

Description of forward transactions of sale of greenhouse gas emission allowances with cash settlement option



Table of Contents

1. Definitions.....	3
2. Forward transaction of sale of greenhouse gas emission allowances with cash settlement option	5
3. Transaction Settlement	5
a. Transaction Settlement by making the Transfer	6
b. Cash Transaction Settlement.....	6
c. Accelerated Transaction Settlement	6
4. Settlement Disruption.....	7
5. Settlement Suspension.....	7
6. Non-making the Transfer.....	7
7. Non-acceptance of Contracted Allowances.....	8
8. Final provisions	8
9. General description of market risks related to concluding the Transaction	8
10. Entry into force.....	8

Terms used in this Description of forward transactions of sale of greenhouse gas emission allowances with cash settlement option (hereinafter: "Transaction Description") shall have the meaning defined in the "Rules of cooperation in the area of financial market transactions" or the Framework Agreement, unless otherwise defined herein.

§ 1. Definitions

Terms used in this Transaction Description shall have the following meanings (in alphabetical order):

- 1/ **Accelerated Settlement Amount** (24)¹ – the amount set by the Bank for the purposes of accelerated Transaction settlement, referred to in § 3 letter c), reflecting the amount of cash liability of the Party due to accelerated settlement of the Transaction.
- 2/ **Accelerated Transaction Settlement Day** (12) – the day agreed by the Parties, on which accelerated settlement of the whole Transaction takes place, as referred to in § 3 letter c).
- 3/ **Administrator Incident** (66) – suspending some or all processes of the Relevant Registry or EUTL in accordance with the Registry Regulation by the National Administrator or the Central Administrator when: (a) such Relevant Registry is not kept in line with provisions of the Registry Regulation or other applicable law; (b) suspension is related to the scheduled or unscheduled service of the Relevant Registry; or (c) a security breach occurred or there is justified suspicion of such breach, which would pose a threat to integrity of the registry systems (including backup systems);
- 4/ **Affected Allowance** (7) – allowance that was or it is deemed that it was subject to Unauthorised Transfer, in justified opinion of the Bank based on the information provided by the Competent Source.
- 5/ **Affected Party** (52) – the Party, the fulfilment of the obligations of which under the Transaction is hindered by the Settlement Disruption Event or the Settlement Suspension Event.
- 6/ **Allowance** (58) – one EUA.
- 7/ **Allowance Account** (43) – with respect to the particular Party, the account in the Registry identified in the agreed Transaction Terms or identified by the Client in the Information Card as the main account or the alternative account to which the Transfer of Allowances subject to the Transaction can be made, whereas, if, in the particular case, the obligation to make or to accept the Transfer to the main account cannot be fulfilled, the account identified by the Party as the alternative account shall be considered the Allowance Account; for the Bank, it shall be the main or alternative account identified in the separate statement of the Bank or in any other form determined by the Bank.
- 8/ **Allowance Type** (56) – EUA.
- 9/ **Buyer** (23) – the Party referred to as such in the agreed Transaction Terms.
- 10/ **Cash Settlement Amount** (25) – amount being a difference between the Market Value and the Price.
- 11/ **Central Administrator** (18) – the entity responsible for EUTL in line with Article 20 of the Directive and Article 6 of the Registry Regulation.
- 12/ **Community Registry** (46) – the Community registry referred to in Article 19 section 1 of the Directive.
- 13/ **Competent Authority** (62) – authorised authority, National Administrator and/or Central Administrator or any other body holding authorisations in accordance with the Directive and/or rules of the Registry with respect to blocking, suspending, refusing, rejecting, cancelling or in any other way influencing the Transfer of Allowances, in whole or in a part.
- 14/ **Competent Source** (64) – competent authority (in accordance with the definition in the Registry Regulation), Central Administrator, National Administrator or any other entity authorised in accordance with the Directive or the Registry Regulation to block, suspend, refuse, reject, cancel or exercise other influence on the transfer of Allowances (in whole or in a part), or any other entity enforcing the law, tax offices of a Member State, European Anti-Fraud Office or the European Police Office.
- 15/ **Contracted Allowances** (65) – Allowances with the Allowance Validity Period and in the Allowance Number indicated in agreed Transaction Terms (or agreed in accordance with provisions of the Transaction Description).
- 16/ **COP/MOP** (5) – conference of the parties serving as the meeting of the parties to the Kyoto Protocol.
- 17/ **Currency** (59) – the currency referred to as such in the agreed Transaction Terms.
- 18/ **Deferred Delivery Day** (39) – the day set in § 5 section 2.
- 19/ **Delivery Day/Delivery Days** (10) – day/days referred to as such in the agreed Transaction Terms.
- 20/ **Delivery or Deliveries** (6) – obligation of the Seller to Transfer the Contracted Allowances in accordance with the Transaction concluded.
- 21/ **Directive** (9) – Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading and amending Council Directive 96/61/EC, as amended.
- 22/ **EUA** (15) – "allowance" within the meaning of Chapter III of the Directive.
- 23/ **EUTL** (16) – independent transaction log referred to in Article 20 section 1 of the Directive.
- 24/ **Executive Board** (44) – the board managing the clean development mechanism established pursuant to Article 12 section 4 of the Kyoto Protocol and in accordance with International Rules.
- 25/ **Final Compliance Day** (33) – second Settlement Working Day after submitting the call to the Seller in accordance with § 7 section 2 or if such day occurs earlier, Settlement Date which occurs on or after the Delivery Day set in the agreed Transaction Terms.
- 26/ **Final Delivery Day** (32) – second Settlement Working Day after submitting the call to the Seller in accordance with § 6 section 2 or if such day occurs earlier, Settlement Date which occurs on or after the Delivery Day set in the agreed Transaction Terms.
- 27/ **International Rules** (27) – principles, regulations, guidelines, instructions, procedures related to international emission allowance trading, set in UNFCCC, Kyoto Protocol, Directive, Registry Regulation, COP/MOP decisions, public minutes of meetings of the Executive Board and all decisions and letters of all supporting bodies and technical panels established based on the Kyoto Protocol.
- 28/ **Kyoto Protocol** (38) – the Protocol to the United Nations Framework Convention on Climate Change adopted at the Third Conference of the Parties to the United Nations Framework Convention on Climate Change in Kyoto, on 11 December 1997, as amended.
- 29/ **Latest Execution Date** (29) – in the case of the Settlement Suspension Event taking place with respect to the obligation to deliver or accept the Allowance due in the following period:
 - a/ from 1 May 2013 (inclusive) to 31 December 2014 (inclusive) – 1 June 2016;
 - b/ from 1 January 2015 (inclusive) to 31 December 2016 (inclusive) – 1 June 2018;
 - c/ from 1 January 2017 (inclusive) to 31 December 2018 (inclusive) – 1 June 2020;
 - d/ from 1 January 2019 (inclusive) to the 25th calendar day of the month in which the Phase-End Settlement Date is going to take place – 25th calendar day of the month, in which the Phase-End Settlement Date is going to take place.
- 30/ **Loss due to Encumbrance** (50) – amount of losses and costs related to the Transaction calculated in good faith, including the loss due to replacement of the item to which the Transaction referred or due to termination of the item, which hedged this Transaction, together with losses or costs that occurred before submitting the notification by the Buyer, legal costs and other related expenses (except the excess emissions penalty within the meaning of the Directive or the compensation for such penalty that the Buyer has to pay to a third party). If a breach of the Obligation not to Encumber resulted from the Transfer of Affected Allowances, the Buyer can include in this amount all losses incurred in relation to a suit, demand or proceedings instituted against the Buyer by a third party as a result of the Buyer transferring Affected Allowances delivered by the Seller during the Transaction implementation.
- 31/ **Market Value** (60) – the price determined by the Bank, amounting to a product of the price of Allowances expressed in euro, established as at the Delivery Day based on the Quoted Price, and the Allowance Number.
- 32/ **Member State** (36) – any state belonging to the European Union in the particular time.

¹ Translator's note: the number at the end of definition means its ordinal number in the Polish language version.

- 33/ **Modification** (28) – method of setting the Quoted Price, which the Bank can use in the case of the Price Quotation Disruption Event. This method involves the Bank determining the Quoted Price in an economically justified way based on market sources and other information that the Bank considers material.
- 34/ **National Administrator** (22) – the entity responsible, on behalf of the Member State, for administration of the set of allowance accounts for this Member State in the Union Registry, in line with Article 7 of the Registry Regulation.
- 35/ **Obligation not to Encumber** (67) – shall be understood to mean the obligation set in § 3 section 11.
- 36/ **Operator** (31) – the operator in accordance with the definition included in the Directive.
- 37/ **Party/Parties** (51) – the Bank or the Client respectively;
- 38/ **Payment Day/Payment Days** (11) – day/days referred to as such in the agreed Transaction Terms, for cash settlement, properly modified in accordance with § 3 section 2.
- 39/ **Phase-End Settlement Date** (14) – Settlement Date set for April 2021.
- 40/ **Phase-End Settlement Date** (35) – Settlement Date which is to occur in April 2021.
- 41/ **Price Quotation Disruption Event** (40) – one of the following situations:
- ICE Futures Europe does not publish the price for futures contracts EUA Phase III Daily Futures (or any other name which will replace it) on the Delivery Day or information from ICE Futures Europe is temporarily or permanently unavailable,
 - EUA and futures contracts for EUA trading on an exchange or any other market, on which EUA or such contracts are traded, is suspended, ceased or limited in a significant degree, in the opinion of the Bank;
 - futures contracts for EUA with new maturity dates are not introduced to trading, EUA are withdrawn or prices for EUA Phase III Daily Futures (or any other name which will replace it) futures contracts are permanently ceased to be published or are permanently unavailable,
 - the formula, method of calculation of the price or the method of settlement of EUA Phase III Daily Futures (or any other name which will replace it) futures contracts is subject to a significant change, in the opinion of the Bank,
- where ICE Futures Europe shall also be understood to mean any legal successor of ICE Futures Europe.
- 42/ **Primary Affected Party** (37) – the entity from the account of which the Unauthorised Transfer of Affected Allowances took place.
- 43/ **Quoted Price** (4) – the final settlement price for a futures contract EUA Phase III Daily Futures (or with any other name, which will replace it) (referred to as the Exchange Delivery Settlement Price), expiring on the Delivery Date, expressed in euro for 1 metric ton of EUA, quoted on ICE Futures Europe exchange, subject to Modification.
- 44/ **Registry** (45) – the registry established in line with International Rules for the purposes of issuing, holding, transferring, cancelling or exchanging the Allowances. For the avoidance of doubt, references to the Registry shall include the reference to the Community Registry and the Allowance Account in the Community Registry, which are subject to jurisdiction of the National Administrator and together constitute the Registry for the particular state.
- 45/ **Registry Functioning** (17) – irrespective of the potential occurrence of the Administrator Incident:
- functioning of the Relevant Registry;
 - functioning of EUTL; and
 - functioning of the link to the Relevant Registry, EUTL.
- 46/ **Registry Regulation** (48) – Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011.
- 47/ **Relevant Registry** (63) – the Registry through which the Party is obliged to make the Transfer of Allowances in relation to the Transaction.
- 48/ **Replacement Costs of the Buyer** (20) – the following amount:
- the price set by the Bank based on the quotation obtained from the Allowance or derivative instruments on Allowances trading market, on the day of termination of the Transaction referred to in § 6 section 2 point 2 letter b, which corresponds to the amount that the Buyer would have to pay for Contracted Allowances as a result of the spot transaction settlement, for which the date of delivery of Contracted Allowances would fall relatively soon, less:
 - Price (plus potential Settlement Suspension Cost) plus
 - Interest for Delay on the difference between the amount set in letter a and letter b for the period from the Delivery Day (inclusive) to the day of submission of the notice on terminating the Transaction (excluding that day).
- 49/ **Replacement Costs of the Seller** (21) – the following amount:
- The Price (plus potential Settlement Suspension Cost) less
 - the price set by the Bank based on the quotation obtained from the Allowance or derivative instruments on Allowances trading market, on the day of termination of the Transaction referred to in § 7 section 2 point 2 letter b, which corresponds to the amount that the Seller would receive for Contracted Allowances as a result of the spot transaction settlement, for which the date of delivery of Contracted Allowances would fall relatively soon, plus:
 - Interest for Delay on the difference between the amount set in letter a and letter b for the period from the Delivery Day (inclusive) to the day of submission of the notice on terminating the Transaction (excluding that day).
- 50/ **Replacement Settlement Amount** (26) – amount being a difference between the Replacement Value and the Price.
- 51/ **Replacement Value** (61) – the price set as the market price by the Bank for Contracted Allowances agreed for the Transaction to be terminated.
- 52/ **Scheme** (53) – the scheme for transferring Allowances between (a) persons within the European Union; (b) persons within the European Union and persons in other countries, whereas in both cases it is the scheme recognised in accordance with the procedure set in the Directive and, subject to its provisions, introduced and implemented pursuant to the national law of every Member State and some other countries outside the European Union.
- 53/ **Second Validity Period** (8) – for EUA it is the period from 1 January 2008 to 31 December 2012.
- 54/ **Seller** (49) – the Party referred to as such in the agreed Transaction Terms.
- 55/ **Settlement Data** (34) – 30 April each year with respect to the previous calendar year or any other day which is agreed in the future for the particular year as the last date on which Allowances can be used for the purposes of settlement in accordance with provisions of the Scheme.
- 56/ **Settlement Disruption Event** (41) – an event beyond the control of the Party that cannot be overcome using any reasonable measures, which prevents this Party to make the Transfer or accept Contracted Allowances respectively. In particular, the following events shall not be considered the Settlement Disruption Event:
- not having relevant Allowances to make the Transfer of Contracted Allowances;
 - non allocating a sufficient number of Allowances for the purposes of making the Transfer of Contracted Allowances in the national plan for allocation of greenhouse gas emission allowances;
 - lack of timely recording of Allowances allocated in the national plan for allocation of greenhouse gas emission allowances on the account of the Party in the case of an option to purchase Contracted Allowances in another country included in the Scheme;
 - lack of timely replacement of Allowances from the Second Validity Period with Allowances from the Third Validity Period.
- 57/ **Settlement Suspension Cost** (19) – additional fee payable by the Buyer to the Seller in accordance with provisions of Article 5 due to the occurrence of the Settlement Suspension Event, calculated based on the “EUR-EONIA-OIS-COMPOUND” rate for “overnight” deposits set by the European Central Bank (or any other rate that will replace it) on the Price for the period from the Delivery Day (inclusive) to: (a) day of the Contracted Allowances Transfer; or (b) Deferred Delivery Day (excluding that day), whichever is earlier.
- 58/ **Settlement Suspension Event** (42) – the situation hindering the particular Party to fulfil its obligations related to the Transaction to make the Transfer or accept Contracted Allowances, due to:
- non-Functioning of the Registry;
 - occurrence of the Administrator Incident;
- whereas in both these instances the Bank is the Affected Party.

- 59/ **Settlement Working Day** (47) – a day other than Saturday, Sunday or statutory holidays, on which banks are opened to carry out their basic activities in Warsaw and in London, which, at the same time, is a day on which the international clearing and settlement system TARGET is operating.
- 60/ **Third Validity Period** (55) – for EUA it is the period referred to in Article 16 of the Directive 2009/29/EC, from 1 January 2013 to 31 December 2020.
- 61/ **Transaction Price or Amount** (2) – amount which is a product of the Unit Price and the Allowance Number.
- 62/ **Transfer** (54) – the transfer of certain Allowances between the Parties or between certain Allowance Accounts.
- 63/ **Unauthorised Transfer** (1) – transfer of the Allowance between accounts of two entities when such transfer is not initiated by an authorised representative or an additional authorised representative (within the meaning of the Registry Regulation) of the party initiating the transfer.
- 64/ **UNFCCC** (57) – United Nations Framework Convention on Climate Change.
- 65/ **Unit Price** (3) – net price of the Allowance (one EUA) set in the agreed Transaction Terms. Unit Price does not include the applicable Value Added Tax (“Value Added Tax”), which is or can be imposed on the Delivery or Deliveries.
- 66/ **Validity Period** (30) – with respect to Allowances, the relevant period referred to in Article 11(2) of the Directive or another relevant period that can be accepted within the Scheme, set in the Transaction Terms.
- 67/ **Working Day** (13) – a day other than Saturday, Sunday or statutory holidays, on which banks are opened to carry out their basic activities in Warsaw.

§ 2. Forward transaction of sale of greenhouse gas emission allowances with cash settlement option

1. Forward transaction of sale of greenhouse gas emission allowances with cash settlement option (“**CO₂ Transaction/Transaction**”) is the derivative transaction involving purchase or sale of greenhouse gas emission Allowances in the quantity sufficient for the settlement on the Settlement Date.
2. The Transaction can be concluded based on negotiations or an offer.
3. The Buyer is a party to the Transaction buying Allowances. The Seller is a party to the Transaction selling Allowances.
4. When concluding the Transaction based on negotiations, the Client and the Bank agree on the following terms:
 - 1/ Seller;
 - 2/ Buyer;
 - 3/ Allowance Type;
 - 4/ Validity Period;
 - 5/ Allowance Number;
 - 6/ Unit Price;
 - 7/ Currency;
 - 8/ Delivery Day;
 - 9/ Payment Day.
5. The Client non-determining the Validity Period when concluding the Transaction shall not result in invalidity of the Transaction. In the case of non-determining the Validity Period, it shall be concluded that the Parties agreed on the Third Validity Period.
6. The Client and the Bank can agree on more than one Delivery Day. In such case, for every Delivery Day the Parties shall at least separately agree on the Payment Day, Allowance Number and Unit Price. In such case, the Parties are deemed to conclude the Transaction comprising some Transaction with separately agreed Delivery Days, Payment Days, Allowance Numbers and Unit Prices. Transaction terms agreed collectively for all component Transactions in accordance with section 4 are the same for every component Transaction.
7. To conclude the Transaction based on an offer, the Client presents to the Bank, by telephone, in a manner suitable to agree on Transaction terms, the offer to conclude the Transaction, while determining the following Transaction terms:
 - 1/ Seller;
 - 2/ Buyer;
 - 3/ Allowance Type;
 - 4/ Validity Period;
 - 5/ Allowance Number;
 - 6/ Unit Price;
 - 7/ Currency;
 - 8/ Delivery Day;
 - 9/ Payment Day.
8. The Client non-determining the Validity Period when making the offer to conclude the Transaction shall not result in ineffectiveness of the offer or invalidity of the Transaction. In the case of non-determining the Validity Period, it shall be concluded that the offer indicated the Third Validity Period.
9. Additionally, except the Transaction terms listed in section 7, when making the offer to conclude the Transaction, the Client can set the offer validity date by indicating the day and exact hour of expiry of the offer in the case of its non-acceptance by the Bank. In the case of non-determining the offer validity date, the offer shall remain binding until 11:00 am. on the next Working Day after making the offer.
10. Before the offer expiry date, the offer can be cancelled by the Client only by telephone, in a manner suitable to agree on Transaction terms, provided that the Bank expresses its explicit consent to cancel the offer.
11. The Transaction based on an offer shall be concluded upon the Bank accepts the offer for concluding the Transaction on terms identified in the offer. The Bank shall accept the offer for concluding the Transaction by telephone. If it is impossible to contact the Client by telephone to accept the offer, the Bank can accept the offer by making the declaration by fax or sending it by electronic mail to the fax number or e-mail address respectively indicated to the Bank by the Client in the Information Card constituting an appendix to the Framework Agreement or in any other form agreed by the Parties, while setting therein Transaction terms referred to in section 7.

§ 3. Transaction Settlement

1. Transactions can be settled physically (by making the Transfer of Contracted Allowances) or in cash, depending on the settlement form selected in accordance with provisions of this Transaction Description. Transactions can also be settled by making the accelerated settlement.
2. On the day falling 5 (five) Settlement Working Days before the Delivery Day, until 04:00 pm Central European Time, the Client can notify the Bank of selecting the cash settlement for the particular Transaction, while at the same time agreeing on the modified Payment Day for the cash settlement. In the case of non-agreeing the modified Payment Day, the Payment Day shall fall on the 5th Working Day after the Payment Day originally agreed in Transaction Terms.
3. In the case of non-selecting the cash settlement in accordance with section 2, the Transaction shall be settled by making the Transfer.
4. The Client must notify the Bank of selecting the cash settlement of the Transaction in a manner suitable for concluding the Transaction, set in the Transaction Description, whereas the Bank shall not send the confirmation of such selection.
5. On the due date of cash liabilities of the Bank or the Client under the Transaction or this Transaction Description, the Bank shall debit or credit respectively the Client's Settlement Account with amounts of these liabilities.
6. On the due date of cash liabilities of under the Transaction or this Transaction Description, the Client shall be obliged to have on the Client's Settlement Account the relevant amount, sufficient to satisfy these liabilities.

a. Transaction Settlement by making the Transfer

7. The Seller shall be obliged to Transfer Contracted Allowances to the Buyer on the Delivery Day from the Seller's Allowance Account to the Buyer's Allowance Account, whereas for each Transfer the Seller undertakes to deliver and it is assumed that on the day on which the Seller delivers such Contracted Allowances, the Transfer of Contracted Allowances shall be completed until 04:00 pm Central European Time, on the Delivery Day. Subject to the next sentence, the Transfer shall be considered completed upon the Buyer receiving Contracted Allowances to the Buyer's Allowance Account. If the Transfer of Contracted Allowances is completed on the particular day after 04:00 pm Central European Time or on the day which is not the Settlement Working Day, Contracted Allowances are deemed delivered at 10:00 am Central European Time on the next Settlement Working Day. Irrespective of the previous sentence, risk related to Contracted Allowances shall be transferred to the Buyer upon their delivery to the Buyer's Allowance Account. When the Bank is the Seller, the Bank shall be entitled to suspend the Transfer of Contracted Allowances until the Buyer pays the Price, whereas the Bank shall make the Transfer of Allowances in the number corresponding to the amount of the part of the Price paid by the Buyer (rounded down). Provisions of § 6 section 3 shall apply accordingly.
8. The Buyer shall be obliged to accept from the Seller Contracted Allowances on the Delivery Day, and to pay the Seller the Price denominated in the Currency on the Payment Day. When the Bank is the Buyer, the Bank shall be entitled to suspend the payment of the Price to the Seller until completing the Transfer of Contracted Allowances, whereas the Bank shall pay a part of the Price corresponding to the number of Allowances delivered. Provisions of § 6 section 3 shall apply accordingly.
9. Unless the Parties agree otherwise, when on the Delivery Day, based on two or more Transactions for Allowances of the same Allowance Type and the Validity Period, settled between the same Allowance Accounts, the Parties shall be obliged to make mutual Deliveries, and in such case mutual obligations of the Parties to make such Deliveries shall be considered fulfilled without the need for their execution, provided that the Party that was originally obliged to make the Deliveries of the total Allowance Number exceeding the total Allowance Number to deliver which the other Party was obliged, this Party remains obliged to deliver such Allowances in the number corresponding to such excess.
10. Either Party shall be obliged to have and maintain all communication links and meet all other conditions and requirements that can be necessary to make the Transfer or accept Allowances in accordance with the rules binding within the Scheme and agreed Transaction Terms. In particular, either Party shall ensure that the Allowance Account is valid and suitable for transferring Allowances within the Scheme. The obligation to make the Transfer and the obligation to accept Contracted Allowances shall include the obligation to carry out any activities required by applicable regulations of the relevant jurisdiction, needed for making the effective Transfer, which apply to the Seller or the Buyer respectively.
11. The Seller shall be obliged to deliver to the Buyer the Contracted Allowances, which are free from any third parties' rights, claims and encumbrances ("**Obligation not to Encumber**").
12. In the case of a breach of the Obligation not to Encumber:
 - 1/ such breach shall not constitute a breach of transaction terms within the meaning of § 9 of the Rules;
 - 2/ all other Transactions, to which the breach does not apply, shall remain binding;
 - 3/ in the case of the Seller receiving from the Buyer the notification of a breach of the Obligation not to Encumber, the Buyer shall determine the Loss due to Encumbrance, without undue delay, and shall present to the Seller the detailed calculation of this amount;
 - 4/ within three Working Days of (a) the date of receiving the call to pay this amount; or (b) the date of receiving the notification with the detailed calculation referred to in item 3 (whichever of these dates is later), the Seller shall pay the buyer the Loss due to Encumbrance. Payment of the Loss due to Encumbrance shall cover all claims of the Buyer resulting from the breach of the Obligation not to Encumber. In the case of lack of timely payment of the Loss due to Encumbrance, the Buyer shall be entitled to Interest for Delay on the Loss due to Encumbrance for the period from the due date of this amount (inclusive) to the actual day of its payment (excluding this day);
 - 5/ if a breach of the Obligation not to Encumber is due to the transfer of Affected Allowances, the Seller shall be obliged to pay the Loss due to Encumbrance when, on the date of first purchase of these Affected Allowances, it did not act in good faith; if upon such purchase the Seller acted in good faith, the Seller shall be obliged to pay the Loss due to Encumbrance only when: (a) the Buyer, which is a party to the suit of the Primary Affected Party, applied due diligence to avoid the Loss due to Encumbrance by defending against such suit related to Affected Allowances (including Article 40 of the Registry Regulation) and was unable to avoid it (due to reason other than lack of good faith); or (b) the Buyer, which acted in good faith when buying such Affected Allowances, and which is a party to the suit filed by a third party (other than the Primary Affected Party), applied due diligence to limit or avoid the Loss due to Encumbrance with respect to these Affected Allowances.
13. No later than 10 (ten) Settlement Working Days before the Delivery Day, a Party shall be obliged to notify the other Party of the intent to change its relevant Allowance Account. Changing the Allowance Account by the Client shall require amending the Client's Information Card to be effective; the Bank shall notify the Client of changing the Allowance Account.
14. If Value Added Tax is due in relation to the Transaction, the Seller shall send to the Buyer a valid VAT Invoice (binding in accordance with regulations of the delivery place), disclosing the Number of Allowances delivered and the Purchase Price of Allowances, as well as the total number to be paid by the Buyer ("**VAT Invoice**").
15. Subject to provisions of section 8, when the Bank is the Buyer, the Bank shall be entitled to suspend the payment of the Price to the Seller until receiving a binding VAT Invoice issued in accordance with this section of the Transaction Description. In the case of the Client making the Transfer of a part of Contracted Allowances and the Bank making payment pursuant to section 8 based on the VAT Invoice submitted by the Client to the bank, the Client shall be obliged to immediately send to the Bank the relevant corrective VAT Invoice. In the case of the Bank making the Transfer of a part of Contracted Allowances in accordance with section 7 in relation to the Client paying a part of the Price, the Bank shall immediately send to the Client the relevant corrective VAT Invoice.

b. Cash Transaction Settlement

16. The Transaction shall be settled by making the following payment on the Payment Day:
 - 1/ when the Cash Settlement Amount is positive – the Seller shall pay the Buyer the Cash Settlement Amount;
 - 2/ when the Cash Settlement Amount is negative – the Buyer shall pay the Seller the absolute value of the Cash Settlement Amount.
17. The Bank shall notify the Client of the Cash Settlement Amount and the Party obliged to pay this amount as soon as possible after determining it.
18. In the case of the Price Modification, the Bank shall notify the Client of the Price Quotation Disruption Event and on the Price Modification made.
19. In the case of selecting the cash settlement of the Transaction, provisions of §§ 4 and 5 of the Transaction Description shall not apply.

c. Accelerated Transaction Settlement

20. The accelerated settlement of the whole Transaction is possible only in form of the cash settlement.
21. Accelerated settlement of the whole Transaction can be agreed by negotiations or based on an offer – by the Client making the offer for accelerated settlement of the whole transaction and the Bank accepting this offer only in the way and in form set in the Transaction Description.
22. The accelerated settlement of the whole Transaction can be made upon consent of the Bank and no later than until the day falling 5 (five) Settlement Working Days before the Delivery Day.
23. Agreeing on the accelerated settlement of the whole transaction by negotiations shall take place upon the Parties agree on the following terms of the accelerated settlement of the whole Transaction:
 - 1/ Transaction subject to the accelerated settlement, identified by the Transaction number;
 - 2/ Accelerated Transaction Settlement Day;
 - 3/ Accelerated Transaction Settlement Amount;
 - 4/ Party (Client or the Bank) obliged to pay the Accelerated Transaction Settlement Amount.
24. Terms of the accelerated settlement of the whole Transaction based on an offer shall be agreed in line with the following procedure:
 - 1/ The Client, by telephone, in a manner suitable to agree on Transaction terms, makes to the Bank the offer for the accelerated Transaction settlement, while setting the terms for accelerated settlement of the whole Transaction, identified in section 23;

- 2/ additionally, except the terms listed in section 23, the Client can set the offer validity date by indicating the day and exact hour of expiry of the offer in the case of its non-acceptance by the Bank. In the case of non-determining the offer validity date, the offer shall remain binding until 11:00 am on the next working day after making the offer;
 - 3/ before the offer expiry date, the offer can be cancelled by the Client only by telephone, in a manner suitable to agree on Transaction terms, provided that the Bank expresses its explicit consent to cancel the offer;
 - 4/ terms of the accelerated settlement of the whole Transaction shall be agreed upon the Bank accepts the offer for the accelerated Transaction settlement on the terms identified in the offer;
 - 5/ the Bank can accept the offer by telephone;
 - 6/ if it is impossible to contact the Client by telephone to accept the offer, the Bank can accept the offer by making the declaration by fax or sending it by electronic mail to the fax number or e-mail address respectively indicated to the Bank by the Client in the Information Card constituting an appendix to the Framework Agreement or in any other form agreed by the Parties, while setting therein Transaction terms referred to in section 23.
25. After agreeing (by negotiations and based on an offer) terms of accelerated settlement of the whole Transaction, one of the Parties shall be obliged to pay the Accelerated Settlement Amount in line with the aforementioned principles (letter a and letter b shall not apply).
 26. The Bank shall make the accelerated settlement of the whole Transaction on the Accelerated Transaction Settlement Day. To this end, on the Accelerated Transaction Settlement Day, the Bank shall credit or debit the Client Settlement Account with the Accelerated Transaction Settlement Amount.
 27. After agreeing (by negotiations and based on an offer) terms of accelerated settlement of the whole Transaction, the Bank shall be obliged to issue to the Client the confirmation of the accelerated Transaction settlement.

§ 4. Settlement Disruption

1. Either Party can notify the other Party in writing of the occurrence of the Settlement Disruption Event and of the Transaction (Transactions), to which the Settlement Disruption Event applies, by sending the notification including the information on the substance of the applicable Settlement Disruption Event, the Party Affected and the date until which the Settlement Disruption would last. Shall the notification be made by the Affected Party, the description of the Settlement Disruption Event shall be enclosed to the notification together with the information on the expected period during which the Affected Party would be unable to fulfil its obligations as a result of the occurrence of the Settlement Disruption Event.
2. In the case of the occurrence of the Settlement Disruption Event, subject to making the notification referred to in section 1, the obligation of the Affected Party to make the Transfer or accept Contracted Allowances, arising from the Transaction to which the Settlement Disruption Event applies, shall be suspended for the duration of the Settlement Disruption Event, subject to the following sections. During that period, the other Party cannot request fulfilling the obligation to which the Settlement Disruption Event applies, whereas the Buyer can suspend paying the Price. Subject to section 3, after the Settlement Disruption Event ceases to exist, the Parties shall be obliged to restart fulfilment of their obligations as soon as practically possible, but in any case no later than on the second Settlement Working Day after the day on which the Settlement Disruption Event ceased to exist. The Affected Party shall be obliged to make all reasonable endeavours to limit consequences and the period of the occurrence of the Settlement Disruption Event.
3. Shall the Settlement Disruption Event last for 9 Settlement Working Days after the Delivery Day (that would take place if not the Settlement Disruption Event) or on the day falling 3 Settlement Working Days before the Phase-End Settlement Date, Transaction affected by the Settlement Disruption Event shall be replaced by the obligation to pay the amount set in section 4. The termination day shall be: (a) the 9th Settlement Working Day after the Delivery Day; (b) Settlement Date if such period of 9 Settlement Working Days would end after the Settlement Date falling on the Delivery Day or just after the Delivery Day; or (c) 3 Settlement Transaction Days before the Phase-End Settlement Date.
4. Obligations arising from each of the Transactions terminated shall be replaced by the obligation to pay the Cash Settlement Amount, where the Replacement Value is calculated based on quotations obtained by the Bank on the day of termination of the Transaction or during any other, potentially similar period, for spot transactions, for which the date of delivery of Contracted Allowances would fall within a possibly short period after the day of their conclusion. The Bank shall notify the Client of the Cash Settlement Amount on the first Working Day after its determining.
5. The Transactions terminated shall be settled by making the following payments:
 - 1/ when a sum of Replacement Settlement Amounts is positive – the Seller shall pay the Buyer the sum of Replacement Settlement Amounts;
 - 2/ when a sum of Replacement Settlement Amounts is negative – the Buyer shall pay the Seller the absolute value of the sum of Replacement Settlement Amounts;
 on the first Working Day after the day of receiving the calculation referred to in section 5.

§ 5. Settlement Suspension

1. The Affected Party shall, without undue delay, notify the other Party in writing of the occurrence of the Settlement Suspension Event, by sending the notification including the information on the substance of the Settlement Suspension Event, the Party Affected and the date until which the Settlement Suspension Event would last. The description of the Settlement Suspension Event shall be enclosed to the notification together with the information on the expected period during which the Affected Party would be unable to fulfil its obligations as a result of the occurrence of the Settlement Suspension Event.
2. In the case of the occurrence of the Settlement Suspension Event, subject to making the notification referred to in section 1, obligations of the Parties arising from the Transaction, to which the Settlement Suspension Event applies, shall be suspended for the duration of the Settlement Suspension Event, subject to the following sections. When the Settlement Suspension Event ceases to exist, suspension of obligations arising from the Transaction shall cease and the Parties shall be obliged to fulfil them as soon as possible, and in any case no later than by: (a) the tenth Settlement Working Day after the day on which the Settlement Suspension Event ceases to exist; or (b) on the third Settlement Working Day before the Phase-End Settlement Date (“Deferred Delivery Day”), whichever is earlier. In such case, references to the Delivery Day in this Transaction Description shall be treated as references to the Deferred Delivery Day.
3. In the case of settling the Transaction in accordance with provisions of section 2 above, the Price shall be increased by the Settlement Suspension Cost.
4. If the Settlement Suspension Event lasts on the Latest Execution Date, obligations arising from the Transaction, to which the Settlement Suspension Event refers, shall be redeemed.
5. When the particular event is at the same time the Settlement Disruption Event and the Settlement Suspension Event, it is recognised that only the Settlement Suspension Event exists.

§ 6. Non-making the Transfer

1. Non-making the Transfer of Contracted Allowances shall not constitute a breach of transaction terms within the meaning of § 9 of the Rules.
2. In the case referred to in section 1, when non-making the Transfer of Contracted Allowances does not result from the occurrence of the Settlement Disruption Event, the occurrence of the Settlement Suspension Event or non-acceptance of Contracted Allowances by the Buyer, the Delivery Day shall be deferred and the Buyer can call the Seller in writing to make the Transfer of Contracted Allowances; in such situation, the following provisions shall apply:
 - 1/ When the Seller makes the Transfer of Contracted Allowances no later than on the Final Delivery Day:
 - a/ the Buyer shall be obliged to accept Contracted Allowances from the Seller and to pay the Seller the Price in accordance with provisions of § 3 letter a) of the Transaction Description, whereas the day of making the Transfer of Contracted Allowances shall be recognised as the Delivery Day, while the Payment Day shall be properly adjusted to the Delivery Day;
 - b/ the Seller shall be obliged to pay the Buyer, on the Payment Day, contractual penalty equal Interest for Delay on the Price from the original Delivery Day (inclusive) to the actual Delivery Day (excluding this day);

- c/ and when settling cash payments, the Bank shall be entitled to deduct amounts referred to in letters a/ and b/ above.
- 2/ When the Seller does not make the Transfer of Contracted Allowances until the Final Delivery Day:
 - a/ the Buyer can terminate the Transaction with respect to which the Seller did not fulfilled the obligation to make the Transfer of Contracted Allowances on a timely basis, by submitting to the Seller the written notification of terminating the Transaction;
 - b/ in the case of receiving the notification of terminating the Transaction, the obligations to make the settlement referred to in § 3 letter a) of the Transaction Description arising from the Transaction shall be redeemed and replaced by the obligation of the Seller to pay the Buyer the Replacement Costs of the Buyer on the first Working Day after the day of receiving the notification of terminating the Transaction;
 - c/ the obligation to pay the Replacement Costs of the Buyer shall be recognised only when Replacement Costs of the Buyer are higher than zero.
- 3. When lack of the Transfer of Contracted Allowances pertains only to a part of Contracted Allowances, provisions of §§ 3 and 6 of the Transaction Description shall apply accordingly. In such case, the Buyer shall be obliged to pay a part of the Price corresponding to the delivered part of Contracted Allowances in accordance with provisions of § 3 of the Transaction Description. Appropriate provisions of § 6 of the Transaction Description shall apply to the undelivered part of Contracted Allowances, whereas the relevant part of the Price shall be paid for the part of Contracted Allowances delivered in accordance with § 6 of the Transaction Description, while the Replacement Costs of the Buyer shall be due with respect to the part of Contracted Allowances, which was not delivered.

§ 7. Non-acceptance of Contracted Allowances

1. The non-accepting the Contracted Allowances by the Buyer shall not constitute a breach of transaction terms within the meaning of § 9 of the Rules.
2. In the case referred to in section 1, when non-accepting the Contracted Allowances does not result from the occurrence of the Settlement Disruption Event, the Delivery Day shall be deferred and the Seller can call the Buyer in writing to cease breaching obligations arising from the Transaction by accepting Contracted Allowances; in such situation, the following provisions shall apply:
 - 1/ When the Buyer accepts the Contracted Allowances no later than on the Final Compliance Day:
 - a/ the Seller shall be obliged to make the Transfer of Contracted Allowances, and the Buyer shall be obliged to pay the Seller the Price in accordance with provisions of § 3 of the Transaction Description, whereas the day of accepting the Transfer of Contracted Allowances shall be recognised as the Delivery Day, while the Payment Day shall be properly adjusted to the Delivery Day;
 - b/ the Buyer shall be obliged to pay the Seller, on the Payment Day, contractual penalty equal Interest for Delay on the Price from the original Delivery Day (inclusive) to the actual Delivery Day (excluding this day).
 - 2/ When the Buyer does not accept the Contracted Allowances until the Final Compliance Day:
 - a/ the Seller can terminate the Transaction with respect to which the Buyer did not fulfilled the obligation to accept the Contracted Allowances on a timely basis, by submitting to the Buyer the written notification of terminating the Transaction;
 - b/ in the case of receiving the notification of terminating the Transaction, obligations to make the settlement referred to in § 3 of the Transaction Description arising from the Transaction shall be redeemed and replaced by the obligation of the Buyer to pay the Seller the Replacement Costs of the Seller on the first Working Day after the day of receiving the notification of terminating the Transaction;
 - c/ the obligation to pay the Replacement Costs of the Seller shall be recognised only when Replacement Costs of the Seller are higher than zero.
3. When non-acceptance of the Contracted Allowances pertains only to a part of Contracted Allowances, provisions of §§ 3 and 7 of the Transaction Description shall apply accordingly. In such case, the Buyer shall be obliged to pay a part of the Price corresponding to the accepted part of Contracted Allowances in accordance with provisions of § 3 of the Transaction Description. Provisions of § 7 of the Transaction Description shall apply accordingly to the unaccepted part of Contracted Allowances, whereas the relevant part of the Price shall be paid for the part of Contracted Allowances accepted in accordance with § 7 of the Transaction Description, while the Replacement Costs of the Seller shall be due with respect to the number of Contracted Allowances, which was not delivered.

§ 8. Final provisions

1. All costs, fees and charges calculated or imposed by the Competent Authority in relation to the Transfer of Allowances under the Transaction shall be covered by the Client. At the request of the Bank, the Client shall immediately reimburse the Bank for costs and fees due.
2. If before the Delivery Day, as a result of official, written and public announcement of the European Community, the Scheme ceases to be implemented or is to be stopped, obligations arising from concluded and unsettled Transactions shall expire subject to submitting a written notification of the expiry to the other Party.

§ 9. General description of market risks related to concluding the Transaction

Market risks, i.e. risk of adverse, from the point of view of the Client, impact of a change of market risk factors on the Transaction, including both the settlement amount on the settlement day and – through the Transaction valuation (net present value) – the value of collateral required by the Bank during the whole Transaction period. General market risk factors for the Transaction include especially the risk of change of prices of greenhouse gas emission allowances and foreign exchange risk. The risk of change of prices of greenhouse gas emission allowances is the risk of adverse, from the point of view of the Client, impact of a change of market levels of cash and forward prices of these allowances on the Transaction, whereas such changes can arise primarily from operations of the scheme for greenhouse gas emission allowance trading and changes of the relationship of the supply of and demand for greenhouse gas emission allowances resulting in particular from concluding international agreements and introducing national regulations pertaining to limitation of greenhouse gas emission, as well as the manner of allocation of greenhouse gas emission allowances among the scheme participants. The foreign exchange risk is the risk of adverse, from the point of view of the Client, impact of a change of market levels of exchange rates of currencies of settlement of the Transaction on this Transaction. Moreover, the Client should also take into account the impact on the Transaction of other market risk factors, such as the risk of change in prices of other commodities and situation on the commodity markets, as well as the risk of changes in interest rate, the level of which influences primarily the discount of future cash flows and thus the valuation of the Transaction. Changes in these factors can expose the Client to unlimited profit or unlimited loss, which may exceed funds invested by the Client. Additionally, changes in the aforementioned market risk factors depend on various macroeconomic parameters, especially such as economic growth rate, budget deficit level, deficit on the account.

§ 10. Entry into force

This Transaction Description shall come into force on 1 July 2016.