

# Finance Conditions of Use

ANZ BUSINESS BANKING | 08.11



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This document contains some important general conditions of use which apply to your Facilities.

We recommend you take a moment to study it in detail, then keep it in a safe place for future reference.

In this document, 'ANZ' means Australia and New Zealand Banking Group Limited ABN 11 005 357 522.

## Opening Your Facility

Under Federal Government law, we must verify the identity of all account holders, and anyone authorised to act for them. For us to do this you and anyone authorised to act for you must satisfactorily meet ANZ's Customer Identification Process.

Depending on your business and/or structure you will be required to provide certain documents and information to ANZ.

For information relating to the documents required please contact any branch or speak to your ANZ Manager.

If you, or signatories to the account, are not identified in terms of the law, the account will be blocked for all withdrawals until the requirements are satisfied.

If you are an existing customer, or account signatory, identification requirements may have previously been satisfied so you don't need to provide the information again, unless you are asked to do so by us.

# Agreement

These Conditions of Use are part of your Agreement with ANZ.

This Agreement consists of:

- a) the letter of offer;
- b) the Conditions of Use set out in this booklet;
- c) the ANZ Business Banking Finance Fees and Charges booklet;
- d) any Specific Conditions of Use (referred to in the letter of offer) for the Facilities; and
- e) in relation to ANZ Revolving Agri Line, the ANZ Business Banking Transaction Accounts Terms and Conditions booklet and the ANZ Business Banking Transaction Accounts Fees and Charges booklet.

## ANZ's Obligations

### 1. Provision of Facilities

ANZ agrees to provide you with the facilities in accordance with this Agreement. ANZ agrees to do this in exchange for you carrying out your obligations under this Agreement.

Where you have applied for an ANZ Indemnity and Guarantee Facility and you use the Bank Guarantee in connection with the purchase of a property, ANZ does not approve or undertake to approve any application from you for a loan to provide finance you may require to complete the purchase. In the event that ANZ gives or has given approval, or approval in principle, to an application for finance for the purchase of a property, any such approval or approval in principle is considered as a separate transaction from the Guarantee.

### 2. Term of the Facilities

ANZ will provide each Facility for the agreed term unless:

- a) you break your obligations under this Agreement or are in default and ANZ exercises its option to terminate a Facility; or
- b) there is a change in law that prevents ANZ from providing a Facility.

The 'agreed term' means:

- if stated in the letter of offer, a specific term for the Facility, being at least the period until that term has expired; or

- where the letter of offer states that the Facility is available until either or both (whichever occurs earlier) a Review Event or an Event of Default occurs, then at least until ANZ at its discretion gives you notice under clause 13 (d) or clause 17 (c); or
- where the letter of offer states that the Facility is 'on demand', then for the period until ANZ demands repayment.

## Your Obligations

### 3. Advancing/Drawing on Your Facility

- a) ANZ Business Saver Loan, ANZ Business Loan, ANZ Business Mortgage Loan, ANZ Agri Finance and ANZ Business Saver Express Loan

The date of the first Drawing must occur within three months of the date of ANZ's Offer, unless otherwise agreed by ANZ in writing. If the date of the first Drawing does not occur within that time (or any extension agreed to in writing by you and ANZ), this Agreement shall terminate and ANZ will not be obliged to provide the Facility. The proceeds of the facility will be paid to you. However if you wish ANZ to pay money elsewhere, or if there are fees or expenses for the facility at the time the facility proceeds are paid, you must complete a Disbursement Order which tells ANZ to whom and in what amounts your facility is to be paid. The proceeds of the facility will be disbursed in accordance with your Instructions for the facility purpose.

If your Disbursement Order includes a payment to some other person or organisation, ANZ can comply with your order by transferring the amount of the payment into a separate account for that other person or organisation.

Where a Disbursement Order includes an amount to pay out an existing ANZ account in your name, the amount specified on the Disbursement Order may not be the final balance owing on that account. The final balance owing on any account may only be determined at the time the account is paid out. If the amount on the Disbursement Order is more than the final balance owing, no interest will be paid by ANZ on the amount refunded.

If your facility requires progressive payments, any request for a progress payment must be accompanied by a completed Disbursement Order.

## b) ANZ Business Credit Facility

You can make withdrawals from your ANZ Business Credit Facility account by:

- using the optional cheque book supplied by ANZ for the account;
- making a request to ANZ in writing; or
- completing a form at any ANZ branch.

## 4. Repayment of the Facilities

For each facility, you agree to pay ANZ at the end of the agreed term the Outstanding Money. You also agree to pay ANZ, at the end of the agreed term for each facility, all other amounts outstanding but unpaid under any Transaction Document.

## 5. Conditions Precedent

What Must be Done Before ANZ Will Make the Facilities Available?

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

- a) you have accepted ANZ's Offer;
- b) no Event of Default or Potential Event of Default has occurred and is continuing;
- c) ANZ has received the Securities described in the letter of offer, properly completed and executed and legally enforceable (and, if a Security is registrable, in registrable form), as well all other documents needed to perfect the Securities;  
**Note:** If a Guarantor is a Company, or acts as a trustee, ANZ may also require some of the documents set out in clauses (e) or (f) for the Guarantor.
- d) ANZ has received an Account Operating Authority;
- e) if you are a Company – ANZ has received a copy of your certificate of incorporation;
- f) if you are making this Agreement as a trustee of a trust ANZ has received:
  - (i) a copy of the trust deed together with evidence satisfactory to ANZ from you, or if you are a Company, from one of your directors or from your secretary, that the trust deed is complete, correct, fully in force and not subject to amendment or revocation; and

- (ii) evidence satisfactory to ANZ from you that:
  - you are authorised to execute, exercise your rights under and perform your obligations under the Transaction Documents; and
  - appoint your Authorised Representatives together with evidence satisfactory to ANZ from you that each of these documents is complete, correct, fully in force and not subject to amendment or revocation.
- g) all the other conditions precedent set out in the letter of offer have been fulfilled.

Where you have applied for an ANZ Indemnity and Guarantee facility ANZ cannot issue a Bank Guarantee under the facility until ANZ receives an Indemnity Application for Guarantee properly executed to ANZ's satisfaction. This must be given to ANZ no later than three clear Business Days before the day on which you want ANZ to issue the Bank Guarantee. You also need to provide ANZ with a form of Bank Guarantee which is acceptable to ANZ, with details completed and signed by you to confirm content.

## 6. Representations Made by You

- a) When you accept this Offer you represent that each of the following statements is true:
  - (i) each of the Transaction Documents executed by you or a Guarantor is binding on you or the Guarantor, as the case requires, and can be enforced against you or the Guarantor in accordance with its terms;
  - (ii) there is no default (that is material in the context of this Agreement) by you or any of the Guarantors under any other agreement, undertaking or instrument;  
**Note:** The agreement, undertaking or instrument need not be this Agreement or an undertaking or instrument under it. It may be with someone other than ANZ.
  - (iii) nothing has happened that would become a default mentioned in the above clause simply by notice being given or time elapsing;
  - (iv) except as notified to ANZ in writing, neither you nor any of the Guarantors is acting as a trustee of a trust;

- (v) except as notified to ANZ in writing, there are no Encumbrances, other than a Permitted Encumbrance, over:
- your property; and
  - any Guarantor's property
- over which a Security has or will be given to ANZ.
- (vi) except as notified to ANZ in writing, no litigation, arbitration or administrative proceeding exists or is pending, and you do not know of any which is threatened, that may have a material adverse effect on:
- your or a Guarantor's business, assets or financial conditions; or
  - your or a Guarantor's ability to perform obligations under any of the Transaction Documents.
- (vii) your most recent annual Financial Statements:
- show a true and fair view of your financial condition and the results of your operations for the financial year that they cover;
  - disclose all material liabilities; and
  - if you are a Company – comply with the laws of Australia and (except where inconsistent with those laws) generally accepted accounting principles consistently applied in Australia.

You also represent that there has been no material adverse change in your financial condition since the date of the Financial Statements.

- (viii) for each corporate Guarantor which is related to you, its most recent annual Financial Statements:
- show a true and fair view of its financial condition and the results of its operations for the financial year that they cover;
  - disclose all material liabilities; and
  - comply with the laws of Australia and (except where inconsistent with those laws) generally accepted accounting principles consistently applied in Australia.

You also represent that there has been no material adverse change in the Guarantor's financial condition since the date of the Financial Statements.

- (ix) you have disclosed to ANZ all material matters that you know of which affect:
    - your or a Guarantor's business, assets or financial condition; or
    - your or a Guarantor's ability to perform obligations under any of the Transaction Documents.
  - (x) your entering into this Agreement, your executing any of the other Transaction Documents and carrying out your obligations under them will not contravene:
    - a law or Government Requirement that applies to you or any of your property; or
    - an authorisation, licence or exemption that applies to you or any of your property; or
    - an agreement which binds you or any of your property; or
    - if you are a Company, any constitution of the Company or the replaceable rules if applicable; or
    - if you are a partner, any partnership document.
  - (xi) the execution by a Guarantor of any of the Transaction Documents and the carrying out of its obligations under them will not contravene:
    - a law or Government Requirement that applies to it or any of its property; or
    - an authorisation, licence or exemption that applies to it or any of its property; or
    - an agreement which binds it or any of its property; or
    - if it is a Company, any constitution of the Company or the replaceable rules if applicable; or
    - if it is a partner, any partnership document. You also represent that execution by a Guarantor will not give rise to a need for an authority, licence or exemption that it does not already hold.
- b) Each time you make a Drawing under, or otherwise use, the facilities (or in the case of a Bill facility, you ask us to roll Bills), you will be representing that, as at the time you make the Drawing, or otherwise use the facilities, or as at the time you ask ANZ to roll Bills, each of the statements set out in the above clause is true.

- c) You agree to give ANZ prompt written notice if, after it was made or given to ANZ, a representation or statement made to ANZ or information given to ANZ ceases to be true or becomes misleading.

## **7. Insurance**

All insurable property mortgaged to ANZ must be insured at all times for all usual risks under a policy acceptable to ANZ with ANZ's interest clearly noted. The insurance must be for full replacement value of the property insured.

Within 30 days of a request by ANZ, you must submit to ANZ a Cover Note or a Certificate of Currency for the property mortgaged to it.

You agree to advise ANZ in the event that the insurance is cancelled or the nature of the cover changes.

## **8. Information**

- a) You agree to provide ANZ with any financial or other information ANZ asks for by the time that ANZ specifies.

ANZ agrees that:

- it will only ask you for information which it considers relevant; and
- it will specify, having regard to the kind of information sought, what it considers to be a reasonable time within which you are to provide the information.

You only need to provide the information to ANZ in writing, if ANZ asks for it to be in writing.

- b) If you are a public Company, you also agree to provide ANZ with all written information that you give to your shareholders (generally or to any class of them) or to a stock exchange, at the same time as you give it to them.

## **9. Costs to be Paid by You**

- a) You agree to pay ANZ, on demand, all of ANZ's Costs in connection with the Transaction Documents. This includes ANZ's Costs in taking any action in connection with a Transaction Document, in particular:

- negotiating, preparing, reviewing, amending, executing, stamping, registering and discharging a Transaction Document;
- valuing anything that ANZ requires to be valued;
- giving a consent; or
- enforcing or protecting ANZ's rights under the Transaction Documents.

#### b) Break Consequences

If ANZ's obligations in respect of a Facility are terminated:

- before the termination date for any reason; or
- because ANZ gives you notice under clause 13 (d) or clause 17 (c);

you agree to pay to ANZ the amount which ANZ determines is required to compensate ANZ for all Costs which ANZ may incur or losses which ANZ may suffer, directly or indirectly, because of termination.

*Warning: If you prepay a facility, the amount of Costs or losses may be significant, particularly in the case of fixed rate facilities or certain treasury products where ANZ has entered into contracts with third parties. If you wish to prepay part or all of a facility, you should discuss it with ANZ first and ANZ can calculate the Costs or losses that you would have to pay if you made the prepayment. This will help you to decide whether you want to go ahead with the prepayment.*

## 10. Request for Informal Overdraft facility

Except in relation to ANZ Equity Manager in a Company name:

- a) when any debit is initiated which, if processed, would result in the approved limit on your account being exceeded, you are deemed to request an Informal Overdraft.
- b) ANZ will consider your request and assess your eligibility for an Informal Overdraft based on ANZ's credit criteria. You will be charged an Informal Overdraft Assessment Fee for this service in the circumstances described below.
- c) If you satisfy ANZ's credit criteria for an Informal Overdraft facility, ANZ will agree to your request by allowing the debit to be processed as an Informal Overdraft, on the following terms:

- (i) if the balance of your Informal Overdraft facility exceeds \$50 at the time of your request, or will exceed \$50 once the debit requested is processed, you will be charged an Informal Overdraft Assessment Fee on the day on which the debit is processed (or if that day is not a business day, on the next business day). The Informal Overdraft Assessment Fee (referred to in your bank statements and in the 'ANZ Finance Fees and Charges' booklet as an 'Honour Fee') is payable immediately.
  - (ii) interest will be charged on the sum of the Informal Overdraft and any fees and charges debited to the account at a rate determined by ANZ which may vary from time to time ("Informal Overdraft Interest Rate").
  - (iii) interest accrues daily from and including the day when the Informal Overdraft facility is first provided until there is no longer an Informal Overdraft.
  - (iv) the Informal Overdraft, any Informal Overdraft Assessment Fee and any interest on both of those amounts will be debited to your account; and
  - (v) you must repay each of those amounts (the Informal Overdraft, any Informal Overdraft Assessment Fee and any interest on both of those amounts) by the earlier to occur of either:
    - 7 days of the Informal Overdraft being debited to your account; or
    - ANZ demanding repayment. Demand for payment may be made in your next statement of account or by letter to you.
- d) If you do not satisfy ANZ's credit criteria for an Informal Overdraft, ANZ will decline your request and will not allow the debit to be processed. You will be charged an Informal Overdraft Assessment Fee (referred to in your bank statements and in the 'ANZ Finance Fees and Charges' booklet as an 'Outward Dishonour Fee') and this fee is payable immediately.
- e) Other than amounts debited to your account in accordance with this clause, ANZ does not agree to provide any additional credit in respect of your account without prior written agreement.

## 11. Overdue Amounts

- a) You agree to pay ANZ interest on each amount (including interest) which is not paid when it is due (an 'overdue amount').
- b) The interest rate for overdue amounts is a rate determined by ANZ which may vary from time to time.
- c) Interest accrues daily from and including the day when the amount becomes due and payable until the amount is paid.

You agree to pay ANZ that interest on the first Business Day prior to the debiting date.

- d) You agree to pay ANZ, on demand any overdue amount.
- e) You agree to pay ANZ, on demand, in addition to the interest payable under sub-clause (a), a fee determined by ANZ so that the interest and the fee will compensate ANZ for the Costs ANZ incurs or loss ANZ suffers as a result of an overdue amount.

## 12. Encumbrances and Personal Property Securities

- a) You agree not to create or permit to exist, an Encumbrance or any other arrangement with another party (including any set off arrangement) having a similar effect as a grant of security, other than a Permitted Encumbrance.
- b) Unless the contrary intention appears in a Transaction Document, where the following terms are used in the context of the PPSA, they have the meanings they have in the PPSA: account, amendment demand, chattel paper, commercial consignment, control, financing statement, financing change statement, perfect, personal property, PPS lease, purchase money security interest, serial number, verification statement.
- c) If ANZ determines that a Transaction Document (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, you and each Guarantor agree to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which ANZ asks and considers necessary for the purposes of:
  - (i) ensuring that the security interest is enforceable, perfected and otherwise effective; or

- (ii) enabling ANZ to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by ANZ; or
  - (iii) enabling ANZ to exercise rights in connection with the security interest.
- d) If you and/or a Guarantor hold any security interests for the purposes of the PPSA and, if a failure by you and/or a Guarantor to perfect such security interests would have a Material Adverse Effect, you and each Guarantor agree to implement, maintain and comply in all material respects with, procedures for the perfection of those security interests. These procedures must include procedures designed to ensure that you and/or a Guarantor take all steps under the PPSA to perfect continuously any such security interest including all steps necessary:
  - (i) for you and/or the Guarantor to obtain, the highest ranking priority possible in respect of the security interest (such as perfecting a purchase money security interest or perfecting a security interest by control); and
  - (ii) to reduce as far as possible the risk of a third party acquiring an interest free of the security interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).
- e) If ANZ asks, you and/or a Guarantor agree to arrange at your or the Guarantor's expense, an audit of the PPSA procedures. ANZ may ask you and/or the Guarantor to do this if it reasonably suspects that you or a Guarantor are not complying with this clause.
- f) Everything you and/or a Guarantor are required to do under this clause is at your or the Guarantor's expense. You and/or the Guarantor agree to pay or reimburse the reasonable Costs of ANZ in connection with anything you and/or the Guarantor are required to do under this clause.

# Review and Changes to Interest Rates, Fees & Charges, Repayment Amounts and Other Terms

## 13. Review of the Facilities

### *Right of Review*

- a) ANZ may review each Facility when either or both (whichever occurs earlier) a Review Event or an Event of Default occurs. If the Facility is provided for a specific term, ANZ can only make a change of the type which has been specifically reserved elsewhere in these Finance Conditions of Use.

If the Facility is provided until either or both (whichever occurs earlier) a Review Event or an Event of Default occurs or is on demand then ANZ can do the following:

- b) If, following a review ANZ determines there has been a Change in Credit, ANZ may give you a written notice stating that ANZ wishes:
- to agree to continue the Facility subject to a change to any of the Conditions. This right to change any of the Conditions is in addition to ANZ's right to make specific changes reserved elsewhere in these Finance Conditions of Use; or
  - to terminate a Facility. ANZ will give you a least 30 days notice, unless you agree to a shorter period.
- Note:** Sub-clause (b) does not allow ANZ to do any of the following things unless you agree or unless you are in default:
- alter the Term of the Facility;
  - change the Conditions of a Facility before a Review Event occurs; or
  - change a Condition of a Facility, if ANZ has previously agreed with you in writing that ANZ will not change that Condition (for example, if ANZ has agreed to a fixed rate of interest for a particular period, ANZ cannot change that fixed rate of interest for that period).
- c) If ANZ gives you notice that ANZ wishes to change any of the Conditions of the Facility, then unless ANZ agrees otherwise with you:

- the changes take effect from the day when you accept the changes; but
  - if you do not accept the changes before the end of the notice period then the Facility becomes repayable on demand at the end of the notice period.
- d) If ANZ gives you notice that ANZ wishes to terminate the Facility, the termination will take effect at the end of the notice period. You must pay ANZ immediately on termination the Outstanding Money under the Facility, including any Costs or losses determined under clause 9(b).

e) Changes to Other Covenants

ANZ may at a review, if there has been a Change in Credit, vary any existing 'other covenants' and introduce new 'other covenants' of a security, operating or financial nature. ANZ will give you at least 30 days written notice of any such change.

f) New AASB Standards

Where you are required to comply with the New AASB Standards, ANZ may, without prejudice to any other right under clause 13, review the Facilities (and the Conditions on which they are made available) at any time from the date of this Agreement, and further upon receipt by ANZ of your first Accounts prepared in accordance with the New AASB Standards.

ANZ will notify you of any such review in writing (an 'AASB Review Notice') and negotiate in good faith with you in conducting the review. Within 60 days of the date of an 'AASB Review Notice', ANZ may give you written notice that it wishes to change the Conditions on which the Facilities will continue to be made available including, in particular, the pricing of the Facilities and the financial undertakings (the 'AASB Amendment Notice').

If you accept the changes set out in the 'AASB Amendment Notice', the changes will take effect from the date as specified in the 'AASB Amendment Notice'. However, if you do not accept the changes within 30 days from the date of the 'AASB Amendment Notice', the Facilities will be terminated and you must repay the Outstanding Money for each Facility in cleared funds, at the expiration of 60 days from the date of the 'AASB Amendment Notice'.

#### g) ANZ's Rights Under Other Clauses

This clause does not affect ANZ's rights under any other clauses in these Finance Conditions of Use including, but not limited to:

- the rights ANZ has if you are in default;
- the rights ANZ has under clause 32; or
- ANZ's right at any time to terminate immediately a Facility which is 'on demand' by making a demand for payment.

#### h) Review Events

ANZ may review your Facilities when it considers any of the following have occurred:

- (i) There is a change in exchange rates or interest rates which may have a material effect on the profitability of your business;
- (ii) Any change in ownership or control of your business;
- (iii) ANZ receives a request from you to pay preferential creditors;
- (iv) There is an increase or application to ANZ to increase Facilities or for new Facility/ies;
- (v) ANZ has dishonoured or refused payment of cheque(s) issued on any of your accounts because there are insufficient funds;
- (vi) ANZ receives a request from a Guarantor of any of your Facilities to be released from their obligations under the guarantee;
- (vii) Any cheque for a material amount deposited to any of your accounts is dishonoured or payment is refused;
- (viii) There is a material change in the value of Security and/or ANZ receives a request to change the Security provided in support of your Facilities;
- (ix) ANZ is notified by statutory or law enforcement authorities of your alleged involvement in illegal activities;
- (x) The occurrence of circumstances which may include matters such as the loss of a key supplier, the loss of a major customer, the loss of a tenant or diversification of activities which, in ANZ's opinion, are likely to result in a material deterioration in your financial position or profitability; or

- (xi) if, at any time after the PPSA commences to apply, ANZ determines that an event has occurred that has had, or is likely to have, a Material Adverse Effect.
- (xii) an event occurs which is specified in the letter of offer to be a review event.

## **14. Changes to Other Terms and Conditions**

### **Changes to Interest Rates**

#### ***Variable Rate Facilities***

- a) ANZ has the right to review its interest rates from time to time to reflect its view of market conditions. This means that the interest rate for your Facility can be increased or decreased by ANZ from time to time. ANZ can also change the interest rate for excesses and overdue amounts.

Where there is a change in the interest rate, ANZ will advertise the new rate or notify you in writing no later than the day of the change. If the interest rate change is notified to you by advertisement, a note recording the change and the new rate will be shown on the next statement which is issued for your Facility.

- b) ANZ also has the right to change the interest margin at any time. If this occurs ANZ will notify you in writing no later than the day on which the change takes effect.

#### ***Fixed Rate Facilities***

- c) The interest rate which will apply to your fixed rate Facility will not be changed during the fixed rate period of the Facility.
- d) ANZ has the right to review the interest margin once your fixed interest rate period has ended. The interest margin will be reviewed and may be varied at the review of your Facility.

### **Changes to Fees and Charges**

- e) ANZ may introduce new fees or charges for Facilities. Any new fee or charge will be notified to you in writing no later than 30 days before the change takes effect.
- f) ANZ may also change existing fees or charges. Any change will be notified to you no later than the day on which the change takes effect by an advertisement in major or national daily newspapers or notice will be given to you in writing.

## Changes to Other Terms and Conditions

- g) ANZ may change any of the names of any of its interest rates, Facilities or publications or any other Condition of your Facility. Any change will be notified to you no later than the day on which the change takes effect by an advertisement in major or national daily newspapers or notice will be given to you in writing. ANZ may also change the method by which interest is calculated or the frequency with which interest is credited or debited to your Facility. Any such change will be notified to you in writing no later than 30 days before the change takes effect.

## Changes to Repayment Amounts

- h) If there is a change in your interest rate prior to Drawing, ANZ may recalculate your repayments and the recalculated repayments may be different to the amount set out in your letter of offer. ANZ will advise you of this change shortly after the Drawing.
- i) Variable interest rates can change at any time during the life of a Facility and if this occurs, the amount of your repayments may need to change. After any increase in your variable interest rate ANZ can increase your repayments. ANZ will advise you of any increase to your repayment amounts.

## 15. Review Date for ANZ Business Mortgage Loan and ANZ Business Saver Loan

In addition to ANZ's right to review this Facility under clause 13, ANZ may, at its discretion, review the Facility if there has been a change in the value of the Security provided resulting in the Loan to Security Ratio exceeding 80%.

# Default

## 16. Events of Default

- a) You will be in default if any of the following things happen:
- (i) you fail to pay on time an amount that is due and payable by you under a Transaction Document;
  - (ii) you fail to pay an amount payable by you under a Transaction Document within any grace period allowed by ANZ;

- (iii) an Encumbrance (other than a Permitted Encumbrance) exists over any or all of your property or an event occurs that causes an Encumbrance or a Security given by you to become enforceable;
- (iv) a representation or statement made to ANZ or information given to ANZ (whenever it was made or given) in or in connection with the Transaction Documents was false or misleading (whether by omission or otherwise) when it was made or given;
- (v) you fail to pay before the end of any grace period an amount that is due and payable to someone other than ANZ for obligations relating to financial accommodation or financial arrangements;
- (vi) any obligation that you have becomes due and payable, or capable of being declared due and payable, before its stated maturity (this does not include where it does so at your option);
- (vii) a provision of a Transaction Document:
  - does not have effect, or ceases to have effect, in accordance with its terms; or
  - is or becomes void, voidable, illegal, invalid or unenforceable (but not simply because of the principles and rules of the common law or of equity that affect creditor's rights generally).
- (viii) some or all of your property is seized by or on behalf of a creditor or under legal process;
- (ix) you stop, or threaten to stop, carrying on all or a material part of your business;
- (x) insolvency:
  - you suspend payment of your debts;
  - you are or state you are, or are presumed by law to be, insolvent or unable to pay your debts; or
  - you take a step for the purpose of entering into a compromise or arrangement with any of your creditors or with any of your members.
- (xi) in ANZ's opinion, you use the financial accommodation provided under a facility for a purpose other than the purpose for which ANZ has made it available;

- (xii) circumstances arise that, in ANZ's opinion, may have a Material Adverse Effect on:
    - your business, assets or financial condition; or
    - your ability to perform your obligations under:
      - any Transaction Document; or
      - an Encumbrance or Security provided by you.
  - (xiii) an event occurs which is specified in the letter of offer to be an Event of Default;
  - (xiv) a Garnishee Notice is given in respect of tax or other money you are said to owe;
  - (xv) you breach an obligation other than those listed separately in this clause 16 under a Transaction Document and either:
    - the breach cannot be remedied; or
    - if it can be remedied – ANZ gives you a written notice requiring you to remedy it and, five Business Days later, it is still not remedied.
- b) If you are a Company, you will also be in default if any of the following things happen:
- (i) an application is made, a resolution is passed or an order is made for your winding up;
  - (ii) you become an externally administered body corporate or a controller or a trustee for creditors is appointed in respect of any of your property; or
  - (iii) without ANZ's written consent you pass a resolution or take a step:
    - a) to give financial assistance, whether directly or indirectly, for the purpose of, or in connection with an acquisition or proposed acquisition of:
      - your shares or the shares of a Company of which you are a subsidiary, or
      - any right or interest in those shares;
    - b) to reduce your share capital;
    - c) to limit your ability to make calls on your uncalled share capital; or
    - d) to buy shares in yourself other than by redeeming redeemable preference shares.
- c) If you are an individual (including a partner), you will also be in default if any of the following things happen:

- (i) you commit an act of bankruptcy;
  - (ii) a bankruptcy notice is issued against you;
  - (iii) you become bankrupt; or
  - (iv) a trustee for creditors or in bankruptcy is appointed in respect of any of your property.
- d) If you are a partnership, you will also be in default if any of the following things happen:
- (i) without ANZ's written consent, there is a change in the constitution of the partnership; or
  - (ii) without ANZ's written consent, the partnership is dissolved.
- e) If you entered into this Agreement as a trustee of a trust, you will also be in default if any of the following things happen:
- (i) the trust is held by a court not to have been properly constituted or you concede that the trust has not been properly constituted;
  - (ii) the trust terminates or the beneficiaries of the trust resolve to terminate it;
  - (iii) you cease:
    - to hold the trust property in your name; or
    - to be trustee;
  - (iv) you commit a breach of trust which, in ANZ's opinion, is material.
- f) Sub-clauses (a) to (e) inclusive (modified as necessary) apply to a Guarantor. If a Guarantor is in default, then you are in default.
- g) You agree to notify ANZ in writing promptly if you are in default or a Potential Event of Default occurs.

## **17. Consequences of Default**

- a) If you are in default, ANZ may waive the rights that it has.
- b) If you are in default, ANZ may do any one or more of the following:
  - (i) terminate immediately some or all of ANZ's obligations under this Agreement;
  - (ii) change immediately some or all of the Conditions on which one or more of the facilities are made available (in particular, ANZ may cancel an unused Facility Limit by reducing the Facility Limit or ANZ may make the facility 'on demand');

- (iii) make some or all of the money that is or may become owing to ANZ in respect of one or more of the facilities immediately due and payable to ANZ (this includes the face value of all outstanding Bills); and
  - (iv) require you to provide ANZ with enough cash to cover ANZ for any contingent liabilities ANZ may have under a facility (for example, a contingent liability under a letter of credit).
- c) ANZ will give you written notice after acting under sub-clause (b) (i) or (ii).
  - d) ANZ will give you written notice before acting under subclauses (b) (iii) or (iv). The notice is effective immediately ANZ gives it.
  - e) You agree to pay ANZ, on demand, the amount of all the Costs ANZ incurs, and the losses ANZ suffers, because of, or in connection with, an Event of Default. Without limiting what this amount may be, it includes whatever amount ANZ determines is needed to compensate ANZ for Costs incurred or losses suffered because of:
    - (i) early payment of amounts outstanding; or
    - (ii) failure to roll a Bill.

ANZ will take into account any benefit that, in ANZ's opinion, ANZ will get because of the early payment or the failure.

- f) You agree that an Event of Default under this Agreement is an Event of Default or an Acceleration Event under all other agreements that you have with ANZ.

This sub-clause applies despite anything in the other agreement.

- g) If you are in default under your ANZ Business Mortgage Loan, ANZ may at any time and without prior notice to you, transfer or apply the whole or any part of the credit balance of your offset account in payment of the whole, or any part, of your loan account. ANZ also reserves the right at any time to block access to your offset account.

## Interest Calculations

### **18. Interest Calculations – ANZ Business Saver Loan, ANZ Business Loan (Interest in Arrears), ANZ Business Mortgage Loan (Interest in Arrears), ANZ Business Saver Express Loan and ANZ Agri Finance**

- a) If after the Term of the Facility commences, you and ANZ agree to change the Conditions of your Facility in any way, ANZ may debit any Accrued Interest to your account on the day on which the change takes effect and, if this occurs, the interest charging will be restarted from that date.
- b) Interest on your facility is calculated on the daily closing balance of your facility. The interest rate is determined by dividing the interest rate applicable at the time by 365.
- c) If a day on which interest is due to be paid (a 'due date') is not a Business Day, that interest will be payable on the next Business Day.
- d) Interest debited to your account will be added to the outstanding balance of the loan principal and will accrue interest at the same rate and in the same manner as the principal of the loan.

### **19. Interest Calculations – ANZ Business Loan (Interest in Advance) and ANZ Business Mortgage Loan (Interest in Advance)**

- a) During the interest in advance term the amount payable at the start of each interest charging period will be equal to the total amount of interest payable for this term divided by the number of interest charging periods within this term.
- b) At the start of an interest in advance term, interest is calculated for each day in this term by applying the applicable fixed interest rate divided by 365 to the amount borrowed.
- c) Any interest debited during the interest in advance term shall, if not paid on the due date, attract interest at the applicable fixed interest rate, calculated daily and be debited to your account on the last day of the current interest charging period. ANZ may recalculate your interest payments to take into account any default interest debited to your loan balance.
- d) If a day on which interest is due to be paid (a 'due date') is not a Business Day, that interest will be payable on the next Business Day.

## 20. Interest Calculations – ANZ Business Overdraft Facility, ANZ Business Credit Facility and ANZ Revolving Agri Line

- a) Interest is calculated on the daily outstanding debit balance of your account. The interest rate applied each day is equal to the annual percentage rate applicable at the time divided by 365.
- b) Interest is payable each month during the term of your facility. The debiting date each month will be based on the date your account was opened unless a different date is agreed on by you and ANZ, or ANZ gives you notice of a new debiting date.
- c) Subject to clause 20 (d), interest debited to your account will accrue interest at the same rate and in the same manner as overdraft advances.
- d) Interest and fees debited to your ANZ Business Credit Facility Account and ANZ Revolving Agri Line will accrue interest at the same rate and in the same manner as your ANZ Business Credit Facility Account and ANZ Revolving Agri Line.

## Fee Calculations

### Credit Facility Fee Calculations – ANZ Business Overdraft Facility and ANZ Business Credit Facility

- a) The Credit Facility Fee is calculated daily on the Facility Limit applicable to your account. The Credit Facility Fee applied each day is equal to the annual Credit Facility Fee amount applicable at the time divided by 366.
- b) The Credit Facility Fee is debited to accounts:
  - quarterly in arrears based on the account opening date; and
  - on a pro-rata basis, whenever there is a change to the Facility Limit.

For example, assume:

- you have an ANZ Business Overdraft Limit of \$40,000 from 1 June (Period 1);
- your request for a limit increase to \$50,000 is approved effective 30 July (Period 2).

Based on the above assumptions, the Credit Facility Fee payable on 30 July for Period 1 is \$96.72 and the Credit Facility Fee payable on 1 September for Period 2 is \$76.64. See the calculations below:

## Period 1

- a) Divide the Credit Facility Fee Amount for Period 1 by 366 to calculate the daily fee.  
 $\$600 / 366 = \$1.63934426$
- b) Multiply the daily fee for Period 1 by the number of days in that period  $\$1.63934426 \times 59 = \$96.72$  (rounded up to 2 decimal places).

## Period 2

- a) Divide the Credit Facility Fee Amount for Period 2 by 366 to calculate the daily fee.  $\$850 / 366 = \$2.32240437$
- b) Multiply the daily fee for Period 2 by the number of days in that period  $\$2.32240437 \times 33 = \$76.64$  (rounded up to 2 decimal places).

# Payments

## 21. Payments Generally

- a) Every payment you make to ANZ will be in immediately available funds.
- b) If any payment is due to be made on the day which is not a Business Day, it must be paid on the next Business Day.

Where the due date falls on the 29th, 30th or 31st of a month which does not contain such a date, the payment will be due on the last day of that month.

- c) For an ANZ Business Credit Facility, you must make sufficient payments to your account to ensure that your Facility Limit is not exceeded.
- d) Each time an interest payment is debited, the period covered by the interest charged will include all days (for which interest has not previously been charged) up until and including the day prior to the due date. Where interest is debited after the due date, subsequent interest charges will be calculated as if the interest had been debited on the due date.
- e) If you are able to make repayment to your facility through an ANZ ATM (or an ATM of an associated financial institution), any repayment will be processed to your facility on the same day provided it is made before 4pm Melbourne time Monday – Friday (excluding national public holidays).

- f) If you are able to make a repayment to your facility by cheque, and the cheque is dishonoured, the repayment will be treated as not having been made and interest will continue to accrue on the unpaid daily balance until actual payment is received by ANZ.
- g) This Agreement provides for certain payments to be made. You authorise ANZ to debit any of your accounts with any amount payable by you under this Agreement. ANZ may debit an amount to your account without making a demand even though another provision of this Agreement says that the amount is payable on demand. However, ANZ does not have to debit your account and ANZ may ask you to pay the amount to ANZ. If ANZ debits your account, ANZ will give you written notice that ANZ has done this.

(For example, clause 9 (a) of this Agreement requires you to pay on demand certain Costs incurred such as stamp duty and registration fees on Securities. Clause 21 (g) allows ANZ to debit stamp duty to your account without having to serve a formal demand. Other amounts which may be debited to your account include interest which is due on a facility or money payable on a Bill roll-over).

ANZ may, at any time, change when, how often and how you will pay ANZ interest, fees or charges under any of the facilities.

**Note:** If ANZ makes a change of this kind, ANZ will give notice of the change before it happens. ANZ will do this either by giving you written notice or by publishing details in a daily newspaper.

## 22. No Deductions From Your Payments

- a) To the maximum extent that the law allows, you agree to make each payment to ANZ under this Agreement without any:
- (i) set-off or counterclaim;
  - (ii) deduction; or
  - (iii) withholding for or on account of tax or duty.
- b) You agree that, if a law requires you to make a deduction or withholding for or on account of tax or duty (other than any imposed on ANZ's overall net income) from a payment to ANZ:

- (i) you will pay ANZ, when the payment is due, whatever additional amount is needed so that what ANZ actually receives, after taking into account the deduction or withholding, is what ANZ would have been entitled to receive if no deduction or withholding had been made;
- (ii) you will indemnify ANZ against any loss ANZ suffers or cost ANZ incurs because you do not make the deduction or withholding; and
- (iii) you will promptly give ANZ a copy of any document relating to the amounts paid or payable in respect of the deduction or withholding.

### **23. Different Currencies**

- a) Unless a Transaction Document provides otherwise, all payments made under or for the purposes of this Agreement or another Transaction Document must be made in Australian dollars.
- b) Where conversion of one currency to another is required ANZ will apply its standard procedures for currency conversion.
- c) This sub-clause will apply if you must make a payment under this Agreement or another Transaction Document in a different currency because of a law, an order of a court or for any other reason. If the amount paid in the other currency, when converted by ANZ into the currency in which it is required to be paid under the relevant Transaction Document, falls short of the amount due and payable under the relevant Transaction Document, you agree to pay ANZ, on demand, the amount of the shortfall.

The amount to be paid will be determined:

- on the day when the payment is actually made; or
- if the payment is made in the case of a winding up, bankruptcy or other insolvency administration – the date fixed by the relevant law for the determination of claims.

Your obligation to make this payment is separate from and independent of your other obligations under this Agreement or the other Transaction Documents.

## 24. Prepayment – ANZ Business Overdraft, ANZ Business Credit Facility and ANZ Revolving Agri Line

You can terminate your ANZ Business Overdraft Facility, ANZ Business Credit Facility or ANZ Revolving Agri Line at any time by repaying all amounts owing under the facility and notifying ANZ.

## 25. Prepayment – ANZ Business Saver, ANZ Business Loan (Variable Interest Rate), ANZ Business Mortgage Loan (Variable Interest Rate), ANZ Agri Finance and ANZ Business Saver Express Loan

You may pay out your facility at any time without incurring additional interest. Government charges and stamp duty may apply.

## 26. Prepayment – ANZ Business Loan (Fixed Interest Rate) and ANZ Business Mortgage Loan (Fixed Interest Rate)

- a) ANZ is not obliged to accept any early or additional partial repayment of your facility during its fixed interest rate period.

If ANZ does accept any early or additional partial repayment of your facility during its fixed interest rate period, or if you repay your facility in full during its fixed interest rate period, then ANZ can require you to pay an early repayment cost, plus an early repayment administration fee.

- b) If ANZ accepts any early or additional partial repayment during any interest in advance period then ANZ will credit your account with a proportional interest rebate of the amount paid early but not until the end of the interest charging period during which it is made. ANZ may also recalculate your interest repayments for the remainder of any interest in advance term to take into account the principal reduction.
- c) If you repay your facility in full during any interest in advance period ANZ will credit your account with a proportional interest rebate for the amount repaid on the date full repayment occurs.
- d) The amount of any early repayment costs is calculated as the net present value of the interest foregone by ANZ. 'Interest Foregone' means:
- interest on the principal which is repaid early, calculated at the market rate at the date of draw

down, for a period equal to the uncompleted part of your fixed interest rate period, less

- interest on the same amount and for the same period calculated at the market rate current at the date of repayment.

**‘Market Rate at Loan Drawdown’** means the Wholesale Swap Rate (currently published daily in the Australian Financial Review and other newspapers) which is quoted on the date of Drawing for a term equal to the fixed interest rate period in your Offer.

**‘Market Rate at Loan Repayment’** means the Wholesale Swap Rate which is quoted on the date of your early repayment for a term equal to the unexpired part of your fixed interest rate period (as at the date of your early repayment).

If either of the terms mentioned above are less than 12 months, then the relevant Bank Bill Swap Rate will be used instead of the Wholesale Swap Rate. Where no Wholesale Swap Rate or Bank Bill Swap Rate is quoted or available for either of the terms referred to above, the rate which is to be used is to be calculated by straight line interpolation between the closest longer and shorter quoted terms either side of the relevant term.

The ‘net present value of the interest foregone’ is calculated by applying the market rate at prepayment as the discounted rate in the calculation.

- e) If you have a Mortgage Offset Account linked to your ANZ Business Mortgage Loan and you make an early or additional repayment to your facility or repay your facility in full during its fixed interest rate period, then any early repayment cost which you may be liable to pay will be calculated without taking into account the balance of your Mortgage Offset Account.

## **27. Cancellation of a Bank Guarantee**

You may, at any time, cancel a Bank Guarantee by returning the Bank Guarantee to ANZ and paying any unpaid fees and other amounts in relation to the Bank Guarantee.

## Notices

### 28. Notices

- a) A notice or demand that ANZ gives to you under this Agreement or the other Transaction Documents will be signed by one of our bank managers, bank officers or by our solicitors.
- b) ANZ may give you a notice or demand under this Agreement or the other Transaction Documents by leaving it at your address or by posting it in a prepaid envelope addressed to you. Your address is that shown in the letter of offer or the last address for you that ANZ has recorded in ANZ's books.
- c) A notice or demand that ANZ gives you for the purposes of this Agreement or the other Transaction Documents will be given and received:
  - (i) if ANZ leaves it at your address mentioned in sub-clause (b) – when left, or
  - (ii) if we post it in accordance with sub-clause (b), on the second Business Day after posting.
- d) A notice that you give to ANZ under this Agreement or the other Transaction Documents must be signed by you or by your Authorised Representative.
- e) You may give a notice under this Agreement or the other Transaction Documents by leaving it or by posting it in a prepaid envelope addressed to ANZ. ANZ's address is that shown in the letter of offer or some other address that ANZ has given you written notice of. Your notice will be effective when ANZ receives it.
- f) If you give ANZ a notice that is expressed to be, or must be read as, irrevocable, you are not able to revoke it and it binds you from the time you give it.
- g) Despite the rest of this Agreement, ANZ may act in accordance with any Instruction in relation to a Drawing or in relation to anything else under or in connection with this Agreement given, or purporting to be given to ANZ, orally or in writing, by you or your Authorised Representative.

You agree that, if ANZ acts in accordance with an Instruction given in this way, ANZ's act is done with your authority.

# General

## 29. Lenders Mortgage Insurance

- a) If it is a requirement that Lenders Mortgage Insurance be obtained it will be taken out by ANZ at the commencement of the Facility. This is insurance which protects ANZ against possible loss arising from the Facility. The cost of this insurance will be payable by you on the date of the first Drawing and deducted from the proceeds of your Facility or debited to your nominated account.
- b) If you default on your facility, ANZ may incur a loss even if property as Security is sold. However you are still legally responsible for repaying the full amount outstanding under the mortgage. The insurer may recover any amount that it has paid to ANZ from you.
- c) If Lenders Mortgage Insurance is still required at the conclusion of an Interest Only term, you will be required to pay an additional Lenders Mortgage Insurance premium.

## 30. Waiver

The rights that ANZ has under the Transaction Documents cannot be waived except by ANZ giving you written notice waiving the particular right. In particular:

- ANZ does not waive any right that ANZ has in connection with this Agreement merely because ANZ does not exercise it, or does not exercise it as soon as ANZ can; and
- if ANZ exercises a right once or partly, it does not mean that ANZ cannot exercise that right again or other rights.

## 31. Changes in Government Requirements

- a) This clause applies if:
  - (i) after the date of the letter of offer there is:
    - a change in Government Requirement or a new Government Requirement;
    - a change in a tax or a new tax; or
    - a change in the interpretation of a Government Requirement or a tax that affects facilities of the kind contemplated in this letter of offer, and

- (ii) its effect is, in ANZ's opinion, directly or indirectly:
- to increase the cost to ANZ of providing or maintaining the facility or of providing funds under it; or
  - to reduce the effective rate of return to ANZ (whether on capital, assets, deposits or otherwise) on the facility.

For the purposes of this clause 'tax' includes duties but does not include a tax on our net income in the normal course of ANZ's business.

- b) You agree to pay to ANZ, on demand, the amount calculated by ANZ as necessary to compensate ANZ for the increase in Cost or reduction in rate. The amount payable will be calculated by ANZ from the day when it first incurred the Costs or suffered the reduction.

### 32. Changes in the Law

If ANZ gives you written notice that, in ANZ's opinion it has become illegal in a jurisdiction or otherwise impracticable for ANZ to continue to make a facility available, ANZ's obligations in relation to the facility will terminate.

Such a situation could arise because of:

- a change in a Government Requirement or a new Government Requirement;
- change in the law, written or unwritten, or a new law; or
- a change in the interpretation of a Government Requirement or law.

### 33. Law and Jurisdiction

- a) This Agreement is governed by the law in force in the place where ANZ's office shown in the letter of offer is located.
- b) In relation to any proceedings about or in connection with the Transaction Documents, ANZ and you agree to submit to the non-exclusive jurisdiction of the courts that have jurisdiction under that law.

### 34. Existing Facilities

- a) This clause only applies if ANZ is already making facilities available to you at the date of the new letter of offer.

- b) The arrangements for the facilities that ANZ is making available to you at the date of the letter of offer, including the Conditions on which those facilities are being made available, (the 'existing arrangements') continue until both of the following things happen:
- (i) you accept ANZ's new Offer; and
  - (ii) everything that must be done before ANZ will make the new facilities available in accordance with the letter of offer has been done to ANZ's satisfaction.

In particular, until both of the above things happen, ANZ is still able to exercise the rights that ANZ has under the existing arrangements, including the right to terminate, or vary the Conditions of, the existing facilities.

- c) When both of the things referred to in sub-clause (b) (i) and (ii) have happened, the Conditions of the existing facilities will from that time onwards be those contained or referred to in this Agreement.

However:

- (i) this Agreement does not replace any Security, guarantee, authority, power or indemnity in force at the date of the letter of offer (these documents and their provisions are not affected in any way); and
- (ii) if the letter of offer says that some or all of the Conditions of an existing facility are not to be changed, those Conditions will not be replaced by the Conditions of this Agreement.

### **35. Consolidation of Accounts**

ANZ may at any time combine, consolidate, merge or apply any credit balance in any of your accounts, or any amount available to ANZ by way of set-off, lien or counterclaim, towards payment of money which is then, or will become, due and payable by you to ANZ under any Transaction Document. If ANZ does any of these things, ANZ will tell you in writing. ANZ can do any of these things despite any previous agreement to the contrary. You authorise ANZ to do anything in your name which is necessary for ANZ to be able to do any of these things.

ANZ's rights under this clause are in addition to any other rights it has at law or under any other agreement.

## 36. Confidential Information and Privacy

### (a) Confidential Information

**'Confidential Information'** means information acquired by ANZ from and concerning you in the course the banker/customer relationship and includes personal information (as defined in sub-clause 36 (b)) but does not include publicly available information.

By acquiring or continuing to hold the product or service from ANZ, you agree that ANZ and each of its related companies (including subsidiaries) may exchange with each other any confidential information about you for the purposes of:

- providing, managing or administering your product or service;
- 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);
- promotion of products or services; and
- complying with regulatory requirements and prudential standards; and

you authorise ANZ to disclose any confidential information collected by it in the course of your relationship with ANZ to:

- any contractor or service provider ANZ engages to provide services connected with your relationship with ANZ (for example mailing houses or debt collection agencies);
- participants in payments systems (including financial institutions, merchants and payment organisations such as the Australian Payments Clearing Association and the Society for Worldwide Interbank Financial Telecommunication); and
- to its alliance partners (and any of its outsourced service providers) to promote their products or services;
- credit reporting agencies;
- insurers and reinsurers;
- your referee(s) (if you have provided referees to ANZ);

- your representative (for example your lawyer, mortgage broker, attorney or executor).

Any contractor, agent or service provider engaged by ANZ is contractually required to only use the confidential information for ANZ purposes and to keep the information confidential.

Where you do not want ANZ or its alliance partners to tell you about their products or services you may withdraw your consent by calling your ANZ Manager.

ANZ may also provide your confidential information to:

- regulatory bodies, government agencies, law enforcement bodies and courts; and
- other parties ANZ is authorised or required by law to disclose information to.

#### (b) Privacy

“personal information” means information about an individual.

This sub-clause applies if you are an individual or if you provide personal information about an individual to ANZ.

When you deal with ANZ, ANZ is likely to collect and use some personal information about you. ANZ explains below when and how ANZ may collect and use your personal information.

If you do not provide some or all of the personal information requested, ANZ may be unable to provide you with a product or service.

#### **Collection of Your Personal Information by ANZ**

ANZ may collect your personal information:

- to provide information about a product or service;
- to consider your request for a product or service;
- to provide you with a product or service;
- to tell you about other products or services;
- to assist in arrangements with other organisations (such as loyalty partners) in relation to the promotion and provision of a product or service;
- 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);

- to prevent or investigate any fraud or crime (or a suspected fraud or crime) and
- as required by relevant laws, regulations, Codes and external payment systems.

### **Accessing Your Personal Information Held by ANZ**

Subject to the provisions of the Privacy Act, you may access your personal information at any time by calling your ANZ Manager or asking to do so at any ANZ branch. ANZ may charge you a reasonable fee for access.

If you can show that information about you is not accurate, complete and up to date, ANZ must take reasonable steps to ensure it is accurate, complete and up to date.

### **Collecting Your Sensitive Information**

ANZ will not collect sensitive information about you, such as health information, without your consent.

### **Where You Supply ANZ With Personal Information About Someone Else**

If you give ANZ personal information about someone else or direct someone else to give their personal information to ANZ, you will show that person a copy of this clause so that they may understand the manner in which their information may be used or disclosed by ANZ.

## **37. Code of Banking Practice**

If you are an individual or if you are using ANZ's products and services in connection with a small business (as defined by the Code of Banking Practice), ANZ is bound by the Code of Banking Practice when it provides its products and services to you.

## **38. Statements**

ANZ will issue statements for your ANZ Business Overdraft facility, ANZ Business Credit Facility and ANZ Equity Manager in a Company Name at least once every three months. For ANZ Home Equity Loan in a Company Name, once every month, and for all other facilities, statements will be issued at least once every six months.

It is your responsibility to carefully review your statements so you are aware of the status of your account. If you believe there are errors or unauthorised transactions shown on your statement, you must contact ANZ as soon as possible.

Deposits or repayments which are made to your facility on the last day of a statement period may not appear on the statement issued for that period. The deposits or repayments will, however, be shown on your next statement, together with a note confirming the effective date of the deposit or payment.

### **39. Cheques**

Cheques may only be written in the form supplied by ANZ. The forms may only be issued by the account holder named on the front or by an authorised operator.

#### **How Long Does it Take to Clear a Cheque?**

Usually five to seven working days, however you will generally be able to draw on the funds after three working days.

When you pay a cheque into an ANZ account, ANZ may allow you to draw on the cheque before it has cleared but you will be liable for the amount of the cheque if it is subsequently dishonoured.

#### **What happens to the original cheque once paid?**

For cheques drawn on ANZ and paid prior to 1 October 2005, ANZ will keep a copy of the cheque for seven years but will destroy the original.

For cheques drawn on ANZ and paid on or after 1 October 2005, ANZ will destroy the original cheque but keep a copy of the cheque for:

- 13 months, if the cheque amounts to less than \$200; or
- seven years, if the cheque amounts to \$200 or more.

#### **What if the cheque is dishonoured after I have drawn on the funds?**

ANZ will debit your account by the amount of the cheque and may also charge you a fee.

## Special Clearances

You can arrange for a cheque to be cleared in less than the usual time by requesting a 'special clearance'. Fees apply to this service (except if cleared to an ANZ Equity Manager in a Company Name account).

## 'Crossed' Cheques

A cheque with two parallel lines across it is a crossed cheque. When you cross a cheque, you are telling the bank that the cheque must be paid into an account with a financial institution and not cashed.

## 'Not Negotiable' Cheques

The words 'Not Negotiable' between two parallel lines protects the true owner of a lost or stolen cheque. They ensure that the recipient of a cheque obtains no better rights to the cheque than the person who passed the cheque.

For example, if your cheque has been stolen and passed by the thief to an innocent person, you will be able to recover the amount paid on your cheque from the innocent person (or the thief if they are found) – this is because the thief had no right to the cheque and therefore passed no rights to the innocent person.

You have the option of having 'Not Negotiable' printed on the cheque forms.

## 'Account Payee Only'

If you write these words on a cheque, you are directing the bank collecting the cheque to only pay the cheque into the account of the person named on the cheque.

## 'Or Bearer' and 'Or Order'

These words mean that a bank may pay the cheque to whomever is in possession of the cheque, not only the person named on the cheque. If you delete these words, the cheque becomes an 'or order' cheque.

A cheque payable 'to order' means that if the payee wants to transfer the cheque to another person, they must first sign the back of the cheque. You must delete the words 'or bearer' and replace them with 'or order' to make the cheque an 'or order' cheque.

## Third Party Cheques

If you present a cheque which is payable to someone else or it appears to belong to someone else (third party cheque) ANZ may, in its discretion, refuse to accept that cheque for deposit or refuse to cash it or may require you to comply with some conditions before it will accept that cheque for deposit or cash it.

## Stopping a Cheque

You may stop a cheque that you have written by telling ANZ the following:

- amount of the cheque;
- number and date of cheque, and
- name of payee.

A Stop Payment Fee may apply. If you have lost a cheque you received from someone else, notify that person so they may stop the cheque.

## Tips for Cheque Security

- Don't leave gaps between words
- Begin the amount in words as close as possible to the left hand side and add 'only' to the end of the amount
- Begin the amount in figures as close as possible to the dollar sign
- Never write on a cheque with pencil or erasable ink
- Only sign a cheque when it is filled out
- Always write the amount in words as well as figures
- Check your bank statements regularly to reconcile cheques drawn on your account.

## When May a Cheque be Dishonoured or Payment Refused?

At the bank's discretion, a cheque may be dishonoured or payment refused where:

- there are insufficient funds in the account of the drawer;
- the cheque is unsigned;
- the cheque is more than 15 months old;
- the cheque is future dated;
- the cheque has been materially altered and the alteration has not been signed;
- there is a legal impediment to payment;
- the cheque has been stopped; or
- the paying bank has been notified of the mental incapacity, bankruptcy or death of the drawer.

Where ANZ refuses payment or dishonours a cheque drawn on your account because there are insufficient funds in your account, ANZ may charge an Informal Overdraft Assessment Fee (referred to in your bank statements and ANZ Business Banking Finance Fees and Charges booklet as an Outward Dishonour Fee).

## What if I Lose my Cheque Book or my Cheque or it is Stolen?

You should keep your cheques safe at all times. If they are lost or stolen, you must take the following action:

- cheque payable to you – tell the person who wrote the cheque;
- cheque written by you – request ANZ to stop the cheque and tell the person to whom the cheque is payable;
- ANZ Cheque Book – tell ANZ to put a Stop Payment on the serial numbers. If you subsequently find the cheques, ANZ will require written authorisation from you before the cheques can be paid.

If you don't inform ANZ that your cheque book has been lost or stolen as soon as possible, you may be liable for transactions incurred by you before you notify ANZ, even if they are made without your authority.

## **40. Disruption to Service**

A disruption is where a service is temporarily unavailable or where a system or equipment fails to function in a normal or satisfactory manner.

To the maximum extent permitted by law, ANZ will only be liable for loss or damage suffered because of a disruption where that disruption is caused by an event within ANZ's reasonable control. ANZ will not be liable for consequential loss or damage because of such disruption. This disclaimer is in addition to, and does not restrict, any other provision contained in these Conditions which limits ANZ liability.

## **41. Problem Resolution Procedure**

### **Making a Complaint**

If ANZ makes a mistake, or our service doesn't meet your expectations, ANZ wants to know.

For the fastest possible resolution to your complaint call ANZ on 1800 805 154 (hearing or speech impaired customers can utilise the TTY (telephone typewriter) service by calling 1300 366 255), or:

- Talk to staff at your local ANZ branch or business centre: or
- Send a letter to ANZ Complaint Resolution Centre via:

Locked Bag 4050, South Melbourne VIC 3205  
Email: [YourFeedback@anz.com](mailto:YourFeedback@anz.com)

Most often ANZ will be able to solve the problem on the spot.

If it can't be resolved promptly ANZ's specialist complaints team will take responsibility and work with you to fix the matter quickly. ANZ's aim is to resolve the complaint within 5 working days.

If this is not possible, ANZ will keep you informed on the progress of your matter and how long ANZ expects it will take to resolve your complaint.

### **ANZ Customer Advocate**

If your complaint isn't resolved to your satisfaction, you can ask to have it reviewed by ANZ's Customer Advocate who will provide a free review of more difficult complaints to help achieve a prompt solution.

## Contact Details

ANZ Customer Advocate  
Level 7, 833 Collins St  
Melbourne, VIC, 3008  
Tel: +61 3 8654 1333  
Email: customeradvocate@anz.com

## Financial Services Dispute Resolution Schemes

If you are not satisfied with the steps taken by ANZ to resolve the complaint, or with the result of our investigation, you may wish to contact an alternative dispute resolution scheme.

Financial Ombudsman Service Limited  
GPO Box 3  
Melbourne Vic 3001  
Telephone: 1300 780 808  
Fax: +61 3 9613 6399  
Internet: <http://www.fos.org.au/>

## 42. If You are in Financial Difficulty

You should inform ANZ as soon as possible if you are in financial difficulty. If you have an ANZ Credit Card or other ANZ facility, ANZ will, with your agreement, try and help you overcome your difficulties with your facility, including for example, developing a repayment plan.

## 43. Anti-Money Laundering and Sanctions

You agree ANZ may delay, block or refuse to process any transaction without incurring any liability if ANZ suspects that:

- a) the transaction may breach any law in Australia or any other country;
- b) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, unlawful conduct.

The Customer must provide all information to ANZ which ANZ reasonably requires in order to manage money-laundering or terrorism-financing risk or to comply with any laws in Australia or any other country and the Customer agrees that ANZ may disclose any information concerning the Customer to any law enforcement, regulatory agency or court where required by any such law, in Australia or elsewhere.

Unless the Customer has disclosed that it 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 this agreement.

The Customer declares and undertakes to ANZ that the payment of monies by ANZ in accordance with the Customer's instructions will not breach any laws in Australia or any other country.

#### **44. Miscellaneous**

- a) Details of current interest rates applicable to your account are available by contacting ANZ Customer Service Centre on 13 13 14, 24 hours, seven days a week or available at any ANZ branch or on anz.com
- b) Information on all current standard finance fees and charges, is contained in the brochure 'ANZ Business Banking Finance Fees and Charges' available from any ANZ branch.
- c) Any obligation that you have under this Agreement to pay ANZ amounts of money as Costs, or on account of a loss that we may have suffered, is a continuing and independent obligation and survives even if this Agreement is terminated.
- d) You agree that ANZ's written determination of any amount in connection with this Agreement (including a determination of how much you owe ANZ at a particular time) is conclusive unless there has been a manifest error.
- e) You consent to ANZ giving information which you provide to ANZ or which ANZ has about you (including a copy of this Agreement or a part of it) to anyone who is:
  - a Guarantor or an assignee;
  - considering becoming a Guarantor; or
  - proposing to enter into any kind of securitisation (or similar) arrangement with ANZ.
- f) If, in any jurisdiction, a provision of this Agreement is illegal or unenforceable, this Agreement is to be interpreted, for the purposes of that jurisdiction only, as if it had never included the provision so far as the provision is illegal or unenforceable.

g) Assignment

- (i) You may not assign or transfer all or any part of your rights or obligations under a Transaction Document without the prior consent of ANZ.
- (ii) ANZ may, in exercising its rights under this clause, assign, novate, transfer, sub-participate or otherwise dispose of or deal with all or any part of its rights or obligations under a Transaction Document without being required to obtain your consent or to provide any prior notice to you.
- (iii) ANZ may disclose to any ratings agency or government agency or to any party with whom it is proposing to enter into or has entered into, any kind of arrangement under this clause or securitisation (or similar) arrangement, such information in relation to this Agreement or in relation to you as that party reasonably requires without being required to obtain your consent or to provide any prior notice to you.
- (iv) Where ANZ exercises its rights under sub-clause 44(g)(ii) or (iii), you will execute such documents and do such acts as may reasonably be required by ANZ so long as your rights or obligations under this Agreement are not adversely affected.

# Interpreting This Agreement

## 45. Meanings of Words and Expressions

a) In this Agreement, unless the context otherwise requires:

**'Acceleration Event'** means an event which, if it happens, results in money becoming due and payable to ANZ immediately under another agreement that you have with ANZ;

**'Account Operating Authority'** means an authority that appoints your Authorised Representative, given by you in a form acceptable to ANZ;

**'Accrued Interest'** means interest which ANZ is entitled to charge under a loan as at that date, but which has not yet been debited to your loan account;

**'ANZ Business Loan'** means each of the following:

- ANZ Business Loan (Variable Rate and Interest in Arrears);
- ANZ Business Loan (Fixed Rate and Interest in Advance);
- ANZ Business Loan (Fixed Rate and Interest in Arrears);
- ANZ Business Loan (Fixed Rate then Variable Rate and Interest in Arrears);
- ANZ Agri Finance (Variable Rate and Interest in Arrears)
- ANZ Business Loan for Personal Investment (Fixed Rate and Interest in Advance);
- ANZ Business Loan for Personal Investment (Fixed Rate and Interest in Arrears);
- ANZ Business Loan for Personal Investment (Variable Rate and Interest in Arrears);

**'ANZ Business Saver Express Loan'** means each of the following:

- ANZ Business Saver Express (Commercial); and
- ANZ Business Saver Express (Residential);

**'ANZ Commercial Bill'** means each of the following:

- Fixed Rate Commercial Bill Facility;
- Fixed Rate Commercial Bill Facility for Personal Investment;
- Maximum Rate Commercial Bill Facility;

- Maximum Rate Commercial Bill Facility for Personal Investment;
- Variable Rate Commercial Bill Facility; and
- Variable Rate Commercial Bill Facility for Personal Investment;
- Extendible Fixed Rate Commercial Bill Facility;
- Extendible Fixed Rate Commercial Bill Facility for Personal Investment;
- Fixed Rate Option Commercial Bill Facility;
- Fixed Rate Option Commercial Bill Facility for Personal Investment;
- Flexible Drawdown Fixed Rate Commercial Bill Facility;
- Flexible Drawdown Fixed Rate Commercial Bill Facility for Personal Investment;
- Layered Commercial Bill Facility;
- Layered Commercial Bill Facility for Personal Investment;
- Range Commercial Bill Facility; and
- Range Commercial Bill Facility for Personal Investment;

**'ANZ Index Rate'**, for a particular day, means the rate that ANZ has most recently published before that day as ANZ's index rate applicable to your facility;

**'ANZ Reference Rate'**, for a particular day, means the rate that ANZ has most recently published before that day as its reference rate;

**'Bank Manager'** means:

- an officer of ANZ who holds or is acting in a position the title of which is or includes the word 'manager' or 'accountant'; or
- someone whom ANZ has appointed as its attorney;

**'Bill'** means a bill of exchange;

**'Business Day'** means, for a payment or a Drawing which is required under the facility to be made in a place other than ANZ's office shown in the letter of offer, a day on which ANZ's office in the place where the payment or Drawing is to be made is open for general banking business.

Otherwise, a day on which ANZ's office shown in the letter of offer, is open for general banking business;

**'Change in Credit'**: a change in credit occurs if, following a Credit Reassessment:

- ANZ would only be prepared to provide any one or more of the facilities on different conditions from those on which it or they are provided at the time of the Credit Reassessment; or
- ANZ would not be prepared to provide a particular facility;

**'Client'** means, in relation to a facility, the person named as the Client in the letter of offer and includes the person's executors, administrators, successors and permitted transferees;

**'Code of Banking Practice'** refers to the voluntary code of conduct and any subsequent or future amendments adopted by ANZ;

**'Company'** has the same meaning as 'corporation' in section 9 of the Corporations Act;

**'Condition'**, in relation to a facility, means any provision of this Agreement;

**'Costs'** include for example:

- ANZ's charges and commissions;
- expenses;
- fees;
- legal costs (calculated on a full indemnity basis) for this Agreement or transactions under this Agreement; and
- taxes or duties (for example, stamp duty);

**'Credit Reassessment'** means an assessment of the facilities made by ANZ:

- applying ANZ's then current criteria for assessing applications for the provision of facilities; and
- as if ANZ were assessing a new application at that time by you for the provision of the facilities;

**'Disbursement Order'** means notice given by you in accordance with the Specific Conditions of Use for a Facility, asking for a Drawing;

**'Drawdown Date'**:

- has the meaning contained in the Specific Conditions of Use which apply to your Facility; or
- where there are no Specific Conditions of Use which apply to your Facility, or where the Specific Conditions for your Facility do not contain a

meaning for 'Drawdown Date', means the day on which a Drawing is, or is proposed to be provided to you under this Agreement;

**'Drawing'** means financial accommodation provided or to be provided to you under any of the facilities and 'to make a Drawing' and similar expressions mean to obtain financial accommodation under any of the facilities;

**'Encumbrance'** means:

- any right or interest of any kind given by way of security (including, for example, a mortgage, pledge, lien, charge or assignment) and includes any security interest in the PPSA but not a Permitted Encumbrance;
- any other arrangement (including any preferential, trust, title retention or set-off arrangement) having a similar commercial effect as a grant of security; or
- a guarantee or indemnity;

**'Event of Default'** means any of the circumstances described in clause 16 of these Finance Conditions of Use;

**'Facility'** means any of the facilities or loans which ANZ makes available under this Agreement;

**'Facility Limit'** means the amount specified as the facility limit in the letter of offer;

**'Financial Statements':**

(i) **'Of a Company'** means:

- its balance sheet and profit and loss account for each financial year; and
- any other document that Chapter 2M of the Corporations Act requires it to prepare.

The Financial Statements must be certified by a director of the Company as giving a true and fair view of:

- its financial condition as at the end of the financial year; and
- the results of its operations for that financial year.

(ii) **'Of an Individual'** means a statement of financial position signed by the individual, in a form satisfactory to ANZ, describing his or her present assets and liabilities and setting out an income and expenditure budget for the following year;

(iii) **'Of a Partnership'** means the partnership accounts, certified by two partners as giving a true and fair view of the financial condition of the partnership as at the end of the financial year, together with copies of the partnership income tax return for the previous financial year;

**'Fully Secured'** means either the Loan to Security Ratio does not exceed 80 per cent, or the Facility is fully mortgage insured with a lender's mortgage insurer acceptable to ANZ and the Loan to Security Ratio does not exceed 90 per cent;

**'Garnishee'** means a person (including ANZ) who:

- holds, or may hold, money for you or on your account; or
- owes, or may owe, you money;

**'Garnishee Notice'** means a notice which is validly given to a Garnishee under any law which requires a Garnishee to deal with money in accordance with the notice regardless of any contrary direction which you may give;

**'Government Requirement'** means a law, or a direction or requirement, whether it has the force of law or not, imposed by the Reserve Bank of Australia, a Government or a Government authority in Australia or a similar body in a foreign country;

**'Guarantor'** means a person who has given, gives or is to give a Security and includes the person's executors, administrators, successors and transferees;

**'Informal Overdraft'** means an amount advanced to you under the Informal Overdraft facility.

**'Informal Overdraft facility'** means any informal short-term credit facility ANZ may provide to you if a debit to your account would, if processed, result in your approved limit on your account being exceeded.

For an ANZ Equity Manager in a Company Name please refer to the ANZ Equity Manager in a Company Name and Home Equity Loan in a Company Name Specific Conditions of Use.

**'Instruction'** includes:

- a notice;
- a request; and

- an acceptance (including an acceptance of additional or varied facilities);

**'Loan to Security Value Ratio'** means the Facility Limit expressed as a percentage of the value of the security property as determined by ANZ using an approved valuer. For example, where the Facility Limit is \$80,000 and the value of the security is \$100,000, the loan to security value ratio is 80%;

**'Material Adverse Effect'** means a material adverse effect on:

- (a) the ability of a Guarantor to perform its obligations under any Transaction Document; or
- (b) the business, operation, property, condition (financial or otherwise), of you or a Guarantor; or
- (c) the effectiveness or priority of any Encumbrance granted by you or a Guarantor under any Transaction Document; or
- (d) the validity or enforceability of the whole or any material part of any Transaction Document or any material rights or remedies of ANZ under any Transaction Document;

**'New AASB Standards'** means the new accounting standards, for application by Australian entities after 1 January 2005, and issued or to be issued after the date of this Agreement by the Australian Accounting Standards Board, including standards based on the standards issued by the International Accounting Standards Board, which are expected to apply to Australian reporting entities;

**'Offer'** means ANZ's offer in the letter of offer;

**'Outstanding Money'**, for a particular facility, means the amount (without converting the currency in which it is expressed) actually or contingently owing by you to ANZ under the facility and includes interest and Costs;

**'Permitted Encumbrance'** means an Encumbrance provided for by one of the following transactions if the transaction does not secure payment or performance of an obligation:

- (i) a transfer of an account or chattel paper; or
- (ii) a commercial consignment;
- (iii) a PPS lease; or

- (iv) any security advised to ANZ by notice from you before entering into the agreement and agreed to by ANZ; or
- (v) any security created subsequently with prior written consent of ANZ.

**'Potential Event of Default'** means circumstances that will become an Event of Default simply by the passing of time or if some notice is given;

**'PPSA'** means the Personal Property Securities Act 2009 (Commonwealth)

**'Review Event'** means any of the circumstances described in clause 13(h) of these Finance Conditions of Use;

**'Security'** for your obligations (whether under this Agreement or not) and which has been given to ANZ previously or will be given to ANZ in the future means:

- any right or interest of any kind given by way of security (including, for example, a mortgage, pledge, lien, charge or assignment) and includes any security interest under the PPSA;
- any other arrangement (including any preferential trust, title retention or set-off having a similar commercial effect as a grant of security); or
- a guarantee or indemnity;

**'Term of the Facility'** means:

- the term for the facility set out in the letter of offer, or
- the day when ANZ terminates its obligations in relation to the facility under this Agreement;

**'This Agreement'** means the agreement constituted by your acceptance of ANZ's Offer;

**'Transaction Document'** means any of the following:

- the letter of offer;
- these Finance Conditions of Use;
- any Specific Conditions of Use for each of the facilities;
- the Securities; and
- any other document required in connection with this Agreement and also means any documents or agreements that amend any of these or replace them;

**'Your Authorised Representative'** means, at a particular time, a person authorised by you, in the most recent Account Operating Authority that you

have given to ANZ, to act on your behalf for all dealings, matters and transactions with ANZ.

#### **b) Provisions About Companies**

For the purposes of this Agreement:

- 'subsidiary' and 'wholly-owned subsidiary' have the same meanings as under the Corporations Act; and
- the Corporations Act will be applied to determine whether one Company is related to another.

#### **c) If the facilities are in the name of more than one person:**

- (i) the liability of those persons under this Agreement is joint and several, and
- (ii) a reference to 'you' or 'Client' includes a reference to each of those persons individually and to any two or more of them together.

#### **d) Words and Expressions Defined Elsewhere**

Despite sub-clauses (a) to (c), words and expressions defined in the letter of offer or in the Specific Conditions of Use for a Facility have the meanings they have in the letter of offer or the Specific Conditions of Use, whichever is relevant.

### **46. Inconsistency**

- a) If there is an inconsistency between the letter of offer and any one of these Finance Conditions of Use, the ANZ Business Banking Finance Fees and Charges or the Specific Conditions of Use for a Facility, the letter of offer prevails.
- b) If there is an inconsistency between either these Finance Conditions of Use or the ANZ Business Banking Finance Fees and Charges and the Specific Conditions of Use for a Facility, the Specific Conditions of Use prevail.
- c) If there is an inconsistency between this Agreement and a Security, this Agreement prevails.

### **47. Other Interpretation Provisions**

- a) A reference to an individual or person includes a reference to a Company and vice versa.
- b) The singular includes the plural and vice versa.

- c) A reference to an agreement, a document or a law is a reference to the agreement, document or law (and, if applicable, any of its provisions) as amended, novated, supplemented or replaced for the time being.

For example: Where ANZ's original letter of offer has subsequently been varied, a reference in any of the Transaction Documents to the letter of offer means the letter of offer as varied.

- d) A schedule to a document is a part of the document.
- e) Section, clause and other headings and notes are not part of this Agreement; they are for convenience only.
- f) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

## Electronic Banking Conditions of Use

This is the standard Electronic Banking Conditions of Use relevant to ANZ Internet Banking and ANZ Internet Banking for Business for Business customers, comprising features such as:

- Access control
- Security Devices
- Direct Debits, and
- File uploads.

For business customers holding products under the ANZ Commercial Card Facility Terms and Conditions or the ANZ Business One Terms and Conditions and for personal accounts accessed using ANZ Internet Banking for Business, ANZ warrants that it will comply with the requirements of the Electronic Funds Transfer Code of Conduct.

Unless the account services are provided or referred to you by ANZ, ANZ does not authorise, promote or endorse the use of account services offered by third parties to access your ANZ accounts (including account aggregation services, such as may be provided by other financial institutions).

### Definitions

**'Activation Code'** means the 7-digit temporary activation number issued to activate the M-Banking or TXT Banking service.

**'Account'** means any business account or loan facility subject to these Electronic Banking Conditions of Use.

**'Account Holder'** means the person or entity who has applied for an Account.

**'ANZ Business Day'** means any day from Monday to Friday on which ANZ is open for business in at least one of its branch locations in Australia.

**'ANZ Mobile Phone Banking'** means M-Banking and TXT Banking.

**'Account Signatory'** means a person who is authorised under an Account Authority from the Account Holder to transact on an Account Holder's Account.

**'Authorised User'** for the purposes of ANZ Internet Banking means a person assigned a permission level in accordance with condition 5(a) and for the purposes of ANZ Internet Banking for Business means a person assigned an access control level in accordance with condition 6(a), being an Administrator, Authoriser or Operator.

**'Banking Business Day'** refers to any day on which banks in Melbourne or Sydney are able to effect settlement through the Reserve Bank of Australia.

**'CRN'** means the Customer Registration Number issued by ANZ to you.

**'PIN'** means Personal Identification Number and includes an action number and password.

**'Pay Anyone Processing Day'** means any day from Monday to Friday that is not a public holiday in both Melbourne and Sydney.

**'Securemail'** means the electronic messaging system which enables communications to be sent to or from ANZ as part of ANZ Internet Banking and ANZ Internet Banking for Business.

**'Security Device'** means a physical device that generates random numbers which are used to authorise certain actions in ANZ Internet Banking for Business.

**'Security Device Code'** means a number generated by a Security Device or a substitute number provided by ANZ.

**'Telecode'** means the four to seven digit number issued to access ANZ Phone Banking and your ANZ Mobile Phone Banking Activation Code.

## **1. Transaction Limits**

- a) ANZ or another party such as a merchant may limit the amount of any electronic transaction you can make over certain periods (e.g. during any day or in a single transaction).
- b) ANZ may change any electronic transaction limit or impose new transaction limits by giving you notice. You can find out current electronic transaction limits for your Accounts by calling ANZ on the relevant enquiries number listed at the back of this booklet.

## 2. How You Can Use ANZ Internet Banking and ANZ Internet Banking for Business

You can use ANZ Internet Banking and ANZ Internet Banking for Business to make transactions on your linked Accounts, as set out in your Account terms and conditions. You can also use ANZ Internet Banking and ANZ Internet Banking for Business to purchase and order a range of financial services and products. Details can be found at [www.anz.com](http://www.anz.com)

## 3. Fees and Charges for ANZ Mobile Phone Banking

Fees and charges may apply to ANZ Mobile Phone Banking and customers will be advised of these at the time of applying for the service or prior to the fee being charged.

You may also incur charges from your mobile phone operator as a result of using ANZ Mobile Phone Banking. Any such charges are solely your responsibility.

## 4. Access To and Use of Pay Anyone and International Services

### 4.1. Obtaining Pay Anyone

- a) ANZ may place restrictions on the manner in which you are permitted to use Pay Anyone. Limits apply to the use of Pay Anyone and your limit must be approved by ANZ. The options for the daily Pay Anyone limits are set out at [www.anz.com](http://www.anz.com).

When applying for Pay Anyone for ANZ Mobile Phone Banking, your daily limit will be as advised to you by ANZ and may not be changed by you.

- b) ANZ may allow you to use a Security Device for certain transactions. You may also be required by ANZ to use a Security Device for certain transactions (including Pay Anyone, International Services, BPAY<sup>®</sup>, and Direct Debits) for security purposes: see [www.anz.com](http://www.anz.com) for further information.

Use of the Security Device will be as set out at [www.anz.com](http://www.anz.com) and in these Electronic Banking Conditions of Use.

- c) ANZ may reduce your current daily Pay Anyone limit or cancel your Pay Anyone access if:
  - ANZ believes that your access to Pay Anyone may cause loss to the Account Holder or to ANZ;

- You require your password for ANZ Internet Banking or ANZ Internet Banking for Business to be re-set or re-issued;
- The limit is not applicable to the Accounts linked to your CRN;
- ANZ changes the options for daily Pay Anyone limits;
- Your Security Device is faulty, misused, lost or stolen;
- You deregister your Security Device; or
- You do not use a Security Device when required to do so by ANZ.

ANZ will provide you with notice of such reduction or cancellation.

- d) Any outstanding transactions subject to this limit, including future dated transactions, will not be processed by ANZ if they exceed the reduced limit. You will need to re-apply if you wish to reinstate that limit. You (or, in the case of ANZ Internet Banking for Business, your Administrator) can increase or decrease your daily Pay Anyone limit for your Account by applying through ANZ Internet Banking or ANZ Internet Banking for Business. Please allow sufficient time for the change to be made before you attempt to use the higher daily Pay Anyone limit.

## **4.2. Obtaining International Services**

- a) You can apply for International Services after you have been granted Pay Anyone access. International Services are not available through ANZ Mobile Phone Banking. The total of all Pay Anyone and International Services transfers (converted into Australian Dollars) on any day cannot exceed your daily Pay Anyone limit.

The terms set out above in relation to Pay Anyone also apply to International Services.

- b) If you apply for ANZ Internet Banking for Business, you may need to re-register for access to International Services after ANZ Internet Banking for Business has been implemented.

Access to these International Services will not then be available until the registration process for International Services is completed.

## 5. Authorised User Permission Levels for ANZ Phone Banking, ANZ Internet Banking\* and ANZ Mobile Phone Banking

- a) Permission Levels (subject to exclusions for all categories set out below these levels):
- **'All Transactions'** – Access every function within ANZ Phone Banking and ANZ Internet Banking for the Account;
  - **'Transaction History Details Only and BPAY®'** – Includes BPAY®, Account balance information, transaction history details, ordering a cheque/ deposit book but excludes transfers between Accounts, direct loan payments, and BPAY® View;
  - **'Deposit and Transaction History Details Only'** – Includes transfers between Accounts, transactions history details, Account balance information and ordering a cheque/ deposit book but excludes withdrawals from Accounts, direct loan payments, BPAY® View, and BPAY®;
  - **'Deposit Only'** – Includes transfers between Accounts but excludes withdrawals from Accounts, BPAY®, direct loan payments, BPAY® View, Account balance information, transaction history details and ordering a cheque/deposit book;
  - **'Transaction History Details Only'** – Includes enquiries on past transactions about the Account but excludes all transactions on the Account, transfers between Accounts, direct loan payments, BPAY® View, and BPAY®.
- b) Only the Account Holder or Account Signatories can select a permission level. The Account Holder or Account Signatories may authorise another person (an 'Authorised User') to operate the Account and that person may have a different permission level to the Account Holder. The Account Holder is responsible for the operation of the Account by the Authorised User within that User's permission level, including proper use and storage of the Authorised User's card, CRN and PIN.
- c) The Account Holder or Account Signatories may cancel or change any permission level by sending a written request or Securemail to ANZ, or calling ANZ

\* For ANZ Internet Banking for Business, refer to condition 6.

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on the relevant number listed at the back of this booklet. ANZ may require written confirmation. ANZ may take several days to process this change.

- d) Authorised Users, regardless of their permission level, cannot access Pay Anyone, International Services, Direct Debits, increase a credit card limit, or use Securemail to change any of the Account Holder's Account or other personal details. However, all Authorised Users can use ANZ Internet Banking to change their own profile, access their own Securemail, select and change their own password and use ANZ Mobile Phone Banking to change their own password.

## 6. Access Control for ANZ Internet Banking for Business

- a) Provided the relevant Account Holder has approved access, an Authorised User may link one or more Accounts to ANZ Internet Banking for Business. These Accounts may be for the same Account Holder and/or for other related/unrelated Account Holders.
- b) Access control is subject to approval by ANZ and any requirements and restrictions set out in the Account authority. An Account Holder may authorise another person to operate an Account and that person may be appointed as an Administrator, Authoriser or Operator. These Authorised Users will be able to perform basic functions as follows.

Function	Administrator	Authoriser	Operator
Approve transactions (eg, Pay Anyone, International Services, BPAY®, Direct Debits, transfers between Accounts)	✓	✓	✗
Setting up transactions (but not approving transactions)	✓	✓	✓

Function	Administrator	Authoriser	Operator
Account enquiries (eg, balance and transaction details)	✓	✓	✓
Administrative functions for all Authorised Users	✓	X	X
Setting up and managing Operators	✓	X	X
Register for and manage Pay Anyone, International Services, BPAY® View Bills and E*TRADE access	✓	✓	X
Administrative functions for self	✓	✓	X

A full list of functions each Authorised User can perform is located at [www.anz.com](http://www.anz.com)

- c) The Account Holder is responsible for the operation of the Account by Authorised Users, including proper use and storage of an Authorised User's cards, Security Devices, CRNs, PINs and Security Device Codes. The Account Holder is responsible for providing a copy of these Electronic Banking Conditions of Use to Authorised Users (if appropriate).
- d) The Account Holder may cancel or change Administrator or Authoriser access by sending a written request to ANZ. ANZ may take several days to process this request. Administrators may cancel Operator access.
- e) All Pay Anyone Payee details (saved in your Pay Anyone Payees List and Payroll Payment Employee List) as well as BPAY® details saved by any

Authorised User of your ANZ Internet Banking for Business facility will be viewed and available to all Authorised Users of your ANZ Internet Banking for Business facility. Therefore, to ensure access is controlled, you should only save Payee and/or BPAY® details relating to your business in ANZ Internet Banking for Business. Payee or BPAY® details relating to personal, family or household affairs should not be saved in ANZ Internet Banking for Business.

## **7. Processing Instructions – General**

- a) The Account Holder authorises ANZ to act on the instructions you enter into electronic equipment. Any electronic transaction made by you cannot be cancelled, altered or changed by you unless allowed by the applicable terms and conditions.
- b) ANZ may delay acting on or may ask you for further information before acting on an instruction. Where ANZ has instructions for more than one payment from your Account, ANZ will determine the order of priority in which payments are made.
- c) If you make a cash withdrawal from an Account by making an electronic transaction and there is a difference between the amount of cash received and the amount shown on the receipt, you must report this to ANZ and to the merchant (if applicable) as soon as possible. You can make your report to ANZ by calling ANZ on the number listed at the back of this booklet.
- d) If you make a deposit of funds to an Account by making an electronic transaction and there is a difference between the amount recorded as having been deposited and the amount ANZ receives, the Account Holder will be notified of the difference as soon as possible and will be advised of the actual amount which has been credited to the Account.
- e) ANZ is not liable for the refusal of any merchant to accept an electronic transaction and, to the extent permitted by law, is not responsible for the goods and services supplied by a merchant. ANZ may notify you of electronic transactions (instructions for which are received through ANZ Mobile Phone Banking) it is unable to process.

- f) You accept that:
- Not all electronic equipment from which cash can be withdrawn will always contain cash;
  - Any cash dispensed at electronic equipment is at your risk once it becomes visible or available for you to collect;
  - Not all electronic equipment will allow you to make deposits; and
  - Future dated transfers are not available through ANZ Mobile Phone Banking.
- g) An immediate transfer, Pay Anyone, International Services, BPAY® or Direct Debit transaction cannot be revoked or stopped once ANZ receives your instruction. Future dated transfer, Pay Anyone, International Services, BPAY® or Direct Debit instructions can only be revoked or changed if instructions to delete the transaction are given to ANZ through ANZ Internet Banking or ANZ Internet Banking for Business before midnight Sydney time on the ANZ Business Day (or, for Pay Anyone, the Pay Anyone Processing Day) before the transaction is scheduled to occur. After this time, the instruction cannot be revoked.

#### **8. Processing Instructions – ANZ Phone Banking, ANZ Internet Banking, ANZ Internet Banking for Business and ANZ Mobile Phone Banking**

- a) Any ANZ Phone Banking, ANZ Internet Banking, ANZ Internet Banking for Business or ANZ Mobile Phone Banking transaction (other than a BPAY®) will generally be processed to your Account on the same day ANZ receives your instructions, if given before 10pm Melbourne time Monday to Friday (except national public holidays). Any transaction made after this time may be processed on the following ANZ Business Day.
- b) Account information accessed using ANZ Phone Banking, ANZ Internet Banking, ANZ Internet Banking for Business or ANZ Mobile Phone Banking will generally reflect the position of the Account at that time, except for transactions not yet processed by ANZ (including uncleared cheques and unprocessed credit card transactions) or cleared cheques and Direct Debits processed by ANZ that day.

## 9. Processing Instructions – Pay Anyone, International Services and Direct Debits

- a) ANZ will generally process Pay Anyone instructions:
- For immediate Pay Anyone or international transfers or Direct Debits, on the day the instruction is given, if ANZ receives the instruction before 6pm Melbourne time on a Pay Anyone Processing Day;
  - For future dated transfers, on the relevant future day you select if it is a Pay Anyone Processing Day (or if it is not, on the Pay Anyone Processing Day after that day).
- b) Instructions you give will be delivered to the payee's or payer's financial institution on the day that ANZ processes them except where:
- ANZ is not obliged to process your instructions;
  - There is a technical failure;
  - There is a delay or error in accepting the instructions caused by the financial institution to which the transfer is to be made to or from; or
  - The instructions are for a transfer by way of an international draft or telegraphic draft.
- c) Where your instruction is for a transfer by way of ANZ issuing an international draft:
- ANZ will send the draft by post to the delivery address notified by you;
  - You acknowledge that it is your responsibility to forward the draft to the intended recipient.
- d) ANZ cannot control (and is not responsible for) when, or if, the payee's or payer's financial institution processes your instructions or the fees that financial institutions may charge to process your instructions.
- e) Once ANZ processes your transfer or Direct Debit instruction, ANZ is reliant on the payee's financial institution to advise whether your instructions have been successfully processed. If a payee's financial institution advises that your transfer instruction has not been successful, it may take a number of weeks, depending on the financial institution, to reverse the relevant withdrawal from your linked Account. Your terms and conditions for

Direct Debits outline your rights and responsibilities regarding Direct Debits.

- f) If the transfer is to be made from a credit card, it will be treated as a cash advance and interest and fees may apply.

#### 10. Processing Instructions – BPAY®

- a) ANZ is a member of the BPAY® Scheme. This is an electronic payments scheme through which ANZ can be asked to make payments on your behalf to billers. ANZ will tell you if it ceases to be a member of the BPAY® Scheme. For the purposes of the BPAY® Scheme, ANZ may also be a biller.
- b) You must comply with the terms and conditions for the Account which you ask ANZ to debit a BPAY® (to the extent that those terms are not inconsistent with or expressly overridden by these Electronic Banking Conditions of Use).
- c) To make a BPAY® the following information must be given to ANZ:
- Your CRN and password and Security Device Code (if appropriate) or Telecode;
  - The biller code from the bill;
  - Your customer reference number (e.g. your account number) with that biller;
  - The amount you want to pay; and
  - The Account from which you want the payment to be made.
- d) Once this information is provided, ANZ will treat your instructions as valid and will debit the relevant Account.

ANZ will not be obliged to effect a BPAY® instruction if it is not made in accordance with these Electronic Banking Conditions of Use or if the information given is incomplete and/or inaccurate.

- e) Limits apply to your use of BPAY® on both a per transaction and daily limit (per CRN) basis. Separate daily limits apply for BPAY® Tax Payments, independent of the general BPAY® limits. For more information on available limits see [www.anz.com](http://www.anz.com)
- f) Subject to the 'Processing Instructions' conditions set out above:

- Any BPAY® made by you will be processed on the day you tell ANZ to make that BPAY®, if ANZ receives your instructions before 6pm Sydney time on a Banking Business Day (ANZ's cut-off time);
  - BPAY® instructions received after 6pm Sydney time on a Banking Business Day, or on a day that is not a Banking Business Day, will be processed on the next Banking Business Day.
- g) A delay may occur in processing a BPAY® where:
- There is a public or bank holiday on the day after you tell ANZ to make a BPAY®;
  - You tell ANZ to make a BPAY® after ANZ's cut-off time; or
  - Another participant in the BPAY® Scheme, such as another financial institution or a biller does not process a payment as soon as it receives details of the payment or does not otherwise comply with its obligations under the BPAY® Scheme.
- h) While it is expected that any such delay will not continue for more than one Banking Business Day, it may continue for a longer period.
- i) ANZ will attempt to ensure a BPAY® is processed promptly by billers and other participants in the BPAY® Scheme.
- j) You should check your Account records carefully and tell ANZ as soon as possible if you become aware of:
- A BPAY® which has been made from your linked Account which was not authorised;
  - The possibility that you have been fraudulently induced to make a BPAY®; or
  - Any delay or mistake in processing of your BPAY®.
- k) If ANZ is advised by a biller that it cannot process your BPAY®, ANZ will:
- Advise you of this;
  - Credit your Account with the amount of that BPAY®; and
  - Tell you how ANZ can assist you, if possible, in making the payment as soon as possible.

- l) A linked ANZ Credit Card Account can only be used to make a BPAY® if the biller accepts credit card payment. If the biller does not accept credit card payment but you want to pay from a credit card account, payment will be by way of a cash advance.
- m) You are not authorised to give a biller code to any person in order to receive payments owing to you. Biller codes may only be used by authorised billers to receive payment of bills issued by that biller. The terms and conditions of use of BPAY® will not apply to any use by you of biller codes in this way.

### **11. Short Message Service (SMS)**

You agree that, by registering for ANZ Mobile Phone Banking, ANZ may send SMS' to your nominated mobile phone. ANZ is not liable for any loss or damage you suffer as a result of any person other than you accessing those SMS.

### **12. Card Validity**

- a) Your card remains ANZ's property at all times.
- b) A card must be signed immediately by the person in whose name it has been issued and must only be used within the 'valid from' and 'until end' dates shown on the card. For security reasons you must, as soon as the card expires, destroy it by cutting it (including an embedded microchip on the card) diagonally in half.

### **13. Security Device Validity**

Your Security Device remains ANZ's property at all times. The Security Device must be registered in the manner specified by ANZ. You must, and you must ensure that your authorised Administrators and Authorisers, return the Security Device to ANZ immediately if requested by ANZ, if the relevant Security Device is deregistered, if ANZ Internet Banking for Business access is cancelled, or if ANZ cancels your right to use the Security Device. You should post the Security Device to the address indicated on [www.anz.com](http://www.anz.com)

### **14. Lost or Stolen Cards, Password, PIN or Telecode**

- a) If you report that a card or Security Device has been lost or stolen the card or Security Device will be cancelled as soon as the report is made. You must not use the card or Security Device once the report is made. If you recover the lost or stolen card, you must destroy the card by cutting it

(including an embedded microchip on the card) diagonally in half and return it to an ANZ branch as soon as possible. If you recover the lost or stolen Security Device you must immediately return it to ANZ by posting it to the address indicated on [www.anz.com](http://www.anz.com)

- b) You must make a report to ANZ (and the relevant third party, if a third party issued the username, password, PIN or card to you) immediately after you become aware or suspect that your password, username, PIN, CRN, Telecode or Security Device Code is disclosed or used without your authority, or lost. You must not then continue to use your password, username, PIN, CRN, Telecode or Security Device Code. ANZ will cancel it and arrange for you to select a new username, password, PIN or Telecode, or to be provided with a new CRN or Security Device Code.
- c) The best way to make the report is to call ANZ on the telephone numbers listed at the back of this booklet. If ANZ's telephone reporting service is unavailable, you must report the loss, theft or misuse to any ANZ branch. Your Account terms and conditions outline how you can make a report if ANZ's telephone reporting service is unavailable or you are overseas.

## **15. Cancellation of Cards, Security Devices or Electronic Access**

- a) ANZ may cancel or limit any card, Security Device, CRN or electronic access:
  - Without prior notice if:
  - ANZ believes that use of the card, Security Device or electronic access may cause loss to the Account Holder or to ANZ;
  - The Account is an inactive account;
  - All the Accounts which the card may access or the Security Device relates to have been closed;
  - The Account has been overdrawn, or you have exceeded your agreed credit limit, other than by use of the Informal Overdraft facility.
  - The account or your use of the account is otherwise out of order; or
  - On giving you not less than three months written notice.

- b) ANZ may also at any time suspend your right to participate in the ANZ BPAY® Scheme.
- c) The Account Holder may cancel a card at any time by sending ANZ a written request or by calling ANZ on the relevant number listed at the back of this booklet. ANZ may require written confirmation. The card must be cut diagonally in half (including an embedded microchip on the card) and returned to ANZ.
- d) The Account Holder or Account Signatories may cancel a Security Device at any time by advising ANZ on the number at the back of this booklet. The Security Device must then be immediately returned to ANZ by posting it to the address indicated on [www.anz.com](http://www.anz.com). ANZ may limit your access to certain functions (eg, Pay Anyone) if you do not have a Security Device.
- e) You can request ANZ to deregister you from ANZ Internet Banking or ANZ Internet Banking for Business at any time by Securemail or by calling the relevant number listed at the back of this booklet.
- f) ANZ may cancel or limit your ANZ Internet Banking or ANZ Internet Banking for Business access, including removing access to some or all of the Accounts from your CRN.

## 16. Withdrawal of Electronic Access

- a) ANZ may withdraw your electronic access to Accounts (including by BPAY®) without prior notice if:
  - Electronic equipment malfunctions or is otherwise unavailable for use;
  - A merchant refuses to accept your card;
  - Any one of the Accounts is overdrawn or will become overdrawn (other than by use of the Informal Overdraft facility).
  - Any one of the Accounts or your use of an account is otherwise considered out of order by ANZ;
  - ANZ believes your access to Accounts through electronic equipment may cause loss to the Account Holder or to ANZ;
  - ANZ believes that the quality or security of your electronic access process or ANZ's systems may have been compromised;

- All the Accounts which you may access using ANZ Phone Banking, ANZ Internet Banking or ANZ Internet Banking for Business have been closed or are inactive or the account you have nominated for ANZ Mobile Phone Banking fees and charges to be charged to is closed; or
  - ANZ suspects you of being fraudulent or engaging in inappropriate behaviour; unless this is prohibited by law.
- b) ANZ may at any time change the types of Accounts that may be operated, or the types of electronic transactions that may be made through particular electronic equipment.

## **17. Password, PIN, Telecode and Security Device Security**

- a) You must keep your password, PIN, Telecode, Security Device and Security Device Codes secure. Failure to do so may increase your liability for any loss.

*Warning: You must not use your birth date or an alphabetical code which is a recognisable part of your name as a password, or select a Telecode which has sequential numbers, for example, '12345' or where all numbers are the same, for example, '11111'. If you do, you may be liable for any loss suffered from an unauthorised transaction.*

- b) You must not:

- Disclose your password, PIN or Telecode to any other person;
- Allow any person access to your Security Device or any Security Device Code;
- Allow any other person to see you entering, or overhear you providing, your password, PIN, Telecode or Security Device Code;
- Record your password, PIN or Telecode on your card or Security Device or on any article carried with or placed near your card or Security Device that is liable to loss, theft or abuse at the same time as your card or Security Device (unless your password, PIN or Telecode is reasonably disguised).

*Warning: You should avoid accessing ANZ Phone Banking through telephone services which record numbers dialled – for example hotels which do this for billing purposes. In these situations you*

*should obtain access to ANZ Phone Banking through an ANZ customer service operator.*

- c) To assist you, ANZ may publish security guidelines.

## **18. Unauthorised Transactions**

These terms relating to unauthorised transactions do not apply to the ANZ Direct Debit Service. The terms relating to liability for Direct Debits are set out in the terms and conditions for ANZ Direct Debits.

### **18.1. When ANZ is Liable**

ANZ will be liable for losses incurred by the Account Holder that:

- Are caused by the fraudulent or negligent conduct of ANZ's employees or agents or companies involved in networking arrangements or of merchants or their agents or employees;
- Relate to any forged, faulty, expired or cancelled part of the electronic access process;
- Arise from transactions that require the use of any card, password, PIN, Telecode or Security Device that occur before you have received or selected the card, password, PIN, Telecode or Security Device (including a reissued card, password, PIN, Telecode or Security Device);
- Result from the same electronic transaction being incorrectly debited a second or more subsequent time to the same Account;
- Result from an unauthorised transaction that occurs after you have notified ANZ that any card or Security Device has been misused, lost or stolen or that the security of your password, PIN, Telecode, Security Device or a Security Device Code has been breached; or
- Result from an unauthorised transaction if it is clear that you have not contributed to the losses.

### **18.2. When the Account Holder is Liable**

- a) If ANZ can prove on the balance of probability that you contributed to the loss arising from the unauthorised transaction:
  - For Business Customers only, by failing to comply with 'Your Obligations' as detailed earlier in these Terms and Conditions or Conditions of Use;

- Through your fraud;
  - Subject to the terms of any account services provided or referred to you by ANZ, by voluntarily disclosing a password, PIN, Telecode or Security Device Code to anyone, or by giving your card or Security Device to anyone, including a family member or friend;
  - By keeping a record of the password, PIN, Telecode or a Security Device Code (without making any reasonable attempt to disguise it):
  - On the card or Security Device or with the CRN;
  - On any article carried with the card or Security Device or the CRN; or
  - Which may be lost or stolen at the same time as the card or Security Device or CRN;
  - By using your birth date or an alphabetic code which is a recognisable part of your name as a password, PIN or Telecode;
  - By failing to secure your mobile phone or leaving your mobile phone logged into ANZ Mobile Phone Banking; or
  - By otherwise acting with extreme carelessness in failing to protect the security of your password, PIN, Telecode, Security Device or a Security Device Code; the Account Holder is liable for the actual losses which occur before ANZ is notified of the loss or disclosure of your password, PIN, Telecode or Security Device.
- b) Where you must use more than one of your passwords, PINs, Telecodes or Security Device Codes to perform an ANZ Internet Banking or ANZ Internet Banking for Business transaction, and you voluntarily disclose, or keep a record of, one or more of them (but not all of them) the Account Holder will only be liable under this clause if the disclosure or record was the dominant contributing cause of the losses.
- c) If, after you become aware of the loss, theft or breach of the security of your password, PIN, Telecode, Security Device Code, or card or Security Device, you unreasonably delay notifying ANZ, the Account Holder will be liable for losses incurred between:

- The time you first became aware of any of the events described above, or in the case of loss or theft of a card or Security Device, should reasonably have become aware of the loss or theft; and
  - The time ANZ is actually notified of the relevant event.
- d) However, you are not liable for any loss:
- Which, over a set period of time, is greater than the transaction limit for that period;
  - Caused by overdrawing your Account or exceeding any agreed credit limit;
  - Where ANZ has agreed the Account could not be accessed electronically; or
  - As a result of conduct that ANZ expressly authorised you to engage in, or losses incurred as a result of you disclosing, recording or storing a password, PIN, Telecode or Security Device Code in a way that is required or recommended by ANZ for the purposes of you using an account access service expressly or impliedly promoted, endorsed or authorised by ANZ.
- e) If it is not clear whether you have contributed to the loss caused by an unauthorised transaction and where a password, PIN, Telecode or Security Device Code was required to perform the unauthorised transaction, the Account Holder is liable for the least of:
- \$150 (unless the Account is used for business purposes); or
  - The actual loss at the time ANZ is notified of the loss, theft or unauthorised use of the card or Security Device or that the security of the password, PIN, Telecode or Security Device Code has been breached (but not any loss incurred on any one day\* if the amount is greater than the daily\* transaction limit or other periodic transaction limit (if any)); or
  - The balance of the Account, including any prearranged credit from which value was transferred in the unauthorised transaction.

\* A day begins at 12.00.01am (Melbourne time) and ends at 12.00.00am (Melbourne time) on the same day. If you are not in the same time zone as Melbourne, please check <http://www.australia.gov.au>.

## 19. Equipment Malfunction

- a) ANZ is responsible to the Account Holder for any loss caused by the failure of equipment to complete a transaction that was accepted in accordance with your instructions.
- b) However, if you were aware or should have been aware that the equipment, including your mobile phone with respect to ANZ Mobile Phone Banking was unavailable for use or malfunctioning, ANZ's responsibility will be limited to correcting errors in the Account and refunding any charges or fees imposed as a result.
- c) You are responsible for the accuracy and completeness of the content that you enter into or upload to ANZ Internet Banking and ANZ Internet Banking for Business. ANZ is not responsible for any inaccuracy or incompleteness in the entering or uploading of information by you. ANZ's records of the information and data that was uploaded will be determinative and final.
- d) You are solely responsible for your own personal computer anti-virus and personal computer and mobile phone security measures, and those of any Authorised User, to help prevent unauthorised access via ANZ Internet Banking, ANZ Internet Banking for Business or ANZ Mobile Phone Banking to your transactions and linked Accounts.

## 20. Access to Other Services

You may use ANZ Internet Banking or ANZ Internet Banking for Business to access other ANZ services, such as the ANZ Direct Debit service. If there is any inconsistency between the terms and conditions set out in these Electronic Banking Conditions of Use and your agreement for that other service, the terms of the agreement for that other service prevail when using ANZ Internet Banking or ANZ Internet Banking for Business to access or use that other service.

## 21. Liability Under the BPAY® Scheme

### 21.1. General

You should note that:

- If you advise ANZ that a BPAY® made from a linked Account is unauthorised, you should first give ANZ your written consent to obtain from the biller information about your linked Account with that

biller or the BPAY® payment (including your CRN), as ANZ reasonably requires to investigate the BPAY®. This should be addressed to the biller who received the BPAY®. If you do not do this, the biller may not be permitted by law to disclose to ANZ the information ANZ needs to investigate or rectify that BPAY® payment;

- If you discover that the amount you instructed ANZ to pay was less than the amount you needed to pay, you can make another BPAY® for the shortfall. If you cannot make another BPAY® for the shortfall because the shortfall amount is less than the minimum amount the biller will accept, you can ask ANZ to arrange for a reversal of the initial payment. You can then make a second payment for the correct amount. If you discover that the amount you instructed ANZ to pay was more than the amount you needed to pay, you can ask ANZ to request a reversal of the initial payment from the biller on your behalf, and if this occurs, you can make a second payment for the correct amount.

### **21.2. ANZ's Liability**

- (a) Where you use your Account for personal purposes, ANZ's liability under the BPAY® Scheme is as set out under 'Unauthorised Transactions'.
- (b) Where you use your Account for business purposes, ANZ will not be liable to you under the BPAY® Scheme except in the circumstances set out in this clause.

### **21.3. BPAY® Payments**

Except where a BPAY® payment is an Unauthorised Payment, a Fraudulent Payment or a Mistaken Payment, BPAY® payments are irrevocable. No refunds will be provided through the BPAY® Scheme where you have a dispute with the biller about any goods or services you may have agreed to acquire from the biller. Any dispute must be resolved with the biller.

### **21.4. Unauthorised Payments**

If a BPAY® is made in accordance with a payment direction, which appeared to ANZ to be from you or on your behalf, but which you did not in fact authorise, ANZ will credit your Account with the amount of that unauthorised payment. However, you must pay ANZ the amount of that payment if:

- ANZ cannot recover the amount from the person who received it within 20 Banking Business Days of ANZ attempting to do so; and
- The payment was made as a result of a payment direction which did not comply with ANZ's prescribed security procedures.

### ***21.5. Fraudulent Payments***

If a BPAY® is induced by the fraud of a person involved in the BPAY® Scheme, then that person should refund you the amount of the fraud-induced payment. However, if that person does not refund you that amount, you must bear the loss unless some other person involved in the BPAY® Scheme knew of the fraud or would have detected it with reasonable diligence, in which case that person must refund you the amount of the fraud-induced payment.

### ***21.6. Mistaken Payments***

- a) If you discover that a BPAY® has been made to a person, or for an amount, which is not in accordance with your instructions (if any), and your Account was debited for the amount of that payment, ANZ will credit that amount to your Account. However, if you were responsible for a mistake resulting in that payment and ANZ cannot recover the amount of that payment from the person who received it within 20 Banking Business Days of ANZ attempting to do so, you must pay that amount to ANZ.
- b) You acknowledge that the receipt by a biller of a mistaken or erroneous payment does not or will not, under any circumstances, constitute part or whole satisfaction of any underlying debt owed between you and that biller.

### ***21.7. Consequential Loss***

ANZ is not liable for any consequential loss or damage you suffer as a result of using the BPAY® Scheme, other than due to any loss or damage you suffer due to ANZ's negligence or in relation to any breach of a condition or warranty implied by law in contracts for the supply of goods and services and which may not be excluded, restricted or modified at all or only to a limited extent.

## 22. Indemnity

To the extent permitted by law, you indemnify ANZ against any loss or damage ANZ may suffer due to any claim, demand or action of any kind brought against ANZ arising directly or indirectly because you:

- Did not observe your obligations under; or
- Acted negligently or fraudulently in connection with, these Electronic Banking Conditions of Use.

## 23. Precedence of Terms

If there is any inconsistency between the terms and conditions set out in the Electronic Banking Conditions of Use and your Account terms and conditions, the Account terms and conditions prevail.

For the avoidance of doubt, these Electronic Banking Conditions of Use apply when you access your personal accounts via ANZ Internet Banking for Business. However, your personal accounts will still be governed by the Electronic Banking Conditions of Use set out in the Terms and Conditions documents which apply to those personal accounts when you access your personal accounts via ANZ Internet Banking, ANZ Phone Banking or ANZ Mobile Phone Banking.

## 24. Changes to the Electronic Banking Conditions of Use

ANZ can change the Electronic Banking Conditions of Use at any time. ANZ will give you 20 days prior written notice of any changes which:

- Impose or increase charges relating solely to the use of electronic equipment;
- Increase your liability for losses relating to electronic transactions; or
- Change your daily transaction limit or other periodical transaction limit applying to the use of electronic equipment.

# Contact Details

## Postal Addresses

ANZ Business Banking  
Speak to your ANZ Manager or call 1800 801 485  
(8am – 8pm, Mon – Fri)

ANZ Cards  
Locked Bag No.10  
Collins Street West Post Office  
Melbourne, Victoria 8007

ANZ Personal Banking  
Contact your nearest branch

ANZ Margin Lending  
GPO Box 4338  
Melbourne VIC 3001

ANZ Trustees (V2 PLUS Service Centre)  
GPO Box 4028 Sydney NSW 2001 or  
GPO Box 389D Melbourne VIC 3001.

## Customer Enquiries

ANZ Cards  
13 22 73

ANZ Internet Banking  
13 33 50  
+ 61 3 9643 8833 (International customers)

ANZ Personal Banking  
13 13 14

ANZ Margin Lending  
1800 639 330

ANZ Trustees (V2 PLUS Service Centre)  
13 28 33

## Lost or Stolen Cards, Suspected Unauthorised Transactions or Divulged Passwords

1800 033 844 or  
Melbourne (03) 9683 7047  
(24 hours, 7 days a week).

## Lost, Stolen or Divulged Passwords

For passwords used on-line and ANZ Security Devices,  
call 1800 269 242

For all other passwords, call 1800 033 844  
(24 hours, 7 days a week)

+61 3 9683 7047 (International customers).



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