

Customer Commitment



August 2022



About this Customer Commitment

This Customer Commitment relates to agreements and transactions to which we are a party that:

- (a) are governed by an ISDA Master Agreement (Multicurrency-Cross Border) or ISDA 2002 Master Agreement together with an ISDA Schedule and related confirmation(s); or
- (b) provide for the purchase of one currency with another currency and form part of an agreement together with a New Zealand Bankers' Association Foreign Exchange Master Agreement (**FX Master Agreement**).

Some agreements and transactions are subject to ancillary agreements or terms and conditions (such as the Electronic Trading User Agreement, a letter regarding 'Historic Rate Rollovers' or our Derivatives General Terms). Where this is the case, this Customer Commitment also applies to the ancillary agreements and/or terms and conditions.

This Customer Commitment applies if your agreement or transaction is a "standard form consumer contract" or a "standard form small trade contract" for the purposes of the Fair Trading Act 1986. This means it will not apply if:

- (a) your agreement or the transaction was subject to effective negotiation between you and us; or
- (b) you are a business customer and the total amount of consideration payable to us in any annual period under the agreement or transaction is \$250,000 or more (this includes consideration payable under the agreement or transaction as well as any other contract with us on the same or substantially similar terms).

This Customer Commitment describes how we'll exercise some of our rights and discretions in relation to these types of agreements and transactions.

Please contact us if you have any questions about whether this Customer Commitment applies to you.

When we refer to "we", "us" or "our" in this Customer Commitment, we are referring to Westpac Banking Corporation ABN 33 007 457 141 (acting through its New Zealand branch).

1. General Commitment - applicable to all agreements and transactions

When we do anything under your contract, including where you ask us to do something, we'll act in a reasonable and fair way. We'll do this by having regard to both your and our respective business interests and circumstances at the time.

2. Specific Commitments - applicable to all agreements and transactions

2.1 Entire Agreement Clauses

We won't rely on clauses that limit our agreement with you to the written contract. This means that statements we make to you (including verbal statements) can form part of our agreement if that is clearly intended.

2.2 Indemnity clauses

If something goes wrong, we'll limit the kinds of loss we'll ask you to cover under indemnity clauses:

- (a) Unless losses are caused by you or your employees, contractors or agents acting fraudulently, either alone or together with any other person, we'll only look to recover losses that are a direct result of the matters covered by any indemnities that you have given us under our contract with you.
- (b) We'll not rely on indemnities to claim losses which arise from the fraud, negligence or wilful misconduct of us, our employees, contractors or those of our related entities.

2.3 Use of "immediately"

Unless we want you to act "immediately" to protect us from a credit, reputation, data compromise, data security, systems security or other risk, we won't require you to take certain actions "immediately" if it is not reasonably practicable.

3. Specific Commitments - ISDAs

3.1 Threshold Amount

If your ISDA Schedule does not specify a "Threshold Amount" (in relation to you) or if it specifies a "Threshold Amount" (in relation to you) that is less than NZ\$20,000, we will treat it as if the "Threshold Amount" (in relation to you) is NZ\$20,000.

3.2 "Specified Entities"

If your ISDA Schedule states that the definition of "Specified Entity" (in relation to you) means "Affiliates" we will only rely on this if there is no "Credit Support Provider" (as defined in the ISDA Schedule).

3.3 Additional Termination Event

If your ISDA Schedule states that it is an "Additional Termination Event" if you prepay or cancel any moneys lent or obligations incurred under a "Finance Agreement", we will not treat it as an "Additional Termination Event" if the moneys lent or obligations incurred are prepaid or cancelled in part only (and not in full) and we have (i) agreed to make a proportionate reduction to the notional amount(s) of your hedging transaction(s) such that they

continue to match the principal amount outstanding under the relevant "Finance Agreement" and (ii) effected that reduction.

3.4 Audited financial statements

Your ISDA Schedule may state that you are required to deliver audited financial statements. If this is the case (and despite the stated requirement) we may confirm to you that the financial statements are not required to be audited. If we do confirm this we will do so in writing.

3.5 Early Termination Provision

We will not rely on, or seek to exercise any rights we have, under any clause in your ISDA Schedule that allows us to terminate any transaction for any reason before its stated maturity simply by giving notice. This does not affect any other rights of termination that we may have, including in relation to "Termination Events" as defined in the ISDA Master Agreement or any rights to terminate a transaction after a certain time has elapsed from the trade date or under an "Optional Early Termination", "Mandatory Early Termination" or similar termination provision in your relevant confirmation.

4. Specific Commitments - FX Master Agreement

4.1 Events of Default - missed payment

If you fail to make a payment under your agreement, we'll only treat it as a default if you fail to remedy the missed payment within one business day of us giving you notice of your failure to make the payment.

If you fail to make a payment under a different agreement between you and us, we'll only treat it as a default under the FX Master Agreement if any applicable grace period in relation to that missed payment has expired.

4.2 Events of Default - compliance with obligations

If you fail to comply with or perform obligations under your agreement (apart from obligations to make payment(s)), we'll only treat it as a default if you fail to remedy the failure to comply within 30 days of us giving you notice of your failure to comply with your obligations.

If you fail to comply with or perform obligations (apart from obligations to make payment(s)) under a different agreement between you and us, we'll only treat it as a default under the FX Master Agreement if the circumstances are likely to materially increase our credit risk or give rise to a reputation risk.

In this section "materially increasing our credit risk" means there is a material increase in the risk that:

- you might not comply with any of your financial obligations to us;
- we might not be able to fully recover from any secured property everything you owe us under contracts we have with you; or
- we're unable to assess either of the things described above.

In this section, "reputation risk" means a material risk that we might not comply with law or a material risk to our reputation.

4.3 Representations by us

The FX Master Agreement states that you have not relied on any representation or information made or given by the Bank (other than a representation set out in the FX Master Agreement). We will not rely on this statement in this clause as evidence that we have not made any particular representation or given you any information.

4.4 Events of default – our rights regarding payments to you

Clause 3.2 of the FX Master Agreement provides that we are not obliged to make a payment to you if you are in default. We will not rely on this clause to avoid making a payment to you if you have satisfied all of your payment or delivery obligations and have no future payment or delivery obligations (whether absolute or contingent) under this transaction or any other agreement with us.

4.5 Interest

Clause 7.5 of the FX Master Agreement allows us to charge interest on amounts that are not paid by you when due. Although the clause allows us to determine the rate of interest at our discretion, when exercising our rights under this clause we will choose an interest rate that is commercially reasonable given your and our respective business interests and circumstances at the time.

4.6 Fees

We will not require you to meet any fees or expenses under clause 7.7 of the FX Master Agreement unless such fees or expenses have been expressly agreed with you. Note that this does not affect any requirement for you to make any other payment required under the FX Master Agreement.

4.7 Enforcement Costs

The FX Master Agreement states that, if you are in default, you will meet any costs incurred by us if and when we enforce our rights under the Agreement. Despite this, we will not ask you to meet any costs that are not reasonably incurred by us (including any costs that are incurred as a result of our fraud, negligence or wilful misconduct – or that of our employees, contractors or agents (unless you introduced us to that agent) or those of our related entities).

4.8 Confirmations

Although the FX Master Agreement states that you must tell us “immediately” if you receive a written confirmation that is incorrect, we will give you a period of 3 business days to tell us.

