



The
National
Bank

Terms and Conditions

of Institutional Financial Markets Transactions

Foreign exchange and derivatives transactions can be complicated and expose customers to risk. The risk of a particular foreign exchange or derivatives transaction will depend on the nature of the transaction the customer enters into. Customer should note the following general risks:

- Foreign exchange and derivative markets can be highly volatile and the prices of the underlying rates, currencies or commodities may fluctuate rapidly over wide ranges, and may reflect unforeseen events or changes in conditions.
- The customer may suffer substantial losses as a result of those fluctuations. The Bank will not be liable for these losses in any circumstances.

It is the customer's responsibility to understand the nature of the transactions the customer enters into, the risks associated with those transactions, and to monitor the transactions. The customer should not enter into transactions if transactions or the risks are not understood.

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1. Agreement

- 1.1 Terms and Conditions govern:** Each Transaction entered into by the Bank and the Customer will, unless the Bank has expressly agreed otherwise in writing, be governed by, and subject to, these Terms and Conditions and the Confirmation for that Transaction.
- 1.2 One agreement:** These Terms and Conditions and all Confirmations will together form one agreement ('Agreement') between the Bank and the Customer, effective from the date the first Transaction is entered into in accordance with clause 2 of these Terms and Conditions.

2. Entering into transactions

- 2.1 When bound:** Both the Bank and the Customer will be legally bound from the time the details of a Transaction are agreed between them.
- 2.2 Confirmations:** The Bank shall, promptly after the Customer and the Bank have agreed to enter into a Transaction, send the Customer a Confirmation setting out the agreed details of that Transaction. Promptly after receipt of a Confirmation, the Customer shall either:
- (a) notify the Bank that there is an error in that Confirmation; or
 - (b) sign a copy of that Confirmation and return it to the Bank.
- 2.3 Cancellation:** The Bank may cancel a Transaction if the Customer does not sign and return a Confirmation relating to that Transaction following a request from the Bank. The Bank will not be liable to the Customer in respect of any such cancellation.
- 2.4 Transactions valid and binding:** Unless the Bank cancels a Transaction in accordance with clause 2.3, a Transaction will be valid and binding even if the procedure described in clause 2.2 is not followed.
- 2.5 Confirmation to prevail:** In the event of any inconsistency between the terms of a Confirmation for a particular Transaction and these Terms and Conditions, the terms of the Confirmation will prevail.

3. How and when to make payments and deliveries

- 3.1 Payment and delivery:** In relation to each Transaction, the Bank and the Customer agree to make each payment or delivery specified to be made by it in the Confirmation for that Transaction sent by the Bank to the Customer under clause 2.2. Payments shall be made in freely transferable funds for value on the due date to the account specified in the relevant Confirmation or otherwise agreed between the Bank and the Customer. Where settlement is by delivery (that is, other than by payment), such delivery shall be made for receipt on the due date in the manner specified in the relevant Confirmation, or otherwise agreed between the Bank and the Customer. Each payment or delivery will be by way of exchange for the corresponding payment or payments payable, or delivery or deliveries deliverable, by the other party.
- 3.2 No Event of Default, etc:** The Bank will not be obliged to make a payment or delivery to the Customer if an Event of Default or Termination Event has occurred and is continuing or would occur as a result of that.

3.3 Netting of payments: If, on any date, both the Bank and the Customer are obliged to pay amounts in the same currency to the other under one or more Transactions then, on that date, unless the Bank and the Customer have otherwise agreed, the obligations of the Bank and the Customer to pay those amounts will be satisfied by payment of the net amount of those obligations from the party having the net debit to the party having the net credit.

3.4 Payments to be free and clear: All amounts payable under the Agreement shall be paid:

- (a) free and clear of any restriction or condition; and
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding on account of any tax; and
- (c) (subject to clauses 3.3, 7 and 8) without any deduction or withholding on account of any other amount, whether by way of set-off, counterclaim or otherwise.

3.5 Deductions: If either party is required by law to make any deduction or withholding from any amount paid or payable by it under the Agreement, then that party shall (without prejudice to clause 3.6):

- (a) promptly notify the other party of such requirement;
- (b) ensure that any deduction or withholding does not exceed the legal minimum and shall pay the amount required to be deducted, withheld or paid to the relevant authority before the date on which penalties attach to that deduction or withholding; and
- (c) promptly deliver to the other party the receipt issued by the applicable authority evidencing that such deduction or withholding has been made.

3.6 Gross up: If, at any time:

- (a) the representation in clause 4.1(i) is untrue or misleading in any respect whatsoever; or
- (b) a Change of Law occurs,

and (in the case of (b) above, as a consequence thereof) the Customer is required by law to make any deduction or withholding from any amount paid or payable by it under the Agreement, the Customer shall pay to the Bank such additional amount as is necessary to ensure that, after that deduction or withholding is made, the Bank receives and retains (free from any liability in respect of any such deduction or withholding) a net amount equal to the amount which it would have received and so retained had no such deduction or withholding been made.

4. Representations and warranties

4.1 Representations and warranties of the Customer: Unless otherwise expressly agreed in writing by the Bank, the Customer represents and warrants, in relation to itself and any Support Provider (as at the date on which it enters into each Transaction or, in the case of the representation in clause 4.1(i), continuously until the Customer satisfies all its obligations in relation to each Transaction) that:

- (a) Status: it is either an individual or a New Zealand company registered under the Companies Act 1993;
- (b) Power and authority: it has:
 - (i) the power to enter into, and perform its obligations under, the Transaction, the Agreement and any Support Document to which it is a party; and
 - (ii) taken all necessary action to authorise the entry into and performance of the Transaction, the Agreement and any Support Document to which it is a party;

- (c) Obligations: its obligations under the Transaction, the Agreement and any Support Document to which it is a party are legal, valid, binding and enforceable;
- (d) No laws violated: its entry into and performance of the Transaction, the Agreement and any Support Document to which it is a party, will not:
 - (i) violate or contravene any law to which it is subject; or
 - (ii) result in a breach of any other agreement or obligation by which it is bound;
- (e) No default, etc: no Event of Default or Termination Event has occurred and remains unremedied or will result from its entry into or performance of the Transaction, the Agreement or any Support Document to which it is a party;
- (f) Full disclosure: all information provided by it to the Bank at any time in connection with the Transaction, the Agreement or any Support Document to which it is a party was true and accurate in all material respects and not misleading as at the date on which it was provided (whether by the omission of facts known to it or otherwise);
- (g) No agency: it is entering into the Transaction, the Agreement and any Support Document to which it is a party as principal and not as agent or (unless the Bank has agreed that clause 4.2 applies) as trustee of any trust or settlement;
- (h) Business purposes: it is entering into the Transaction and the Agreement for the purposes of a business and accordingly nothing in the Consumer Guarantees Act 1993 will apply to the Agreement or the Transaction; and
- (i) Tax status: it is resident in New Zealand for the purposes of the Tax Act.

4.2 Representations and warranties of a trustee: If the Customer is acting as the trustee or trustees of a trust (in this clause 4.2 'Trust'), the Customer represents and warrants, as at the date on which it enters into each Transaction, that:

- (a) Trust validly created: the Trust has been validly established, and is validly existing, under New Zealand law;
- (b) Trustee: the Customer has been validly appointed as trustee or trustees of the Trust, and comprises all of the trustees of the Trust;
- (c) Power, authority etc: its entry into and performance of the Transaction, the Agreement and any Support Document to which it is a party:
 - (i) is permitted by the trust deed establishing the Trust (in this clause 4.2, the 'Trust Deed');
 - (ii) has been duly authorised in accordance with the Trust Deed; and
 - (iii) does not result in any breach of trust in relation to the Trust; and
- (d) Right of indemnity: it has a right of indemnity out of the assets of the Trust with respect to its obligations and liabilities under the Transaction, the Agreement and any Support Document to which it is a party, which right of indemnity has not been negated or limited in any way by the provisions of the Trust Deed or by any breach of trust in relation to the Trust or otherwise.

5. Undertakings

5.1 The Customer:

- (a) Deliver specified information: shall promptly provide to the Bank any forms, documents or other information specified in any Confirmation or requested by the Bank from time to time; and
- (b) Notify default, etc: shall promptly notify the Bank of the occurrence of any Event of Default or Termination Event.

6. Events of default and termination events

6.1 Events of Default: Each of the following events (whether or not within the control of the Customer or any Support Provider) will be an Event of Default:

- (a) Failure to pay or deliver: the Customer fails to pay or make, when due, any payment or delivery under any Transaction or the Agreement or any other agreement with the Bank; or
- (b) Other breach: the Customer or any Support Provider breaches or does not comply with any obligation under the Agreement or any Support Document or any other agreement with the Bank to which it is a party; or
- (c) Misrepresentation: any representation or warranty made or deemed to be repeated by the Customer or any Support Provider in relation to any Transaction or the Agreement or any Support Document to which it is a party is or was untrue or incorrect in any material respect when made or deemed repeated; or
- (d) Security: any security over any asset of the Customer or any Support Provider is enforced or becomes enforceable; or
- (e) Bankruptcy, etc: the Customer or any Support Provider is adjudicated bankrupt, or is placed in receivership, or the Customer or any Support Provider enters into any assignment for the benefit of creditors or is subject to any agreement or compromise with creditors, or the liquidation or statutory management of the Customer or any Support Provider commences, or any event preliminary or analogous to the bankruptcy, receivership, liquidation or statutory management of the Customer or any Support Provider occurs; or
- (f) Insolvency: the Customer or any Support Provider is unable to pay, or does not pay, its debts as they become due and payable, or becomes insolvent, or the financial position of the Customer or any Support Provider or the value of any securities held by the Bank changes adversely to a material extent, in each case in the Bank's opinion; or
- (g) Repudiation: the Customer or any Support Provider disclaims or repudiates, in whole or in part, any Transaction, the Agreement or any Support Document (or any person on their behalf takes such action); or
- (h) Resettlement: if the Customer is acting as trustee or trustees of a trust (in this clause 6.1(h), ('Trust')), any property of the Trust has, without the prior written consent of the Bank, been re-settled or set-aside or transferred to any other person other than in accordance with the trust deed establishing the Trust, or any person purports to do so; or

- (i) Material adverse effect: any other event or series of events, whether related or not, occurs, or any circumstances arise or exist, which in the opinion of the Bank may have a material adverse effect on the Customer or any Support Provider or the ability or willingness of the Customer or any Support Provider to comply with all or any of their obligations under any Transaction, the Agreement or any Support Document to which they are a party; or
- (j) Death: if a Customer or Support Provider is an individual, the death of that person; or
- (k) Other: any other event which the Bank and the Customer agree in writing or which is specified in a Confirmation to be an event of default for the purposes of the Agreement.

6.2 Termination Events: Each of the following events will be a Termination Event:

- (a) Illegality: If by reason of:
 - (i) the introduction of, or any change in, any law or any change in the interpretation or application thereof by any government, governmental agency or authority; or
 - (ii) compliance by a party with any directive,
 it becomes, or will become, illegal for that party or any Support Provider to participate in any Transaction or any part of any Transaction, or otherwise to give effect to the Agreement or any Support Document to which it is a party; or
- (b) Force majeure: a party or any Support Provider is prevented from making or receiving a payment or delivery under a Transaction or the Agreement or any Support Document to which it is a party or from complying with any other provision of the Agreement or any Support Document to which it is a party, or it becomes impossible or impracticable to perform or comply with that obligation or provision, in each case by reason of an act of God, riot, act of terrorism, civil commotion, insurrection, war (declared or undeclared), any other circumstances affecting the New Zealand financial markets or the availability of finance to financial institutions in New Zealand generally or any other similar event or circumstance which:
 - (i) is beyond the control of that party or Support Provider; and
 - (ii) that party or Support Provider is not, after using all reasonable efforts (which will not require that party or Support Provider to incur a loss, other than immaterial, incidental expenses), able to overcome; or
- (c) Tax event: a party will, or there is a substantial likelihood that it will, be required on the next date for a payment or delivery under a Transaction, to make a deduction or withholding pursuant to clause 3.5; or
- (d) GST event: a party will, or there is a substantial likelihood that it will, be required on the next date for a payment or delivery under a Transaction, to make a payment under clause 11.3. That party will be the 'non-affected party' for the purposes of clause 7.2; or
- (e) Other: any other event or circumstance which the Bank and the Customer agree in writing or which is specified in a Confirmation as constituting a 'Termination Event' for the purposes of the Agreement.

6.3 Hierarchy of events:

- (a) Any event or circumstance which gives rise to an Illegality or Force Majeure Event will not, for so long as that is the case, also be an Event of Default under clauses 6.1(a) or 6.1(b), to the extent that such event or circumstance relates to the failure to make any payment or delivery or failure to comply with any other undertaking or obligation under the Agreement or any Support Document.
- (b) Except in the circumstances contemplated by clause 6.3(a), if an event or circumstance which would give rise to an Illegality or Force Majeure Event is also an Event of Default or other Termination Event, it will be treated as an Event of Default or other Termination Event and not as an Illegality or Force Majeure Event.
- (c) If an event or circumstance which would give rise to an Illegality is also a Force Majeure Event, it will be treated as an Illegality and not as a Force Majeure Event.

6.4 Deferral of payment and delivery: If an Illegality or Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery required to be made under that Transaction will be deferred and will not be due until the earlier of the first Business Day after the expiry of the Waiting Period and the date on which the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist.

7. Consequences of an event of default or termination event

7.1 Termination following an Event of Default or cancellation: If:

- (a) an Event of Default occurs; or
- (b) the Bank cancels a Transaction under clause 2.3,

the Bank may by notice to the Customer designate a date as the Early Termination Date in respect of some or all of the outstanding Transactions.

7.2 Termination following a Termination Event:

- (a) If a Termination Event occurs in respect of a party or any Support Provider, that party ('affected party') shall promptly notify the other party ('non-affected party'), specifying the nature of the Termination Event and identifying the Transactions which are affected by the event or circumstance. The non-affected party may, if the Termination Event is continuing after the expiry of the Waiting Period, by notice to the affected party, designate a date as the Early Termination Date in respect of some or all of the affected Transactions or all outstanding Transactions. If the non-affected party designates a date as the Early Termination Date only in respect of affected Transactions, the affected party may by notice to the non-affected party, designate that same date as the Early Termination Date in respect of all the other outstanding Transactions.
- (b) If a Termination Event occurs in respect of both the Customer or any Support Provider and the Bank, each party shall promptly notify the other party specifying the Termination Event and identifying the Transactions which are affected by the event or circumstance. The Bank may, by not less than 21 days notice, designate a date as the Early Termination Date in respect of some or all of the affected Transactions or all outstanding Transactions.

7.3 Effect of designation: If the Early Termination Date occurs, no further payments or deliveries will be required to be made under clause 3.1 in respect of the Terminated Transactions and the following provisions of this clause 7 will apply.

- 7.4 Calculation of value of each Terminated Transaction:** The Bank shall determine, as at the Early Termination Date, the value in New Zealand dollars of each Terminated Transaction and whether that value is payable by the Bank or the Customer.
- 7.5 Payment:** An account shall be taken between the Bank and the Customer of the aggregate value (as determined by the Bank in accordance with clause 7.4) owing to each of them in respect of Terminated Transactions to obtain a final net amount ('Termination Amount'). The Termination Amount will be due from the party having a net debit to the party having a net credit and all obligations to make payments or deliveries under clause 3.1 in respect of the Terminated Transactions will be satisfied by payment of the Termination Amount.
- 7.6 Notification:** The Bank shall notify the Customer of the Bank's determinations and the Termination Amount payable under clause 7.5 as soon as is reasonably practicable.
- 7.7 Time of payment:** Payment of the Termination Amount shall be made within two Business Days of the Bank notifying the Customer of the Termination Amount under clause 7.6.
- 7.8 Pre-estimate:** The Bank and the Customer agree that an amount recoverable under this clause 7 is a reasonable pre-estimate of loss and not a penalty.

8. Set-off

- 8.1 Contractual set-off:** Without prejudice, and in addition, to any right of set-off, combination of accounts, lien or other right to which the Bank is at any time entitled (whether by law, contract or otherwise), the Bank may at any time on or after the occurrence of an Early Termination Date, without prior notice or demand, apply any amount owed or to become owing by it to the Customer under the Agreement in or towards satisfaction of any amount payable by the Customer (whether or not under the Agreement) and, for such purpose, is authorised to accelerate the date for payment of any amount owing by the Bank to the Customer, notwithstanding the terms upon which such amount is so owing. The Bank may exercise such rights notwithstanding that such liabilities may not be expressed in the same currency, and the Bank is authorised to effect any necessary conversion at the market rate of exchange then prevailing.
- 8.2 Bank may estimate:** If an obligation is unascertained, the Bank may estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.
- 8.3 No security interest:** This clause 8 is intended to give rights in contract only and is not intended to constitute, create or give rise to a security interest of any kind.

9. Transfer and assignment

- 9.1 Bank:** The Bank may, without the consent of the Customer, assign all or any of its rights or transfer all or any of its obligations under the Agreement to any one or more financial institutions.
- 9.2 Customer:** The Customer may not assign or transfer (whether by way of security or otherwise) or declare a trust over any of its rights or obligations under the Agreement.
- 9.3 Disclosure:** The Customer authorises the Bank to disclose to a potential assignee or transferee or any other person with whom it wishes to enter into contractual relations in connection with the Agreement, all information held by it about the Customer.

10. Relationship between parties

10.1 Independent advice: The Customer has entered into and will enter into each Transaction and the Agreement in reliance on such independent advice (including tax, legal and financial advice) as the Customer considers necessary and not on any representation or information made or given by the Bank. To the maximum extent permissible by law, the Bank will not be liable for the Customer's loss in any circumstances.

10.2 Assessment: The Customer represents and warrants on entering into each Transaction and the Agreement that it:

- (a) is capable of assessing the merits of and understanding (on its own behalf or through independent expert advice) and understands, accepts and assumes the terms, conditions and risks of that Transaction and the Agreement;
- (b) is satisfied that the Transaction is suitable for its objectives, financial situation and needs; and
- (c) understands foreign exchange and derivatives markets and how they operate.

11. Costs and expenses

11.1 Costs and expenses: All costs, losses, expenses (including legal expenses on a full indemnity basis) and other liabilities incurred by the Bank in connection with the exercise, enforcement or preservation, or the attempted exercise, enforcement or preservation, of any right under the Agreement or any Support Document shall be paid by the Customer on demand.

11.2 Transaction taxes: All stamp, documentary, transaction, registration and other similar duties and taxes (including fines, interest and penalties), if any, payable in connection with the Agreement or any Support Document shall be payable by the Customer.

11.3 GST inclusive: If any supply by one party to the other is, at the time of supply, subject to goods and services tax chargeable under the Goods and Services Tax Act 1985, the recipient shall pay to the supplier an amount equal to the applicable goods and services tax in addition to the consideration for that supply.

12. Currency indemnity

12.1 Indemnity:

- (a) If any payment under the Agreement is received by the Bank in a currency ('first currency') other than the currency ('second currency') in which it is payable (whether as a result of obtaining or enforcing an order or judgment, the dissolution of any person or otherwise), the amount received will only satisfy the Customer's obligation to pay that amount to the extent of the amount of the second currency which the Bank is able, in accordance with its usual practice, to purchase with the amount received in the first currency on the date of that receipt (or, if it is not practicable to make that purchase on that date, on the first day upon which it is practicable to do so).
- (b) The Customer indemnifies the Bank against:
 - (i) any loss sustained by the Bank as a result of the amount purchased by it in the second currency pursuant to clause 12.1(a) being less than the amount due; and
 - (ii) all costs and expenses incurred by the Bank in purchasing the second currency.

12.2 Payment: The Customer shall pay to the Bank, upon demand, in the currency stipulated by the Bank, all amounts payable pursuant to the indemnity contained in clause 12.1.

13. Default interest

- 13.1 Default interest and compensation for defaulted delivery:** If the Customer fails to pay any amount payable under the Agreement when due, or defaults in the performance of any obligation required to be settled by delivery, the Customer shall pay interest on that amount or, in the case of a default in delivery, an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, from its due date until it is paid or delivered in full (both before and after any judgment).
- 13.2 Rate of default interest:** For the purposes of clause 13.1, interest shall be calculated and payable by reference to successive periods, each of which (other than the first, which will begin on and include the due date) will begin on the last day of the previous period. Each such period shall be of a duration selected by the Bank from time to time and the rate of interest applicable to a particular period will be the rate per annum determined by the Bank.
- 13.3 Payment of default interest:** Interest payable pursuant to this clause 13, shall be payable on the last day of each period in respect of which it is calculated and on the date of payment of each overdue amount. Any such interest which is not paid when due shall be added to the overdue amount in respect of which it is payable and will itself bear interest in accordance with this clause 13.

14. Miscellaneous

- 14.1 Certificates:** Any certificate given by the Bank in relation to the Agreement, any Transaction or any Support Document (including as to amounts payable or deliverable by either party) is sufficient evidence of its contents unless its contents are proved to be incorrect.
- 14.2 Entire agreement:** The Agreement contains all of the terms, representations and warranties made between the parties with respect to its subject matter and supersedes all prior discussions and agreements relating thereto.
- 14.3 Survival of obligations:** Without prejudice to clause 7.3, the obligations of the parties under the Agreement will survive termination of any Transaction.
- 14.4 Telephone recording:** Telephone conversations between the Bank and the Customer may be recorded. The Customer consents to such recording taking place and any recording or transcript of that recording being admissible as evidence in any suit, action or proceeding relating to the Agreement or a Support Document.
- 14.5 Consequential loss:** Neither party is entitled to claim from the other any consequential loss in the event of that other party's breach of the Agreement or a Support Document.
- 14.6 Amendments to the Agreement:** Subject to clause 14.7, no amendment or waiver in respect of the Agreement will be effective unless it is in writing and signed by each of the parties.
- 14.7 Amendments of these Terms and Conditions:** The Bank may, at any time, either by giving 30 days written notice or by publication on its website www.nationalbank.co.nz, amend or replace these Terms and Conditions. Any such amendment or replacement will take effect:
- (a) in relation to a written notice, on the expiry of that 30 day period; or
 - (b) in the case of publication on its website, 30 days after the amendment or replacement is published on the Bank's website; or
 - (c) in either case, on any later date specified by the Bank.

- 14.8 Authorised persons:** The Bank shall be entitled, without being required to make any further enquiry and notwithstanding any prior arrangement between the Bank and the Customer, to treat a person who holds himself out as having the authority to enter into and settle a Transaction on behalf of a Customer and/or sign a Confirmation, as having the authority of the Customer to do so (and a Transaction entered into in these circumstances will be valid and binding even if it transpires that that person did not have that authority). Without limiting the foregoing, if the Bank requires, the Customer shall provide the Bank with a list of those persons the Customer has authorised to enter into and settle Transactions on its behalf and sign Confirmations.
- 14.9 Partial invalidity:** If at any time any provision of the Agreement or any Support Document is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, that illegality, invalidity or unenforceability will not affect the enforceability of the provisions, or (as the case may be) the remaining provisions, of the Agreement or, as applicable, that Support Document, nor will the legality, validity or enforceability of any of those provisions under the law of any other jurisdiction be in any way affected or impaired thereby.
- 14.10 No implied waivers:** Time shall be of the essence in respect of performance by the Customer or any Support Provider of their respective obligations under the Agreement and any Support Document to which each is a party, but no failure on the part of the Bank to exercise, and no delay on its part in exercising, any right, power or remedy under the Agreement or any Support Document will operate as a waiver thereof, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- 14.11 Remedies cumulative:** The rights, powers and remedies provided in the Agreement are cumulative, and not exclusive of, any rights, powers or remedies provided by law.
- 14.12 Obligations independent:** Each of the obligations of the Customer under clauses 3.6, 11 and 12 constitutes a continuing obligation, separate and independent from its other obligations under the Agreement.
- 14.13 Enforcement:** It shall not be necessary for the Bank to incur any expense or make any payment before enforcing any of its rights in respect of any obligation of the Customer referred to in clause 14.12.
- 14.14 Payments:** The obligation of the Customer to pay any money under the Agreement will only be discharged when the Bank is satisfied that the Customer or any other person or persons making any payment of that money was solvent at the time of making that payment or after the elapse of the period during which any such payment may become or be deemed to be avoided or voidable.
- 14.15 Conflict of provisions:** In the event of a conflict between a provision of the Agreement and a provision of any Support Document, the Bank may, in its absolute discretion, determine which will prevail. In the event of a conflict between a provision of these Terms and Conditions and a Confirmation, the provisions of the Confirmation will prevail for the purposes of the Transaction to which it relates.
- 14.16 Consents:** The Bank may give or withhold any approval or consent in its absolute discretion, and either conditionally or unconditionally.

14.17 Joint and several liability: If the Customer is a partnership, trust or other entity comprising more than one person, each partner, trustee or person will be jointly and severally liable for the obligations of the Customer under the Agreement and references to the Customer in the Agreement means each of those persons.

14.18 Determinations: Any determination or estimate required to be made by the Bank under the Agreement will, unless the context otherwise requires, be made by the Bank in good faith and in a commercially reasonable manner, and its determinations and estimates will be binding in the absence of manifest error.

15. Notices

15.1 Each notice or other communication to be given or made by a party under the Agreement shall:

- (a) Writing: be given or made in writing by facsimile or letter and be signed by the sender or an authorised officer of the sender;
- (b) Address: be given or made to that party at the address or facsimile number, and marked for the attention of the person (if any), from time to time designated by that party to the other for the purposes of the Agreement, provided that if the Customer has not designated an address or facsimile number for the purposes of the Agreement the Bank may give or make each notice or other communication under the Agreement to the Customer at any address or facsimile number which the Bank has for the Customer;
- (c) Deemed delivery: not be effective until received by that party, and any such notice or communication will be deemed to be received by that party:
 - (i) (if given or made by letter) when left at the address of that party or 3 Working Days after being put in the post, postage prepaid, and addressed to that party at that address; or
 - (ii) (if given or made by facsimile) upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient;

provided that any notice or communication received or deemed received after 5 pm on a Working Day, or on a day which is not a Working Day, will be deemed not to have been received until the next Working Day.

16. Governing law

16.1 The Agreement is governed by, and shall be construed in accordance with, the laws of New Zealand and the New Zealand courts shall have non-exclusive jurisdiction.

17. Interpretation

17.1 Definitions: In the Agreement, unless the context otherwise requires:

'Bank' means ANZ National Bank Limited.

'Business Day' means a day (other than a Saturday or Sunday) on which banks are open for business (including dealings in foreign exchange and foreign currency deposits) in Wellington and Auckland, and:

- (a) in respect of payments, the principal financial centre of the currency of the payment or, if different, the place where the account for receipt of the payment is located; or
- (b) in respect of deliveries, the place in which the delivery is to be made.

'Change of Law' means:

- (a) any introduction of, amendment to, clarification of, or a change in law;
- (b) any judicial decision, official administrative directive or announcement, published or private ruling, regulatory procedure, notice, assessment, directive or announcement or an amendment to, clarification of, or change in the official position of any governmental agency, in each case with respect to any law, judicial decision, official administrative directive or announcement, published or private ruling, regulatory procedure, notice, directive or announcement; or
- (c) any introduction of, amendment to, clarification of, or a change in any applicable generally accepted accounting practice, in each case, that occurs after the date the Bank and the Customer have entered into any Transaction.

'Confirmation' means, in relation to a Transaction, the document or other confirming evidence exchanged between the Bank and the Customer for the purpose of confirming or evidencing that Transaction.

'Customer' means a person who enters into a Transaction with the Bank.

'Early Termination Date' means, in relation to a Transaction, the date designated by a party (acting in its absolute discretion) pursuant to clause 7.1 or clause 7.2.

'Event of Default' means any event specified in clause 6.1.

'Force Majeure Event' means any event specified in clause 6.2(b).

'Illegality' means any event specified in clause 6.2(a).

'Schedule' means the schedule to these Terms and Conditions.

'Specified Transaction' means:

- (a) any existing or future transaction:
 - (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions); or
 - (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made;
- (b) any combination of these transactions; and
- (c) any other transaction identified as a Specified Transaction in a Confirmation or which the Bank has advised in writing as being a Specified Transaction for the purposes of these Terms and Conditions, but does not include a transaction referred to in (a) or (b) above which the Bank has advised in writing is not subject to these Terms and Conditions.

'Support Document' means any agreement, deed or other document recording the terms of a guarantee, security or other support of any nature provided by a Support Provider.

'Support Provider' means any person who provides a guarantee, security or other support to the Bank (whether alone, or jointly or jointly and severally with any other person) in relation to the Customer.

'Tax Act' means the Income Tax Act 1994.

'Terminated Transaction' means a Transaction in respect of which an Early Termination Date has been designated.

'Termination Amount' has the meaning given to that term in clause 7.5.

'Termination Event' means any event specified in clause 6.2.

'Terms and Conditions' means the terms and conditions as set out in this agreement and includes the Schedule.

'Transaction' means each Specified Transaction entered into between the Bank and the Customer from time to time.

'Working Day' means a day (other than a Saturday or a Sunday) in which banks are open for business in Wellington and Auckland.

'Waiting Period' means in relation to a Termination Event, 7 days after the occurrence of that Termination Event.

17.2 References: Except to the extent that the context otherwise requires, any reference in the Agreement to:

a **'directive'** includes any present or future directive, regulation, request, requirement, voluntary credit restraint programme or notification by any means or change in interpretation or application of any law by any government, governmental agency or authority (in each case, whether or not having the force of law but, if not having the force of law, compliance with which is in accordance with the general practice of persons to whom the directive is addressed).

the **'dissolution'** of a person includes the liquidation or bankruptcy of that person, or (where that person is a company) its removal from the register, and any equivalent or analogous procedure under the law of any relevant jurisdiction.

'guarantee' includes any contract of surety or indemnity.

'government' includes central or local government, and 'governmental agency' and 'authority' shall be construed accordingly.

a **'law'** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute, treaty or other legislative measure.

something having a **'material adverse effect'** on a person is a reference to it having a material adverse effect:

- (a) on that person's financial condition or business, or
- (b) on its ability to perform and comply with its obligations under the Agreement or any Support Document to which it is a party.

a **'person'** includes an individual, firm, company, corporation, unincorporated body of persons, organisation or trust, and any government, governmental agency or authority, in each case whether or not having separate legal personality.

a **'security'** includes a mortgage, charge, encumbrance, lien, pledge, security interest (as defined in the Personal Property Securities Act 1999), finance lease, sale and lease back, sale and repurchase, deferred purchase or title retention arrangement (other than in respect of goods purchased in the ordinary course of ordinary trading), credit support agreement, flawed asset arrangement, and any other security or arrangement having like economic effect over any property, assets or revenues.

'tax' includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called, imposed or levied by any government, governmental agency or authority, together with any interest, penalty, charge, fee or other amount imposed or made on, or in relation to, any of the foregoing, and 'taxation' shall be construed accordingly.

'written' and **'in writing'** include all means of reproducing words in a tangible and permanently visible form.

17.3 Miscellaneous:

- (a) Headings are inserted for convenience only and do not affect interpretation of the Agreement.
- (b) Unless the context otherwise requires the singular includes the plural and vice versa and words denoting individuals include other persons and vice versa.
- (c) A reference to any legislation includes any statutory regulations, rules, orders or instruments made or issued pursuant to that legislation and any amendment to, or re-enactment or replacement of, that legislation.
- (d) A reference to any document includes reference to that document as modified, novated, supplemented, varied or replaced from time to time.
- (e) A reference to any party to any document includes its heirs, successors, permitted assigns and personal representatives.
- (f) A reference to any gender includes all genders.
- (g) A reference to a time of day is a reference to New Zealand time unless otherwise stated.
- (h) Except where inconsistent with the context, the expression 'at any time' also means from time to time.

Schedule

Standard Terms for Confirmations

1. Scope of schedule

- 1.1 This schedule contains definitions of terms and expressions and other provisions which apply to certain Transactions.

2. Business days

- 2.1 If a day for the performance of an obligation or exercise of a right under a Transaction is not a Business Day, then the day for the performance of the obligation or exercise of the right will be modified in accordance with the Business Day Convention specified in the relevant Confirmation, as follows:

If the Business Day Convention is:

- (a) 'Following', then the relevant day will be the next Business Day;
- (b) 'Modified Following', then the relevant day will be the next Business Day unless that day falls in the next calendar month, in which case it will be the first preceding Business Day; and
- (c) 'Preceding', then the relevant day will be the first preceding Business Day.

If no Business Day Convention is specified in the relevant Confirmation, then 'Modified Following' will apply to the Transaction.

3. Floating rates

- 3.1 The 'floating rate' for a Reset Date and a Transaction is the sum of the Spread (if any) and the Floating Rate Option for that Transaction on that Reset Date.
- 3.2 If the Floating Rate Option is specified in the relevant Confirmation as 'NZD-BBR-FRA', then:
- (a) if the calculation period is equal to the Designated Maturity, the floating rate will be the 'FRA' rate quoted on Reuters Screen BKBM page at approximately 11am Wellington time on the relevant Reset Date for a bill having a tenor of the Designated Maturity; or
 - (b) if the calculation period is not equal to the Designated Maturity, the Bank will determine the floating rate for that calculation period.

4. Day count fractions and calculation periods

- 4.1 The 'calculation periods' in respect of a Transaction are each period from and including one Payment Date (or the Effective Date in the case of the first calculation period) to but excluding the next Payment Date (or the Termination Date in the case of the last calculation period).
- 4.2 The 'day count fraction' in respect of an amount payable by a party is calculated by reference to the Day Count Fraction applicable to that party or amount and the calculation period relevant to the Payment Date on which the amount is payable.
- 4.3 If the Day Count Fraction is:
- (a) 'Actual/365 (Fixed)', then the day count fraction is the actual number of days in the relevant calculation period divided by 365; or
 - (b) 'Actual/360', then the day count fraction is the actual number of days in the relevant calculation period divided by 360.

5. Foreign exchange transactions

- 5.1 A foreign exchange transaction will be a 'deliverable' transaction unless specified otherwise in the relevant Confirmation.
- 5.2 In respect of each Transaction that is a 'deliverable' foreign exchange transaction, on the Settlement Date each party shall pay to the other party the amount of currency specified as being payable by it to the other party in the relevant Confirmation.
- 5.3 In respect of each Transaction that is a 'non-deliverable' foreign exchange transaction, on the Settlement Date:
- (a) if the settlement currency amount is positive, the Reference Currency Buyer shall pay that amount to the Reference Currency Seller; and
 - (b) if the settlement currency amount is negative, the Reference Currency Seller shall pay the absolute value of that amount to the Reference Currency Buyer.
- 5.4 The 'settlement currency amount' means the amount, in the Settlement Currency, calculated as the product of:

Notional Amount

and

$$\left(1 - \frac{\text{Forward Rate}}{\text{Settlement Rate}} \right)$$

where both the Forward Rate and the Settlement Rate are quoted in terms of the amount of Reference Currency per one unit of Settlement Currency.

6. Currency option transactions

- 6.1 In respect of each Transaction that is a currency option the Buyer shall pay the Seller the Premium on the Premium Payment Date.
- 6.2 In respect of each Transaction that is a 'European' style currency option if, at or before the Expiration Time on the Expiration Date, the Buyer notifies the Seller in writing that the Buyer wants to exercise the currency option, on the Settlement Date (being the Expiration Date):
- (a) the Buyer shall pay the Seller the Put Currency Amount in the Put Currency; and
 - (b) the Seller shall pay the Buyer the Call Currency Amount in the Call Currency.
- 6.3 In respect of each Transaction that is an 'American' style currency option if, at or before the Expiration Time on the Expiration Date, the Buyer notifies the Seller in writing that the Buyer wants to exercise the currency option, on the Settlement Date (being a date on or before the Expiration Date):
- (a) the Buyer shall pay the Seller the Put Currency Amount in the Put Currency; and
 - (b) the Seller shall pay the Buyer the Call Currency Amount in the Call Currency.
- 6.4 Unless otherwise provided in the relevant Confirmation, a currency option that has not otherwise been exercised is deemed to have been exercised at the Expiration Time on the Expiration Date where the in-the-money amount of the currency option equals or exceeds the product of one percent of the Strike Price multiplied by the Call Currency Amount or the Put Currency Amount (as appropriate).
- 6.5 The 'in-the-money amount':
- (a) in relation to a call option, is the amount (if any) in the Put Currency determined by the Bank by taking the excess of the spot price over the strike price and multiplying this excess by the Call Currency Amount, with both prices being quoted in terms of the amount of the Put Currency to be paid for one unit of the Call Currency; and

(b) in relation to a put option, is the amount (if any) in the Call Currency determined by the Bank by taking the excess of the strike price over the spot price and multiplying this excess by the Put Currency Amount, with both prices being quoted in terms of the amount of the Call Currency to be paid for one unit of the Put Currency.

- 6.6 The 'spot price' is the rate of exchange between the Put Currency and the Call Currency at or about the Expiration Time on the Expiration Date as determined by the Bank.
- 6.7 The 'strike price' is the currency exchange rate specified as such in the relevant Confirmation, being the currency exchange rate at which the Put Currency and the Call Currency may be exchanged on exercise of the currency option.

7. Interest rate option transactions

7.1 This paragraph 7 applies to Transactions that are interest rate options.

7.2 The Buyer shall pay the Seller the Premium on each Premium Payment Date.

7.3 If, on a Reset Date, the Cap Rate is less than the floating rate, then:

- (a) if 'FRA Basis' or 'FRA Discounting' is specified in the relevant Confirmation, the Seller shall pay the Buyer on the relevant Payment Date the amount calculated as the difference between:

$$\frac{36500 \times \text{Notional Amount}}{(\text{ND} \times \text{Cap Rate}) + 36500}$$

and

$$\frac{36500 \times \text{Notional Amount}}{(\text{ND} \times \text{floating rate}) + 36500}$$

For this purpose, 'ND' is the number of days in the relevant calculation period and the Cap Rate and the floating rate are expressed as a number and not a percentage (eg 8.5 instead of 8.5%); or

- (b) otherwise, the Seller shall pay the Buyer on the relevant Payment Date the amount calculated by reference to the following formula:

$$\text{Notional Amount} \times (\text{floating rate} - \text{Cap Rate}) \times \text{day count fraction}$$

7.4 If, on a Reset Date, the Floor Rate is greater than the floating rate, then:

- (a) if 'FRA Basis' or 'FRA Discounting' is specified in the relevant Confirmation, the Seller shall pay the Buyer on the relevant Payment Date the amount calculated as the difference between:

$$\frac{36500 \times \text{Notional Amount}}{(\text{ND} \times \text{floating rate}) + 36500}$$

and

$$\frac{36500 \times \text{Notional Amount}}{(\text{ND} \times \text{Floor Rate}) + 36500}$$

For this purpose, 'ND' is the number of days in the relevant calculation period and the Floor Rate and the floating rate are expressed as a number and not a percentage (eg 8.5 instead of 8.5%); or

- (b) otherwise, the Seller shall pay the Buyer on the relevant Payment Date, the amount calculated by reference to the following formula:

$$\text{Notional Amount} \times (\text{floating rate} - \text{Cap Rate}) \times \text{day count fraction}$$

8. Swap transactions

8.1 This paragraph 8 applies to Transactions that are swaps.

8.2 The Fixed Rate Payer shall pay (in the currency specified in the relevant Confirmation):

- (a) the fixed amount on each Fixed Rate Payer Payment Date; and
- (b) any Fixed Rate Payer Initial Exchange Amount, if any, on the Initial Exchange Date; and
- (c) any Fixed Rate Payer Final Exchange Amount, if any, on the Final Exchange Date.

Where each party is a Fixed Rate Payer, then each party has the obligations referred to above in respect of the amounts and dates specified in the relevant Confirmation as applicable to that party.

8.3 The 'fixed amount' in respect of a Fixed Rate Payer Payment Date is the amount calculated by reference to the following formula:

$$\text{Notional Amount} \times \text{Fixed Rate} \times \text{day count fraction}$$

8.4 The Floating Rate Payer shall pay (in the currency specified in the relevant Confirmation):

- (a) the floating amount in respect of a Reset Date on the next Floating Rate Payer Payment Date after that Reset Date; and
- (b) any Floating Rate Payer Initial Exchange Amount, if any, on the Initial Exchange Date; and
- (c) any Floating Rate Payer Final Exchange Amount, if any, on the Final Exchange Date.

Where each party is a Floating Rate Payer, then each party has the obligations referred to above in respect of the amounts and dates specified in the relevant Confirmation as applicable to that party.

8.5 The 'floating amount' in respect of a Reset Date is the amount calculated by reference to the following formula:

$$\text{Notional Amount} \times \text{floating rate} \times \text{day count fraction}$$

8.6 If 'FRA Basis' or 'FRA Discounting' is specified in the relevant Confirmation as applicable, the obligations of the parties to make payments in respect of each calculation period will be the same as the obligations the parties would have had if they had entered into a forward rate agreement in respect of that calculation period (in which case paragraph 9 will apply).

9. Forward rate agreements

9.1 This paragraph 9 applies to Transactions that are forward rate agreements.

9.2 If, on the Reset Date:

- (a) the FRA amount is positive, then the Fixed Rate Payer shall pay to the Floating Rate Payer the FRA amount on the Payment Date and the Floating Rate Payer is not obliged to pay a FRA amount; or
- (b) the FRA amount is negative, then the Floating Rate Payer shall pay to the Fixed Rate Payer the absolute value of the FRA amount on the Payment Date and the Fixed Rate Payer is not obliged to pay a FRA amount.

- 9.3 The FRA amount in respect of the Reset Date is:
- (a) if the currency in which the forward rate agreement is based is Australian dollars or New Zealand dollars, the amount calculated as the difference between:

$$\frac{36500 \times \text{Notional Amount}}{(\text{ND} \times \text{floating rate}) + 36500}$$

and

$$\frac{36500 \times \text{Notional Amount}}{(\text{ND} \times \text{Fixed Rate}) + 36500}$$

- (b) otherwise, the amount calculated in accordance with the following formula:

$$\frac{(\text{Fixed Rate} - \text{floating rate}) \times \text{Notional Amount} \times \text{ND}}{(\text{B} \times 100) + (\text{floating rate} \times \text{ND})}$$

For these purposes, 'ND' is the number of days in the relevant calculation period, the Floating Rate and the Fixed Rate are expressed as a number and not a percentage (ie 8.5 instead of 8.5%) and 'B' is 360 or 365 depending on the market custom for the relevant currency.

10. Swaption transactions

- 10.1 This paragraph 10 applies to Transactions that are swaptions.
- 10.2 The Buyer shall pay the Seller the Premium on each Premium Payment Date.
- 10.3 Each swaption that is a 'European' style swaption may be exercised only on the Expiration Date (and no later than the Expiration Time).
- 10.4 Each swaption that is an 'American' style swaption may be exercised:
- (a) on any Business Day during the Exercise Period, but no later than the Expiration Time on the Expiration Date; or
- (b) if no Exercise Period is specified in the relevant Confirmation, on any Business Day on or before the Expiration Date, but not later than the Expiration Time on the Expiration Date.
- 10.5 Unless otherwise provided in the relevant Confirmation or the relevant Confirmation specifies that 'Automatic Exercise' is applicable, notice of exercise of a swaption must be given by telephone or in writing.
- 10.6 If the relevant Confirmation specifies that 'Automatic Exercise' is applicable, then at the Expiration Time on the Expiration Date the Bank shall determine whether the Buyer is 'in the money' under the underlying interest rate swap to which the swaption relates if the swaption were to be exercised, and the following shall apply:
- (a) The swaption is automatically exercised on the Expiration Date if and only if the Bank has determined that the Buyer is 'in the money'.
- (b) If the Buyer is the Floating Rate Payer in respect of the underlying swap, then the Buyer will be in-the-money if the Settlement Rate is less than the Fixed Rate.
- (c) If the Buyer is the Fixed Rate Payer in respect of the underlying swap, then the Buyer will be in-the-money if the Settlement Rate is more than the Fixed Rate.
- (d) The Settlement Rate will be determined by the Bank in accordance with the method specified in the relevant Confirmation.

- 10.7 If a swaption is exercised, then:
- (a) if Cash Settlement is specified in the relevant Confirmation, on the Cash Settlement Date the Seller shall pay the Buyer the cash settlement amount; and
 - (b) if Physical Settlement is specified in the relevant Confirmation, the underlying swap to which the swaption relates becomes effective.
- 10.8 The 'cash settlement amount' means the amount determined by the Bank.

11. ISDA definitions

- 11.1 If the terms of a Confirmation cannot be construed by reference to these Terms and Conditions and the relevant Confirmation (for example if a different Floating Rate Option or Floating Rate Day Count Fraction is specified, and not defined, in the relevant Confirmation) then the '2000 ISDA Definitions' and the '1998 FX and Currency Option Definitions', each as published by the International Swaps and Derivatives Association, Inc, shall apply to the extent necessary.
- 11.2 If there is any inconsistency between the terms of this schedule and the ISDA Definitions referred to above, then the terms of this schedule will prevail.



The National Bank
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