

Master Agreement for Foreign Currency Transactions



Between: Bank of New Zealand

And: Insert Name of Customer

Warning

Foreign currency transactions can sometimes result in loss if exchange or interest rates change. You should not enter into these transactions if you do not understand the risks. It is your responsibility to monitor your transactions. We will not be liable for your losses in any circumstances to the extent permissible by law.

1. Scope of Master Agreement

- 1.1 All transactions which provide for the purchase of one currency in exchange for the sale of another currency and which are entered into between you and us on or before the date of this Master Agreement and are not fully executed by that date, are governed by this Master Agreement from and including that date.
- 1.2 All transactions which provide for the purchase of one currency in exchange for the sale of another currency and which are entered into between you and us after the date of this Master Agreement are only governed by this Master Agreement.
- 1.3 This Master Agreement and all transactions constitute a single Master Agreement between you and us (collectively referred to as the "Master Agreement").

2. Entering and Varying Transactions

- 2.1 You may initiate a transaction by applying to us:
 - over the telephone,
 - in writing delivered by post, courier or facsimile transmission,
 - by other electronic means (such as email), and giving us the information required by us from time to time. However, we are not obliged to accept your application.
- 2.2 You and we are legally bound by a transaction from the time a transaction is agreed between us.

2.3 We will send you a written confirmation setting out the details of each transaction. Within one business day of receiving the confirmation, you must notify us if there is an error in the confirmation (you are bound by the confirmation unless you tell us there is an error within that time). However, the transaction is valid and binding even if you do notify us of an error or we fail to send a confirmation.

- 2.4 You may request us:
 - a) to extend or cancel a transaction in whole or in part;
 - b) in the case of a fixed term transaction, to deliver prior to the maturity date; or
 - c) in the case of a transaction with an optional delivery period, to deliver prior to the start of that period.

We may agree to meet your request with or without conditions, such as that the exchange rate is adjusted or you meet our fees and expenses.

3. Payments

- 3.1 You and we must make the payments required under each transaction in funds that are immediately payable in the place and in the manner agreed, or if it has not been agreed, as we nominate. The amount and the currency of the payments will depend on the terms of each transaction. However, if you and we owe each other amounts under this Master Agreement in the same currency on the same day, then, unless otherwise agreed, the party owing the higher amount must pay the other the difference between those amounts. In those circumstances the other party would not make a payment.
- 3.2 All payments must be in cleared funds and the amount of each payment made by you to us must be the full amount without any withholding, deduction or (except as allowed by clause 3.1) set-off. Each of our obligations to make a payment to you referred to in clause 3.1 is subject to the condition precedent that none of the events referred to in clause 4.1 has occurred and is continuing.

4. Default

- 4.1 We may terminate any or all outstanding transactions if:
- (a) you do not pay on time any amount due under this Master Agreement; or
 - (b) you do something you agree not to do or you do not do something you agree to do in connection with this Master Agreement; or
 - (c) you do not perform any of your obligations to us under other agreements with us; or
 - (d) a representation made by you in connection with this Master Agreement is untrue or misleading in any material respect; or
 - (e) you become insolvent; or
 - (f) you become subject to a recommendation by the Securities Commission or the Reserve Bank of New Zealand to the relevant Minister supporting the appointment of a statutory manager.

If we elect to terminate, neither party need make further payments for those transactions under clause 3. Instead, this clause 4 governs the payments to be made.

- 4.2 If we terminate outstanding transactions under clause 4.1, we must calculate in New Zealand dollars the mark-to-market value of each transaction as at the termination date using prevailing market rates chosen by us in good faith. We determine the mark-to-market value having regard to what another person would pay us (expressed as a negative number), or what we would have to pay another person (expressed as a positive number), to take over your rights and obligations under the terminated transactions.
- 4.3 The sum of all positive mark-to-market values of terminated transactions is to be set-off against the sum of all negative mark-to-market values of terminated transactions. If as a result of this calculation the overall sum is positive, you must pay us an amount equal to that overall positive sum. Alternatively, if as a result of this calculation the overall sum is negative, then, subject to clause 6.4, we must pay you the absolute value of that overall negative sum. We must notify you as soon as practicable after making those calculations. Payments due under this clause must be made not later than two business days after we give this notice.

- 4.4 You represent and warrant that as of the date of this Master Agreement and each transaction that none of the events of default outlined in clause 4.1 has occurred or is continuing.

5. Liability

- 5.1 You are not liable for any losses:
- that are caused by the fraudulent or negligent conduct of our contractors, employees or agents;
 - resulting from unauthorised transactions where it is clear that you have not contributed to those losses;
 - resulting from faults that occur in the machines or systems used by us in connection with this Master Agreement, unless those faults are obvious or advised by message or notice on display.
- 5.2 You are liable for all loss from unauthorised transactions if you have acted fraudulently, either alone or together with any other person.
- 5.3 You may be liable for some or all of the loss from unauthorised transactions if you have contributed to or caused that loss, for example, by failing to comply with this Master Agreement.
- 5.4 If you have not acted fraudulently or negligently but have contributed to or caused losses from unauthorised transactions, you may be liable for some or all of the actual losses occurring before notification to us except for that portion of the total losses incurred on any one day that exceeds the aggregate of any prearranged credit.
- 5.5 Except as provided in clauses 5.1 to 5.4, we exclude all liability, whether arising in contract, tort or otherwise for or in respect of all claims, actions, losses, liabilities or damages (whether direct, indirect, consequential or incidental losses or damages, and whether for loss of profits or otherwise) suffered or incurred by you or any other person arising out of or in connection with this Master Agreement. Without in any way limiting the generality of the foregoing, we are not liable to you in respect of:
- the loss, delay in transit, destruction or mutilation of any form of oral, written or electronic message; or

- any oral, written or electronic instruction purporting to be sent by a person you authorise under clause 6.3; or
 - any errors or omissions in any instruction; or
 - our failure to perform any of its obligations set out in this Master Agreement where such a failure is a direct or indirect result of the inability of services, software or hardware used or provided by any third party; or
 - any losses caused by occurrences beyond our control, including machine or communication line failure; or
 - any indirect, special or consequential losses caused by occurrences within our control.
- 5.6 You indemnify us fully against any liability, loss or damage we suffer or incur as a result of us acting in accordance with this Master Agreement.

6. Miscellaneous

- 6.1 No assignment - Neither party may assign, mortgage, charge, declare a trust over or otherwise deal with any of its rights under this Master Agreement without the other party's consent.
- 6.2 Authority - Each party represents and warrants that:
- it has the power to enter this Master Agreement and each transaction;
 - this Master Agreement and each future transaction, once entered into, will be binding on it;
 - it enters this Master Agreement and each transaction as a principal and not as a trustee or agent;
 - it enters this Master Agreement without violating any other Master Agreement by which it is bound; and
 - it enters this Master Agreement in reliance upon independent advice.
- 6.3 Authorised persons - You must give us on request a list of persons authorised to enter and settle transactions on your behalf. You must tell us of any changes to that list from time to time.
- 6.4 Set-off - At any time after we exercise our rights under clause 4.1, we may set off any money we owe you under this Master Agreement against any money you owe us (whether or not under this Master Agreement and irrespective of the currency or place of payment). This clause does not affect any other rights of set-off we may have.
- 6.5 Interest - You must pay us on demand interest on amounts not paid by you when due. The interest accrues from the due date until you pay the overdue amount. Interest is calculated at a rate and in a manner determined by us from time to time. Each month (or any other period we choose) we may add to the amount you owe us any interest payable under this clause which is overdue (i.e., "capitalise" the interest). You will then be liable for interest under this clause on the total amount.
- 6.6 Costs and other expenses - You must pay us on demand for our costs in enforcing or taking any other action in connection with our rights if we become entitled to take action under clause 4.1. You must also pay us on demand our fees, charges and expenses in connection with this Master Agreement or transactions.
- 6.7 Consent to telephone recording - You consent to us recording our telephone conversations with you and such recordings being used in any legal proceedings between us.
- 6.8 Our certificate - A certificate by us (including, but not limited to, a certificate stating the mark-to-market value of a terminated transaction) about a matter or about a sum payable in connection with this Master Agreement is sufficient evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be false.
- 6.9 Disruption in a Market - If in relation to an outstanding transaction we are prevented for reasons beyond our control from making or receiving a payment in the place or manner agreed, we may terminate the transaction immediately and notify you accordingly. If we terminate an outstanding transaction under this clause 6.9, we must act in accordance with clause 4.2 in respect of the transaction. For the purposes of this clause 6.9 only, "reasons beyond our control" includes disruption in a market in which we normally deal, disruption in the means by which we usually communicate, and a change in any law affecting this Master Agreement or a transaction under it.
- 6.10 Disclosure of information - You authorise us and each of our officers, agents and employees to disclose to any of our branches or other offices or NAB any information relating to you which we may hold now or in the future.



6.11 Amendment - No amendment or waiver in respect of this Master Agreement will be effective unless it is in writing and executed by each of us.

6.12 Governing law and jurisdiction - This Master Agreement is governed by New Zealand law and the courts of New Zealand shall have non-exclusive jurisdiction in any proceedings relating to it.

7. Meaning of Words

insolvent means insolvent, bankrupt, in receivership, subject to statutory management, under administration or reconstruction, in liquidation, struck off the register under the Companies Act 1993, wound up, subject to any arrangement, assignment, compromise or composition, or dissolved.

NAB means National Australia Bank Limited, its subsidiary companies or its related group companies.

person includes an individual, a firm, a body corporate, an unincorporated association or an authority.

transaction means a transaction of the type described in clauses 1.1 and 1.2 of this Master Agreement and includes any other transaction that you and we agree is a transaction for the purpose of this Master Agreement.

we or us means Bank of New Zealand and its successors and assigns.

you means the entity or entities named at the beginning of this document as "customer". You includes your successors and assigns.

Executed as a Master Agreement

Date: Insert Today's Date

Signed for and on behalf of **BANK OF NEW ZEALAND:**

Signed:

Authorised Person

Name: BNZ Staff member

Title: BNZ staff member's title

Signed for and on behalf of **INSERT NAME OF CUSTOMER:**

Signed:

Director/Authorised Person

Name:

Title: