

# ANZ Direct Online

CONDITIONS OF USE | OCTOBER 2010

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# 1. Conditions of Use

## These Conditions of Use are important

These Conditions of Use form a legal contract between you and us in relation to your use of ANZ Direct Online and it is important that you read and understand them before signing the application form for ANZ Direct Online. These Conditions of Use specify:

- your authorisation (mandate) to us to process transactions on your accounts when electronic instructions are received by us through ANZ Direct Online;
- your obligations, rights and responsibilities when using ANZ Direct Online;
- our obligations, rights and responsibilities in relation to the provision of ANZ Direct Online services;
- the extent of your potential liability for loss using ANZ Direct Online;
- other important matters including confidentiality, termination of access to ANZ Direct Online, amendments to the ANZ Direct Online services and these Conditions of Use and how you may receive notices.

## Terminology

**'Account'** and **'accounts'** means all your accounts associated with the Client Code as specified on your application form.

**'Administrator'** means the ANZ Direct Online user(s) who has access to the whole ANZ Direct Online system, including editing and User Management functions.

**'ANZ Direct Online'** means the ANZ Direct Online package provided by ANZ National Bank Limited, and includes, where the context requires, ANZ Direct Online services provided by us through channels other than our ANZ Direct Online website.

**'ANZ Direct Online fees and charges'** means the fees and charges set out in the charges schedule in the ANZ Direct Online application form as amended from time to time.

**'ANZ Direct Online Services'** means services offered by us to you under the ANZ Direct Online system from time to time.

**'Application form'** means the ANZ Direct Online application form signed by you.

**'Authentication Device'** means the hand held electronic device used by Authorisers to authorise ANZ Direct Online transactions.

**'Authorisation Procedures'** means the procedures set out in these Conditions of Use (as they may be amended from time to time) for initiating and authorising a transaction through ANZ Direct Online.

**'Authoriser'** means, in respect of any account, a person who is authorised in the Signing Authority or specified in the ANZ Direct Online application form to operate the account and is nominated in the application form to use ANZ Direct Online in respect of that account.

**'Business Day'** means every day except Saturdays, Sundays and statutory holidays.

**'Cleared funds'** means funds that are available to be withdrawn, and which cannot be reversed.

**'Client code'** means the code that we use to identify your ANZ Direct Online system on our system.

**'Electronic payment'** means either a direct credit, an automatic payment or direct debit payment.

**'Nominated account'** means the account you nominate to which fees (including ANZ Direct Online fees and charges) are to be debited.

**'Password'** means the alphanumeric code given to a User by an Administrator.

**'Payment date'** means, in relation to an electronic payment initiated through ANZ Direct Online, the Business Day selected by you for that electronic payment to be made.

**'PIN'** means the unique personal identification number given to each Authoriser which resides in the authentication device.

**'Signing Authority'** means the authority or mandate from you (as amended from time to time) specifying the persons who are authorised to operate your accounts with the Bank.

**'Transaction'** means any banking transaction that is permitted by us to be processed through ANZ Direct Online.

**'User'** means a person authorised by you to use ANZ Direct Online, whether as an Administrator, or only to view or have limited access (excluding payment authorisation access) to your accounts accessible through ANZ Direct Online.

**'User guide'** means the user guide provided by us in respect of ANZ Direct Online.

**'User ID'** means the user identification for each user logging onto ANZ Direct Online.

**'We'** and **'us'** means ANZ National Bank Limited and where the context requires, includes all companies in ANZ National Bank Limited group of companies.

**'You'** and **'your'** means the customer identified in the application form by name and client code and, where the context requires (particularly in respect of authorisation, and use and security of PINs and passwords) includes any authoriser, user and administrator.

## ANZ Direct Online Conditions of Use prevail

These Conditions of Use and the ANZ Direct Online application form apply in addition to the terms and conditions that apply to your ANZ accounts and services accessed using ANZ Direct Online. Where inconsistent, these Conditions of Use will override the account signing authorities, or any other mandates and terms and conditions of specific products and services in relation to all transactions using ANZ Direct Online.

## Use of ANZ Direct Online

You acknowledge that use of your Client Code, User ID and Password provides sufficient authority for us to allow you access to ANZ Direct Online to create and maintain transactions on your accounts.

You will ensure that Administrators, Users, and Authorisers understand their obligations when using ANZ Direct Online and agree to be bound by these Conditions of Use. However, you remain responsible for compliance by Administrators, Users and Authorisers with these Conditions of Use.

You acknowledge that use of your Authentication Device and PIN in accordance with the Authorisation Procedures set out in these Conditions of Use provide us with sufficient authorisation to process those transactions without an obligation to make further enquiries.

You agree that you will not use ANZ Direct Online for any purpose other than to access ANZ Direct Online services.

### **Access to accounts and availability of ANZ Direct Online**

We shall, as soon as reasonably practicable after acceptance of your application, enable your access to the ANZ Direct Online website.

All of the Administrators, Users and Authorisers can access and, where applicable, transact on your accounts to which they are provided access by your Administrator(s). Only Authorisers can authorise transactions on your accounts as permitted under the Authorisation Procedures set out below.

ANZ Direct Online is generally available 24 hours, 365 days a year, excepting any necessary downtime to allow for maintenance of the system.

### **Direct Online Support**

We will provide an ANZ Direct Online helpdesk (Direct Online Support) to assist you in your use of ANZ Direct Online. Direct Online Support will be available from 7.30am to 7.00pm on any Business Day. This service is provided on the understanding that neither we nor our employees will be liable for any direct or indirect loss suffered by you, arising from your use of Direct Online Support.

Any telephone information exchanged and demands or requests made of Direct Online Support may be recorded and retained by us for a period of seven years.

### **Your obligations**

You agree you will not:

- choose a Password and/or PIN that is easily able to be guessed or identified as relating to you, or is an obvious combination of letters and numbers (e.g. sequential numbers, birth date etc);
- make your Password or PIN known to any person;
- keep any record of your Password or PIN in a form in which it can be readily identified;
- store the Password or PIN anywhere, in written or electronic form;
- leave your computer unattended and left logged into ANZ Direct Online or any other application that you and we have agreed you may use as a channel to access ANZ Direct Online.

You agree to:

- ensure all information provided to us in relation to your ANZ Direct Online transactions is accurate;
- comply with the procedures and guidelines in the User Guide and with any directions given by us in relation to your use of ANZ Direct Online;
- keep each Authentication Device securely within your control and return it to us when directed by us;
- ensure that only Users have access to ANZ Direct Online and that each User complies with these Conditions of Use;
- be solely responsible for continuing to meet the system requirements necessary to be able to access ANZ Direct Online;
- take appropriate steps to ensure any computer you use to access ANZ Direct Online is protected against computer viruses and unauthorised access;
- safeguard your Password and PIN and commit your Password and PIN to memory, to guard against the possibility that others may use your Password or PIN to gain unauthorised access to ANZ Direct Online;
- change your Password and PIN regularly using the 'Change Password' link. Our recommendation is that you do this at least once every three months;
- immediately notify an Administrator or call Direct Online Support on 0800 269 347 if your Password, PIN or Client Code becomes known to anyone other than yourself or if any record containing your Password, PIN or client code is lost or stolen. You must also notify us in writing of this. You can reapply for a Password by contacting your Administrator.

### **Our liability**

Except as provided in this clause or as otherwise provided by law, under no circumstances shall we be liable for any loss, claim, delay, expense, damage or other liability (collectively 'loss'), whether direct, indirect, consequential or incidental including, without limitation, any loss of profit, arising from:

- a) the supply or use of ANZ Direct Online or any negligence or failure to perform any obligation or observe any terms of these Conditions of Use by us or any of our related companies (as that term is defined in the Companies Act 1993); or
- b) the accuracy or otherwise of any information contained in any report or information provided to you through ANZ Direct Online; or
- c) the use of ANZ Direct Online, in a manner or for a purpose not authorised by you, by any Authoriser; or
- d) any other cause,

even if we are aware of the possibility of any loss.

Our disclaimer of liability in the above clause will not apply where the loss arose directly out of our or our employees' gross negligence or wilful misconduct, provided that we will not be liable for any indirect or consequential loss, including, without limitation, loss of profits, whether or not such loss is attributable to us, or our employees.

## Your indemnity to us

You shall indemnify and hold us harmless against any loss, claim, delay, damage, expense, injury or other liability (collectively 'loss') sustained or incurred by us, whether direct, indirect, consequential or incidental including, without limitation, any loss of profit, arising:

- a) from a claim by a third party alleging an infringement of any intellectual property rights (including, without limitation, copyright, trademarks and patents) if the alleged infringement arises from:
  - i) your use of ANZ Direct Online in a combination with any other computer program; or
  - ii) your use of ANZ Direct Online in a manner or for a purpose not contemplated by these Conditions of Use or authorised by us; or
  - iii) modification or alteration by you of ANZ Direct Online; or
  - iv) any transaction entered into by you arising out of the use of ANZ Direct Online;
- b) out of your gaining or attempting to gain unauthorised access to our systems or your use of ANZ Direct Online in a manner or for a purpose not contemplated by these Conditions of Use or authorised by us; or
- c) as a consequence of us acting in accordance with instructions which, in our reasonable opinion, appear to comply with the Authorisation Procedures,

even if we are aware of the possibility of any loss.

## Our obligations

We will endeavour to provide a secure system within which you can carry out your banking transactions and retrieve information, as long as your web browser supports 128-bit encryption.

We will endeavour to ensure that electronic payment transactions initiated through ANZ Direct Online are processed, so long as there are sufficient cleared funds in your account.

Transactions can be submitted up until 8.00pm on the payment date. In that context, we will endeavour to process transactions within the following timeframes:

- when submitted on a Business Day, on that day;
- when submitted other than on a Business Day, on the next Business Day.

However, to the extent permitted by law, we will not be liable for any refusal or omission to follow instructions or make any such payments or any other failure to fulfil our obligations, due to causes beyond our reasonable control (including without limitation, the failure or default of any third party network provider or any system or application not owned or directly controlled by us including, for the avoidance of doubt, any failure in a third party's application or system which is used by you to access ANZ Direct Online, or any other electronic, telecommunications, power or computer processing failure).

## Authorisation procedures

You acknowledge that you must comply with the Authorisation Procedures detailed below to render ANZ Direct Online operational and that any breach of the Authorisation Procedures will constitute a breach by you of these Conditions of Use.

The Authorisation Procedures for ANZ Direct Online are as follows:

We will provide you initially with two Authentication Devices, and more by agreement. An additional charge may apply if more than two Authentication Devices are required or if an Authentication Device is lost or damaged. We will also provide each Authoriser with a unique PIN which may be changed by the Authoriser if required. The Authentication Devices remain the property of ANZ.

You shall ensure that:

- i) in each case, receipt of the PIN is acknowledged by the relevant Authorisers on the form provided by us;
- ii) the Authentication Devices are only used by Authorisers in accordance with these Conditions of Use and the User Guide;
- iii) each payment instruction or batch of instructions is authorised by an Authoriser in accordance with the instructions in the User Guide;
- iv) we are advised promptly of any loss or unauthorised use of an Authentication Device or PIN or unauthorised use of ANZ Direct Online.

## Acceptance of instructions

Our acceptance of any instructions, whether made in accordance with the Authorisation Procedures or not, is at our absolute discretion.

## Dishonour of transactions

ANZ Direct Online transactions may be dishonoured by us within 24 hours of being processed (or if not processed on a Business Day, within 24 hours of the commencement of the next Business Day).

## Electronic payments

When you create an electronic payment through ANZ Direct Online, you are authorising us to debit your account on the Payment Date with the amount to be paid to the other party, and to deduct any current bank and/or Government charges that relate to this service.

You will need to know the other party's bank account number to set up an electronic payment. You will be solely responsible for creating the payment and ensuring that the information you provide to us, including the other party's bank account number, is accurate. We accept no responsibility or liability if the bank account number or other information you provide to us is wrong.

Electronic payments are irrevocable by you and can not be stopped, cancelled or altered once your payment has been processed. You must advise us immediately if any incorrect electronic payment information is shown on your bank statement.

If your electronic payment instructions are given for business purposes, to the extent allowed by law, the provisions of the Consumer Guarantees Act 1993 will not apply. We accept no responsibility or liability (subject to our obligations (if any) under the Consumer Guarantees Act 1993) for:

- a) any refusal or omission to make payments; or
- b) late payments or omission to follow your electronic payment instructions; or
- c) the accuracy of information you provide when setting up an electronic payment, including account numbers; or
- d) electronic payments made in accordance with the Authorisation Procedures.

You are solely responsible for making arrangements in relation to any payment if an electronic payment is not made on the Payment Date for any reason.

We may, in our absolute discretion:

- a) determine the order or priority of payment by us of any monies under an electronic payment, or any other authority or transfer instruction which you have given, or may give, or any cheque which you have issued, or may issue; or
- b) refuse to make any one or more electronic payments where there are insufficient cleared funds in your account or otherwise; or
- c) terminate your electronic payment instructions, or reduce any electronic payment amount for any reason and at any time whatsoever, without giving you notice.

Any electronic payment instructions that you give us are subject to any arrangements between you and us in relation to your account, now or in the future, including batched instructions meeting certain validation criteria and being authorised in terms of the Authorisation Procedures. You also agree that your electronic payment instructions will remain in force and effect in relation to all electronic payments made in good faith despite your death or bankruptcy or any other revocation of your electronic payment instructions, until we have received notice of that revocation.

### Real Time Balance and Transaction Reporting

RTB is available on any Business Day in respect of any of your domestic New Zealand dollar accounts held with us. The real time information available via RTB will be balance and transaction information only. All other information in respect of your accounts will not be available real time but will instead be available on the next Business Day.

Balance and transaction information shall reflect the state of the relevant account at the date and time displayed in the relevant screen (unless otherwise advised by us). Real Time Balance and Transaction Reporting RTB is available on any Business Day in respect of any of your domestic New Zealand dollar accounts held with us. The real time information available via RTB will be balance and transaction information only. All other information in respect of your accounts will not be available real time but will instead be available on the next Business Day.

Balance and transaction information shall reflect the state of the relevant account at the date and time displayed in the relevant screen (unless otherwise advised by us).

### Withdrawal of service

We may at any time with reasonable notice withdraw your access to ANZ Direct Online. We may suspend or withdraw your access to ANZ Direct Online at any time without prior notice if:

- you breach any of these Conditions of Use or the terms of the Application; or
- we learn of your death, bankruptcy, liquidation, receivership or lack of legal capacity, or that any step is taken against you for your bankruptcy, liquidation or receivership;
- any event or change occurs which affects your assets, affairs or financial condition, and gives us reasonable grounds to conclude that you may not be able to perform and observe your obligations to us;
- there are insufficient cleared funds to cover payments or payment instructions given;
- you have acted fraudulently; or
- we consider we have other reasonable grounds to do so.

You may at any time cancel your access to ANZ Direct Online by contacting any ANZ branch or Direct Online Support.

You shall, upon the date when we withdraw your access to ANZ Direct Online or you cancel your access to ANZ Direct Online, immediately pay all amounts payable to us, when directed by us.

### Termination of service

Termination of all or any of the ANZ Direct Online services for any reason whatsoever shall not:

- a) relieve you of your obligation to pay all amounts payable to us for the ANZ Direct Online service as at the date of termination;
- b) release you from any liability arising from any breach of these Conditions of Use or the Application form which occurred prior to termination;

entitle you to receive any rebate or refund of the whole or any part of the ANZ Direct Online fees and charges.

### Use of information

Your transactions and any personal information are held within a secure server environment with us. Usage information (which is not intended to identify individuals) is recorded by us for site management and security purposes.

Any personal information you transmit to us or which is held by us will be used to process your transactions and may also be used by us to advise you of any of our products or services, and those of selected third parties.

You have the right to access and correct personal information held by us about you.

## Confidentiality

You shall treat all information you receive relating to ANZ Direct Online, us or any of our customers, as confidential and may only disclose such details to those of your employees who require the information to enable the proper operation and use of ANZ Direct Online, and as a condition of such disclosure, you shall obtain their agreement to be bound by these Conditions of Use.

In no case may you disclose any confidential information to a third party (except your auditors or other third parties whose review is mandated by law) without our prior written consent, which shall be conditional upon their agreement to be bound by these Conditions of Use. Your obligations under this clause are continuing and shall survive the expiration or termination of these Conditions of Use.

## Changes to ANZ Direct Online Services and Conditions of Use

We may at any time modify, add to or delete:

- any of the ANZ Direct Online services and the ANZ Direct Online fees and charges applicable to them; or
- any of these Conditions of Use.

We will give you 14 days notice of such changes, except for interest rates and other variations that are subject to market fluctuations and may be varied at any time.

## Notices

We may notify you of termination or suspension of your access to ANZ Direct Online or any other matter, in writing or by telephone.

We may notify you of amendments to these Conditions of Use or ANZ Direct Online services by any of the following means:

- posting information on our website;
- notice in our branches;
- public notice;
- written notice to you.

## Fees and charges

Use of ANZ Direct Online will incur the ANZ Direct Online fees and charges as detailed in the Application. You may also be charged a registration fee and a monthly fee for each ANZ Direct Online service to which you have access. Details of current fees and charges can be obtained at any ANZ branch or by calling Direct Online Support on 0800 269 347.

ANZ Direct Online transactions are also subject to all conditions, fees and charges applying to specific bank services accessible through ANZ Direct Online, at the time of the transaction, except where an exemption or a fee reduction applies.

You authorise us to debit your nominated account for the amount of our fees and charges (including the ANZ Direct Online fees and charges) and any Government taxes or charges payable on transactions made through ANZ Direct Online. If there are insufficient cleared funds in your nominated account to cover these fees and charges, you authorise us to overdraw your nominated account by debiting the fees and charges due, or to debit any of your other accounts.

Where we have agreed special charging arrangements, you must pay the ANZ Direct Online fees and charges in accordance with those arrangements.

## Other matters

### Copyright

All rights in ANZ Direct Online, including the copyright, are our sole property. ANZ Direct Online embodies substantial creative effort on our part and is protected by New Zealand copyright laws and international treaty obligations.

### Waiver

In relation to these Conditions of Use, no delay or failure to act will be construed as a waiver of, or in any way prejudice, any of our rights. No waiver will be effective unless it is in writing. A waiver of a breach will not waive any other breach.

### Severability

If any of these Conditions of Use is held to be invalid, illegal or unenforceable, that Condition will be severed and the remaining Conditions of Use will be enforceable.

### Governing Law

These Conditions of Use and the contract between you and us arising out of your registration to use ANZ Direct Online are governed by New Zealand law and New Zealand courts have jurisdiction.

## 2. International Payments Conditions of Use

These Conditions of Use apply, in addition to the preceding Conditions of Use, when you use ANZ Direct Online in relation to International Payments. If there is any inconsistency between these Conditions of Use and the preceding Conditions of Use, these Conditions of Use prevail to the extent of the inconsistency.

**'International Payment'** means an electronic or other payment of a foreign currency or of New Zealand dollars to a beneficiary with an overseas bank account.

**'International Business Day'** means, in relation to an International Payment, a Business Day which is also a day on which payments can be made in the payment centre of the currency of the International Payment.

The Bank acts as your agent in giving effect to your instructions. In so doing, the Bank may appoint another bank (a correspondent bank) on your behalf as your agent for the purposes of giving effect to your instructions. You acknowledge that you do not rely on the Bank's skill or judgement in appointing another bank for the purpose of giving effect to your instructions.

Each of the correspondent or intermediary banks appointed by the Bank or the negotiating banks involved in effecting your instructions may have charges, commissions and/or expenses associated with your International Payment over which the Bank has no control and unless otherwise stipulated, all of these charges, commissions and expenses other than the Bank's charges as your paying bank are described as 'for account of the beneficiary'. In this case, you authorise deduction of those charges, commissions and expenses from the amount payable to the beneficiary. This may result in the beneficiary receiving less than the amount we pay. You also agree and acknowledge that the Bank may receive a commission from a correspondent bank in relation to its appointment.

Should a payment, through no fault of the Bank, be unpaid, and you wish to claim a refund of the payment but in a different currency, you can claim a refund of only the New Zealand dollar value of the payment at the time of the refund. This may differ from the original New Zealand dollar value. The refund can not be effected until the Bank has received definite advice from its correspondent bank that the payment is unpaid, that the original instructions have been cancelled and that all correspondent bank, overseas and other charges and fees have been paid. Where local exchange control regulations exist in the beneficiary's country there may be an additional delay in the return of funds.

Where an International Payment or associated refund require conversion from one currency to another, the Bank will make that conversion at its then current rate applicable to transactions of that nature, including by reference to the amount of the International Payment. This may differ from the original New Zealand dollar value.

### 3. Same Day Cleared Payments Conditions of Use

These SCP Conditions of Use apply whenever you use ANZ Direct Online to make or send a Payment Instruction via the SCP System. These SCP Conditions of Use are in addition to the preceding Conditions of Use but in the event of any conflict these SCP Conditions of Use will apply.

In these SCP Conditions of Use, these terms have the following meanings:

**“Accepted”** means in relation to a payment instruction received by us, the time when we release that Payment Instruction for payment through the SCP System.

**“Beneficiary”** recipient of the SCP as set out in the Payment Instruction.

**“Irrevocable”** means the Payment is cannot be reversed in accordance with the New Zealand Bankers’ Association Same Day Cleared Payment SCP Business Rules.

**“Mistake”** means if we fail to act on a Payment Instruction received from you or we do not follow your Payment Instruction or we accidentally duplicate a Payment Instruction.

**“Operating Hours”** means the hours of operation of the SCP Service which at present is 8am-4.30pm on any Business Day or as otherwise advised by us, from time to time.

**“Payment Instruction”** is the form of instruction made by you completing and submitting to us a request to effect your requested SCP via ANZ Direct Online.

**“Receiving Bank”** means the bank which maintains the Beneficiary’s account to which an SCP is to be made pursuant to your Payment Instruction.

**“SCP”** means Same Day Cleared Payment.

**“SCP System”** includes all communication and processing facilities or systems which are used by us and the Receiving Bank in the course of an SCP payment cycle.

1. You may make or send a Payment Instruction during Operating Hours. We may act on any Payment Instruction that is, or purports to be, given by or on behalf of you in accordance with the Conditions of Use.
2. You must not make or send a Payment Instruction that is subject to any condition. We will not act on that condition.
3. You must ensure that all the information included in a Payment Instruction is complete, accurate and correct.
4. We will only make an SCP to the account number you specify in your Payment Instruction and it is to that account to which your SCP will be credited. If you specify an incorrect account number, the SCP may be credited for the account of the wrong person and you may suffer a loss as a result. You accept that neither we nor the Receiving Bank are under any obligation to validate the account number (or validate that the account number belongs to the payee).
5. Once a Payment Instruction has been accepted by us it is Irrevocable.
6. If a Payment Instruction is received during Operating Hours on a Business Day, then your payment will normally be credited to the account number specified in that Payment Instruction on the same Business Day or within such period as we may advise you from time to time. However delays in payment may be experienced if the SCP Systems are not fully operational.
7. If you ask, we will request the Receiving Bank to attempt to notify the Beneficiary of the receipt of that SCP to the Beneficiary’s account. If you request that the Beneficiary is notified you must provide us with the correct facsimile number for the Beneficiary. Neither we nor the Receiving Bank are responsible for any failure to give that notification to the Beneficiary.
8. If we make a Mistake and have not made the SCP in accordance with the Payment Instruction you give us and you suffer loss as a result we will take reasonable steps to attempt to remedy that Mistake and will provide you with a full refund of all fees paid in connection with the corresponding Payment Instruction.
9. In no event shall we have any liability to you or anyone else (whether in contract, tort, equity or otherwise) for or in respect of:
  - any Mistake we make if that Mistake is due to any failure in the SCP System or for any reason that is beyond our reasonable control;
  - the validity or invalidity of any Payment Instruction we receive from you or that appears to be from you; or
  - us not acting upon a Payment Instruction, or part of a Payment Instruction, which we consider illegible, unclear, or where there are insufficient cleared funds available, or we are unable to act upon the Payment Instruction due to circumstances beyond our reasonable control.
10. As a condition of us allowing you to make an SCP you agree to:
  - pay the fees and charges for SCPs which are set out in the Application Form or as otherwise notified to you from time to time by allowing us to debit your Nominated Account;
  - neither use the SCP System, nor allow the SCP System to be used, for any illegal or fraudulent purpose;
  - check your account(s) on a regular basis and immediately advise us of any error or mistake which you identify has or might have arisen as a result of an SCP being made; and
  - ensure you always have sufficient Cleared Funds in your accounts or adequate credit arrangements in place to make the SCP. You acknowledge that we may refuse to make an SCP where there are insufficient Cleared Funds in your account or otherwise.

