

# ELECTRONIC BANK GUARANTEES - SPECIFIC CONDITIONS OF USE

ANZ BUSINESS BANKING  
06.2022



# KEY TERMS OF YOUR ELECTRONIC BANK GUARANTEE

## ABOUT THESE KEY TERMS

ANZ has offered you a Facility, under which one or more electronic bank guarantees may be issued.

The terms and conditions that apply to electronic bank guarantees include:

- (a) the Electronic Bank Guarantees - Specific Conditions of Use;
- (b) the terms and conditions that apply to the Facility (see the below definition); and
- (c) the documents that you agree with the Blockchain Platform.

The aim of these key terms is to help you understand the key terms of your electronic bank guarantee issued under a Facility.

In these Key Terms:

**electronic bank guarantee** means:

- (a) a bank guarantee from ANZ issued electronically through the Blockchain Platform; and
- (b) a replacement paper bank guarantee from ANZ.

**Facility** means the provision of an electronic bank guarantee under:

- (a) the *Cash Cover Indemnity Guarantee Facility Terms and Conditions (CCIG Terms)* which are available at <https://www.anz.com.au/business/help-support/terms-conditions/>

or

- (b) your Agreement (which includes your Letter of Offer).

Other capitalised terms are defined in section 14 of the Electronic Bank Guarantees - Specific Conditions of Use.

These key terms:

- (a) apply only to electronic bank guarantees issued under your Facility; they do not apply to bank guarantees that are not electronic bank guarantees; and
- (b) should be read in conjunction with the “Key Terms of your Business Lending” document that you will also receive. Please note these Key Terms do not contain all of the terms and conditions of your arrangements; and
- (c) are not a substitute for and do not form part of your contract with ANZ. The Specific Conditions of Use that follow on from this page do form part of your contract.

## HOW DO YOU REQUEST AN ELECTRONIC BANK GUARANTEE?

Your first request for an electronic bank guarantee under the Facility must be made in accordance with the CCIG Terms or within six months of the date of your Letter of Offer.

When you request ANZ to issue, and before ANZ can issue, an electronic bank guarantee, you must also comply with all requirements of the Blockchain Platform including the Blockchain Platform Documents. You must also indemnify ANZ for any claims under, or losses that arise from, the electronic bank guarantee.

## HOW IS AN ELECTRONIC BANK GUARANTEE CANCELLED?

You, the favouree or ANZ may initiate a request to cancel an electronic bank guarantee (that is not a replacement paper bank guarantee) at any time by requesting the cancellation using the Blockchain Platform and subject to the following:

- (a) Any request from you or ANZ to cancel such an electronic bank guarantee must also be accepted by all parties on the Blockchain Platform before ANZ is able to proceed with cancellation; the favouree may not accept the cancellation.
- (b) Any request from a favouree to cancel an electronic bank guarantee does not require your confirmation or acceptance.

Where the request is from you or the favouree, ANZ will also need to be satisfied with all information required for the cancellation request.

Where the electronic bank guarantee is a replacement paper bank guarantee, the cancellation must be made in accordance with the terms applying to that replacement paper bank guarantee.

## WHAT HAPPENS IF A FAVOUREE MAKES A DEMAND ON AN ELECTRONIC BANK GUARANTEE ISSUED BY ANZ?

If a favouree makes a compliant demand on an electronic bank guarantee, ANZ will pay the amount demanded without notifying you beforehand. ANZ may make the payment even if you ask ANZ not to. You must immediately pay ANZ the amount claimed and all fees and other amounts owing in relation to the electronic bank guarantee.

ANZ may not notify you of any demand made by a favouree.

A demand by a favouree is also a Review Event under both the CCIG Terms and the Finance Conditions of Use.

## WHAT HAPPENS IF ANZ TERMINATES AN ELECTRONIC BANK GUARANTEE THAT IT HAS ISSUED?

You agree that ANZ may unconditionally terminate an electronic bank guarantee; this is sometimes known as 'pay and walk'. ANZ may do this by paying the favouree an amount equal to the amount that the favouree could claim from ANZ under the electronic bank guarantee, without notifying you beforehand. If this happens, you must immediately pay ANZ the amount claimed and all fees and other amounts owing in relation to the electronic bank guarantee.

## YOU MUST MAINTAIN AN ANZ TRANSACTION ACCOUNT

You must hold and maintain any account required under the Facility for the full term of your Facility.

## WHAT HAPPENS AT THE END OF YOUR TERM?

If the term of your Facility ends, and there are outstanding electronic bank guarantees, you must immediately provide enough cash to cover all outstanding electronic bank guarantees.

If the term of your Facility has ended because of an Event of Default, then the other consequences of an Event of Default will also apply. Please refer to the CCIG Terms or the Finance Conditions of Use for more information.

## WHERE CAN YOU FIND OUT MORE?

Should you wish to view the electronic bank guarantee (other than a replacement paper bank guarantee), a record of the electronic bank guarantee is on the Blockchain Platform.

You should read the provisions that apply to your Facility before you sign anything. Please ask your ANZ business banker, your accountant or lawyer about anything you do not understand.

# ELECTRONIC BANK GUARANTEES - SPECIFIC CONDITIONS OF USE

## ANZ BUSINESS BANKING 06.2022

### 1 WHAT YOU NEED TO KNOW ABOUT THESE TERMS AND CONDITIONS OF USE

This document contains terms for electronic bank guarantees issued under your Facility. Bank guarantees are also known as indemnity guarantees or where issued electronically, digital, online or electronic bank guarantees. A favouree is also known as a Beneficiary.

You should read this document in conjunction with the other documents that make up your Facility including the documents that you agree with the Blockchain Platform.

The terms and conditions that apply to electronic bank guarantees include:

- (a) these Electronic Bank Guarantees - Specific Conditions of Use;
- (b) the terms and conditions that apply to the Facility; and
- (c) the documents that you agree with the Blockchain Platform.

To the extent of any inconsistency between these documents, the terms of this document will prevail and then the terms and conditions that apply to the Facility.

In this document:

- **electronic bank guarantee** means:
  - (a) a bank guarantee from ANZ issued electronically through the Blockchain Platform; and
  - (b) a replacement paper bank guarantee from ANZ.
- **replacement paper bank guarantee** means a bank guarantee issued electronically on the Blockchain Platform that is subsequently converted to, or substituted by, a paper bank guarantee.
- capitalised words and phrases have special meanings. You can find their meanings in section 14 below.

## 2 WHAT YOU NEED TO KNOW ABOUT ANZ'S INVOLVEMENT IN THE BLOCKCHAIN PLATFORM

ANZ may have an economic interest in the Blockchain Platform through a non-controlling equity interest in, and certain contractual arrangements with, the Operator.

## 3 HOW TO CONTACT US

See the 'Contact Details' section at the end of this document.

## 4 USING YOUR FACILITY, REQUESTING AN ELECTRONIC BANK GUARANTEE AND YOUR INDEMNITY IN FAVOUR OF ANZ

### 4.1 When can you use your Facility?

You may use your Facility once we tell you that the relevant terms of the Facility have been met. For example:

- (a) if your Facility is provided under the CCIG Terms, you must satisfy the requirements under those CCIG Terms;
- (b) if your Facility is provided under your Agreement, you must satisfy all the conditions required to be met under your Agreement before your Facility becomes available, which includes meeting conditions precedent and providing any security listed in your Letter of Offer.

### 4.2 What must you do before ANZ can issue an electronic bank guarantee?

When you request ANZ to issue, and before ANZ can issue, an electronic bank guarantee (other than a replacement paper bank guarantee) under your Facility, you:

- (a) agree to complete a request online using the Blockchain Platform. All electronic bank guarantees will be issued only when you, the favouree and ANZ:
  - (i) have satisfied all requirements of the Blockchain Platform; and
  - (ii) accept each electronic bank guarantee in the Blockchain Platform; and
- (b) agree that each electronic bank guarantee is issued on the terms of the Blockchain Platform Documents and your Facility (the latter prevails over the former in case of any inconsistency); and
- (c) agree to indemnify ANZ as contained in section 12 of these Specific Conditions of Use.

A replacement paper bank guarantee can only be issued if permitted or required under the Blockchain Platform.

Your first request for an electronic bank guarantee must be made in accordance with the terms of the Facility. If you already have a bank guarantee and

require this to be replaced with an electronic bank guarantee, please contact your ANZ business banker.

Despite any other provision to the contrary in your Facility, ANZ will not send a copy of any electronic bank guarantee to you after it is issued, and you may not object to the terms of such an electronic bank guarantee after it has been issued.

Should you wish to view the electronic bank guarantee (other than a replacement paper bank guarantee), a record of the electronic bank guarantee is on the Blockchain Platform. You are solely responsible for accepting the terms of the electronic bank guarantee prior to issuance in each case, in accordance with the terms of use of the Blockchain Platform.

## 5 HOW IS AN ELECTRONIC BANK GUARANTEE, OR FACILITY, CANCELLED?

### 5.1 The following provision applies only to electronic bank guarantees issued using the Blockchain Platform and not to any replacement paper bank guarantees.

You, the favouree or ANZ may request to cancel an electronic bank guarantee at any time by requesting the cancellation of that electronic bank guarantee using the Blockchain Platform subject to the Blockchain Platform Documents and the following:

- (a) Any request from you to cancel an electronic bank guarantee must also be accepted by the favouree in the Blockchain Platform before ANZ is able to proceed with cancellation; the favouree may not accept the cancellation request.
- (b) Any request from a favouree to cancel an electronic bank guarantee does not require your confirmation or acceptance.

### 5.2 The following provisions apply only to replacement paper bank guarantees.

You, the favouree or ANZ may request to cancel a replacement paper bank guarantee at any time subject to the following:

- (a) Any request to cancel a replacement paper bank guarantee requires return of the original replacement paper bank guarantee to ANZ; the request does not require the favouree to confirm its acceptance of the cancellation.
- (b) Any request from a favouree to cancel a replacement paper bank guarantee does not require your confirmation or acceptance.

### 5.3 The following provisions apply to all electronic bank guarantees including all replacement paper bank guarantees.

If any one or more electronic bank guarantees are cancelled, you must pay all fees and other amounts owing in relation to the cancelled electronic bank guarantee.

In all cases, ANZ will also need to be satisfied with all information required for the cancellation request.

#### **5.4 The following provisions apply if you wish to cancel your Facility.**

If you wish to cancel your Facility:

- (a) all electronic bank guarantees must be cancelled first; and
- (b) you must comply with all other requirements to cancel your Facility (for example, if you have bank guarantees that are not electronic bank guarantees, the originals must be returned to ANZ).

### **6 WHAT HAPPENS IF A FAVOUREE MAKES A DEMAND ON AN ELECTRONIC BANK GUARANTEE ISSUED BY ANZ?**

A favouree can make a demand on:

- (a) an electronic bank guarantee (other than a replacement paper bank guarantee) using the Blockchain Platform; or
- (b) a replacement paper bank guarantee in accordance with the terms applying to that replacement paper bank guarantee.

If a favouree makes a compliant demand on an electronic bank guarantee, ANZ will pay the amount demanded. ANZ may make the payment even if you ask ANZ not to.

ANZ will not notify you of any demand on an electronic bank guarantee made by a favouree.

A compliant demand on an electronic bank guarantee will also constitute a Review Event and the consequences of a Review Event will apply. Please refer to the terms that apply to your Facility, including the CCIG Terms or the Finance Conditions of Use, for more information.

### **7 WHAT HAPPENS IF ANZ TERMINATES AN ELECTRONIC BANK GUARANTEE THAT IT HAS ISSUED?**

ANZ may unconditionally terminate an electronic bank guarantee. ANZ may do this by paying the favouree an amount equal to the amount that the favouree could claim from ANZ under the electronic bank guarantee, without notifying you until after payment has been made. This is also known as ANZ exercising 'pay and walk'.

### **8 YOU MUST PAY ANZ IMMEDIATELY AFTER IT MAKES A PAYMENT UNDER AN ELECTRONIC BANK GUARANTEE**

If ANZ has made a payment to a favouree, arising from either:

- (a) the favouree making a demand upon an electronic bank guarantee (see section 6 above); or

- (b) ANZ terminating an electronic bank guarantee by paying the favouree (see section 7 above);

you must immediately pay ANZ the amount of that payment together with all fees and other amounts owing in relation to the electronic bank guarantee. ANZ may debit any accounts you hold with ANZ for this purpose, even if this results in a negative account balance.

## **9 REQUESTING THE TRANSFER OF, OR AN AMENDMENT TO, AN ELECTRONIC BANK GUARANTEE**

### **9.1 The following provisions apply only to electronic bank guarantees issued using the Blockchain Platform and not to any replacement paper bank guarantees.**

- (a) You can request the transfer of an electronic bank guarantee using the Blockchain Platform. Any request from you to transfer an electronic bank guarantee must also be accepted by the favouree, the proposed favouree and ANZ before ANZ is able to proceed with the transfer.
- (b) A favouree can request the transfer of an electronic bank guarantee using the Blockchain Platform. Any request from a favouree to transfer an electronic bank guarantee must also be accepted by the proposed favouree and ANZ before ANZ is able to proceed with the transfer; you will be notified of this transfer after it has been completed.
- (c) You can request to amend an electronic bank guarantee using the Blockchain Platform, subject to the Blockchain Platform Documents. Any request from you to amend an electronic bank guarantee must also be accepted by the favouree and ANZ before ANZ is able to proceed with the amendment.
- (d) A favouree can also request to amend an electronic bank guarantee using the Blockchain Platform, subject to the Blockchain Platform Documents. Any request from a favouree to amend an electronic bank guarantee must also be accepted by you and ANZ before ANZ is able to proceed with the amendment.

As the electronic bank guarantee is issued by ANZ, in each of the above situations, ANZ will act reasonably in assessing the request but may refuse to consent to any proposed amendments to, or transfers of, an electronic bank guarantee. ANZ will not disclose its reasons for withholding consent, unless required to do so by law.

### **9.2 The following provisions apply only to replacement paper bank guarantees.**

- (a) A replacement paper bank guarantee is not assignable. This means that neither you nor the favouree can request its transfer to another favouree.

- (b) A replacement paper bank guarantee cannot be amended. However, a replacement paper bank guarantee can be exchanged for:
  - (i) a paper bank guarantee in ANZ's format; or
  - (ii) a new replacement paper bank guarantee.
- (c) The terms and conditions that apply to the exchanged document must be accepted by you, the favouree and ANZ before ANZ is able to proceed with it.

## 10 YOU MUST MAINTAIN AN ANZ TRANSACTION ACCOUNT

You must hold and maintain any account required under the Facility for the full term of your Facility.

## 11 WHAT HAPPENS AT THE END OF THE TERM OF YOUR FACILITY?

If the term of your Facility ends:

- (a) and there are outstanding bank guarantees (whether those outstanding bank guarantees are electronic bank guarantees, replacement paper bank guarantees or any other form of bank guarantee), you must immediately provide enough cash to cover all outstanding bank guarantees, on the conditions contained in the CCIG Terms or your Agreement, as applicable.
- (b) because of an Event of Default, then the other consequences of an Event of Default will also apply. Please refer to the CCIG Terms or your Agreement, as applicable, for more information.

## 12 YOUR INDEMNITY IN FAVOUR OF ANZ

### 12.1 Your indemnity to ANZ

Without limiting any other applicable indemnity, you must on demand indemnify ANZ and make good any loss or liability arising directly from, and any reasonable costs arising in connection with:

- (a) any claim or demand made under an electronic bank guarantee;
- (b) issuance of the electronic bank guarantee, including losses that arise from you not complying with your obligations under the Blockchain Platform Documents to which you are a party;
- (c) any determination or decision made by ANZ to act or refuse to act in connection with your Facility or any electronic bank guarantee because of:
  - (i) any inability of ANZ to collect or freely deal with funds which it receives in relation to an amount owing by, or advanced to, you (other than due to ANZ's negligence);
  - (ii) a court order or other similar obligation (whether or not subsequently discharged);
- (d) any claim made against ANZ by a third party relating to any electronic bank guarantee;

- (e) it being unlawful in any jurisdiction for ANZ to perform its obligations or enforce its rights;
- (f) any breach of any AML/CTF Law (other than by ANZ);
- (g) any breach by you of a law or requirement of any government agency or statutory authority; or
- (h) any transaction to which your Facility or any electronic bank guarantee relates in any way being tainted by fraud or alleged fraud (other than ANZ's fraud).

### 12.2 Exclusions from your indemnity to ANZ

The loss, liability and costs referred to in this clause 12 do not include any loss, liability or costs to the extent that they arise from the negligence, fraud or wilful default of ANZ or its officers, employees, contractors or agents or any receiver appointed by ANZ.

### 12.3 Other rules about your indemnity to ANZ

Any indemnity, reimbursement or similar obligation in these Specific Conditions of Use or in any Facility:

- (a) is a continuing obligation despite any intervening payment, settlement or other thing;
- (b) is independent of your other obligations to ANZ or any other party;
- (c) survives the termination or discharge of any Facility and the satisfaction of any payment or obligation secured by any security; and
- (d) is in addition to any other rights that ANZ has under these Specific Conditions of Use, any Facility or given independently by law.

### 12.4 How your indemnity to ANZ operates

It is not necessary for ANZ to incur expense or make payment before enforcing a right of indemnity in connection with these Specific Conditions of Use.

## 13 CHANGES TO THESE SPECIFIC CONDITIONS OF USE

Sometimes we may need to change the terms and conditions that apply to your Facility, including these Specific Conditions of Use.

The changes that we can make are contained in your Agreement or the CCIG Terms. Where:

- (a) the CCIG Terms apply to your Facility, these Specific Conditions of Use can be varied as if they form part of the CCIG Terms; and
- (b) your Agreement applies to your Facility, these Specific Conditions of Use can be varied as if they form part of your Agreement.

## 14 DEFINITIONS

The words and phrases below have the following special meanings in this document.

**Agreement** has the meaning given in your Letter of Offer.

**Bank Guarantee Deed** means any bank guarantee deed (however described) executed by ANZ as a deed poll setting out the terms on which ANZ issues electronic bank guarantees.

**Blockchain Platform** means a distributed ledger technology platform for the recording of, and communication about, the creation, amendment, performance and other matters in relation to electronic bank guarantees that may be issued by ANZ under your Facility.

**Blockchain Platform Documents** means the documentation to which you or ANZ are party in connection with their participation in a Blockchain Platform, including:

- (a) the Bank Guarantee Deed;
- (b) the User Terms; and
- (c) the Participant Rules

but not including documentation to which ANZ has a commercial interest as an investor in the Operator, or documentation between the Participants and the Operator that relates to the technology for the Blockchain Platform.

**CCIG Terms** means the *Cash Cover Indemnity Guarantee Facility Terms and Conditions (CCIG Terms)* which are available at <https://www.anz.com.au/business/help-support/terms-conditions/>

**Customer, you or your** means each person named as a borrower or customer for each Facility. When more than one person is named as a borrower or customer, it means each person individually and any two or more of those people. It also includes each person's executors and administrators.

**Event of Default** means each event described as such in the CCIG Terms or in your Agreement and any other event that you and we agree is a default event or event of default.

**Facility** means the provision of a bank guarantee (whether an electronic bank guarantee, a replacement paper bank guarantee or any other bank guarantee) under:

- (a) the CCIG Terms; or
- (b) your Agreement.

**Finance Conditions of Use** means the ANZ booklet titled 'Business Finance Conditions of Use'.

**Letter of Offer** means the letter titled 'letter of offer' between a Customer and ANZ.

**Operator** means the entity that operates (including manages and administers) a Blockchain Platform from time to time and at any relevant time; this does not include you, the favouree or ANZ.

**Participant** means, in relation to a Blockchain Platform at any time, a person who is a party to the Participant Rules as a participant in that Blockchain Platform at that time.

**Participant Rules** means the contractual terms to, or by, which each participant in a Blockchain Platform is party or bound.

**Review Event** means each event described as such in the CCIG Terms or in your Agreement and any other event that you and we agree is a review event.

**User Terms** means the contractual terms to, or by, which each user of a Blockchain Platform is party or bound.

## CONTACT DETAILS

ANZ may change the contact details below from time to time. If we do, we will not notify you of the change (unless required to do so by law or industry code) but these details will be published on [anz.com](http://anz.com).

### ANZ Small Business Banking

1800 351 663

8am – 7pm (AEST), Weekdays

### ANZ Business Banking

Speak to your ANZ Manager or call 1800 801 485

8am – 8pm (AEST), Weekdays

### ANZ Agribusiness Banking

Speak to your ANZ Manager or call 1800 462 474

8am – 8pm (AEST), Weekdays

### ANZ Internet Banking for Business

1800 269 242 or +61 3 8699 6906 (International customers)

8am – 8pm (AEST), Weekdays

