of the Import Credit to its Correspondent Bank, The National Bank 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 The National Bank all amounts paid by The National Bank under the Import Credit on the day on which The National Bank makes or is required to make that payment.

## 2.4 Discrepant Documents

- (a) If The National Bank determines that any Documents do not appear on their face to be in compliance with the terms of the Import Credit, The National Bank may refuse to honour the Documents.
- (b) The National Bank 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 The National Bank to seek a waiver at any time does not oblige The National Bank to seek a waiver at any other time in respect of any other discrepancies.
- (c) If the Customer requests The National Bank to authorise the release or delivery of the Goods to the Customer, the Customer will reimburse The National Bank for any payment made by The National Bank 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 The National Bank and provide a copy of that insurance policy and all receipts for current premiums to The National Bank, on request.

- (b) If the insurance policy provided to The National Bank is not acceptable to The National Bank, The National Bank may effect further or other insurance (including war risk) in respect of the Goods, and the Customer will reimburse to The National Bank 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 The National Bank in respect of the Import Credit or the Secured Moneys, The National Bank 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 The National Bank considers appropriate.
- (b) If The National Bank exercises any remedy,
  - (i) The National Bank is not liable for any loss suffered by the Customer as a consequence of such action, (ii) the Customer will pay to The National Bank, on demand the costs and expenses incurred by The National Bank 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 The National Bank 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 The National Bank requires in order to perfect The National Bank'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 The National Bank, 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 The National Bank 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 The National Bank may in its absolute discretion consider appropriate, failing which The National Bank 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 The National Bank 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 The National Bank, (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 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 The National Bank 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 The National Bank 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, The National Bank 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 The National Bank 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 The National Bank have been or will be so delivered or deposited by way of pledge as security (**Pledge**) for payment on demand to The National Bank of the Secured Moneys.
- (b) The Goods will be dealt with by the Customer in accordance with such instructions as The National Bank may give from time to time for the protection of The National Bank'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 The National Bank will not be responsible for any loss or damage or depreciation in value of any Goods or Documents held by The National Bank as security.

## 2.9 Trust Receipt

- (a) If, prior to the payment in full of the Secured Moneys, The National Bank 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 The National Bank and in respect of those Goods exclusively for the purpose of their sale or other disposition approved by The National Bank on normal trade terms at market value;
  - (ii) if required by The National Bank, execute and deliver to The National Bank a trust receipt, on terms satisfactory to The National Bank, together with any other documents that The National Bank 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 The National Bank, maintain the Goods in sellable condition and at the Customer's cost and immediately deliver to The National Bank the warrants or receipts for the Goods (if issued);
  - (iv) insure the Goods against fire and any other risks that The National Bank may reasonably require to their full insurable value and to hold the policies on behalf of The National Bank and in case of loss pay the insurance moneys to The National Bank 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 The National Bank, without deduction and until it does so the Customer will hold the proceeds in trust for The National Bank;
  - (vi) if required by The National Bank, do all things necessary to give The National Bank 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 The National Bank'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 The National Bank under this clause, (ii) the Goods will remain the property of The National Bank until sold or otherwise disposed of and (iii) any proceeds of sale or other disposal paid to The National Bank in accordance with this clause, may be appropriated and applied by The National Bank, as it thinks fit.

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

- (a) The Customer will give The National Bank such periodical reports and other particulars concerning the Goods or the Documents as The National Bank may require from time to time.
- (b) The Customer authorises The National Bank 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 The National Bank considers necessary or desirable to protect its interest in the Goods. The National Bank 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 The National Bank or as agreed to by The National Bank 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) The National Bank has no duty to ensure that a BtB Credit contains terms and requirements matching or compatible with the Master Credit.
- (b) The National Bank 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 The National Bank within a period which is acceptable to The National Bank.

### 3.3 Amendment

- (a) If the Master Credit is not advised by The National Bank and the Customer receives any amendment issued in respect of the Master Credit, the Customer shall notify The National Bank 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 The National Bank.

### 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 The National Bank retains full recourse to the Customer in respect of those liabilities.
- (b) The payment by The National Bank under any BtB Credit or FtB Credit shall not constitute any warranty or representation on the part of The National Bank that the Documents received by The National Bank 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 The National Bank.

### 3.5 Appointment and authority

- (a) The Customer irrevocably appoints The National Bank to be its presenting bank regarding the Master Credits with the right for The National Bank to negotiate the Master Credits in accordance with the term hereof if The National Bank deems fit.
- (b) The National Bank 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, Confirming bank or other Nominated bank of any Master Credit as in compliance with its terms, The National Bank 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 The National Bank in connection with, the BtB Credit or FtB Credit as The National Bank may think fit without first crediting such proceeds to the Customer's account with The National Bank.
- (d) The National Bank 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 The National Bank'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 The National Bank 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 The National Bank 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 The National Bank is not the Advising bank, the originals of the Export Credit and all amendments to the Export Credit in existence at that time.
- (c) The National Bank 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 The National Bank 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 The National Bank on demand (i) the amount of the draft or the amount of the claim in each case and (ii) interest on that amount at The National Bank'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 The National Bank.

### 4.3 Export Collection

- (a) At the request of the Customer The National Bank may (but need not) negotiate a bill of exchange or draft or provide advances against the Document(s) to be sent on Collection.
- (b) The National Bank is not obliged to check the Documents before sending them to the collecting bank.
- (c) The National Bank will only pay the Customer proceeds of a Collection which have actually been received by The National Bank from the collecting bank and will not be liable if it receives late advice of payment.

- (d) The National Bank 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 The National Bank.

#### 4.4 Negotiation and/or advances against Documents

- (a) The Customer warrants and represents to The National Bank that all Documents delivered or to be delivered to The National Bank 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 The National Bank in relation to the negotiation or presenting of Documents, the Collection or any advance against Documents sent on Collection will be deducted by The National Bank from the proceeds before payment to the Customer.
- (c) Unless otherwise agreed in writing, The National Bank has full recourse to the Customer and the Customer will provide The National Bank with the necessary funds on demand and in any event not later than the maturity date of the relevant Document to reimburse The National Bank 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 The National Bank on the maturity date for any reason and (ii) any unpaid and accrued interest, fees and charges.
- (d) Notwithstanding that The National Bank may (but need not) negotiate, finance or discount or provide advances against Documents on a 'without recourse' basis, The National Bank always retains limited recourse to the Customer as provided in Clause 11.14.
- (e) Nothing done or omitted to be done by The National Bank in respect of any Documents negotiated by The National Bank for the Customer after being dishonoured for payment or acceptance or not duly taken up on presentation will in any way prejudice The National Bank's right of full recourse or, if otherwise agreed, limited recourse to the Customer.

- (f) The National Bank 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 The National Bank 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 The National Bank 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 The National Bank of an Export Credit on either an open or silent basis.

### 5.2 Confirmation

- (a) If the Issuing bank requests or allows The National Bank to confirm an Export Credit, the Customer need not request The National Bank to add its confirmation.
- (b) If the Issuing bank does not request or allow The National Bank to confirm an Export Credit, the Customer may request The National Bank to do so and will provide to The National Bank any documents required by The National Bank in order for The National Bank to assess the request.
- (c) If The National Bank adds its confirmation to the Export Credit it does so only on the 'limited recourse' basis as set out in Clause 11.14.
- (d) The National Bank will only add a confirmation to an Export Credit which is subject to UCP, complete and regular on its face and available with The National Bank 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 The National Bank is not the Advising bank, the Advising bank are all acceptable to The National Bank.

- (e) The National Bank will advise the Customer in writing if it is willing to add its confirmation to the Export Credit. Upon receipt by The National Bank of the Customer's acceptance and, if necessary, performance, of the terms in that advice, The National Bank adds its confirmation to the Export Credit.

### 5.3 Amendment

- (a) The National Bank will not be bound by the confirmation if the Export Credit is amended or an amendment is rejected without The National Bank's written consent. The National Bank's consent will not be unreasonably withheld or delayed.
- (b) The Customer will pay The National Bank on demand any losses, liability, cost or expenses whatsoever incurred or suffered by The National Bank 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 The National Bank a confirmation fee and negotiation fee, as separately agreed in writing with The National Bank, from time to time.
- (b) If an amendment to which The National Bank agrees increases the value or extends the validity of The National Bank's existing commitment the Customer will pay The National Bank a further fee calculated on such increase or extension.
- (c) Without affecting the Customer's liability to pay The National Bank, the Customer authorises The National Bank, at its discretion, to debit any of the Customer's accounts held with The National Bank 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.

### 5.5 Presentation of Documents

- (a) The Customer will present at the counters of its National Bank Office the original Export Credit and all amendments to the Export Credit in existence at that time, if The National Bank 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 The National Bank) 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, The National Bank'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 The National Bank has 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) The National Bank 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 (or such other period as determined by The National Bank) of the maturity date of the Export Credit, The National Bank 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 The National Bank 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 The National Bank 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 The National Bank 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 The National Bank 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 The National Bank based its confirmation, The National Bank confirmation ends and The National Bank has no obligation to make any payment to the Customer under the confirmation.
- (c) If the Customer instructs The National Bank to dispatch discrepant Documents to the Issuing Bank, The National Bank 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 The National Bank adds its confirmation, represents and warrants on and from the earlier of the date of its application or the date The National Bank 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 The National Bank 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 The National Bank (or the Customer on behalf of The National Bank) 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 The National Bank 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 The National Bank's prior written consent or it is compelled by law to do so.

## 5.9 Assignment

- (a) When The National Bank confirms an Export Credit at the request of the Customer, until The National Bank 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 The National Bank's request, assign to The National Bank absolutely all the Export Credit Rights in terms satisfactory to The National Bank.
- (b) If The National Bank 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 The National Bank making that payment or incurring that obligation assigns to The National Bank absolutely all the Export Credit Rights.
- (c) If requested by The National Bank, 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 The National Bank, at Customer's cost, to evidence and perfect the assignment of the Export Credit Rights under any applicable law or regulation.

- (d) If requested by The National Bank, the Customer will take all action and steps and provide all assistance as The National Bank may reasonably require at The National Bank's cost (those costs to be reasonable and agreed with The National Bank) including (i) making demand, (ii) directing any relevant person to make payment under the Export Credit or the related Documents or any contract or agreement in respect of the relevant Goods, Services or insurances to The National Bank, (iii) initiating and continuing legal action in any Court or jurisdiction and conducting such legal proceedings in the Customer's name (or allowing The National Bank to use the Customer's name, failing which The National Bank may use its name) and in accordance with The National Bank's instruction; and (iv) in connection with any claim by The National Bank 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 The National Bank, the Customer agrees and declares that until such date as the remaining interest is effectively assigned and transferred to The National Bank, the Customer will hold the remaining interest on trust for the sole benefit of The National Bank.
- (f) The Customer cannot assign, encumber or otherwise deal with its rights under the confirmation without the prior written consent of The National Bank.

## 6. TRANSFER OF EXPORT CREDITS

### 6.1 Terms applying

The terms in this Clause 6 apply if, on the Customer's application, The National Bank 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 The National Bank.
- (b) The Customer undertakes to deliver to The National Bank, 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 The National Bank to the contrary in its application, The National Bank 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 The National Bank'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 The National Bank.
- (d) If the Customer fails to deliver its drafts and invoices to The National Bank in conformity with the terms of the Export Credit, The National Bank is authorised to forward the documents accompanying the drafts of the Transferee without any responsibility on The National Bank'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 The National Bank transferring the Export Credit at the request of the Customer, the Customer accepts full responsibility for the transfer and (i) agrees that neither The National Bank 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 The National Bank 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 The National Bank 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 The National Bank 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 The National Bank 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) The National Bank relies on the information contained in all payment instructions delivered to The National Bank and The National Bank will make no further or independent enquiries into such matters.
- (c) The National Bank will advise the Payee that payment will be made to it of the Export Credit proceeds in form and content acceptable to The National Bank.
- (d) The National Bank 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 receipt of the Export Credit proceeds by The National Bank from the Issuing/reimbursing bank.
- (e) The National Bank 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 The National Bank, on demand any fees, charges and out of pocket expenses associated with the issuance of The National Bank'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 The National Bank 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 The National Bank's liability from the letter of guarantee or indemnity and the return of the same to The National Bank for cancellation.
- (b) The Customer will, upon the request of The National Bank, deposit with The National Bank such sum of money and/or security equivalent to The National Bank's obligations in respect of the letter of guarantee or indemnity given by The National Bank until it is released and returned to The National Bank for cancellation.
- (c) If the Customer requests The National Bank 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 The National Bank 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 The National Bank under the relevant Import Credit irrespective of discrepancies that may appear on the Documents and (iii) authorises The National Bank to honour any relevant drawings without examining the presented Documents.

## 8.3 Customer's liability

- (a) The Customer will pay to The National Bank all amounts The National Bank 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 The National Bank makes or is required to make that payment.
- (b) Before The National Bank issues, endorses or countersigns a letter of guarantee or indemnity, if requested by The National Bank, the Customer will arrange for an issuer acceptable to The National Bank to deliver to The National Bank a backing letter of guarantee or indemnity in favour of and in terms acceptable to The National Bank. If that backing letter of guarantee or indemnity is addressed and delivered to the Customer, if requested by The National Bank, the Customer will assign or transfer to The National Bank all its right, title and interest in that backing letter of guarantee or indemnity in terms acceptable to The National Bank.

- (c) If The National Bank pays the amount of the consignor's or any carrier's invoices, the Customer will pay to The National Bank on demand the amount paid by The National Bank and, subject to applicable law or regulation, title of the Goods the subject of the invoices passes to The National Bank until such time as the Customer reimburses The National Bank 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 The National Bank 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 The National Bank 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 The National Bank is not responsible and has no duty whatsoever to advise the Customer on such issues.
- (c) The National Bank may arrange for the Instrument to be issued by its Correspondent Bank on such terms as The National Bank or its Correspondent Bank may decide and may issue a counter-indemnity in favour of such Correspondent Bank.
- (d) The National Bank 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 The National Bank and must notify The National Bank 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 The National Bank in respect thereof.

## 9.3 Payments under the Instrument

- (a) The National Bank 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 The National Bank and a reference to 'payment' in this Clause 9 is a reference to such a payment.

- (b) The National Bank is entitled to pay to the beneficiary an amount not exceeding, in aggregate, the maximum amount specified in the Instrument that The National Bank believes to have been properly demanded under the Instrument.
  - (c) The National Bank 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 The National Bank determines that a demand, draft or other document presented under the Instrument does not comply with the terms of the Instrument, (i) The National Bank may refuse the demand by notice to the party from which it received the demand and any draft or other documents and (ii) The National Bank 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 The National Bank to seek a waiver at any time does not oblige The National Bank to seek a waiver at any other time in respect of any other discrepancies.
  - (e) The National Bank may, at any time, discharge all its obligations under an unexpired Instrument by paying, whether or not The National Bank 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 The National Bank the Customer will be liable for (and will pay The National Bank on demand) all amounts which The National Bank has paid to the beneficiary.
- (b) The Customer indemnifies The National Bank against, and will pay The National Bank 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 The National Bank 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 The National Bank may pay or be required to pay on termination of the Instrument to the beneficiary, (iv) The National Bank acting on any representations made by the Customer to The National Bank relating to the Instrument or (v) any failure, inability or refusal on the part of The National Bank to honour the Instrument because of a court order or other similar obligation, or because The National Bank 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 The National Bank is the beneficiary of an Instrument issued by another branch of The National Bank, for the purposes of Clauses 9 and 11 (including the indemnities) and those Instruments, the branches will be treated as separate legal entities.

## 9.4 Documentary responsibility

- (a) Neither The National Bank nor any of its Correspondents Banks are responsible for the genuineness, correctness or validity of any demands, notices, instructions, drafts or other documents received by it.
- (b) The National Bank 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 The National Bank an amount equal to all amounts paid or discharged by The National Bank under the Instrument on the day on which The National Bank makes or is required to make that payment or discharges its liability.

# 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 The National Bank 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 The National Bank 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 The National Bank or any other person and will not be financed by any person other than The National Bank, (ii) are not and will not be encumbered in any way to any person other than The National Bank 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 The National Bank, 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 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 The National Bank to make a new trade finance loan for that amount for a term to be agreed with The National Bank.
- (c) If The National Bank agrees to make a new trade finance loan accrued interest on the existing trade finance loan must be paid by the Customer to The National Bank 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:

- (a) At any time during the term of the trade finance loan, The National Bank 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 The National Bank or its Correspondent Banks.
- (b) If such a Bill is drawn (i) the total face amount of Bills prepared by The National Bank 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) The National Bank will pay any charges, fees or government imposts relating to the Bills and (iv) the Customer's responsibility to The National Bank 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 The National Bank, and each authorised officer of The National Bank appointed for this purpose, severally, as its attorney to sign and/or endorse each Bill drawn and executed by The National Bank under this clause on the Customer's behalf, and to complete the Bill in accordance with this clause.
- (d) The National Bank may realise or deal with any Bill prepared by it as it thinks fit.
- (e) If a Bill prepared by The National Bank 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 The National Bank under the relevant trade finance loan.

# 11. TRADE PRODUCTS OR SERVICES – GENERAL TERMS AND CONDITIONS

## 11.1 Terms applying

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

## 11.2 Definitions

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

**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.

**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 The National Bank.

**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 The National Bank in connection with an import or export collection.

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

**Export Credit** means a Documentary Credit issued by another bank in favour of the Customer which The National Bank 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 The National Bank and the Customer, the jurisdiction in which The National Bank Office is located.

**Import Credit** means a Documentary Credit issued by The National Bank 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 The National Bank in favour of its 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 The National Bank 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 another Trade Product or Service is provided to the Customer by The National Bank) 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.

**The National Bank** means The National Bank, part of ANZ National Bank Limited which is an ANZ Group Member, and all of The National Bank branches and offices) that provide the Trade Product or Service to the Customer.

**The National Bank** or **National Bank Manager** means the Customer's relationship manager, trade officer or product specialist.

**The National Bank** or **National Bank Office** means the branch or office of The National Bank or any ANZ Group Member that provides the Trade Product and 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.

**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 The National Bank (including the terms of the Customer's facility agreement or letter of offer issued by The National Bank) and these Terms.

**Trade Product** or **Service** means any trade related product, service or facility provided by The National Bank 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 The National Bank 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 The National Bank is entitled or instructed to debit or credit that payment (**Account Currency**), then as determined on the basis of the Exchange Rate (i) The National Bank will make the payment in the Payment Currency or credit equivalent amount in the Account Currency and (ii) the Customer will pay to The National Bank and The National Bank 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 The National Bank to purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in accordance with The National Bank's standard procedures at that time for currency conversion and authorises The National Bank to do so.
- (c) The National Bank 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 The National Bank (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 The National Bank to the Customer and will pay The National Bank on demand such amount as The National Bank may be required to expend on account of such regulations.
- (e) The National Bank will not be liable in anyway to the Customer and the Customer will indemnify The National Bank 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 The National Bank's applicable Exchange Rate are available by contacting the Customer's National Bank 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 The National Bank) of any such licence to The National Bank if requested to do so.

## 11.6 Interest

- (a) If The National Bank 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 The National Bank, 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 The National Bank 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 The National Bank.
- (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 The National Bank anticipates receiving payment from the party responsible for making the payment (and interest may be adjusted by The National Bank, and is payable by the Customer on demand by The National Bank, 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 The National Bank from the party responsible for making the payment.

- (e) The Customer may obtain details of applicable interest rates and margins by contacting its National Bank Manager.

## 11.7 Commissions, fees, charges and expenses

- (a) The Customer will pay The National Bank all fees, commissions and charges which apply in respect of each Trade Product or Service provided by The National Bank to the Customer as stated in any relevant Trade Agreement.
- (b) The National Bank 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 The National Bank 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 The National Bank 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 The National Bank.

## 11.8 Reimbursement by the Customer

- (a) The Customer (i) authorises The National Bank to debit at any time from any account held by the Customer with The National Bank (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 The National Bank (either as available credit funds or as approval or available overdraft funds) so that the debits can be made on time.
- (b) The National Bank will tell the Customer if it makes such a debit.
- (c) The authority to debit given to The National Bank does not oblige The National Bank to do so or relieve the Customer of its obligation to pay each amount to The National Bank when due under a Trade Agreement.

- (d) Upon the request of The National Bank, the Customer will pay The National Bank on or shortly before the date upon which The National Bank 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) The National Bank may hold such sum in an account in its name under its complete and unfettered control, (ii) The National Bank may apply all or any part of such sum against the Customer's obligation to reimburse The National Bank for any payment made by it by under the Payment Obligation, (iii) The National Bank 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 The National Bank agrees otherwise, no interest will accrue on any such account.

## 11.9 Drawing or release against funds

- (a) If The National Bank permits the Customer to draw against funds to be collected or transferred from any account(s), the Customer will on demand reimburse The National Bank in full the amount so drawn if The National Bank does not receive the funds in full at the time when The National Bank ought to have received the same or if, after The National Bank has accepted the transfer, The National Bank is prevented from collecting or freely dealing with the funds in accordance with usual banking practice.
- (b) If The National Bank receives payment from any person in connection with a Trade Product or Service utilised by the Customer which is not final and The National Bank 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, The National Bank 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 The National Bank for any loss, cost or expense (including legal expenses) and taxes suffered or incurred by The National Bank as a result of the payment not being final.

## 11.10 Changes in fees and terms

- (a) Subject to any agreement to the contrary, The National Bank 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 The National Bank. The National Bank 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) The National Bank may delay, block or refuse to process any transaction in connection with a Trade Product or Service without incurring any liability and without informing the Customer of the reasons if The National Bank 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 or any country or (iii) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful.
- (b) The Customer will provide all information to The National Bank which The National Bank 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) The National Bank 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 The National Bank that the payment of monies and/or processing of any transaction by The National Bank 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) The National Bank 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 The National Bank on third party products or interdependencies including, but not limited to, electricity or telecommunications, (ii) The National Bank acting in accordance with applicable laws, regulations or rules, (iii) The National Bank acting in accordance with The National Bank'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 The National Bank whether or not such advice was requested by the Customer.
- (c) The National Bank 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) The National Bank 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 The National Bank whether express, implied, statutory or otherwise relating in any way to the Trade Products and Services are excluded.
- (b) The National Bank will only be liable for direct loss, cost or damage suffered or incurred by the Customer which arises from a material breach by The National Bank of these Terms or any other Trade Agreement or the fraud, negligence or wilful misconduct by The National Bank.

- (c) If The National Bank 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 (**The National Bank's Liability**) then (i) the Customer will pay The National Bank at such branch or office of The National Bank or the ANZ Group in any country as The National Bank may specify, all amounts which The National Bank may be liable to pay under The National Bank's Liability and (ii) The National Bank may discharge part or all of The National Bank's Liability (at The National Bank's election with or without notice to the Customer) at any branch or office of The National Bank or ANZ Group in any country and in any currency and any such discharge is a discharge of The National Bank's Liability for which the Customer is liable to The National Bank.
- (d) The Customer indemnifies The National Bank 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 The National Bank may suffer or incur in connection with:
  - (i) The National Bank 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 The National Bank 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 termination or completion of any Trade Product or Service. It is not necessary for The National Bank 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 The National Bank to provide the Trade Product or Service to the Customer on a "without recourse" basis), The National Bank has no liability to pay the Customer or if already paid, The National Bank will have full recourse to the Customer for repayment of the amount paid by The National Bank, and payment of interest, fees and charges and any loss, cost or expense The National Bank suffers or incurs, and the Customer will pay that amount to The National Bank on demand, if (i) there is a fraud, illegality or unauthorised act committed by any person (other than The National Bank) 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 The National Bank by any person or The National Bank is required to reimburse any person for moneys received by The National Bank, 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 The National Bank or claim reimbursement from The National Bank or (2) any injunction, stop payment order or other court order (whether or not subsequently discharged).
- (b) The Customer will notify The National Bank 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) The National Bank may disclose Customer Information to any person making a claim under an Import Credit or an Instrument.
- (b) The National Bank 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) The National Bank 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 The National Bank to (i) any contractor or service provider The National Bank 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 The National Bank (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 The National Bank or any other ANZ Group Member is contractually required to only use the Customer Information for The National Bank purposes and to keep the Customer Information confidential.
- (e) Where the Customer does not want The National Bank, 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 National Bank Manager.
- (f) The National Bank 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 The National Bank 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 The National Bank, The National Bank is likely to collect and use some Personal Information.
- (b) If the Customer does not provide some or all of the Personal Information requested, The National Bank may be unable to provide the Customer with a Trade Product or Service.

- (c) The National Bank 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 the Customer's National Bank Manager or asking to do so at any National Bank Office. The National Bank 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, The National Bank will take reasonable steps to ensure it is accurate, complete and up to date.
- (f) If the Customer is an individual, The National Bank 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 The National Bank has the Customer's consent or, unless The National Bank is legally required to collect, use or disclose that information.
- (g) If the Customer gives The National Bank Personal Information about someone else or directs someone else to give their Personal Information to The National Bank, 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 The National Bank.
- (h) If the Customer does not want The National Bank, loyalty partners or other organisations to tell the Customer about their products or services the Customer may notify The National Bank of this by calling the National Bank Manager.

## 11.17 Dispute Resolution

- (a) If The National Bank makes a mistake, or The National Bank's service doesn't meet the Customer's expectations, The National Bank wants to know. For the fastest possible resolution to any complaint the Customer should talk to the Customer's National Bank Manager or if the Customer is unable to talk with the Customer's National Bank Manager, talk to the National Bank Manager's immediate supervisor.

- (b) If the complaint can't be resolved promptly, the Customer's National Bank Manager (or their supervisor), will take responsibility and work with the Customer to fix the matter quickly. The National Bank's aim is to resolve the complaint within 14 calendar days. If this is not possible, The National Bank will keep the Customer informed on the progress of the matter and how long The National Bank expects it will take to resolve the complaint.

## 11.18 Security

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

## 11.19 Financial difficulty

The Customer should inform The National Bank as soon as possible if the Customer is in financial difficulty. The National Bank 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.

## THE NATIONAL BANK TRADE TERMS NEW ZEALAND ADDENDUM

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### NEW ZEALAND AS GOVERNING JURISDICTION

In addition to the terms for the Trade Products or Services referred to in the current National Bank Trade Terms ("Terms"), the provisions of this Addendum apply where New Zealand is the Governing Jurisdiction (being the country where the Customer's National Bank Office is located):

#### 1. Definitions

The following entity is the ANZ Group Member providing the Trade Product or Service to the Customer in this jurisdiction:

**The National Bank, part of ANZ National Bank Limited.**

#### 2. Liability

- (a) Certain legislation (for example, the Consumer Guarantees Act 1993) may imply warranties or conditions or impose obligations upon The National Bank which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent.
- (b) The terms and conditions applicable to a Trade Product or Service must be read subject to statutory provisions as referred to above.
- (c) The Customer acknowledges that in accordance with section 43(2) of the Consumer Guarantees Act 1993, the Trade Products and Services provided under the Terms will be used for the purposes of the Customer's business and that any rights and remedies under the Consumer Guarantees Act 1993 shall not apply.
- (d) The Customer declares that for the purposes of section 13 and in accordance with section 14 of the Credit Contracts and Consumer Finance Act 2003, the Trade Product or Service provided to the Customer by The National Bank will be used solely for business purposes.

### 3. Amendments

The clauses in the Terms shall be amended as follows:

**Clause 2:** The heading is amended to read "Imports and Exports".

**Clause 2.1** (Terms applying): This clause shall be amended by adding the following at the end of the sentence:

"with the exception of clauses 2.8 and 2.10 which apply if, on the Customer's application, The National Bank provides to the Customer a Trade Product or Service in connection with Goods to be imported or exported, or which have been imported or exported."

**Clause 2.6(c):** The words "pledged or mortgaged Documents, pledged or mortgaged Goods," shall be replaced with "Documents or Goods over which The National Bank has a security interest (for the purposes of these Terms "security interest" includes any security interest (as defined under the Personal Property Securities Act 1999 ("PPSA"), any interest of a security nature, and a mortgage, charge, lien or pledge)."

**Clause 2.8:** The heading "Pledge" in Clause 2.8 shall be amended to read "Security Interest".

**Clause 2.8(a):** Clause 2.8(a) shall be replaced with the following:

"As a continuing security for the payment on demand to The National Bank of Secured Moneys, the Customer agrees that The National Bank shall have a security interest over all Documents and Goods now or at any time delivered to or deposited with The National Bank and the Customer agrees to execute all documents and do all things necessary to enable The National Bank to register its security interest in both the Documents and the Goods on the Personal Property Securities Register ("PPSR")."

**Clause 2.8(c):** Clause 2.8(c) shall be amended by adding the following words at the end of the clause:

"or while they are in the possession, custody or control of The National Bank or its employees or agents."

**Clause 2.8(d) and (e):** New Clauses 2.8 (d) and (e) shall be inserted to read as follows:

- "(d)** The Customer waives any right under section 148 of the PPSA to receive from The National Bank a copy of any financing statement, financing change statement or verification statement that is registered, issued, or received at any time in relation to this Addendum.
- (e)** The Customer shall pay all of The National Bank's costs and expenses in relation to the compliance with any demand given by the Customer under section 162 of the PPSA, or in relation to any application for, or the obtaining of, a court order to maintain any registration in respect of the security interest created by this Addendum and the servicing of any such court order on the Customer or the Registrar of Personal Property Securities."

**Clause 2.9(a)(ii):** In clause 2.9(a)(ii) the word "Pledge" shall be replaced with "security interest".

**Clause 2.10:** The heading for clause 2.10 shall be amended to read "Goods while subject to security interest (including under a trust receipt)".

**Clause 2.10(c):** Clause 2.10(c) shall be amended to read as follows:

**"(c)** The Customer will not mortgage, charge, pledge or otherwise encumber or allow to be encumbered the Goods and Documents (otherwise than in favour of The National Bank or as agreed to by The National Bank in writing) until Secured Moneys have been paid in full."

**Clauses 2.10(d), (e), (f) and (g):** New clauses 2.10(d), (e), (f) and (g) shall be inserted to read as follows:

- "(d)** If the Customer fails to observe any of its obligations to The National Bank in respect of the Trade Product or Service in connection with Goods to be exported or the Secured Moneys relating to any export(s), The National Bank may at its absolute discretion and 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 The National Bank considers appropriate, in which circumstance:
- (i)** The National Bank is not liable for any loss suffered by the Customer as a consequence of such action;
  - (ii)** the Customer must pay to The National Bank, on demand the costs and expenses incurred by The National Bank in respect of any actual or attempted landing, docking, storage, insurance, transportation, sale or other disposal of the Goods or dealing with the Documents;
  - (iii)** the Customer will remain liable for and must pay any deficiency that may remain owing to The National Bank after the sale or disposal of the Goods or dealing with the Documents; and
  - (iv)** the Customer must do anything which includes endorse, assign, sign, execute and deliver any transfers, deeds or documents (or arrange any such matters) which The National Bank requires in order to perfect The National Bank's title to the Goods or to otherwise give effect to any proposed landing, docking, storage, insurance, sale or other disposal or dealing.
- (e)** The Customer shall, upon request by The National Bank, forthwith:
- (i)** appear and defend at its own cost and expense any action which may be brought in connection with the Trade Product or Service in connection with Goods to be exported; and/or

- (ii) make any claim or take any action or institute any proceedings which The National Bank may consider necessary or desirable to recover any proceeds, compromise or settle any dispute in connection with any Documents or Goods over which The National Bank has a security interest, Trade Product or Service in connection with Goods to be exported, relevant documents, charged property, sales proceeds or insurance proceeds on such terms as The National Bank may in its absolute discretion consider appropriate, failing which The National Bank may do it in its name or the Customer's name at the Customer's cost.
- (f) For the purposes of clause 2.10, The National Bank may:
- (i) demand delivery and endorsement to The National Bank of all Documents; and
  - (ii) exercise all the Customer's rights (if any) as unpaid seller of the Goods.
  - (g) Where the enforcement provisions of Part 9 of the PPSA apply to the enforcement by The National Bank of the security interests created by this Addendum, the Customer agrees that sections 114(1)(a), 133 and 134 shall not apply to such enforcement. The Customer also waives any rights it may have under sections 116, 120(2) 121, 125, 129 and 131 of the PPSA on such enforcement."

**Clause 9.5(c):** Clause 9.5(c) is deleted.

**Clause 11.2 Definitions:** The definition of "Secured Moneys" is amended by adding the words "or exported" at the end of the definition.

**Clause 11.8(e):** Insert a new clause 11.8(e) which reads as follows: "If the Customer has no account with The National Bank, the Customer will pay to The National Bank on demand (and in the currency demanded) all sums paid or payable under or in accordance with these Terms or a Trade Agreement or in connection with any Goods and/or Services and any fees, commission, charges and interest (at the rate specified in the relevant Trade Agreement, failing which the rate determined by The National Bank in its absolute discretion)."

**Clause 11.16:** Replace clause 11.16 with the following:

## "11.16 Personal Information

The National Bank takes privacy very seriously. Customer Information the Customer provides to The National Bank will be kept strictly confidential and will be securely held by The National Bank and/or by ANZ Group Members. The Customer has a right to access the Customer's Personal Information by enquiring at any branch of The National Bank and the Customer may also request that it be corrected. A fee may be payable.

The National Bank will make every effort to keep the Customer's Personal Information up to date. To assist The National Bank, please let The National Bank know of any changes in the Customer's personal details, such as the Customer's address.

How The National Bank uses the Customer Information will depend on the purposes for which that information was collected. Generally The National Bank may use this Customer Information to:

- consider the Customer's application for facilities, products or services;
- administer, manage and monitor any facilities, products or services provided to the Customer;
- conduct market research, data processing and statistical analysis; and
- unless the Customer disagrees, provide the Customer with information about other facilities, products or services including certain third party products or services.

The National Bank may disclose information about the Customer to the ANZ Group Members, agents or contractors for the above purposes.

The National Bank may use the Customer Information for the purpose of data matching and in doing so may collect information about the Customer. 'Data matching' is the process of comparing the Customer's Personal Information with publicly available information and/or with information held by a reputable entity The National Bank has an ongoing relationship with in order to better enable The National Bank to carry out any of the above purposes.

The National Bank may disclose the Customer Information to carefully selected third parties for the purposes of data matching, provided those third parties are subject to an obligation of confidentiality.

The National Bank may obtain information and make such enquiries about the Customer as The National Bank may consider warranted from any source including the ANZ Group Members and credit reference agencies for the above purposes.

The National Bank may disclose information about the Customer to credit reference agencies for the purpose of obtaining credit reports on the Customer. Those credit reference agencies may retain that information and provide it to their customers who use their credit reporting services. If the Customer defaults in any obligations to The National Bank, then The National Bank may disclose information about the Customer to credit reference or debt recovery agencies and it may be retained by them. Those agencies may provide that information to their customers who use their credit reporting services.

The National Bank may also disclose account information to any authorised signatory to the Customer's accounts.

If the Customer is a person under 18 years old, The National Bank may contact the Customer's parent(s)/guardian(s) to disclose, or to collect, information about the Customer that will help The National Bank contact the Customer, or to obtain repayment of any amount the Customer owes The National Bank.

The National Bank's security standards are maintained and The National Bank's technology regularly updated to provide protection for the information The National Bank holds. The National Bank does not sell, publish or give away the Customer's information.

Certain laws also require The National Bank to disclose the Customer Information on request, for example the Tax Administration Act 1994. If The National Bank receives a request from certain agencies to release the Customer Information, The National Bank may not be able to tell the Customer that the request has been received. The National Bank may also disclose information to the police, certain government agencies or other financial institutions where The National Bank reasonably believes that the disclosure will assist in the investigation, detection and/or prevention of fraud or other criminal offences, such as money laundering. ANZ Group Members are subject to anti-money laundering and terrorist financing legislation in force in New Zealand, Australia and other countries. The Customer agrees to provide all information to ANZ Group Members which they reasonably require to comply with these laws. Anti-money laundering and terrorist financing legislation in force in New Zealand, Australia and other countries may also prohibit The National Bank from entering or concluding transactions which involve certain countries, persons or entities. As a result, the Customer agrees that ANZ Group Members may:

- delay or block any transaction, or refuse to pay any money, without incurring any liability; or
- disclose any information concerning the Customer or the transaction to the New Zealand Police or Australian Federal Police or any relevant authority in any country in order to ascertain whether the laws in that country apply to a transaction or otherwise in compliance with those laws that aim to prevent or detect terrorist financing or money laundering, in the reasonable belief that the transaction may contravene those laws, and ANZ Group Members will not incur any liability to the Customer as a result of that action.

In this clause, "money laundering" includes any dealing with the proceeds of criminal activity and any dealing with funds or assets of any person or entity suspected of involvement in terrorism or any terrorist act."

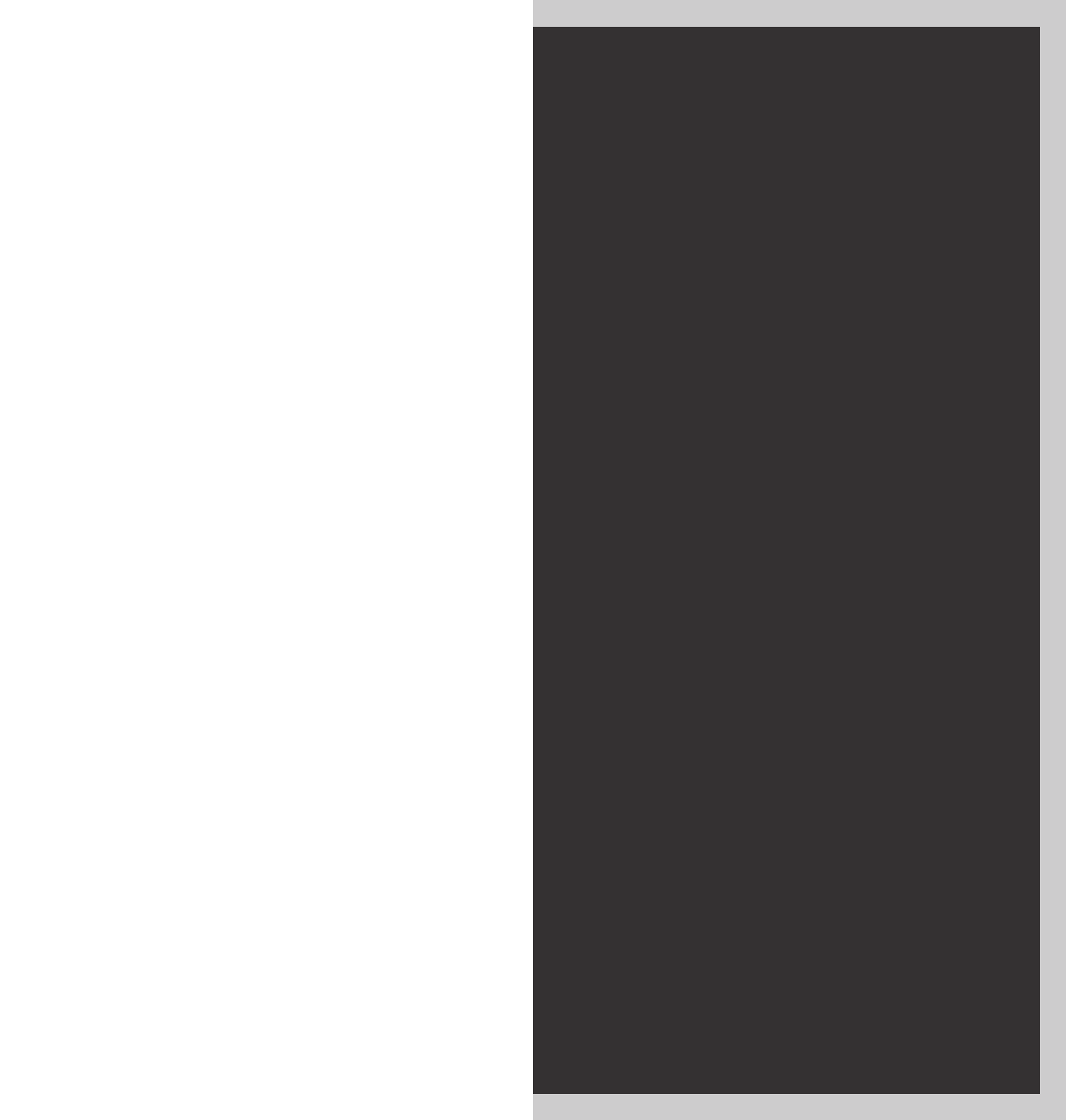
**New section 13:** Insert a new section 13 (Dishonour) to read as follows:

## "13. DISHONOUR

- 13.1** Without limiting any other right, power or remedy which The National Bank has under these Terms or otherwise, the provisions of this clause 13 shall apply where The National Bank purchases, negotiates or accepts bills of exchange drawn and/or endorsed by the Customer or where The National Bank issues bills of exchange drawn on the Customer by The National Bank, in each case whether or not the bills of exchange are accompanied by Documents.
- 13.2** If a bill of exchange is dishonoured by non-acceptance or non-payment for any reason:
- (a) The National Bank and its agents are authorised to dispose of the Goods to which the bill of exchange relates at the Customer's sole risk and expense without being under any responsibility in respect of such sale;

- (b) The National Bank may at its discretion protest or note the bill of exchange and take any other steps The National Bank considers necessary to protect its interest in the bill of exchange;
- (c) The National Bank's acceptance of any Documents relating to the bill of exchange shall not affect or reduce the Customer's liability on the bill of exchange if the proceeds of sale or insurance of the Goods to which the bill of exchange relates are insufficient to cover the amount of the bill of exchange plus interest, charges, expenses and commissions; and
- (d) The National Bank's rights on the bill of exchange shall not be prejudiced by The National Bank's holding of security in relation to the bill of exchange, nor shall any recourse or proceedings taken by The National Bank on the bill of exchange, or The National Bank giving time to, or making any arrangements with, or accepting any composition from, any party to the bill of exchange affect The National Bank's rights under any such security or the Customer's liability under the bill of exchange or these terms.

**13.3** The Customer waives absolutely any requirement as to notice or protest in respect of any bill of exchange."





**The National Bank**