

# Terms and Conditions “Rules of Cooperation for Financial Market Transactions for institutional clients”

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## Table of Contents

1.	General .....	3
2.	Definitions .....	4
3.	General Advice.....	6
4.	Risks.....	6
5.	Entering into Transactions and Recording Communication.....	7
6.	Transaction Platform.....	8
7.	Confirmations.....	8
8.	Transaction Settlement .....	8
9.	Events of Default.....	9
10.	Consequences of Event of Default.....	9
11.	Termination Events .....	10
12.	Notices.....	10
13.	Complaints, dispute resolution.....	11
14.	Portfolio Reconciliation .....	11
15.	Report on Transaction .....	11
16.	Portfolio Compression .....	12
17.	MiFID, MiFIR, EMIR and SFTR Assumptions.....	13
18.	Types of Collateral.....	13
19.	Required Collateral.....	13
20.	The method of establishing the Required Collateral.....	13
21.	Satisfaction of claims .....	14
22.	Personal Data Processing.....	14
23.	Amendment to the Terms and Conditions.....	15
24.	Final Provisions .....	15
24 <sup>1</sup> .	Mark-up.....	16
25.	Termination of the Master Agreement.....	16
26.	Entry into Force .....	16

## § 1. General

1. These Terms and Conditions “Rules of Cooperation for Financial Market Transactions for Institutional Clients” (hereinafter referred to as the “**Terms and Conditions**”) together with the master agreement for the financial market transactions (hereinafter referred to as the “**Master Agreement**”) and Transaction Descriptions, regulates the rules of cooperation between the Bank and the Customer regarding, inter alia, entering into the Transactions, fulfilling obligations arising from the Transactions, establishing Collaterals in favour of the Parties, the Parties satisfying its claims from the said Collaterals, and settlements between the Parties in case of termination of the Master Agreement or individual Transactions as well as principles of limiting the credit risk of the Parties in connection with the Transactions executed.
2. The Terms and Conditions together with Transaction Descriptions supplement provisions of the Master Agreement and, along therewith, create one legal relationship between the Parties. The Terms and Conditions shall apply to the Customers being FC Counterparties and NFC+ Counterparties.
3. With respect to the Transactions entered into by the Customers, provisions of the entire Chapter II (except for Article 32a) and Article 34, Articles 35-37, Article 40 Sec. 3-4, Article 45, Article 46 Sec. 2-5, Article 47, Article 48, Article 51, and Articles 144-146 of the Payment Services Act of 19 August 2011 or, whenever acceptable, other laws which modify or amend the said provisions shall not apply.
4. For the purposes of Article 54 of the Act referred to in section 3 above, the date when the payment order starts to be processed shall be the Settlement Date.
5. These Terms and Conditions have been issued in accordance with Article 109 Sec. 1 Item 4 of the Banking Law.
6. The Bank executes Transactions in financial instruments in accordance with Article 70 (2) of the Act on Trading in Financial Instruments of 29 July 2005.
7. The Bank publishes the “Principles of Acting in the Best Interests of the Customer in the Financial Markets Area of mBank S.A.” (hereinafter referred to as the “**Principles**”) on mBank Group’s website ([www.mbank.pl/en/help/forms/sme-corporate/financial-market/best-execution/](http://www.mbank.pl/en/help/forms/sme-corporate/financial-market/best-execution/)). At the request of the Customer, the Bank may send the Principles in hard copy. The Bank applies the Principles to the extent applicable to the Customer. The best execution requirement referred to in § 27.1 of MiFID applies only to the extent explicitly indicated in the Principles.
8. Entering into the Transaction included in the Principles is tantamount to granting consent by the Customer to be bound by the Principles.
9. The Customer grants consent to making the Principles available to the Customer via mBank Group’s website referred to in § 1.7.
10. Entering into the Transaction included in the amended Principles will be deemed as approval of the amended Principles.
11. In line with Regulation (EU) No. 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), the Bank provides retail Customers within the meaning of MiFID Regulations with key information documents for products listed in the Regulation on mBank Group’s website ([www.mbank.pl/en/help/forms/sme-corporate/financial-market/priip/](http://www.mbank.pl/en/help/forms/sme-corporate/financial-market/priip/)). At the request of the Customer, the Bank may send key information documents in hard copy. The Customer consents to making amendments to key information documents available to him/her on the mBank Group’s website mentioned above. By executing a Transaction after the effective date hereof the Customer declares that he/she has read the currently valid information documents.
12. Customers entering into Transactions in financial instruments are obliged to provide the Bank with their Legal Entity Identifier (LEI) and ensure LEI validity.
13. Financial market transactions are entered into with retail and professional Customers and eligible counterparties within the meaning of the MiFID Regulations and the Act on Trading.
14. If the Master Agreement allows for concluding transactions of a given type, the Customer represents that:
  - 1/ when entering into Derivative Transactions:
    - a/ the Customer is ready to incur a possible loss exceeding the funds invested to enter into the Transaction and accepts such a risk and the Customer’s financial standing allows incurring such a loss,
    - b/ entering into the Transaction arises from the need to hedge against market risk, including:
      - i/ FX risk – by entering into, in particular: Foreign Exchange Forward (FX Forward), Foreign Exchange Option or Currency Interest Rate Swap (CIRS),
      - ii/ Interest rate risk – by entering into, in particular: Forward Rate Agreements (FRA), Interest Rate Swap (IRS), Currency Interest Rate Swap (CIRS) or Interest Rate Option,
      - iii/ Commodity risk – by entering into, in particular: Forward Transaction (FT), Commodity Swap, Commodity Option or Forward transactions of sale of greenhouse gas emission allowances with cash settlement option;and the purpose of the Transaction is to adjust the structure and time horizon of the collateral applied to the Customer’s exposure to the market risk, unless the Customer informs the Bank about a different nature of the Transaction in line with the procedure defined in § 17.1,
  - 2/ when entering into Debt Securities Transactions:
    - a/ the Customer is ready to incur a possible loss of up to 100% of the invested funds and accepts such a risk and the Customer’s financial standing allows incurring such a loss,
    - b/ entering into the Transaction arises from the need of capital investment with the objective of adjusting the investment to the Customer’s liquidity structure (including the time horizon during which the Customer can invest free funds),
  - 3/ when entering into an Investment Deposit:
    - a/ the Customer is ready to incur a possible loss of a part of invested capital in the case where the Investment Deposit is subject to early withdrawal, the Handling Fee is higher than the amount of the early interest,
    - b/ entering into the Transaction arises from the need of capital investment with the objective of adjusting the investment to the Customer’s liquidity structure (including the time horizon during which the Customer can invest free funds),
  - 4/ when entering into a Dual-Currency Deposit:
    - a/ the Customer is ready to incur a possible loss of up to 100% of the invested funds and accepts such a risk and the Customer’s financial standing allows incurring such a loss,
    - b/ entering into the Transaction arises from the need of capital investment with the objective of adjusting the investment to the Customer’s liquidity structure (including the time horizon during which the Customer can invest free funds),
  - 5/ if the Customer’s financial standing and risk tolerance as well as needs and objectives concerning the particular Transactions referred to in points 1-4 change during the term of the Master Agreement, the Customer is obliged to inform the Bank about this in writing, subject to point 1 letter b) when the Customer is obliged to inform the Bank’s employee about this fact while concluding a transaction.
15. The Customer represents that commodity transactions concluded result in creating, from the Customer’s point of view, objectively measurable positions mitigating the risk directly connected with the Customer’s business within the meaning of the MiFID Regulations, unless the Customer informs the Bank about a different nature of the Transaction in line with the procedure defined in § 17.1.
16. In the case when a given Transaction type is subject to the obligation to trade for the Customer within the meaning of Article 28 of the MiFIR Regulations, the Customer is obliged to inform the Bank about this fact in writing.
17. The Customer undertakes to immediately provide the Bank upon its request with any information, documents and data that may be reasonably expected by the Bank in order to fulfill its obligations, in particular reporting or publication obligations, which may be incumbent on it.
18. In connection with the conclusion of Transactions based on quotations provided by phone, the Bank does not perform the function of another liquidity provider within the meaning of Commission Delegated Regulation (EU) 2017/575 (UE) supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions, and thus the Bank may refuse to enter into the Transaction.
19. The Bank is a systematic internaliser within the meaning of the MiFIR with respect to selected financial instruments.
20. If the Customer executes FX Spot Transactions or Term Deposit Transactions in accordance with the Terms and Conditions, the provisions of the Terms and Conditions referring to the Master Agreement apply accordingly to the Integrated Bank Account Agreement. If the provisions of the Terms and Conditions and the Integrated Bank Account Agreement vary, the Integrated Bank Account Agreement shall prevail.

## § 2. Definitions

<b>1. Bank</b>	mBank S.A.
<b>2. Net Present Value/NPV</b>	<p>calculated for a single Transaction, an amount denominated in PLN constituting the Net Present Value of the given Transaction, determined and calculated with due diligence by the Bank; when performing the calculations, the Bank shall take into account the data and information available to the Bank, including the following:</p> <ol style="list-style-type: none"><li>1/ valuation models applied by the Bank, current market data (in particular currency rates, reference rates, commodities prices, volatility levels, prices of securities or other indices relevant for the given market) available from the news agency services (e.g. Reuters, Bloomberg), data obtained from other financial institutions or data obtained from the internal sources of the Bank; or</li><li>2/ the cost that the Bank would have to incur if it had to terminate the Transaction and enter into transactions replacing the Transactions terminated on account of the Early Termination.</li></ol> <p>The Net Present Value is a positive number where the market valuation is unfavourable for the Customer, or a negative number where the market valuation is favourable for the Customer.</p>
<b>3. Net Present Value of Transaction Package</b>	a sum of the Net Present Values of the Transactions of which the Transaction Package consists.
<b>4. CCP</b>	a legal person acting between counterparties of contracts in trade on at least one financial market, becoming a purchaser for every seller and a seller for every purchaser.
<b>4<sup>1</sup>. MIFID</b>	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (as amended).
<b>5. Business Day</b>	every day, save for Saturday, Sunday or statutory holiday, on which the Bank conducts business activity on the financial market and performs settlements in currencies, in which the Transaction is denominated; if the Customer is a business entity having its registered seat outside the Republic of Poland to whom the EMIR Legislation apply, then, within the scope of confirmation of the Transactions in Derivatives on the days set in accordance with the principle stipulated in the above sentence, the statutory holidays in the state where the Customer has its registered seat shall also be excluded pursuant to the principle set forth in the sentence above.
<b>6. Settlement Date</b>	Business Day agreed between the Parties when agreeing on the Transaction Terms on which the Transaction Settlement occurs pursuant to provisions of § 8 below.
<b>7. Early Termination Date</b>	a date on which the Bank performs the Early Termination.
<b>8. Pricing Date</b>	Business Day on which the Bank calculates the Net Present Value of Transaction Package and the value of the Minimum Collaterals. Unless the Parties provide otherwise in the Credit Support Agreement, it is each Business Day.
<b>9. Transaction Date</b>	Business Day on which the Parties agree on the Transaction Terms.
<b>10. Exposure</b>	<p>the value calculated by the Bank for:</p> <ol style="list-style-type: none"><li>1/ The Bank – equal to the NPV of Transaction Package if the NPV of Transaction Package is a positive number, or equal to zero if the NPV of Transaction Package is a negative number;</li><li>2/ The Customer – equal to the absolute value of the NPV of Transaction Package if the NPV of Transaction Package is a negative number, or equal to zero if the NPV of Transaction Package is a positive number.</li></ol>
<b>11. ESMA</b>	the European Securities and Markets Authority.
<b>12. NBP Fixing</b>	the average exchange rate announced by the National Bank of Poland.
<b>12<sup>1</sup>. Derivative</b>	derivative instrument within the meaning of the EMIR Regulations.
<b>13. Customer</b>	legal person or other organisational unit without legal personality vested, by virtue of law, with the legal capacity and capacity to perform acts in law being an FC Counterparty or an NFC+ Counterparty.
<b>14. Civil Code</b>	Act dated 23 April 1964 – Civil Code.
<b>15. FC Counterparty</b>	the Customer who is the Financial Counterparty within the meaning of the EMIR Legislation.
<b>16. NFC+Counterparty</b>	the Customer who is the Non-Financial Counterparty as referred to in Article 10(1)(b) of the EMIR Regulation to whom Article 10(2) of the EMIR Regulation does not apply.
<b>17. Early Termination Amount</b>	an amount of the cash obligation calculated by the Bank that is due to the Bank from the Customer or to the Customer from the Bank on account of Early Termination.
<b>18. Amount of the Limit of the Customer / Bank</b>	the amount up to which the Customer or the Bank is discharged from an obligation to establish the Required Collateral if this amount is provided in the Credit Support Agreement.
<b>18<sup>1</sup>. Mark-up</b>	the difference between the Transaction price quoted for the Customer and the price of maintaining the position by the Bank.
<b>19. Minimum Transfer Amount</b>	the amount determined as such in § 19, the value of which is PLN 10,000.00 (ten thousand) Polish Zloty, unless the Parties provided otherwise in the Credit Support Agreement.

<b>20. Transaction Description</b>	description delivered to the Customer by the Bank constituting an appendix to these Terms and Conditions, containing description of specific Transactions selected by the Customer executed under the Master Agreement.
<b>21. Transaction Package</b>	collection of non-settled Derivative and/or other Transactions, on the condition that the Transaction Description provides that they form parts of the Transaction Package. The Parties may, in the Master Agreement or the Credit Support Agreement, divide the Transaction Package and apply different rules of Credit Support to such separated Transaction Packages.
<b>22. Transaction Platform</b>	electronic distribution channel made available by the Bank through the Internet Customer service system: mBank CompanyNet that allows to agree on the Transaction Terms
<b>23. Confirmation</b>	document or information in an electronic form prepared by the Bank presenting the Transaction Terms agreed by the Parties.
<b>24. Banking Law</b>	[Polish] Act dated 29 August 1997 – Banking Law (as amended).
<b>25. Bankruptcy Law</b>	[Polish] Act dated 28 February 2003 – Bankruptcy and Reconstruction Law (as amended).
<b>25<sup>1</sup>. Restructuring Law</b>	the Restructuring Law Act of 15 May 2015 (as amended).
<b>26. Event of Default</b>	event referred to in § 9.1 that may trigger Early Termination Procedure.
<b>27. Termination Event</b>	event referred to in § 11.1.
<b>28. Customer's Settlement Account</b>	an account for settlement of claims under the Master Agreement, Transactions or Collaterals: 1/ the Customer's (current or shadow) bank account maintained with the Bank, specified by the Customer in the Information Sheet or other written statement of the Customer approved by the Bank or stipulated in the course of agreeing on the Transaction Terms; 2/ the Customer's bank account maintained by other bank specified by the Customer in the Information Sheet or in any other written statement of the Customer accepted by the Bank.
<b>29. Bank's Settlement Account</b>	the Bank's Settlement Account specified by the Bank for settlement of claims under the Master Agreement, Transactions or Collaterals.
<b>30. EMIR Legislation</b>	the EMIR Regulation along with the secondary legislation thereto, including the delegated regulations.
<b>30<sup>1</sup>. MIFID Regulations</b>	MiFID together with delegated and implementing acts.
<b>30<sup>2</sup>. MIFIR Regulations</b>	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (as amended) with implementing acts.
<b>30<sup>3</sup>. SFTR Legislation</b>	Regulation (EU) No 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012, together with delegated and implementing acts.
<b>31. Trade Repository</b>	entity authorised under EMIR or SFTR Legislation to collect and maintain the records of Transactions.
<b>32. EMIR Regulation</b>	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.
<b>33. Transaction Settlement</b>	performance of the Parties' obligations resulting from the Transaction within deadlines agreed by the Parties or, if the performance is delayed, within later deadlines pursuant to the provisions of § 8.
<b>34. Force Majeure</b>	an extraordinary factual or legal event that could not have been foreseen, avoided or prevented by the Parties in the normal course, as a result of which performance of settlement or other activities related to the Transactions, the Master Agreement or the Credit Support Agreement becomes impossible.
<b>35. Party</b>	the Customer or the Bank.
<b>36. Foreign Exchange Rates Table</b>	Table of FX rates of mBank S.A., applicable at the moment of currency conversion.
<b>37. Transaction</b>	transaction entered into by the Customer with the Bank under the Master Agreement.
<b>38. Derivative Transaction</b>	Transaction defined in the Transaction Description as derivative transaction.
<b>38<sup>1</sup>. SFT</b>	securities financing transaction within the meaning of the SFTR Legislation.
<b>39. Transaction Terms</b>	the essential terms (essentialia negotii) of the given Transaction, as specified in the Transaction Descriptions and, provided that such terms are agreed, any other additional Transaction terms, as agreed between the Parties.
<b>40. Early Termination</b>	performance by the Bank, as a result of occurrence of Event of Default or Termination Event, of immediate settlement of all or certain Transactions, save for Term Deposit Transactions, pursuant to these Terms and Conditions. (19) Minimum Transfer Amount – the amount determined as such in § 19, the value of which is PLN 10,000.00 (ten thousand) Polish Zloty, unless the Parties provided otherwise in the Credit Support Agreement.
<b>41. Credit Support Agreement</b>	agreement regulating the conditions and rules of establishing of the Collateral by the Parties.
<b>41<sup>1</sup>. Act on Trading</b>	Act on Trading in Financial Instruments of 29 July 2005, as amended.

<b>41<sup>2</sup>. Act on Funds</b>	Act on Investment Funds and Management of Alternative Investment Funds of 27 May 2004, as amended.
<b>42. Additional Collateral</b>	Collateral established by the Party (other than the Required Collateral or Minimum Collateral), specified as the Additional Collateral in the Credit Support Agreement.
<b>43. Minimum Collateral</b>	Collateral determined by the Bank on the basis of comprehensive assessment of risk resulting from the given Transaction, taking into account in particular its type, currency, Transaction amounts, nominal values, the term for which it has been executed, price volatility level or underlying instrument volatility level. In the course of agreeing on the Transaction Terms, upon express request of the Customer, the Bank shall specify the value of the Minimum Collateral concerning any given Transaction.
<b>44. Established Collateral</b>	the value of Collateral (other than the Additional Collateral) which has been established in favour of the Party.
<b>45. Required Collateral</b>	the value of the Collateral determined in § 19, securing the Party's Exposure, which should be established in favour of that Party by the other Party.
<b>46. Collateral</b>	as stipulated in the Master Agreement, Credit Support Agreement or any other agreement, a Collateral to secure the Bank's claims resulting from the Transactions or Master Agreement executed that should be established in favour of the Party. A Collateral may be a Required Collateral, Minimum Collateral or Additional Collateral.
<b>47. Tax Event</b>	such change in the provisions of the tax law or the official interpretation thereof as a result of which if a Party intends to duly perform its financial obligations under the Master Agreement or any Transaction, the Party needs to incur excessive costs or glaring loss.
<b>48. Report on Transaction</b>	report on execution, modification, termination, adjustment of or any other activity concerning a Transaction in Derivatives or an SFT, made in accordance with the principles and within the deadlines specified in the EMIR or SFTR Legislation.
<b>49. Additional Obligations</b>	obligations imposed on the Party, as determined in the Credit Support Agreement as the Additional Obligations, the non-performance of which vests the Party with the right to request the other Party to establish the Additional Collateral or constituting the Termination Event.

### § 3. General Advice

1. As a part of entering into Transactions with the Customers, the Bank may provide investment advice of general nature ("general advice"), concerning investing in financial instruments in accordance with the following principles:
  - 1/ general advice shall not be provided with regard to the needs and situation of the Customer nor shall it constitute a recommendation to undertake specific steps in connection with a given financial instrument,
  - 2/ general advice may be provided by phone, verbally, or in writing,
  - 3/ general advice may only be provided by the authorised employees of the Bank,
  - 4/ general advice shall consist in providing information about financial instruments and may, in particular, apply to results (including historical results) of investing in financial instruments, comparison of financial instruments, comparison of services provided by the Bank, information on the characteristics of financial instruments, including the benefits of using them, the associated risks, the terms and conditions, and the situation in which they can be used, providing the Customers with information about the market situation, market reports and analyses or other type of information prepared by the Bank or other entities,
  - 5/ provision of general advice shall not account for the preparation of investment or financial analyses or other recommendation of a general character concerning the Transactions on financial instruments,
  - 6/ provision of general advice shall not account for the provision of investment advice service,
  - 7/ the Bank shall not provide investment advice services unless, in order to provide such service, the Bank enters with the Customer into a written agreement on providing investment advice services.
2. The Bank shall not be liable for any actions or investment decisions, or for any investment results, including in particular under the Transactions entered into with the Bank, generated by the Customer in connection with providing general advice, or for results of such actions and decisions.

### § 4. Risks

1. The Bank, acting in accordance with its knowledge of the market and experience, shall present the Customer with a general description of the risks attributable to the transactions on financial instruments. When entering into a Transaction, the Customer should in particular take into account the following:
  - 1/ risks indicated in the Transaction Description, including the market risks,
  - 2/ legal risk attributable to the possibility of changes to legal regulations or, potentially, to non-observance thereof; a change in the legislation or an illegal/unlawful activity may result in sudden and significant deterioration in the business parameters, and, therefore, may adversely affect the valuation or settlement of the Transaction,
  - 3/ financial leverage effect; the Derivative Transactions or forward transactions entail the so-called financial leverage effect, which means that a Transaction may yield a very large profit (including premium payment) or bring a very large loss in comparison with funds committed by the Customer in order to enter into the Transaction (in particular payment of premium or establishment of Collateral) accounting only for a portion, quite often insignificant, of the nominal value of the Transaction; therefore, a change in the market risk factors may result in a proportionally greater change in the current pricing of the Transaction (Net Present Value) or the amount of settlement of the Transaction in comparison with the funds committed by the Customer,
  - 4/ potentially high volatility of prices and valuations of the Transaction, understood as the volume of the price or the Transaction valuation fluctuations in specific time frames; considering that the Transaction is an instrument of the over-the-counter market (so-called "OTC Market"), Transaction valuation and price may be subject to high, quite frequently salutatory, changes, even in short time intervals, and the dynamics of these changes may take various levels; high volatility may in particular be the result of a limited volatility of the OTC market,
  - 5/ requirements related to establishing the Collaterals; in accordance with these Terms and Conditions, the Customer shall be obligated to establish a Collateral for the Transaction settlement; as a result of adverse market changes that have effect on deterioration in the valuation of the Transaction, the Customer may need to supplement the Collateral up to the value of the Required Collateral; the Customer should also be aware that in the event of the Transaction termination, entering into a repurchase Transaction or settlement of the Transaction, a potential loss may exceed the amount of the established Collateral; the Collateral established by the Customer pursuant to these Terms and Conditions shall not be treated as an advance payment, earnest money or any other performance on the account of the fulfilment of future obligations of the Customer towards the Bank in connection with the executed Transaction; such Collateral may be set off against those obligations pursuant to these Terms and Conditions or the Credit Support Agreement,

- 6/ The risk of contracting a financial obligation as a result of entering into a Transaction; when entering into a Transaction, the Customer contracts an obligation that may consist in the payment of the settlement amount, premium or payment for the currency delivered, securities or in the delivery of currency or securities and/or greenhouse gas emission allowances; obligation consisting in the payment of the settlement amount is an obligation with an amount thereof not specified in advance that may result for the Customer with a debt on the Settlement Date; obligation to deliver sold currency may become converted into financial obligation in accordance with the provisions of these Terms and Conditions or the Transaction Description in the event of the Early Termination or failure to perform the obligations by the Customer; the remaining claims of the Bank against the Customer that may arise in connection with entering into the Transaction are set out in these Terms and Conditions or Transaction Description.
- 7/ the fact that Debt Securities, including Debt Securities being the subject of the Sell-Buy-Back Transactions and financial (monetary) means being the subject of collateral under which the ownership title is transferred by the Customer to the secured entity (the Bank) may be used by the Party to which the ownership title has been transferred. As a result:
- a/ it is not possible to deliver a Debt Security on the Settlement Date, which has the following consequences:
    - i. the Parties will have to modify the Transaction Terms by changing the originally set Transaction Settlement Date or
    - ii. a Debt Security being the subject of the Transaction will be replaced by another Debt Security with the same features, or
    - iii. the Party which did not deliver the Debt Security will be obliged to pay the amount being the equivalent of the purchase price of the same Debt Security on the initially set Settlement Date;
  - b/ in the case when bankruptcy or restructuring proceedings are instigated towards the Bank, the procedure and rules of refunding of the collateral provided will be subject to relevant provisions of the Bankruptcy or Restructuring Law,
  - c/ in the case when the collateral is seized by the authority which has initiated enforcement proceedings towards the Bank, the Customer may demand the return of the collateral from the Bank, however, this case may lead to a situation presented in letter a).
- The measures referred to in letter a) may cause a loss in the case when one of the Parties undertakes an obligation towards a third party, the subject of which will be the Debt Security not delivered on time.

Entering into the Transaction after the effective date of this provision will be treated as the Customer's consent to using the collateral transferred to the Bank.

2. The Customer should carry out assessment of the risk, financial, legal, accounting and tax consequences as well as suitability of the financial market Transactions for his business activity; the assessment should be performed by the Customer on his own or by way of obtaining professional advice from independent entities that have relevant knowledge and experience in this respect.
3. The Bank shall not guarantee that the Customer achieves any specific economic result in connection with execution of the Transaction. Entering into a Transaction may generate either profit or loss.
4. The Customer shall enter into the Transactions on his own risk and responsibility; the Bank shall not be liable to the Customer for any loss that the Customer may suffer as a result of entering into a Transaction with the Bank, including in particular a loss resulting from non-comprehension or incorrect understanding by the Customer of the character or structure of the Transaction.
5. The Bank shall be liable for damage incurred by the Customer in connection with the Bank's failure to perform or properly perform the Master Agreement or the Transaction, up to an amount of the damage actually suffered by the Customer (the Bank shall be liable for the Customer's loss but not for the lost profits).

## § 5. Entering into Transactions and Recording Communication

1. Transaction shall be executed upon making concordant declarations of intent by the Parties with regard to the Transaction Terms.
2. Transaction may be executed by telephone or e-mail (provided that the Bank has given its consent to such a form), in particular through the Transaction Platform. Should the Bank wish to introduce in these Terms and Conditions an additional form of agreeing on the Transaction terms, the Bank needs only to inform the Customer thereof for such additional form to be effective.
3. The Bank may agree to executing the Transactions by way of offer and acceptance, which shall consist in submitting by one of the Parties an offer for entering into a Transaction on specific Transaction Terms. The Party submitting the offer shall specify the type of the offer and its validity date, including in particular the date and exact time of expiry of the offer. Upon submission of the offer, the Parties may reserve that the other Party's acceptance of the offer shall depend on occurrence of a specific event, in particular occurrence of a specific asset price, currency exchange rate or interest rate on the market. Provisions of Article 66<sup>1</sup> § 1 to Article 66<sup>1</sup> § 3 and Article 68<sup>2</sup> of the Civil Code shall not apply.
4. The Customer may withdraw its offer, provided that the Bank confirms that the offer has been withdrawn. If the Bank accepts an offer just before its expiry date, information that the offer has been accepted may be made available and sent to the Customer after the expiry of the offer's deadline.
5. When entering into Transactions, the Parties may agree on the Transaction Terms other than those specified in the Transaction Descriptions, provided that this is expressly specified in the course of agreeing on such Transaction Terms.
6. The Parties may specify the Transaction Terms with regard to the mandatory conditions specified in the given Transaction Description using wording different than that provided in such Transaction Description, including in particular wording used in the trading practice, provided that the respective Transaction Terms defined in such Transaction Description may be attributed to such differently phrased definitions.
7. The persons authorised to enter into the Transactions on behalf of the Customer shall be individuals named by the Customer in the power of attorney contained in the Information Sheet or in a different power of attorney, provided that such power of attorney has been previously delivered to and approved by the Bank.
8. Those authorised to agree on the Transaction Terms on behalf of the Parties shall be made:
  - 1/ with regard to the Customer, if the Transaction Terms are being agreed:
    - a/ over the phone – specifying the Customer's name and its full name, by the attorney in fact agreeing the Transaction Terms;
    - b/ through the Transaction Platform – by positive identification and authentication of the person authorised by the Customer, which is carried out in the mBank CompanyNet system;
    - c/ by e-mail – by contacting the Customer at the e-mail address specified by the Customer or his attorney in fact before the Transaction Terms have been agreed;
    - d/ via electronic platforms used in the interbank market, including technical solutions offered by Thomson Reuters or Bloomberg – when an identifier which explicitly indicates the Customer and its attorney in fact as the Party making a declaration of will appears on the Bank's computer screen; at the Bank's request, the Customer is obliged to provide the Bank with an additional document containing a list of identifiers referred to in the previous sentence, assigned to particular persons entitled to enter into Transactions;
  - 2/ with regard to the Bank, if the Transaction Terms are agreed:
    - a/ over the phone – by specifying the full name of the authorised employee of the Bank;
    - b/ by e-mail, by sending e-mail from the office e-mail box including the full name of the authorised employee of the Bank;
    - c/ via electronic platforms used in the interbank market, including technical solutions offered by Thomson Reuters or Bloomberg – when an identifier which explicitly indicates the Bank as a Party making a declaration of will appears on the Customer's computer screen.
9. If a Transaction is executed by telephone, the Parties may additionally identify each other by using a password and an answerback. If such identification is not possible, the Parties may refuse to enter into the Transaction.
10. In line with the MiFID and MiFIR, the Bank records phone conversations and electronic communication, in particular the conversations or communication during which the Transaction Terms are agreed on. The Parties give their consent to recording communication. The recorded phone or electronic communication may be used as evidence in the case of any differences between the Parties as regards the conclusion and execution of the Master Agreement or Transactions, and in the case of arbitration or judicial proceedings.

11. The Customer shall be responsible for a Transaction entered into by an individual claiming to be authorised to enter into Transactions on behalf of the Customer if such individual has used the password and answerback or identifier and token or used the e-mail address specified by the Customer or his attorney in fact. The Customer undertakes to secure any and all equipment and information necessary for identification against third party access. Transactions executed in violation of the security principles shall be binding upon the Customer.
12. If the Customer opts out from identification with a password or answerback, provisions of § 5.11 shall apply accordingly.
13. In the case when, pursuant to EMIR Legislation, the Transaction is subject to the obligation of settlement by CCP, the Parties are obliged to agree on CCP to whom the Transaction Settlement is to be submitted.
14. The recorded phone or electronic communication which results or may result in entering into the Transaction is available at the Customer's request during the period of five years from the Transaction Date or longer if it is required by applicable law to make the communication available.
15. The Bank shall exercise due care to make the recorded communication available immediately, however, not later than within ten Business Days from the date when the Customer made the request. Given the complexity of the Customer's request and a possible necessity to obtain archive recordings, the Bank reserves the right to prolong this period, about which it shall immediately notify the Customer, indicating a new period of time to make the recorded communication available. The Bank has the right to collect a fee on account of making the recorded communication available in line with the "Tariff of banking fees and commissions of mBank for SME and Corporates".

## **§ 6. Transaction Platform**

1. The Transaction Platform is made available only to those Customers who are a party to the Integrated Bank Account Agreement or Agreement on Using the Internet Customer Service System mBank CompanyNet of mBank S.A., who meet the technical requirements specified in the "Regulations on Opening, Holding and Closing an Integrated Bank Account at mBank S.A. – Part 2 mBank S.A. Internet Customer Service System mBank CompanyNet" or the Regulations "mBank S.A. Internet Customer Service System mBank CompanyNet".
2. Transaction Terms within the scope specified in the Information Sheet may be agreed through the Transaction Platform, provided that such transaction type has been made available in the Transaction Platform.
3. The Customer must not provide illegal or unlawful content through the Transaction Platform.
4. Specific principles for agreeing on the Transaction Terms and any additional services provided through the Transaction Platform are specified on the Transaction Platform web sites in the "HELP" section.

## **§ 7. Confirmations**

1. After executing a Transaction, the Bank shall immediately, however no later than until the end of the Transaction Date, confirm the agreed Transaction Terms by delivering the Confirmation to the Customer. As regards Transactions executed after 4 PM, the Bank may deliver the Confirmation to the Customer on the next Business Day following the Transaction Date.
2. Confirmations may be delivered: in writing, by fax, in electronic form (in particular by e-mail or by making the Transaction Terms available to the Customer on the Transaction Platform) or in any other form agreed between the Parties. In the case of Term Deposit Transactions and FX Spot Transactions, Transaction Confirmation may consist of a statement of the current or shadow account made available to the Customer pursuant to the bank account agreement.
3. A Transaction shall be validly entered into regardless of whether the Transaction Confirmation has been provided. The content of the Transaction Confirmation may not amend the Agreed Transaction Terms. The Transaction Confirmation shall not require signatures of the Parties or seal of the Bank.
4. The Customer shall verify the content of the received Transaction Confirmation.
5. Unless the Master Agreement, the Terms and Conditions or the Transaction Description provide otherwise, a Transaction may be deemed to be confirmed if the Customer raises no objection to the content of the Transaction Confirmation (in particular, confirms adjustments or amendments, if any, to the agreed Transaction Terms) until the end of the first (1st) Business Day from the Date of Conclusion Transactions, and for Transactions concluded after 4 PM by the end of the first (1st) Business Day from the date of receipt of the Confirmation.
6. In case of any discrepancies between the agreed Transaction Terms and the content of the Confirmation, the record of the agreed Transaction Terms shall prevail.

## **§ 8. Transaction Settlement**

1. Subject to other provisions of these Terms and Conditions, the Master Agreement and the Transaction Descriptions, in order to settle the Transactions, the Parties shall make payments under the Transaction(s) in accordance with the agreed Transaction Terms.
2. When calculating the amounts of liabilities and receivables arising from the Transaction Settlement, the Bank rounds the amounts off in accordance with the standard applicable at the interbank market for the given transaction type.
3. Transactions shall be settled through the Settlement Accounts of the Customer and the Bank. As a standard, in the case of the Customer, they shall be the accounts maintained with the Bank. Unless the Master Agreement or the relevant appendix thereto so provides, the settlements may be made through the Customer's Settlement Accounts maintained with different bank.
4. If the Customer has more than one Settlement Account maintained with the Bank, the Customer shall be obligated to specify, at the time of entering into the Transaction at the latest, which of the Settlement Accounts maintained with the Bank shall serve the purpose of the Transaction Settlement. If, in the course of agreeing on the Transaction Terms, the Customer fails to specify any of the Customer's Settlement Accounts, the Transaction Settlement shall be made to the first of the Settlement Accounts specified in the Information Sheet that is maintained in the same currency as the currency of the Transaction Settlement.
5. In the case where the Customer wishes to perform the Transaction Settlement through the Settlement Account maintained with another bank, the Customer shall each time, no later than three (3) Business Days prior to the Transaction Settlement date, indicate to the Bank such Settlement Account as the account designated for the Transaction Settlement purposes.
6. The Customer may replace the Settlement Account maintained with the Bank and indicated in the Information Sheet with a different Settlement Account maintained with the Bank no later than two (2) Business Days before the Transaction Settlement. If the replacement referred to in the foregoing sentence occurs at a later time, the Customer shall not be entitled to any incidental benefits for the Bank's delay in payment under Transaction Settlement in favour of the Customer.
7. The Customer shall be obligated to provide funds on the Customer's Settlement Account maintained with the Bank in an amount due to the Bank as at the liability maturity date, or, on the bank account indicated to the Customer by the Bank, in the instance referred to in the third sentence of § 8.3 above.
8. If the Transaction is settled through the Customer's Settlement Accounts maintained with the Bank, then, on the Settlement Date, the Bank shall credit or debit, respectively, the Settlement Account of the Customer maintained with the Bank with the full amount of the Customer's liability towards the Bank under Transaction Settlement regardless of the amount of the balance available on the Settlement Account of the Customer maintained with the Bank.
9. If on the Transaction Settlement Date there are no funds on the Customer's Settlement Account through which the Transaction Settlement is performed in an amount requested to perform the Transaction Settlement by the Bank, the Bank shall have the right to charge any (current or shadow) account of the Customer maintained with the Bank with an amount required to perform the Transaction Settlement; the Bank shall first charge the account maintained in the same currency as the Transaction Settlement currency.
10. If an account maintained in a different currency is credited or debited, the Bank shall convert the funds accumulated on such account at the rate quoted in the Foreign Exchange Rates Table applicable as at the moment of debiting.
11. If the Transaction Settlement is performed through the Settlement Accounts of the Customer maintained with another bank, then:
  - 1/ on the Settlement Date, the Customer shall transfer an amount required to perform the Transaction Settlement to the Bank's Settlement Account; the moment when the funds are recorded on the Bank's Settlement Account shall be deemed to be the moment of payment,



- 2/ on the Settlement Date, the Bank shall transfer an amount required to perform the Transaction Settlement to the Customer's Settlement Account maintained outside the Bank, with the provision that in a Transaction Settlement providing for mutual payment of liabilities on the same Settlement Date, the Bank shall have the right to refrain itself from its payment as referred to in § 8.11.2 above until it receives the funds pursuant to § 8.11.1 above, and not to make a payment on the Settlement Date, if the Customer fails to provide funds on the Bank's Settlement Account at the time specified by the Bank to enable the Bank to make a payment on the Settlement Date, which will not constitute an Event of Default with respect to the Bank and shall not entitle the Customer to demand interest for a delay in payment.
12. If an unauthorised debit arises on the Settlement Account of the Customer maintained with the Bank as a consequence of Transaction Settlement, the Customer shall be obligated to promptly repay the unauthorised debit.
13. Repayment (performance) of pecuniary obligation under the Transaction by the Customer shall not be treated as an effective performance of the Transaction Settlement or repayment of any other payment falling due under the Transaction if the funds obtained by the Bank thereunder are subsequently returned following the decision of a competent court or authority or if the payment has been otherwise annulled.

## § 9. Events of Default

1. Each of the following events occurring with respect to each Party shall constitute an Event of Default with respect to such Party (the "Defaulting Party"):
- 1/ failure to perform a payment on its maturity date, which the Party is obliged to make under the Master Agreement or a Transaction if such a lack of payment lasts longer than one (1) Business Day;
  - 2/ occurrence of an unauthorised debit on the Customer's Settlement Account maintained with the Bank as a consequence of performing the Transaction Settlement;
  - 3/ the Party's failure to establish the Collateral;
  - 4/ the Customer's failure to perform any obligation under the Master Agreement or a Transaction (other than that specified in § 9.1.1 above);
  - 5/ the Party's failure to perform any obligation under the Credit Support Agreement; in particular failure to perform the Additional Obligation;
  - 6/ submitting false documents or making false representations or warranties, or submitting documents certifying untruth or making misrepresentations by the Party, including representations and warranties made in connection with entering into a Transaction, the Master Agreement or any other agreement with the Bank, amendments thereto, as well as in connection with establishing the Collateral;
  - 7/ Occurrence of the following factual or legal events which increase the risk of failure to fulfil the Party's obligations resulting from the Transaction:
    - a/ significant, permanent deterioration of the financial standing of the party, which makes or may make it impossible for the party to meet its obligation under the Master Agreement on a current basis;
    - b/ the party's failure to meet its obligations under credit agreements, loan agreements, leasing agreements or other agreements of similar character charged with credit risk to the extent justifying termination of such agreements on the conditions provided therein, save that with regard to the Bank the amount of claims asserted under such agreement shall not be lower than EUR 50,000,000.00,
    - c/ seizure by enforcement authority of debts under one or more bank accounts of the Party, save that, with regard to the Bank, such a seizure shall not be lower than the amount of EUR 50,000,000.00,
    - d/ institution of enforcement proceedings against the Party in which the amount of claims asserted accounts for a significant portion of liabilities of the Party, save that, with regard to the Bank, the amount of claims asserted shall not be lower than 3% of equity (calculated on consolidated basis),
    - e/ occurrence of other events affecting the legal, financial or economic situation of the Customer, which, in the Bank's point of view, may cause increase of the risk of the Customer's failure to meet his obligations under the Transactions executed,
  - 8/ occurrence of the following factual or legal events resulting in loss or decrease of the value of the Collateral, including in particular:
    - a/ establishing the Collateral ineffectively or discovering legal defect(s) in the assets constituting the Collateral,
    - b/ seizure by the enforcement authority of assets constituting the Collateral,
    - c/ establishment of the Collateral that is legally ineffective or is null and void,
    - d/ discovering legal defect(s) in the assets constituting the Collateral,
    - e/ the Party's failure to meet any of the obligations specified in the Terms and Conditions, if the failure to meet this obligation results or may result in loss or decrease of the value of the Collateral,
    - f/ false representations or warranties included in any documents submitted by the Party, necessary for establishing or changing the Collateral,
  - 9/ material breach by the Customer of terms of any transaction entered into with the Bank that is not a Transaction,
  - 10/ the Party's having ceased or threatening to cease to conduct the business activity in whole or in part,
  - 11/ withdrawal or expiry of any consent or approval or other licenses required for the validity of the Master Agreement, the Transactions executed or allowing the Party to perform its obligations under the Master Agreement or the executed Transactions.
  - 12/ occurrence of the following events:
    - a/ expiration of the period for which, according to the articles of association, the Customer was established,
    - b/ discontinuation of the performance of the depository's duties, if no agreement to maintain the register was entered into with another depository,
    - c/ failure to take over the fund's management within the time limit set out in Article 68 Sec. 2 of the Act on Funds by a company other than investment fund company in connection with the decision to cancel the license or with its expiration,
    - d/ adoption of a resolution on dissolving the fund by a board of investors or a meeting of investors,
    - e/ occurrence of events specified in the Customer's articles of association, resulting in the dissolution of the Customer,
  - 13/ the Customer's failure to close all the Derivative Transactions within 5 Business Days if, during the term of the Master Agreement, the value of net assets held by the Customer being an open-ended or a specialist open-ended investment fund falls below the value set out in Article 92 Sec. 1 of the Act on Funds (or any relevant provision substituting it).
2. The Defaulting Party shall be obligated to promptly inform the other Party (the "**Non-Defaulting Party**") of the occurrence of any of the Events of Default affecting the Defaulting Party.

## § 10. Consequences of Event of Default

1. If an Event of Default occurs, then:
- 1/ immediately after having become aware of the occurrence of Event of Default, the Non-Defaulting Party shall notify the Defaulting Party, by fax, e-mail or in writing, of stating the occurrence of Event of Default,
  - 2/ if, upon the lapse of the second (2nd) Business Day after the day of delivery (or attempted delivery pursuant to § 10.1.1 above) of the notice on the Event of Default, the Event of Default referred to in § 10.1.1 is continuing, then:
    - a/ if the Bank is the Non-Defaulting Party, the Bank shall have the right to perform an Early Termination by calculating the Net Present Value for each Transaction subject to Early Termination and calculate the Early Termination Amount pursuant to § 10.4 below; the day on which the Bank performs the Early Termination shall become the Early Termination Date;
    - b/ if the Bank is the Defaulting Party and the notice referred to in § 10.1.1 above is not manifestly unfunded, the Bank shall set the Early Termination Date that may not fall later than on the twentieth (20th) Business Day after the notice referred to in § 10.1.1 and perform the Early Termination by calculating the Net Present Value for each Transaction subject to the Early Termination and calculate the Early Termination Amount pursuant to § 10.4 below.

2. If an Event of Default occurs with respect to a Party, then as of the time it has become aware of the Event of Default, the Non-Defaulting Party shall have the right to refrain from paying any amounts in favour of the Defaulting Party under the Transaction, save for the Term Deposit Transactions, and shall not be obligated to pay any late payment interest thereunder. The said right shall be vested in the Non-Defaulting Party until the Event of Default ceases to exist or becomes remedied and the Defaulting Party has settled any and all liabilities under the Master Agreement and the Transactions.
3. As of the Early Termination Date, the obligations of the Bank and the Customer (whether due or not) arising from the Transactions (save for the Term Deposit Transactions) shall become the obligation to determine and pay the Early Termination Amount (which, however, shall not constitute a novation within the meaning of Article 506 § 1 of the Civil Code).
4. The Early Termination Amount calculated by the Bank as at the Early Termination Date shall be equal to the sum of the following values:
  - 1/ the sum of the due or undue liabilities of the Bank and the Customer under the Transactions (save for the Term Deposit Transactions) calculated in the manner set out for calculating the Net Present Value of each Transaction subject to the Early Termination; and
  - 2/ the value of the matured liabilities due and payable by each Party under the Transactions (other than the Term Deposit Transactions).
5. After calculating the Early Termination Amount, the Bank shall either credit (if the Early Termination Amount is payable to the Customer) or debit (if the Early Termination Amount is payable to the Bank) the Settlement Account of the Customer maintained with the Bank. If the Customer has no Settlement Account maintained with the Bank, he shall be obligated to pay, no later than until the end of the Business Day following the Early Termination Date, the amount corresponding to the Early Termination Amount to the account specified by the Bank. If the Early Termination Amount is payable to the Customer, the Bank shall remit the Early Termination Amount to the Settlement Account of the Customer maintained outside the Bank.
6. Any calculations related to the computing of the Early Termination Amount are performed by the Bank. After having calculated the Early Termination Amount and performed the Early Termination, the Bank shall notify the Customer about the value of the Early Termination Amount in the manner specified in § 10.1.1 above. If the Customer requests so in writing, the Bank shall substantiate the Early Termination Amount calculated by the Bank.
7. The Bank shall have the right to request to be reimbursed for, and the Customer shall cover all documented costs and charges related to the Early Termination. The Bank may also seek compensation on general terms in accordance with provisions of the Civil Code.

## § 11. Termination Events

1. The following events shall constitute Termination Events:
  - 1/ change in the applicable provisions of law in such a way that the Transaction or settlement thereof becomes illegal or may result in breach of law;
  - 2/ event of Force Majeure, provided that such event of Force Majeure is continuing for at least three (3) Business Days;
  - 3/ Tax Event;
  - 4/ other events specified by the Parties as the events constituting the Termination Events in separate representations, documents or agreements.
2. The Party affected by the Termination Event shall be obligated to promptly notify the other Party thereof, and in the case of the Tax Event, the Party shall be obligated to present an opinion of a person holding appropriate professional qualifications to have the occurrence of such Tax Event confirmed.
3. Failure, by the Party affected by the Termination Event, to make payment under the Transaction shall not be deemed as delay or Event of Default; however, the other Party shall have the right to refrain from performing mutual obligations under the Transaction.
4. If, after occurrence of the Termination Event, a Party has fulfilled a performance arising from a Transaction in favour of the other Party but has not received from the other Party any payable sum under the Transaction, the performing Party shall be entitled to request return of what was received by the second Party.
5. If the Termination Event occurs and affects either Party, the Parties in good faith shall enter into negotiations in order to eliminate the Termination Event; however, such negotiations may not last longer than five (5) Business Days, unless the Parties agree on a different deadline for completing negotiations. If the negotiations do not lead to elimination of the Termination Event, the Transaction, with respect to which the Termination Event referred to in § 11.1 above occurred, shall be settled early in accordance with § 10 above, which § 10 shall apply accordingly, without the necessity to observe the deadlines stipulated therein.

## § 12. Notices

1. Unless provisions of the Master Agreement, these Terms and Conditions or Transaction Descriptions provide otherwise, all correspondence to the Customer shall be provided to the address and/or telephone number specified by the Customer in the Master Agreement, Information Sheet or to the last known to the Bank address and/or telephone number.
2. Correspondence and/or information shall be deemed to be effectively delivered:
  - 1/ if directly delivered – upon confirmation of receipt of the letter by the Customer, its representative or attorney in fact;
  - 2/ if sent by fax – upon the sender Party's receipt of correct send confirmation message;
  - 3/ if sent by e-mail – upon correct sending of the e-mail to the server of the Bank or the Customer, respectively;
  - 4/ if sent by registered mail or courier service – upon delivery or attempted delivery; in particular, the following shall be deemed to constitute a proof of attempted delivery: an appropriate advice note in writing received from the post office, courier service or a different entity authorised for service stating that the deadline to collect the mail has expired ineffectively or that it has been impossible to deliver the mail, in particular due to refusal to accept the mail;
  - 5/ if the Customer refused to accept the delivery – on the date of such refusal;
  - 6/ e-banking message – upon introducing the message into the means of e-communications in a way enabling the Customer to familiarise himself therewith;
  - 7/ if a different correspondence delivery method has been agreed upon – in accordance with the Parties arrangements.
3. The Bank hereby provides the following correspondence details for the purpose of cooperation with the Customer with regard to the Master Agreement and the Transaction(s):
  - 1/ for matters other than specified in items § 12.3.2 and § 12.3.3:  
mBank S.A.  
Departament Rozwoju Biznesu Rynków Finansowych (Financial Markets Business Development Department)  
ul. Senatorska 18  
00-950 Warszawa  
e-mail address: DSM\_negocjacje@mbank.pl
  - 2/ for matters relation to Confirmations:  
Departament Obsługi i Rozliczeń Rynków Finansowych (Financial Markets Support and Settlement Department)  
E-mail address: potwierdzenia.klient@mbank.pl
  - 3/ for matters related to Collaterals and Mark-up information:  
Departament Obsługi i Rozliczeń Rynków Finansowych (Financial Markets Support and Settlement Department)  
E-mail: collateral.klient@mbank.pl
4. The Bank hereby announces that all details concerning the Bank are available at the web site of the mBank Group at: <http://www.mbank.pl>.
5. If the notice referred to in § 12.2.1 – § 12.2.4 is delivered after business hours on a Business Day or a day that is not a Business Day at the place of delivery, the notice shall be deemed to have been delivered on the first Business Day following the day on which the notice was delivered at the place of delivery. The notice shall be irrevocable in absence of manifest error, and, if so, then it shall be revocable only to the extent of the error.
6. In case of any change, the Customer shall promptly update its address details.

### § 13. Complaints, dispute resolution

1. Unless the provisions of law (including the EMIR and SFTR Legislation) provide otherwise, in the event of any:
  - 1/ discrepancy between the Transaction Confirmation sent to the Customer by the Bank and the agreed Transaction Terms, the Customer shall have the right to promptly notify the Bank over the phone of any objections, however, no later than until the end of the Business Day following the date of receipt of the Confirmation;
  - 2/ inconsistencies in the content of the report with the valuation of the Transaction Package, the Customer shall have the right to raise objections in writing, by e-mail (provided that the Bank has informed the Customer of its e-mail address for the purpose of raising such objection in the Master Agreement or in the manner as provided in the Master Agreement or the Information Sheet or in the Terms and Conditions) or by fax, promptly, however, no later than within two (2) Business Days from the date of receipt of the report together with valuation of the Transaction Package from the Bank; and
  - 3/ inconsistencies in the content of the Collateral report, of the nature other than specified in § 20.7, the Customer shall have the right to raise objections in writing by e-mail (provided that the Bank has informed the Customer of its e-mail address for the purpose of raising such objection in the Master Agreement or in the manner as provided in the Master Agreement or in the Information Sheet or in the Terms and Conditions) or by fax, promptly, however no later than within two (2) Business Days from the date of receipt of the Collateral report from the Bank.
2. The Bank shall make its best efforts to provide answer or explanations thereto by telephone, telefax or email immediately, however, no later than within five (5) Business Days from the date the objections have been raised. The Bank reserves the right to extend the deadline depending on the complexity of objections raised by the Customer pursuant to § 13.1 above; the Bank shall promptly inform the Customer of such deadline extension and set a new deadline to provide the answer or explanations.
3. If the Customer's objections are recognised, then, immediately after the answer or explanations referred to in § 13.2 above have been provided, the Bank shall deliver to the Customer a revised version of the Confirmation, the report together with Transaction Package valuation or the Collateral report, as the case may be.
4. If the objections raised by the Customer are dismissed, the Customer shall have the right to lodge a complaint in writing with the Bank. If no complaint has been lodged within five (5) Business Days, the Customer shall be deemed to have accepted the explanations provided to him by the Bank.
5. The Customer may file a complaint related to the Master Agreement or the Terms and Conditions, subject to § 13.4.
6. A complaint may be filed with the Bank's organisational unit providing customer service in writing, electronically, by phone or in person during a meeting with the Bank's employee.
7. The Bank shall reply to the complaint referred to in § 13.4 and § 13.5 not later than within 15 Business Days from the date of its receipt. Replies to complaints shall be provided on durable medium, i.e. in paper or electronic form.
8. Upon the Customer's request included in the complaint, the Bank may respond to the complaint referred to in § 13.4 via electronic mail.
9. In the case of particularly complex matters, the Bank reserves the right to extend the time limit referred to in § 13.7 to 35 Business Days. The Bank shall promptly inform the Customer of such deadline extension.
10. The Bank shall keep record of all disputes related to Transactions entered into between the Bank and the Customer, including in particular information concerning the time during which the dispute has remained unsettled, the details of the Customer who has been a party to the dispute and the contested amount.
11. If there is a dispute as referred to above between the Bank and the Customer, such a dispute shall not affect the scope of the rights and obligations of the Parties under the Transactions executed, in particular, such a dispute shall not affect the validity of the executed Transactions.

### § 14. Portfolio Reconciliation

1. The Bank shall provide the Customer with a report together with Transaction Package valuation, including:
  - 1/ list of unmatured Transactions executed with the Bank forming part of the Transaction Package;
  - 2/ the value of the Minimum Collateral calculated for the Transactions referred to in § 14.1.1 above;
  - 3/ Net Present Value of individual Transactions referred to in § 14.1.1 above;
  - 4/ Net Present Value of Transaction Package,or another valuation report of the Transactions in Derivatives that are not included in the Package of Transactions.
2. The Bank shall provide the Customer with the report together with the valuation referred to in § 14.1 above within the deadlines resulting from the EMIR Legislation provided for reconciliation of portfolios of Transactions in Derivatives.
3. The report with the valuation may be submitted to the Customer more frequently than as provided in § 14.2 above if the Customer and the Bank so agree or if the Bank decides so.
4. Whenever the Customer receives the report with the valuation, the Customer shall be obligated to verify the contents thereof. If the Customer discovers any inconsistency, the Customer should promptly, however, no later than within two (2) Business Days from the date of receipt of the report with the valuation, contact the Bank in order to clarify inconsistencies, if any, or raise objections to the content of the report acting pursuant to § 13.1.2 above.
5. If no objection has been raised regarding the report with the valuation within the deadline referred to in § 14.4 above, the Customer shall be deemed to have familiarised himself, verified and accepted the content of the report with the valuation.
6. The Customer undertakes to promptly inform the Bank whenever he/she does not receive the report with the valuation from the Bank within the deadlines resulting from the EMIR Legislation provided for reconciliation of portfolios of Transactions in Derivatives.

### § 15. Report on Transaction

1. The Customer authorises the Bank to report, on behalf of the Customer, Transactions in Derivatives (including any modifications or termination thereof) entered into with the Bank to a Trade Repository in accordance with the requirements arising from the EMIR Legislation. A Customer being an FC Counterparty authorises the Bank to report, on behalf of the Customer, SFTs (including any modifications or termination thereof) entered into with the Bank to a Trade Repository in accordance with the requirements arising from the SFTR Legislation. The authorisation applies to Transactions entered into with the Bank both before and after the date of entry into force of the obligation to report Transactions in the scope defined in the EMIR and SFTR Legislation. The Bank chooses a Trade Repository to which Transactions are to be reported; it may choose more than one Trade Repository. The Bank informs Customers about Trade Repositories to which Transactions are to be reported by publishing information on its official website or in the form of a message in the online banking system. If the Customer so requests, the Bank provides the information referred to in the foregoing sentence to the Customer in writing.
2. Transactions (including any modifications or termination thereof) are reported to a Trade Repository in accordance with the principles and within the deadlines specified in the EMIR and SFTR Legislation and the agreement between the Bank and the Trade Repository. The scope and the principles of reporting Transactions (including any modifications or termination thereof) to a Trade Repository by the Bank depend on the requirements imposed in the mandatory provisions of law, in particular the EMIR and SFTR Legislation, and the agreement between the Bank and the Trade Repository.
- 2<sup>1</sup>. The Bank does not report SFTs entered into with Customers not being FC Counterparties. The Bank does not report reuse of securities that are subject to SFTs. The obligation to report reuse of securities (within the meaning of the SFTR Legislation) rests with the Customer.
3. With regard to Transactions entered into with the Bank, the Customer authorises the Bank to access the Customer's data recorded in a Trade Repository, obtain information concerning the Customer or Transactions entered into with the Customer from the Trade Repository, and perform any other activities and make declarations of will on behalf of the Customer concerning the data covered by reports on Transactions entered into with the Bank.

4. Should the Customer/the FC Counterparty wish to report Transactions in Derivatives/SFTs (including any modifications or termination thereof) to a Trade Repository independently, the Customer/the FC Counterparty is obliged to notify the Bank of this fact and agree with the Bank on a detailed method of arranging the contents of Reports on Transactions in Derivatives or Reports on SFTs (including any modifications or termination thereof) to the Trade Repository. The notification referred to above becomes binding on the Bank after the lapse of the second (2) Business Day from the day when the method of arranging the contents of Reports to the Trade Repository is finally agreed on with the Bank and confirmed by the Bank in writing. Notwithstanding the method of arranging the contents of reports to Trade Repositories with the Bank, in the event where the Customer reports Transactions in Derivatives/SFTs to a Trade Repository independently, for the purposes of reporting to a Trade Repository the Customer is obliged to use identifiers referred to in the EMIR and SFTR Legislation, as assigned by the Bank and contained in Transaction Confirmations provided to the Customer by the Bank. For the avoidance of doubt, if the Customer notifies the Bank of an intention to report Transactions in Derivatives to a Trade Repository independently, the Customer is also obliged to report any modifications or termination of Transactions already reported to a Trade Repository by the Bank acting on behalf of the Customer. The Bank is not be liable for any loss suffered by the Customer in connection with Transactions (including any modifications or termination thereof) reported to a Trade Repository by the Customer independently. If the Customer who reports Transactions in Derivatives (including any modifications or termination thereof) to a Trade Repository independently wishes that the Bank takes over the reporting of Transactions (including any modifications or termination thereof) to a Trade Repository on behalf of the Customer, the Customer is obliged to notify the Bank of this fact in writing. Unless the Bank informs the Customer within five (5) Business Days from the date of receipt of such a notification that the Bank does not agree to report Transactions to a Trade Repository on behalf of the Customer, the provisions of § 15 concerning reporting to a Trade Repository on behalf of the Customer apply directly starting from the first Business Day falling after ineffective lapse of the aforesaid five-day period or on a different Business Day specified by the Bank to the Customer.
5. All data concerning the Customer that the Bank has in its possession required for the Bank to duly report Transactions in Derivatives and SFTs (including any modifications or termination thereof) to a Trade Repository (in particular the Customer's telephone number and address details, business name, registered office and the legal status of the Customer, particulars required to assign the Customer to the FC Counterparty category and information related to the Customer's LEI (Legal Entity Identifier) or BIC (Business Identifier Code)) are deemed by the Bank to be up to date and are used by the Bank to report Transactions in Derivatives and SFTs to a Trade Repository unless the Customer notifies the Bank that the data has changed; the notification becomes effective on the second Business Day after the date of its receipt by the Bank.
6. The Bank may request the Customer (in writing or by email as the Bank sees fit) to promptly (however, not later than within one (1) Business Day from the date the Customer receives the Bank's request) confirm whether the data referred to in § 15.5 above are up-to-date and promptly (however, not later than within one (1) Business Day from the date the Customer receives the Bank's request) provide additional information, make representations or perform any other activity that is necessary for the Bank to report Transactions to a Trade Repository on behalf of the Customer, regardless of whether such additional information, representations or activity is required by virtue of law or under the agreement between the Bank and the Trade Repository.
7. If the Customer does not take the following actions immediately:
  - 1/ confirm that the Customer's data is up-to-date at the Bank's request referred to in § 15.6, or
  - 2/ provide additional information, or
  - 3/ make representations, or
  - 4/ take other actions necessary to report Transactions in Derivatives or SFTs to a Trade Repository at the Bank's request referred to in § 15.6, the Bank may choose to do the following:
  - 5/ not to report Transactions in Derivatives or SFTs on behalf of the Customer, and inform the Customer thereof, or
  - 6/ to report Transactions in Derivatives or SFTs to its best knowledge of the Customer and the Transactions concluded with the Customer.
8. Notwithstanding § 15.5 and § 15.6, the Customer undertakes to immediately notify the Bank in writing of any changes to data referred to in § 15.5 and § 15.6 without being requested to do so by the Bank.
9. For the purposes of reporting Transactions (including any modifications or termination thereof) to a Trade Repository, the Customer accepts that, unless otherwise agreed between the Parties, when reporting Transactions (or modifications thereof) to the Trade Repository on behalf of the Customer, the Bank reports data relating to valuations and Collateral, calculated or determined by the Bank in accordance with the methodology adopted by the Bank.
10. The Bank is not liable to the Customer for the consequences of the Customer's non-performance of any obligation referred to in § 15.4 – § 15.9 (especially for any consequences related to the Bank reporting incomplete, delayed or incorrect Transactions (including any modifications or termination thereof) to a Trade Repository or not reporting them at all), unless such responsibility results from deliberate fault or gross negligence of the Bank.
11. The Customer is liable to the Bank for any damage sustained by the Bank (especially any penalties imposed on the Bank) resulting from the Customer's non-performance of any of its obligations referred to in § 15.4 – § 15.9. In particular, at the Bank's request, the Customer immediately covers any damage and reimburses the Bank for any costs incurred by the Bank in connection with the Customer's non-performance of any such obligation or obligations.
12. In accordance with the EMIR and SFTR Legislation, the obligation to report Transactions (including any modifications or termination thereof) under the EMIR and SFTR Legislation is imposed on each Transaction Party, i.e. separately on the Bank and the Customer. Despite the fact that, subject to § 15.4, the Bank reports Transactions (including any modifications or termination thereof) on behalf of the Customer, any penalties resulting from non-compliance with the EMIR and SFTR Legislation in the above scope may be imposed directly on the Customer.
13. The Bank is not liable to the Customer for non-performance or defective performance by a Trade Repository of any obligations resulting from the law and the agreement between the Bank and the Trade Repository.
14. The Bank is not liable to the Customer for any damage sustained by the Customer due to inability to report a Transaction (including any modifications or termination thereof) to a Trade Repository due to technical reasons, force majeure or other reasons, unless such liability results from deliberate fault or gross negligence of the Bank.
15. The Bank reserves the right to charge fees for reporting Transactions (including any modifications or termination thereof) to Trade Repositories as per the Tariff of Banking Fees and Commissions of mBank for SME and Corporates. The Bank introduces or changes fees with a one-month prior notice to Customers.
16. Pursuant to the EMIR and SFTR Legislation, the Customer authorises the Bank to report Transactions in Derivatives and SFTs concluded with the Bank on behalf of the Customer (including any modifications or termination thereto) to ESMA (in line with the principles set out in § 15.1 – § 15.15) in case the Trade Repository is unavailable, in order to register Transactions in Derivatives and SFTs in accordance with the EMIR and SFTR Legislation.
17. Subject to § 15.4, the Customer undertakes to the Bank that, unless agreed otherwise between the Bank and the Customer, it will not independently report any Transactions in Derivatives or SFTs (including any modifications or termination thereof) covered by the authorisations referred to in § 15.1 and § 15.16 to Trade Repositories or ESMA.
18. § 15.1 – §15.17 do not apply to Customers having their registered office (or, if they do not have a registered office, their place of business) outside the territory of the European Union.

## § 16. Portfolio Compression

In the event that the number of the applicable Transactions in Derivatives between the Bank and the Customer that are not subject to the obligation of central settlement pursuant to the EMIR Legislation, exceeds 500, or, if, as a result of other circumstances, it might become likely that the number achieves or exceeds 500 in the nearest future (i.e. no later than within the following consecutive 45 calendar days), then the Bank and the Customer shall enter into negotiations in order to agree on specific procedures concerning regular verification (at least twice a year) whether a portfolio of those Transactions in Derivatives (including the Transaction Package) may be compressed in order to limit the credit risk of the counterparty.

## § 17. MiFID, MiFIR, EMIR and SFTR Assumptions

- For the purposes of performance by the Bank and the Customer of their obligations resulting from EMIR, MiFID, MiFIR and SFTR and, for the Bank, for the purposes of performance of the agreement between the Bank and a Trade Repository, the Bank is entitled to assume the following, unless the Customer has notified the Bank otherwise, bearing in mind that the notification concerning the information referred to in § 17.1.3 should be made when concluding a Transaction, while the notification concerning the information referred to in § 17.3.1, § 17.3.2 and § 17.3.4 should be provided to the Bank in writing, and that such a notification is effective from the next Business Day after it is provided to the Bank:
  - Customer has a customer status within the meaning of the EMIR Legislation consistent with the status provided to the Bank when concluding the Framework Agreement or consistent with the status provided to the Bank in accordance with the provisions of § 17.2, whereas if the Customer does not provide the status to the Bank, the Bank assumes that the Customer is an FC Counterparty,
  - Customer concludes a Transaction on own behalf and for own account,
  - unless the Customer has declared otherwise, it is assumed that the Transaction is not a security short sale transaction (or a part of such a transaction) within the meaning of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps,
  - when entering into a Transaction, the Customer confirms that the Transaction is not subject to the obligation to trade referred to in § 1.16.
- If the Customer's status changes, the Customer promptly, and in any case not later than before the conclusion of the next Transaction or modification of an existing one with the Bank, informs the Bank about the change of the status (including about obtaining a new or losing the existing status); however, if necessary for the Bank or the Customer to fulfill any obligations under the EMIR or SFTR Legislation, the Parties determine in good faith their further conduct, especially with regard to the conclusion and settlement of Transactions.
- The provisions of § 15.10 and § 15.11 apply accordingly.
- If the Transaction Settlement is submitted to a CCP, the Transaction Settlement, as a result of a clearing novation referred to in Article 45h Sec. 2 Item 1 and 2 of the Act on Trading in Financial Instruments, is governed by the relevant agreement concluded by each of the Parties with the CCP or with a participant which, based on the agreement concluded with the Party, undertook to perform the tasks of a participant being a party to the transaction settlement ("**Settlement Agent**").
- Subject to § 17.1, the Customer must notify the Bank in writing should the Customer be required to perform any obligation arising from the EMIR and SFTR Legislation, and MiFID and MiFIR Regulations.

## § 18. Types of Collateral

- In respect of the Transactions executed as a part of the Transaction Package the Parties shall establish a Collateral pursuant to the provisions of §§ 18 and 19 and the Credit Support Agreement.
- The Required Collateral shall be established through:
  - transferring the title to cash funds (security deposit) pursuant to Article 5 Sec. 1 Item 1 of the Act of 2 April 2004 on Certain Financial Collateral;
  - establishing a financial pledge on the title to cash funds or financial instruments (financial pledge) pursuant to Article 5 Sec. 1 Item 2 of the Act of 2 April 2004 on Certain Financial Collateral.The Parties shall specify the applicable types and principles of establishing the Required Collateral in the Credit Support Agreement. The Parties may also agree that the Required Collateral be established in a form different than that specified in § 18.2.1 and § 18.2.2.
- The Additional Collateral shall be specified in the Credit Support Agreement.

## § 19. Required Collateral

- The value of the Collateral shall be calculated by the Bank for each of the Parties, as at each Pricing Date, according to the data from the Pricing Date. To determine the value of the Collateral the Bank shall calculate the value of:
  - the Party's Exposure;
  - the Required Collateral;
  - the Established Collateral.
- The value of the Required Collateral shall be equal to the amount of the Party's Exposure less the Amount of the Limit for that Party specified in the Credit Support Agreement. Unless the Parties in the Credit Support Agreement stipulate otherwise, the Amount of the Limit shall be zero.
- If on any Pricing Date the value of the Required Collateral calculated for the Party exceeds the value of the Collateral established in its favour, the other Party shall be obliged to pay a difference between the value of the Required Collateral and the Established Collateral (the "**Payment Amount**").
- If on any Pricing Date the value of the Collateral established for the Party exceeds the value of the Collateral required in its favour, this Party shall be obliged to make a refund of the difference between the value of the Established Collateral and the Required Collateral (the "**Refund Amount**").
- The obligation to pay the Payment Amount or the Refund Amount shall not arise if the value of any of these amounts is lower than the value of the Minimum Transfer Amount. This provision shall not apply in the case when:
  - between the Parties there are no executed and unsettled Transactions forming part of the Transaction Package; or
  - the value of the Required Collateral established by the Party falls down to zero.
- Unless the Parties agree otherwise in the Credit Support Agreement, the Payment Amount or the Refund Amount payable pursuant to § 19.5 shall be rounded up to the nearest thousand.
- In the Credit Support Agreement, the Parties may agree on different principles of establishing the Required Collateral.

## § 20. The method of establishing the Required Collateral

- Until 10:30 a.m. of the Business Day following the Pricing Date, the Bank shall provide the Customer with a Collateral report containing the following information:
  - Value of the Established Collateral, established by the Customer in favour of the Bank or by the Bank in favour of the Customer, as at the Pricing Date;
  - Value of the Required Collateral due from the Customer or the Bank;
  - The Payment Amount or the Refund Amount that the Customer or the Bank is obliged to pay pursuant to the provisions of § 19.
- For the purpose of establishing the Required Collateral, in the case where:
  - the Customer has a Settlement Account with the Bank,
    - the Bank shall debit the Customer's Settlement Account specified in the Credit Support Agreement with the Payment Amount or the Refund Amount up to an amount of the funds available on the first (1st) Business Day after the Pricing Date,
    - The Bank shall credit the Customer's Settlement Account specified in the Credit Support Agreement with the Payment Amount or the Refund Amount on the first (1st) Business Day after the Pricing Date.
  - The Customer has no Settlement Account with the Bank,
    - The Customer shall transfer, no later than on the first (1st) Business Day after the Pricing Date, the Payment Amount or the Refund Amount to the account specified in the Credit Support Agreement.
    - The Bank shall transfer, no later than on the first (1st) Business Day after the Pricing Date, the Payment Amount or the Refund Amount to the Customer's Settlement Account.

- 3/ On the Business Day referred to in § 20.1 above, the Customer has failed to provide funds on the Settlement Account in an amount required to establish the Required Collateral, the Bank shall have the right to debit another Customer's Settlement Account or another bank account of the Customer maintained with the Bank, provided that the account is maintained in the same currency as the currency in which the Required Collateral is collected, up to an amount of payable the Required Collateral, which amount is specified in the Collateral report.
3. The Bank may make execution of the Transaction dependent upon the establishment of the Required Collateral in the amount agreed with the Customer before the Transaction is entered into. In such case, the Bank shall collect the agreed amount of the Required Collateral from the Customer's Settlement Account or the Customer shall pay the agreed amount of the Required Collateral to the account specified by the Bank. Where there has been no Transaction, the Required Collateral shall be refunded in accordance with the principles specified in § 19.
4. In the event that the Established Collateral is provided in a currency other than Polish Zloty, then, for the purpose of determining its value, the Bank shall convert the Collateral at the exchange rate determined by the Bank on the basis of the quotations from the interbank market from 4.30 p.m. on the Pricing Date.
5. If the Customer contests the amounts referred to in § 20.1, he shall notify the Bank by e-mail to the address collateral.klient@mbank.pl until 1 p.m. on the Business Day on which the Customer received the Collateral Report. In such circumstances, the Customer shall present to the Bank, together with a notification of the dispute, its calculations of the value of the Required Collateral, the Established Collateral, the Refund Amount and the Payment Amount, as well as the value of the Exposure divided by individual Transactions.
6. Regardless of the provisions of § 20.7, the Customer or the Bank shall transfer the Payment Amount or the Refund Amount, pursuant to the principles specified in § 20.2
7. The Bank, after receiving the calculation referred to in § 20.5, shall respond to it by 10:30 a.m. on the next Business Day by specifying whether it agrees with the Customer's calculations or upkeeps its primary calculations. In the case where the Bank:
  - 1/ upkeeps its primary calculations, the Payment Amount or the Refund Amount transferred in accordance with the provisions of § 20.6 shall still remain applicable;
  - 2/ agrees with the Customer's calculations:
    - a/ after the next Pricing Date shall deliver to the Customer a new Collateral report with the properly calculated Payment Amount or the Refund Amount as at this Pricing Date, and then the Customer or the Bank shall transfer this amount pursuant to the principles specified in § 20.2, or
    - b/ together with the notification referred to in the first sentence of § 20.7, shall inform the Customer about the new Payment Amount or the Refund Amount falling due on that day, and then the Customer or the Bank shall transfer this amount, pursuant to the principles specified in § 20.2.
8. Failure, by either Party, to observe the deadlines stipulated in § 20.5 and § 20.7, shall be treated as the acceptance of the calculation of the opposing Party.
9. Obligations of the Parties to provide or refund the Collateral shall depend upon the fulfilment of the conditions precedent assuming that no Event of Default (or the event which, according to the definition of the particular Event of Default, would become an Event of Default upon the lapse of the stipulated deadline) has occurred in relation to the other Party.
10. The Established Collateral shall bear interest at the rate agreed by the Parties in the Credit Support Agreement. Interest shall be calculated by the Bank for each of the Parties for each day of the calendar month per annum, taking into account positive and negative interest rates. Interest due of the Parties shall be set off, and the amount of set off interest shall be paid out monthly within three (3) Business Days after the end of the given calendar month. Interest shall be calculated separately for each currency. The Bank shall notify the Customer of the amount of accrued interest in a paper or electronic form. Interest shall be transferred to the accounts specified in the Credit Support Agreement.

## § 21. Satisfaction of claims

1. The Party may satisfy the following claims from the Collaterals established in favour of the Party:
  - 1/ payment of the due and payable amounts resulting from settlement of Transactions entered into between the Parties, in particular, the Early Termination Amount;
  - 2/ late payment interest due to the Party on the other Party's liabilities not satisfied on their payment date;
  - 3/ covering of any documented fees, charges and expenses incurred by the Party in connection with the Early Termination.
2. Regardless the principles described in § 21.1, the Bank may cover, from the Collaterals established by the Customer, unauthorised debit on the Customer's Settlement Account maintained by the Bank as a result of settlement of the Transaction or the Early Termination;
3. The priority of satisfaction of the claims referred to in § 21.1 and 21.2 above as well as satisfaction from the Collaterals shall be determined by the Party.
4. If the amount of the claims referred to in § 21.1 above is denominated in a currency different than the Collateral established by the other Party, the Party, for the purpose of satisfaction of the claims, shall have the right to convert the value of the Collateral into the currency in which the Bank's claim is denominated according to the NBP Fixing or, if the NBP Fixing is not published, to the pair of the claim and the Collateral currencies, at the rate of exchange calculated on the basis of the available NBP Fixing rates of the claim and the Collateral currencies to PLN currency, published on the conversion date, unless the Parties agreed on a different conversion rate.
5. The Bank shall charge interest calculated at the statutory interest rate as of the due date (including that day) until the payment date (excluding that day) on any due and outstanding amounts receivable of the Party under a Transaction or the Master Agreement or Collateral.
6. In the case of the Early Settlement or Event of Default as referred to in § 9.1.1 and § 9.1.2, a Party may set off payable receivables arising from Transactions executed under the Master Agreement (in particular, the Early Termination Amount and the amounts recorded as unauthorised debit in the Customer's Settlement Account) against any payable and not yet payable receivables due to the other Party. The set off amounts in currencies other than the Early Termination Amount currency are converted into the Early Termination Amount currency or the currency of the receivable with the earliest due date according to the NBP Fixing published on the conversion date. After the set-off, the Party provides a list of receivables under Transactions which have been set off.
7. The provisions of § 21.6 do not apply to: calculation of the Early Termination Amount and the Transaction Settlement made by debiting the settlement amount or the Early Termination Amount to the Settlement Account.
8. The Bank may record, as unauthorised debit, the receivables due to the Bank from the Customer under the Transactions covered by these Terms and Conditions on the Customer's Settlement Accounts maintained with the Bank.
9. The Customer undertakes to treat the liabilities towards the Bank arising from the Master Agreement and transactions concluded on its basis at least on equal terms (*pari passu*) with all other current and future liabilities of the Customer to third parties on account of similar agreements and transactions, except for the liabilities that must be satisfied on a preferential basis under the mandatory provisions of law.

## § 22. Personal Data Processing

1. The Bank acts as personal data controller of the Customer and their representatives.
2. In order to conclude and perform an Agreement, the Bank processes personal data of the Customer and their representatives. The provision of personal data is necessary for the conclusion and performance of the Agreement.
3. The Bank processes personal data of the Customer and their representatives also:
  - 1/ for the purposes of banking activity, i.e. for the purposes of assessing creditworthiness and analysing credit risk, for statistical and analytical purposes, for the purposes of assessing and monitoring operational risk, handling complaints, asserting claims, preventing fraud, performing obligations arising out of the applicable law, in particular AML, FATCA, CRS, MIFID and archiving,
  - 2/ in order to provide the Customer with marketing materials concerning own services and products of the Bank and subsidiaries of the Bank's Group. The list of mBank Group subsidiaries is available at [www.mbank.pl](http://www.mbank.pl).
  - 3/ for the purposes profiling supporting direct marketing promoting the services and products of the Bank and of the subsidiaries of the Bank's Group.

4. The Bank processes personal data of the Customer and their representatives for the period necessary to conclude and perform an Agreement, and then for the period of ten years calculated from the date of the Agreement termination or for another period being the prescription period of possible claims. After the lapse of the above time limits, the Bank shall anonymise the personal data.
5. The Customer and their representatives:
  - 1/ have the right to access and correct their data, as well as to transfer them; and
  - 2/ may demand that the data be erased or their processing be restricted, or may object to their processing; the Customer may, in particular, object to profiling for the purposes of direct marketing promoting the services and products of the Bank and of the subsidiaries of the Bank's Group.
6. An employee of the Bank holds the function of the Inspector General for the Protection of Personal Data. S/he may be contacted at the following e-mail address: [Inspektordanychosobowych@mbank.pl](mailto:Inspektordanychosobowych@mbank.pl).
7. Detailed information concerning the principles and procedure for processing personal data by the Bank is specified in the GDPR package available at: [www.mbank.pl/pdf/rodo/gdpr-package.pdf](http://www.mbank.pl/pdf/rodo/gdpr-package.pdf).
8. The President of the Personal Data Protection Office acts as the supervisory authority in terms of protection of personal data and the Customer and their representatives have to right to lodge a complaint to him/her.
9. The Bank announces that:
  - 1/ execution of foreign transfers via SWIFT (Society for Worldwide Interbank Financial Telecommunications) may result in the government of the United States of America having access to the personal data of the Customer and their representatives. The American authorities have undertaken to use the personal data only for the purpose of counteracting terrorism, respecting the guarantees provided for in the European system of personal data protection, data, including personal data, of the Customer and their representatives may be disclosed to entities entrusted by the Bank with data processing for the purpose of the performance of agreements on rendering services for the benefit of the Bank.
  - 2/
10. The Bank has the right to provide data on liabilities arising from the Agreement, including the Customer's personal data, to:
  - 1/ Banking Register System ("BR") – a database managed by the Polish Bank Association with its registered office in Warsaw, operating pursuant to the Banking Law Act of 29 August 1997,
  - 2/ Biuro Informacji Kredytowej S.A. (Credit Information Bureau, "BIK") with its registered office in Warsaw, operating pursuant to the Banking Law Act of 29 August 1997,
  - 3/ business information bureaus operating on the basis of the Act on the Provision of Business Information and Exchange of Business Data of 9 April 2010, if:
    - a/ the overall amount of liabilities to the Bank is at least PLN 500,
    - b/ the payment or payments are at least 30 days due and payable,
    - c/ at least one month has passed since the Bank transmitting the data and being the creditor sent a request for payment, warning the Customer of its intention to transmit the data to a bureau, including the bureau's registered business name and address of its registered office, by registered mail to the correspondence address specified by the Customer, and if the Customer has not specified such an address, to the address of the Customer's registered office.
11. The Customer's data, including personal data, collected in BR and BIK may be disclosed to:
  - 1/ other banks,
  - 2/ financial institutions operating as subsidiaries of banks within the meaning of the Banking Law Act of 29 August 1997,
  - 3/ other entities having statutory authorisations – subject to the terms and conditions laid down in the Banking Law Act of 29 August 1997,
  - 4/ business information bureaus operating under the Act on Disclosure of Business Information and Exchange of Business Data of 9 April 2010, within the scope and on the terms specified in the aforesaid Act.

### § 23. Amendment to the Terms and Conditions

1. Any amendments to these Terms and Conditions and the Transaction Descriptions made during the term of the Master Agreement shall be provided to the Customer along with indication of the dates on which they become effective. Amendments shall be delivered in accordance with the provisions of § 12 above.
2. Within 14 days of the date of delivery of the amendments, the Customer shall have the right to submit a notice of termination of the Master Agreement. The Customer's failure to submit a notice of termination of the Master Agreement within the time limit specified in the foregoing sentence shall be deemed as the Customer's acceptance of the amendments delivered by the Bank.

### § 24. Final Provisions

1. The Bank shall not accept or withhold any tax on the Transaction due from the Customer unless it is obligated to do so under the mandatory provisions of law.
2. Unless otherwise provided in these Terms and Conditions, the Master Agreement, the Credit Support Agreement or the Transaction Confirmation, all calculations are performed by the Bank, and all conversions of the amounts denominated in one currency to another currency are performed in accordance with the Foreign Exchange Rates Table applicable at that time.
3. For the avoidance of doubt:
  - 1/ any reference, in the content of these Terms and Conditions, to time (save for the Transaction Descriptions which refer to the Warsaw Time, Central European Time and other times) shall be understood as the standard time applicable in the Republic of Poland;
  - 2/ reference to a paragraph or section shall mean the relevant paragraph or section of these Terms and Conditions;
  - 3/ capitalised terms shall have the meanings ascribed to them in these Terms and Conditions or Transaction Descriptions;
  - 4/ all subdivisions in these Terms and Conditions have been adopted are for the purpose of order only.
4. The Bank hereby informs that:
  - 1/ The Bank is a participant in the statutory fund guarantee system as provided in the Act on the Bank Guarantee Fund, Deposit Guarantee Scheme and Resolution (as amended) dated 10 June 2016. Protection under the Bank Guarantee Fund ("BGF") is provided for deposits (whether in PLN or in other currencies) established by the following depositors: natural persons, legal persons, organisational units without legal personality, provided that they have legal capacity, school savings unions and employee savings-and-loan associations that are parties to personal bank account agreements or who have claims against the Bank under a banking transaction (as confirmed with registered documents issued by the Bank or registered deposit certificates as referred to in Article 9 Sec. 1 of Trading in Financial Instruments Act dated 29 July 2005) and individuals referred to in Article 55 Sec. 1 and Article 56 Sec. 1 of the Banking Act, provided that its claim against the Bank has become mature before the date on which the condition under the guarantee became fulfilled (within the meaning of the Bank Guarantee Fund Act);
  - 2/ in the event that the Bank maintains one account for more than one entity (joint account), each of the entities shall be the depositor within the limits set out in the account agreement, or, in the absence of contractual provisions or applicable regulations – in equal parts;
  - 3/ in the event that the Bank maintains an account for a partnership, general partnership, professional partnership, limited partnership or limited joint-stock partnership, such entity shall be the depositor;
  - 4/ guaranteed funds shall be covered with the mandatory guarantee system as of the date they have been paid into the bank account no later than on the date preceding the date when the BGF guarantee condition fulfils, or – with regard to claims under banking transactions – provided that the transaction has been performed before the date when the BGF guarantee condition fulfils – up to an amount (including interest accrued until the date when the guarantee condition fulfils in accordance with the interest rate specified in the agreement notwithstanding their maturity date) the PLN equivalent of EUR 100,000.00 – in 100%. The depositor shall always have the right to assert claim(s) against the bank in the portion exceeding the amount of the guaranteed cash performance;
  - 5/ A value denominated in EUR shall be converted to PLN in accordance with the average rate announced by the National Bank of Poland as at the date of fulfilment of the guarantee condition;

- 6/ the amount of the PLN equivalent of EUR 100,000.00 shall be the maximum amount of the depositor's claims against BGF, notwithstanding the amount and the number of accounts on which the depositor has had the funds or the number of sums receivable under which the claims arise;
  - 7/ claims under the guarantee extended by BGF shall be barred by the statutes of limitation of five (5) years from the date the guarantee condition is fulfilled;
  - 8/ a more specific information on the Bank Guarantee Fund can be found at the website of the mBank Group [www.mbank.pl/download/bfg-info/](http://www.mbank.pl/download/bfg-info/).
5. The Customer is obligated to regularly provide the Bank with the following documents by mail that allow verification of the financial situation of the Customer:
    - 1/ a copy of the F-01 GUS report – promptly, as soon as it is prepared by the Customer;
    - 2/ copy of annual financial statements – promptly as soon as they are prepared and again – after they have been audited by the statutory auditor, if such an audit is required under applicable regulations;
    - 3/ statement on the amount of the limits granted and the existing and planned indebtedness with other banks and financial institutions along with repayment dates – on the quarterly basis;
    - 4/ statement of the amount of the off-balance sheet commitments – on the quarterly basis;
    - 5/ projected balance sheet, profit and loss account and cash flow statement – promptly, as soon as they are prepared;
    - 6/ information on the derivative transactions entered into with other banks and their valuation – at least once in a calendar quarter.
  6. Whenever the Bank so requests, the Customer is obligated to provide explanations and present documents concerning his financial standing other than those referred to in § 24.5 above.
  7. The definitions and terms specified in the Terms and Conditions and Descriptions of Transactions correspond to the statutory terms as presented below.

mBank's terminology	Terminology used in the Act on Trading in Financial Instruments
Dual-Currency Deposit	another derivative instrument whose underlying instrument is a currency, exercised by delivery or cash settlement
Investment Deposit	structured deposit
Foreign Exchange Forward (FX Forward)	a forward contract whose underlying instrument is a foreign currency, exercised by delivery or cash settlement
Foreign Exchange Option	an option whose underlying instrument is a foreign currency, exercised by delivery or cash settlement
Forward Rate Agreement (FRA)	a forward rate agreement exercised by cash settlement
Interest Rate Option	an option whose underlying instrument is an interest rate, exercised by cash settlement
Interest Rate Swap (IRS)	a swap whose underlying instrument is an interest rate, exercised by cash settlement
Currency Interest Rate Swap (CIRS)	a swap whose underlying instruments are an interest rate and a foreign currency, exercised by cash settlement
Forward Transaction (FT)	a forward contract whose underlying instrument is a commodity, exercised by cash settlement
Commodity Swap	a swap whose underlying instrument is a commodity, exercised by cash settlement
Commodity Option	an option whose underlying instrument is a commodity, exercised by cash settlement
Forward transactions of sale of greenhouse gas emission allowances with cash settlement option	a forward contract whose object are emission allowances which may be exercised by cash settlement in the manner selected by one of the parties
Debt securities	bonds, covered bonds, investment certificates and other transferable securities, including securities which incorporate property rights equivalent to the rights attached to debt, issued on the basis of relevant provisions of Polish or foreign law.

8. Transactions which are settled in cash ("net" settlement, "without delivery") by exchanging the settlement amount are not contracts for difference within the meaning of the Act on Trading in Financial Instruments.

### § 24<sup>1</sup>. Mark-up

1. The Bank announces that Mark-up may be included in the Transaction quotation.
2. The Bank shall inform the Customer about the amount of the maximum Mark-ups by making them available at mBank Group's website ([www.mbank.pl/en/help/forms/sme-corporate/financial-market/information-on-mark-up/](http://www.mbank.pl/en/help/forms/sme-corporate/financial-market/information-on-mark-up/)). At each request of the Customer, the Bank may send the information about the maximum Mark-ups in hard copy. Any changes relating to information about the maximum Mark-ups are made by the Bank by making new amended information available at its above-mentioned website. The amendment is effective from the moment of publishing it by the Bank and applies only to new Transactions. Before entering into a Transaction for which the actual Mark-up exceeds the value of the aforesaid maximum Mark-up, the Bank shall inform the Customer about this fact.
3. The Customer is obliged to check the amount of the maximum Mark-ups before entering into the Transaction. Entering into the Transaction is treated as the Customer's statement that the Customer has read the current information about the amount of the maximum Mark-ups and agrees to such a maximum amount.

### § 25. Termination of the Master Agreement

1. The Master Agreement may be terminated by a Party at any time upon one month's written notice of termination effective as at the end of the calendar month, provided that there are no unsettled Transactions and all obligations of the Parties arising from the Master Agreement have been met at the time of sending the notice of termination to the Customer.
2. Notwithstanding the rules stipulated in § 25.1 above, the Party shall have the right to terminate the Master Agreement effective immediately in the event of the Early Termination. In such circumstances, the Master Agreement shall be terminated as of the Early Termination Date and any Transactions (save for the Term Deposit Transactions) shall be subject to the Early Termination performed by way of calculation of the Early Termination Amount. In such situation, the Bank shall also have the right to the Early Termination of the outstanding Transactions (other than the Derivative Transactions) save for the Term Deposit Transactions. The provisions of § 10 shall apply accordingly.
3. The Credit Support Agreement shall be terminated as of the date of termination of the Master Agreement.

### § 26. Entry into Force

The Terms and Conditions come into force on 12 October 2020.