

# DERIVATIVES GENERAL TERMS

Issued by Westpac Banking Corporation  
ABN 33 007 457 141

Dated: 28 September 2022  
Version 6

## **Important**

Westpac Banking Corporation is incorporated in Australia with ABN 33 007 457 141 and is a registered bank in New Zealand under the Banking (Prudential Supervision) Act 1989. Westpac, acting through its New Zealand branch, provides financial markets services in New Zealand under the Westpac Institutional Bank brand. Westpac Banking Corporation acting through its New Zealand branch has prepared this document.

This document forms part of your client agreement with us for the purposes of the Financial Markets Conduct Act 2013 (New Zealand). Your client agreement is your agreement with us relating to the issue of derivatives by us to you.

By entering into pricing discussions with us for a derivative, you agree to the terms in this document. Please read this document carefully to ensure you understand it before you decide to enter into pricing discussions for a derivative. We are happy to explain anything that is not clear.



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## 1. About this document

- 1.1 These terms apply to **derivatives** issued by us, **Westpac Banking Corporation** (a company incorporated in Australia with ABN 33 007 457 141) to **retail investors** in New Zealand.
- 1.2 Certain bolded words and phrases used in this document have the meaning given in clause 22 (Definitions and interpretation).
- 1.3 These terms are additional to and do not replace other terms that may be applicable to your derivative with us (for instance, under any master dealing agreement which applies to your derivative) unless they have been expressly replaced in writing with our agreement.
- 1.4 These terms take effect from 28 September 2022.

## 2. Client agreement

- 2.1 These terms, together with:
  - (a) in relation to derivatives other than carbon forward contracts, any master dealing agreement referred to in clause 4 (How is a derivative entered into?); or
  - (b) in relation to carbon forward contracts, our standard form of confirmation for Westpac spot and forward carbon transactions (**Carbon Confirmation**),

form your **client agreement** with us. Your **client agreement** sets out terms and conditions that apply to the relationship between us in relation to derivatives.

- 2.2 If any of these terms (other than the terms set out in clauses 9 (Unpaid amounts) or 13 (Our liability to you)) contradict or conflict with any terms of:
  - (a) a master dealing agreement you have entered into with us; or
  - (b) our **Carbon Confirmation**,

such that it is impossible or impracticable for those terms to be read together, the terms of your master dealing agreement or our Carbon Confirmation (as applicable) will prevail to the extent necessary to resolve the contradiction or conflict.

## 3. Westpac requirements before dealing

- 3.1 Before entering into a derivative, we will assess:
  - (a) your financial position to determine whether or not you satisfy our credit requirements; and
  - (b) your ability to understand that derivative and the risks involved. Where you are not an individual, we will assess the ability of the relevant directors, employees or agents (as appropriate) to determine whether they, either collectively or individually, have the ability to understand that derivative and the risks involved.
- 3.2 Before entering into a derivative, you will need to:
  - (a) provide us with all information that we reasonably request to enable us to complete our assessment of the matters set out in clause 3.1; and
  - (b) sign any documentation reasonably required by our approval.
- 3.3 You agree that we may not agree to enter into any derivatives with you if you do not provide the information and sign the documentation required by us in accordance with this clause 3 (Westpac requirements before dealing).

## 4. How is a derivative entered into?

- 4.1 You acknowledge that you may need to sign one of the following master dealing agreements as specified by us before we can enter into a derivative with you:
  - (a) an International Swaps and Derivatives Association Master Agreement and its associated schedule;
  - (b) a New Zealand Bankers' Association Foreign Exchange Master Agreement; or
  - (c) Westpac's Master Agreement for Derivative Transactions.

- 4.2 You agree that we may refuse to enter into any derivatives with you if you do not sign the master dealing agreement specified by us in accordance with clause 4.1.
- 4.3 If we agree to enter into a carbon forward contract with you, you agree that the terms and conditions set out in the **Carbon Confirmation** will apply to that derivative.

### **Important**

**Unless you have already entered into a master dealing agreement or you only intend to enter into carbon forward contracts, you will be provided with a copy of the relevant master dealing agreement and we strongly recommend that you fully consider its terms before signing.**

**If you may enter into carbon forward contracts, you will be provided with a copy of the Carbon Confirmation and we strongly recommend you read the Carbon Confirmation.**

**You should obtain independent advice if you do not understand any aspect of the master dealing agreement, Carbon Confirmation or any other documents that are provided to you to sign.**

- 4.4 The commercial terms agreed in relation to any specific derivative will be agreed before we enter into that derivative. This may occur during a telephone call, by email or electronically (depending on the type of derivative). Once we reach an agreement with you, both parties are bound by the terms of the specific derivative.
- 4.5 Shortly after entering into a derivative, we will send you a document called a confirmation outlining the commercial terms of your derivative.
- 4.6 In most cases you will need to sign this confirmation and return it to us.
- 4.7 The confirmation evidences the commercial terms of the specific derivative entered into between you and us during the telephone call, by email or electronically.
- 4.8 It is extremely important that you check your confirmation to make sure that it accurately records the commercial terms of your derivative. If there is a discrepancy between your understanding and the confirmation or you do not receive a confirmation from us, you must contact your **Westpac** financial markets dealer as a matter of urgency.

## **5. Rights to terminate a derivative**

5.1 Your:

- (a) master dealing agreement with us and/or the confirmation for a specific derivative (in relation to derivatives other than carbon forward contracts); or
- (b) **Carbon Confirmation** (in relation to carbon forward contracts),

will specify the circumstances in which your master dealing agreement and/or a derivative may be terminated and the way in which any amount payable on termination is calculated.

5.2 You may ask us to terminate a derivative before the expiry of the term of that derivative. We will provide you with a termination quote. There may be a cost or gain to you as a result of a derivative being terminated early. If you accept the termination quote and pay any applicable cost, we will terminate your derivative. If there is a gain as a result of the derivative being terminated early, we will pay you any applicable gain following termination of the derivative.

## **6. How to make payments to Westpac**

Unless we agree otherwise, amounts due to us in respect of a derivative can be paid to us by:

- (a) direct debit payment (for New Zealand dollar amounts); or
- (b) making a payment through another electronic delivery mechanism operated by a member of the **Westpac Group** in New Zealand (for New Zealand dollar amounts); or
- (c) telegraphic transfer (for foreign currency amounts); or
- (d) transferring funds from a foreign currency account or deposit (for foreign currency amounts).

## 7. Our obligations

- 7.1 When we do anything under these terms or any other applicable terms and conditions, 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.
- 7.2 In exercising any powers or performing any duties in relation to any derivatives issued to you by us, we agree to exercise the care, diligence and skill that a prudent licensed derivatives issuer would exercise in the same circumstances.
- 7.3 We will take all reasonable steps:
- (a) to ensure that any functions which are required to issue derivatives which are contracted to a third party are performed in the same manner and are subject to the same duties and restrictions as if we were performing them directly; and
  - (b) to monitor the performance of those functions.

## 8. Instructions to us

- 8.1 You agree that we may, at our sole discretion, accept instructions (from you or people authorised by you) by post, telephone, facsimile, email, SMS message, electronic banking service or any other means and you authorise us to act on any such instructions.
- 8.2 If you are an organisation or operate a business you must maintain appropriate internal controls to ensure that unauthorised, forged or fraudulent instructions are not given to us.
- 8.3 If you want to provide us with email, facsimile or telephone instructions in relation to derivatives, we may require you to complete an indemnity form. The purpose of this indemnity is to protect us against the consequences of acting on instructions which may not represent your genuine wishes, but which appear to us to be genuine.

## 9. Unpaid amounts

- 9.1 If money you owe, or which is payable by you to any member of the **Westpac Group** is not paid when due, we and/ or Westpac New Zealand Limited (company number 1763882) may use the credit balance of any of your accounts to either pay off or put money towards the unpaid amount at any time. For this purpose:
- (a) money may be transferred from one account to another;
  - (b) any number of accounts may be treated as one;
  - (c) money in one currency may be used to buy money in another currency; and
  - (d) term investments may be broken.
- 9.2 We and Westpac New Zealand Limited may do this without prior notice, in any order, and as often as necessary.
- 9.3 You agree that you may not set off any amounts a member of the **Westpac Group** owes you (for example credit balances in your accounts) against amounts you owe us. If we or Westpac New Zealand Limited exercise our right to under this clause 9 (Unpaid amounts), we will notify you promptly in writing at the address shown in our records.
- 9.4 Nothing in this clause 9 (Unpaid amounts) creates a charge or security interest. This clause 9 (Unpaid amounts) is without prejudice and is in addition to any set-off, offset, combination of accounts, lien, right of retention or withholding or similar right, we are, at any time, entitled to (whether by contract, operation of law or otherwise).

## 10. Anti-Money Laundering and Sanctions

- 10.1 You agree to provide all information to us which we require in order to manage our anti-money laundering and countering terrorism-financing obligations, to manage our economic trade sanctions risks, or to comply with any laws, rules or regulations in New Zealand or any other country.
- 10.2 You agree that we may:
- (a) refuse to establish a business relationship with you;
  - (b) be required to delay, defer, stop or refuse to process any transaction; or
  - (c) terminate our business relationship with you,

at any time without notice, if you fail to provide us with the information referred to in clause 10.1 in the manner and timeframe specified by us.

- 10.3 You agree that we may delay, defer, stop, or refuse to process any transaction without incurring any liability if we know or suspect that:
- (a) the transaction will or may breach any laws or regulations in New Zealand or any other country; or
  - (b) the transaction involves any person (natural, corporate or governmental) who is itself sanctioned, or is connected directly or indirectly, to any person (natural, corporate or governmental) who is sanctioned, under economic and trade sanctions imposed by any country.

## 11. Financial crimes monitoring

- 11.1 When you enter into a derivative with us or make or receive a payment under a derivative with us, you undertake that:
- (a) you are not and will not enter into any agreement with us under an assumed name;
  - (b) any funds used by you to meet your obligations under a derivative have not been derived from or related to any criminal activities;
  - (c) any payments received from us will not be used in relation to any criminal activities;
  - (d) if we ask, you will provide us with additional information we reasonably require from you for the purposes of meeting our regulatory and compliance obligations. This may include information about the source of funds used to settle a derivative; and
  - (e) you will not start, engage in or effect a transaction with us that may be in breach of New Zealand law or sanctions (or the law or sanctions of any other country).
- 11.2 You agree to indemnify (which means compensate for harm or loss) each member of the **Westpac Group** against any loss arising from any breach by you of the above undertakings. Unless losses are caused by you or your employees, contractors or agents acting fraudulently, either alone or together with any other person, each member of the **Westpac Group** will only look to recover losses that are a direct result of the matters covered by this indemnity. Members of the **Westpac Group** will not rely on this indemnity to claim losses which arise from the fraud, negligence or wilful misconduct of:
- (a) members of the **Westpac Group**;
  - (b) **Westpac's** employees, contractors or agents or those of members of the **Westpac Group**; or
  - (c) any receiver we appoint to you.
- 11.3 You should be aware that:
- (a) we may obtain information about you or any beneficial owner of an interest in a derivative from third parties if we believe this is necessary to comply with our regulatory and compliance obligations;
  - (b) transactions may be delayed, blocked, frozen or refused where we have reasonable grounds to believe that they breach New Zealand law or sanctions (or the law or sanctions of any other country); and
  - (c) where transactions are delayed, blocked, frozen or refused, we and other members of the **Westpac Group** are not liable for any loss you suffer (including consequential loss).

## 12. Telephone conversations

- 12.1 You consent to:
- (a) conversations with our dealing room and settlement departments being recorded. This is standard market practice. We do this to make sure that we have complete records of the details of all derivatives; and
  - (b) recorded conversations being retained for a limited period (the recordings are usually used where there is a dispute or for staff monitoring purposes).

## 13. Our liability to you

We will not be liable for:

- (a) any losses arising as a result of us acting in accordance with the terms of your **client agreement** or any other applicable terms and conditions;
- (b) losses caused by you, or anyone acting on your behalf, providing us with incorrect information;
- (c) losses caused by user error by you or anyone acting on your behalf;

- (d) losses arising out of unauthorised access or fraud committed by you or any of your employees, officers or agents;
- (e) any direct or indirect costs, losses, damages or other liability resulting from your failure;
- (f) losses caused by circumstances beyond our control, including any machine or system failure, or any strike or dispute;
- (g) losses arising from your use or inability to access an electronic banking service at any time, inaccurate content or information in any electronic banking service, or any failure or delay in providing any service via the internet, phone or mobile device; or
- (h) losses arising from faults in, or a malfunction of, any equipment (including telecommunications equipment) which supports an electronic banking service.

## 14. Taxation

- 14.1 Taxation law is complex and its application to a **derivative** will depend on your particular circumstances. You acknowledge that you are responsible for ensuring a **derivative** will provide an appropriate tax outcome for you.
- 14.2 When deciding whether a **derivative** is suitable for your circumstances, you should, among other things, consider the impact it will have on your own tax position and seek professional advice on the tax implications it may have for you. Taxation laws are subject to change and these changes may materially affect your tax position with respect to a **derivative**.
- 14.3 This clause 14.3 applies if your master dealing agreement is a New Zealand Bankers' Association Foreign Exchange Master Agreement. You promise to make all payments without any deduction or withholding on account of any tax whether imposed in New Zealand or elsewhere (except to the extent required by law). If:
- (a) you are required by law to make any deduction or withholding from any payment; or
  - (b) we are required by law to make any payment on account of any tax (other than tax on our overall net income) on or in relation to any amount received or receivable under a **derivative** entered into with you,

the amount payable by you shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, we receive and retain a net amount equal to the amount which we would have received and retained had no such deduction, withholding or payment been made.

You promise to deliver to us, on request, a receipt issued by the applicable taxation or other authority evidencing that such deduction or withholding has been made.

In this clause 14.3, "**tax**" includes any tax, levy, impost, deduction, charge, rate, duty or withholding which is levied or imposed by a governmental agency and is required by law to be paid and any related interest, penalty, charge, fee or other amount.

## 15. Privacy

- 15.1 We are committed to your privacy. The **Westpac Privacy Policy** explains how personal information is collected, stored, protected and used. You and we agree that the **Westpac Privacy Policy** applies in relation to **derivatives** that are subject to these terms. The **Westpac Privacy Policy** is available at any Westpac branch in New Zealand or online at [westpac.co.nz](http://westpac.co.nz).
- 15.2 In addition, you authorise us and any member of the **Westpac Group** to obtain, use and/or disclose information held about you and your employees, directors and agents to the New Zealand Financial Markets Authority, if required by the Financial Markets Authority.

## 16. Consumer Guarantees Act

- 16.1 Where you are a 'consumer' for the purposes of the Consumer Guarantees Act 1993 (**CGA**), nothing in these terms seeks to limit or vary your rights pursuant to the CGA.
- 16.2 Subject to clause 16.1, you confirm that you are acquiring the services in trade and that the rights and guarantees under the CGA do not apply.

## 17. The right to vary

- 17.1 We reserve the right to change these terms and to change or withdraw any of our services or products at any time without your consent. We will not alter the terms of a derivative that we have already entered into with you other than in accordance with the terms of your master dealing agreement or Carbon Confirmation (as applicable).

- 17.2 Without limiting our ability to vary under clause 17.1, examples of when we may exercise these rights include:
- (a) to respond to changes for reasons outside of our control (for example changes required to comply with law, a code of practice, a regulator’s requirements or guidance or decisions of courts or other dispute resolution processes or changes driven by our suppliers or other third parties or for sustainability reasons);
  - (b) if our legal or regulatory requirements change;
  - (c) if the legal or regulatory requirements of any other member of the Westpac Group changes;
  - (d) to allow us to respond to market changes;
  - (e) to reflect improvements to our services or products that technological, service or propositional enhancements have allowed us to make; or
  - (f) to enable changes that are reasonably necessary for our other legitimate business purposes.
- 17.3 We’ll generally give you at least 30 days’ notice of changes to these terms by either a direct communication (like a letter or email), a notice on our website or uploading a new version of these terms on the offer register at **www.disclose-register.companiesoffice.govt.nz**. We may give you less than 30 days’ notice, notice after the change takes effect, or no notice if it’s reasonable to do so, in relation to the following types of changes:
- (a) changes that are outside of our control;
  - (b) changes where specific laws set out when we may (or must) give you notice; and
  - (c) changes resulting from changes to our products or services (including the addition of new products or services) where we reasonably consider that there is no adverse impact on you.

## 18. Waiver and severability

- 18.1 We can only waive a provision of these terms expressly.
- 18.2 If any part of these terms is found to be unenforceable, that will not affect the enforceability of the remaining parts of these terms.

## 19. Third parties

- 19.1 Subject to clause 19.2, neither of us intend these terms to be enforceable by any third party.
- 19.2 These terms may be enforced by any member of the **Westpac Group**.

## 20. Applicable law

These terms are governed by and must be interpreted in accordance with New Zealand law and you and we accept the non-exclusive jurisdiction of the courts of New Zealand.

## 21. Assignment

- 21.1 Your rights and obligations under these terms may not be assigned or transferred without our prior written consent.
- 21.2 To the extent permitted by law, we may at any time, and without notice to you, transfer or assign all or any of our rights and obligations under these terms to any other member of the Westpac Group. You consent to any such transfer or assignment.

## 22. Definitions and interpretation

- 22.1 In these terms the following word and phrases shall have the meaning stated:

<b>Carbon Confirmation</b>	means our standard form of confirmation for Westpac spot and forward carbon transactions.
<b>client agreement</b>	has the same meaning as is given to that phrase in the Financial Markets Conduct Act 2013.
<b>derivative</b>	has the same meaning as is given to that word in the Financial Markets Conduct Act 2013.



<b>retail investor</b>	has the same meaning as is given to that phrase in the Financial Markets Conduct Act 2013.
<b>Westpac, we, our or us</b>	means (unless the context requires otherwise) Westpac Banking Corporation a company incorporated in Australia with ABN 33 007 457 141.
<b>Westpac Group</b>	means Westpac Banking Corporation and its subsidiaries from time to time.
<b>Westpac Privacy Policy</b>	means the document entitled “Westpac Privacy Policy” which explains how Westpac New Zealand Limited and its NZ operations collects, stores, uses and shares personal information. The Westpac Privacy Policy applies to all products and services made available in New Zealand by the <b>Westpac Group</b> (as that term is defined in the policy).

22.2 In these terms:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a person includes a natural person, company, corporation, trust, partnership, limited partnership, organisation, society, joint venture or governmental agency, in each case whether or not having a separate legal personality, and any association of entities; and
- (c) references to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

