

# Terms and Conditions

## “Rules of Cooperation for Financial Market Transactions”



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## § 1. General

1. These Terms and Conditions “Rules of Cooperation for Financial Market Transactions” (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, in particular with regard to entering into the Transactions, fulfilling obligations arising from the Transactions, establishing Collaterals in favour of the Bank by the Customer, the Bank 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.
3. With respect to the Transactions entered into by the Customers, provisions of the entire Chapter II and Articles 34 – 37, Article 40 Sec. 3 to Article 40 Sec. 4, Article 45, Article 46 Sec. 2 to Article 46 Sec. 5, Article 47, Article 48, Article 51, and Articles 144 – 146 of Payment Services Act dated 19 August 2011 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 enters into transactions on financial instruments pursuant to Article 70 Sec. 2 of Trading in Financial Instruments Act dated 29 July 2005. The Bank shall not execute orders of acquisition or disposal of financial instruments on the account of Customers unless a Transaction Description applicable to any given Transaction expressly so provides.

## § 2. Definitions

1. **Additional Collateral** (39)<sup>1</sup> – Collateral established by the Customer (other than the Required Collateral or Minimum Collateral), specified as the Additional Collateral in the Credit Support Agreement.
2. **Additional Obligations** (45) – obligations imposed on the Customer, as determined in the Credit Support Agreement as the Additional Obligations, the non-performance of which vests the Bank with the right to request the Customer to establish the Additional Collateral or perform a Partial Early Termination of Transaction, closing of the FRA Transaction, Early Withdrawal of Deposit, Early Termination of Transaction, Option Repurchase Transaction, Closing Transaction (hereinafter the “Reduction”).
3. **Amount of the Limit** (17) – if the Credit Support Agreement provides for establishing of the Required Collateral, then this is the amount provided in the Credit Support Agreement up to which the Customer is discharged from an obligation to establish the Required Collateral.
4. **Bank** (1) – mBank S.A.;
5. **Banking Law** (22) – means [Polish] Act dated 29 August 1997 – Banking Law.
6. **Bankruptcy Law** (23) – means [Polish] Act dated 28 February 2003 – Bankruptcy and Reconstruction Law.
7. **Business Day** (4) – 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 Derivative Transactions 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.
- 7.1. **CCP** (3<sup>1</sup>) – 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.
8. **Civil Code** (12) – means [Polish] Act dated 23 April 1964 – Civil Code.
9. **Collateral** (42) – as stipulated in the Master Agreement, Credit Support Agreement or any other agreement, a Collateral to secure the Bank’s claims resulting from the Transaction or Master Agreement executed that the Customer is obligated to establish. A Collateral may be a Required Collateral, Minimum Collateral or Additional Collateral.
10. **Confirmation** (21) – document or information in an electronic form prepared by the Bank presenting the Transaction Terms agreed by the Parties.
11. **Credit Support Agreement** (38) – agreement regulating the rules of establishing of the Collateral by the Customer.
12. **Customer** (11) – a natural person conducting business activity, legal person or other organisational unit that is not a legal person, who is vested, by virtue of law, with the legal capacity and capacity to perform acts in law, who entered into the Master Agreement with the Bank.
13. **Customer’s Exposure** (9) – the value of the equivalent of the market risk for the Transactions that the Transaction Package consists of, as determined by the Bank in order to calculate the value of the Required Collateral; the Customer’s Exposure consists of the Net Present Value of the Transaction Package, and, if the Credit Support Agreement so provides, the Minimum Collateral, if required for specific Transactions of which the Transaction Package consists.
14. **Derivative Transaction** (35) – Transaction defined in the Transaction Description as derivative transaction.
15. **Early Termination** (37) – 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.
16. **Early Termination Amount** (16) – 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.
17. **Early Termination Date** (6) – means a date on which the Bank performs the Early Termination.
18. **EMIR Legislation** (27) – the EMIR Regulation along with the secondary legislation thereto, in particular the delegated regulations.
19. **EMIR Regulation** (29) – the Regulation of the European Parliament and of the Council (EU) No. 648/2012 of 4 July 2012 on OTC derivatives, central counterparties (CCPs) and trade repositories (TRs) (EMIR).
20. **ESMA** (10) – the European Securities and Markets Authority.
21. **Event of Default** (24) – event referred to in § 9.1 that may trigger Early Termination Procedure.
22. **Financial Counterparty** (13) – the Customer who is the Financial Counterparty within the meaning of the EMIR Legislation.
23. **Force Majeure** (31) – 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.
24. **Foreign Exchange Rates Table** (33) – Table of FX rates of mBank S.A., applicable at the moment of currency conversion.
25. **Minimum Collateral** (40) – 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.
26. **Net Present Value** (2) – calculated for a single Transaction, an amount denominated in PLN constituting the Net Present Value of the given Transaction determined and calculated in good faith by the Bank; when performing the calculations the Bank shall take into account the data and information available to the Bank, including in particular the following:
  - 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
  - 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;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.

<sup>1</sup> Translator’s note: the number at the end of definition means its ordinal number in the Polish language version.

27. **Net Present Value of Transaction Package** (3) – a sum of the Net Present Values of the Transactions of which the Transaction Package consists;
28. **Non-Financial Counterparty** (14) – the Customer who is the Non-Financial Counterparty within the meaning of the EMIR Legislation.
29. **Non-Financial Counterparty +** (15) – 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.
30. **Party** (32) – the Customer or the Bank.
31. **Pricing Date** (7) – Business Day on which the Bank calculates the Net Present Value of the Transaction Package and the value of the Minimum Collaterals.
32. **Required Collateral** (41) – Collateral determined by the Bank, which the Customer is obligated to establish pursuant to § 18 and 19 below, defined as the Required Collateral in the Credit Support Agreement.
33. **Settlement Account** (26) – 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, 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.
34. **Settlement Date** (5) – Business Day agreed between the Parties when agreeing on the Transaction Terms on which the Transaction Settlement occurs pursuant to provisions of § 8 below.
35. **Tax Event** (43) – 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.
36. **Termination Event** (25) – event referred to in § 11.1.
37. **Trade Repository** (28) – an entity authorised pursuant to the EMIR Legislation to collect and maintain the details concerning the Transaction.
38. **Transaction** (34) – transaction entered into by the Customer with the Bank under the Master Agreement.
39. **Transaction Date** (8) – Business Day on which the Parties agree on the Transaction Terms.
40. **Transaction Description** (18) – 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.
41. **Transaction Notification** (44) – notification, to the Trade Repository, of execution, change, termination, adjustment and/or any other activity concerning a Derivative Transaction, performed in conformity with the rules and on the deadlines specified in the EMIR Legislation.
42. **Transaction Package** (19) – 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.
43. **Transaction Platform** (20) – electronic distribution channel made available by the Bank through Bank's internet Customer service system: mBank CompanyNet that allows to agree on the Transaction Terms.
44. **Transaction Settlement** (30) – 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 § 8.
45. **Transaction Terms** (36) – 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.

### § 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, in particular 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.
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 a 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 (lucrum cessans)).

## § 5. Entering into Transactions

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, 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 his/her 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.
- 5<sup>1</sup>. 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.
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 authorized 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 his/her full name, by the proxy 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 proxy before the Transaction Terms have been agreed;
  - 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.
9. If a Transaction is executed by telephone, the Parties shall have the right to additionally identify each other by giving a password and answerback. Should such identification be impossible the Parties shall have the right to refuse to enter into the Transaction.
10. Each of the Parties shall have the right to record a telephone conversation, in particular the one in the course of which Transaction Terms are being agreed on. Neither Party shall be obligated to make the recorded telephone conversations available to the other Party. The recorded telephone conversations shall serve as evidence in the event of discrepancy between the Parties concerning execution and/or performance of the obligations under the Master Agreement or Transaction, or arbitration or court 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 proxy. 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 above shall apply accordingly.

## § 6. Transaction Platform

1. 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 "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. Following entering into a Transaction, the Bank shall promptly, however no later than until the end of the Business Day following the Transaction Execution Date, confirm the agreed Transaction Terms to the Customer by delivering the Confirmation to the Customer.
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 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 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 (1<sup>st</sup>) Business Day after 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.
  - 1<sup>1</sup>. 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.
2. Transactions shall be settled through the Customer's Settlement Accounts maintained with the Bank. The Bank gives its consent to the settlements being made through the Customer's Settlement Accounts maintained with different bank.
3. 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 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.
4. 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 two Business Days prior to the Transaction Settlement date, indicate to the Bank such Settlement Account as the account designated for the Transaction Settlement purposes.
5. 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.
6. 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 second sentence of § 8.2 above.
7. If the Transaction is settled through the 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.
8. If on the Transaction Settlement Date there are no funds on the 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.
9. 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. .
10. 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 account specified by the Bank; the moment when the funds are recorded on the bank account specified by the Bank 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 into the Settlement Account indicated by the Customer 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 § 8.10.2 above until it receives the funds pursuant to § 8.10.1 above, which will not constitute an Event of Default with respect to the Bank.
11. 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.
12. If an unauthorised debit arises on the Settlement Account of the Customer maintained with the Bank or if the Customer has failed to secure funds in an amount equal to the amount due to the Bank under the Transaction Settlement on the bank account specified by the Bank - in the case when the Transaction Settlement is performed through the Settlement Account maintained with a different bank, the Bank shall have the right to charge interest for the delay in payment.
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.
14. In the case when the Transaction Settlement is submitted to CCP, the Transaction Settlement, as a result of a clearing novation, referred to in Article 45h.2.1 and 2 of the Act on Trading in Financial Instruments, is regulated by the relevant agreement concluded by each of the Parties with CCP or with a participant who, based on the agreement concluded with the Party, is obliged to perform the tasks of a participant being a Party to the Transaction Settlement ("Settlement Agent"). The rules for the Bank performing the function of a Settlement Agent for the Customer are regulated by a separate agreement.

## § 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;
  - 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 Customer's failure to establish the Collateral required by the Bank;
  - 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 Customer's failure to perform any obligation under the Credit Support Agreement; in particular failure to perform the Additional Obligation irrespective of whether the Bank has exercised its right to request that an Additional Collateral be established or Reduction be effected;
  - 6/ submitting false documents or making false representations or warranties, or submitting documents certifying untruth or making misrepresentations by the Customer, 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/ *deleted*
  - 8/ Occurrence of the following factual or legal events , which increase the risk of failure to fulfil the Customer's obligations resulting from the Transaction:
    - a/ fulfilment of any condition justifying termination or a request for immediate repayment under credit agreements, loan agreements, leasing agreements or other agreements of similar character charged with credit risk that the Customer is a party to;
    - b/ institution of enforcement proceedings or solvency safeguard procedure (postępowanie zabezpieczające) in which the amount of claims asserted accounts for a significant portion of liabilities of the Customer towards his creditors;
    - c/ delivery of a valid and final judgment or decision ordering the Customer to pay a sum in an amount accounting for a significant portion of liabilities of the Customer towards his creditors;
    - d/ seizure by the enforcement authority of debts under one or more one of the Settlement Accounts of the Customer maintained with the Bank;



- e/ appointment of receivership or a different administrator for the Customer's enterprise;
  - f/ occurrence of 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;
  - 9/ 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.
  - 10/ material breach by the Customer of terms of any transaction entered into with the Bank that is not a Transaction;
  - 11/ the Customer's having ceased or threatening to cease to conduct the business activity in whole or in part;
  - 12/ withdrawal or expiry of any consent or approval or other license required for the validity of the Master Agreement, the Transactions executed or allowing the Customer to perform his obligations under the Master Agreement or the executed Transaction.
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 above) of the notice on the Event of Default, the Event of Default referred to in § 10.1 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 § 10.1.4 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 an event constituting the Termination Event 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 an 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 proxy;
  - 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 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 familiarize 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):  
mBank S.A.  
Departament Sprzedaży Rynków Finansowych (*Financial Markets Sales Department*)  
ul. Senatorska 18  
e-mail address of the Bank: DSM\_negocjacje@mbank.pl  
00-950 Warszawa
- in relation to confirmations: *Departament Obsługi i Rozliczeń Rynków Finansowych* (Financial Markets Support and Settlement Department) fax No.: 022 829-04-03  
other matters: *Departament Sprzedaży Rynków Finansowych* (Financial Markets Sales Department), fax No.: 022-829-02-45
- 4. The Bank hereby announces that all details concerning the Bank are available at the Bank's web site: <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 his/her address details .

### § 13. Complaints, dispute resolution

- 1. Unless provisions of law (in particular the EMIR Legislation, the Master Agreement or the Terms and Conditions) 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 together 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 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, 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 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 its best efforts to provide answer or explanations thereto by telephone, telefax or e-mail, 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 Collaterals 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.
- 4<sup>1</sup>. 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.
- 5. The Bank shall reply to the complaint referred to in sec. 4 not later than within 30 days from the date of its receipt. Upon Customer's request included in the complaint, the Bank may respond via electronic mail.
- 6. In the case of particularly complex matters, the Bank reserves the right to extend the time limit referred to in § 13.5 above by another month. The Bank shall promptly inform the Customer of such deadline extension.
- 7. 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 for which the dispute has remained unsettled, the details of the Customer who has been a party to the dispute and the contested amount.
- 8. For the avoidance of doubt, unless the Bank and the Customer agree otherwise, subject to mandatory provisions of law and final and valid or non-appealable decisions or judgments of competent courts or other authorities, if there is a dispute as referred to above between the Bank and the Customer, such dispute shall not affect the scope of the rights and obligations of the Parties under the Transactions executed, in particular, such dispute shall not affect the validity of the concluded Transactions.

### § 14. Portfolio Reconciliation

- 1. The Bank shall provide the Customer with a report together with Transaction Package valuation, including:
  - 1/ list of unmatured Transaction 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 the Transaction Package.
- 2. The Bank shall provide the Customer with the report together with the valuation referred to in § 1 above within the deadlines resulting from the EMIR Legislation provided for reconciliation of Derivative Transaction portfolios.
- 3. The Report together 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 familiarized 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 Derivative Transaction portfolios.

### § 15. Transaction Notification

- 1. The Customer authorises the Bank to perform, on behalf of the Customer, notifications of Derivative Transactions (in particular of any amendments thereto and the fact of termination thereof) entered into with the Bank to the Trade Repository in accordance with the requirements resulting from the EMIR Legislation; the requirements apply both to the Derivative Transactions executed with the Bank after the obligation to notify the Derivative Transactions in accordance with the EMIR Legislation has come into force and the Derivative Transactions executed with the Bank before the obligation has become effective within the scope specified in the EMIR Legislation. The Bank shall choose the Trade Repository to which the Derivative Transactions are to be reported. The Bank may choose more than one Trade Repository. By publishing information on the Bank's web site or in the form of an announcement published to the electronic banking system, the Bank shall inform the Customers about the Trade Repository(ies) to which it shall report the Derivative Transactions. If the Customer so requests, the Bank shall provide information referred to in the foregoing sentence to the Customer in writing.



2. The reporting of the Derivative Transactions to the Trade Repository (in particular any changes to the Derivative Transactions and the fact of termination thereof) shall take place in accordance with the principles and within deadlines specified in the EMIR Legislation and the agreement between the Bank and the given Trade Repository. The scope and the principles of reporting the Derivative Transactions (in particular any and all changes thereto and the fact of termination thereof) by the Bank to the Trade Repositories depends on the requirements imposed by in mandatory provisions of law, in particular the EMIR Legislation, and the agreement between the Bank and specific Trade Repository.
3. With regard to Derivative Transactions entered into with the Bank, the Customer authorises the Bank to access the Customer's data contained in the Trade Repository, obtain from the Trade Repository information concerning the Customer or Derivative Transactions entered into therewith and perform, on behalf of the Customer, any other activities and make declarations of will concerning the data that are subject to the notification of the Derivative Transactions executed with the Bank.
4. Should the Customer wish to make Derivative Transaction Notifications to the Trade Repository (in particular any changes to the Derivative Transactions and the fact of termination thereof) acting on his own, he shall notify the Bank thereof in writing and, subsequently, agree with the Bank on a detailed manner in which the contents of the Derivative Transaction Notifications to the Trade Repository (in particular any and all changes to the Derivative Transactions and the fact of termination thereof) are to be agreed upon. The aforementioned notification shall be binding upon the Bank after the lapse of the second (2<sup>nd</sup>) Business Day from the day when the above-described manner of agreeing on the content of the Derivative Transaction Notifications to the Trade Repository was finally agreed with the Bank and the Bank confirmed it in writing. Notwithstanding the method in which the contents of the notifications to the Trade Repository are agreed with the Bank, in the event where a Customer notifies a Derivative Transaction to the Trade Repository acting on his own, then, for the purposes of reporting Notifications to the Trade Repository, the Customer shall use Derivative Transaction identification codes referred to in the EMIR Legislation, as assigned thereto by the Bank and contained in the Confirmations of specific Derivative Transactions provided to the Customer by the Bank with regard to such Derivative Transactions. For the avoidance of doubt, if the Customer notifies the Bank of his intention to make the Derivative Transaction Notifications to the Trade Repository acting on his own, the Customer shall report any changes or terminations of Derivative Transactions already notified to the Trade Repository by the Bank acting on behalf of the Customer. The Bank shall not be liable for any loss suffered by the Customer in connection with reporting Derivative Transactions (in particular any changes thereto and the fact of termination thereof) to the Trade Repository by the Customer acting on his own. If the Customer who makes Derivative Transaction Notifications (in particular any and all changes thereto and the fact of termination thereof) to the Trade Repository acting on his own wishes that the Bank assumes the reporting of the Derivative Transactions (in particular any and all changes thereto and the fact of termination thereof) to the Trade Repository acting on behalf of the Customer, then the Customer shall notify the Bank of that fact in writing. Unless the Bank informs the Customer within five (5) Business Days from the date of delivery of such notification that the Bank does not agree to report the Transactions to the Trade Repository on behalf of the Customer, then provisions of this § 15 concerning the Transaction reporting to the Trade Repository on behalf of the Customer shall apply directly starting from the first (1<sup>st</sup>) Business Day falling after ineffective lapse of the aforesaid five(5)-day deadline 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 make Notification to the Trade Repository of Derivative Transactions (in particular any changes thereto and the fact of termination thereof) executed with the Customer (in particular the Customer's telephone number and address details, business name, registered seat and the legal status of the Customer, particulars required to assign the Customer to the FC Counterparty or NFC Counterparty categories and information related to the Customer's LEI (*Legal Entity Identifier*) or BIC (*Business Identifier Code*) numbers shall be deemed as up-to-date by the Bank and the Bank shall use them to make Derivative Transaction Notifications to Trade Repositories unless the Customer notifies the Bank of change of the data; the latter notification shall be effective as of the second (2<sup>nd</sup>) Business Day after the date of delivery thereof to the Bank.
6. The Bank may (acting at its own discretion, in writing or by e-mail) request the Customer to promptly (however no later than within one (1) Business Day from the date of the Customer's receipt of the Bank's inquiry thereof) confirm whether the data referred to in § 15.5 above are up-to-date and promptly (however no later than one (1) Business Day from the day the Customer has received the inquiry from the Bank) provide additional information, make representations or perform any other activity that is necessary for the Bank to make a Derivative Transaction Notification to the Trade Repository on behalf of the Customer regardless of whether such additional information, representation or activity is required by virtue of law, in particular under the EMIR Legislation, or under agreement executed between the Bank and specific Trade Repository.
7. In the event that:
  - 1/ the Customer fails to promptly confirm, upon the request from the Bank referred to in § 15.6 above, that his data are up-to-date; or
  - 2/ the Customer has failed to promptly provide, upon the request from the Bank referred to in § 15.6 above, additional information, submit representation(s) or take any other steps that are necessary to make the Derivative Transaction Notification to the Trade Repository;
 The Bank shall have the right, at its own discretion:
  - 1/ not to make Derivative Transaction Notification on behalf of the Customer, of which the Bank shall inform the Customer; or
  - 2/ make Derivative Transaction Notification to its best knowledge about the Customer and the Derivative Transactions entered into therewith.
8. Notwithstanding § 15.5 and 15.6 above, the Customer undertakes to inform the Bank promptly in writing, without any request from the Bank to that end required, of any and all data change(s) as referred to in § 15.5 and 15.6 above.
9. For the purposes of Derivative Transaction Notifications (in particular any change thereto or termination thereof) to the Trade Repository, it is assumed that the Customer shall accept, unless the Parties agree otherwise, that when making Derivative Transaction Notification (or notification of change thereto) to the Trade Repository, the Bank, acting on behalf of the Customer, shall provide data concerning valuations and Collaterals calculated or determined by the Bank in conformity with methodology adopted to that end by the Bank.
10. The Bank shall not be liable to the Customer for any consequences of the Customer's non-performance of any of the obligations referred to in § 15.4 – 15.9 above (including, in particular, consequences of the Derivative Transaction Notifications (in particular any change thereto and/or termination thereof) made by the Bank to Trade Repository being incomplete, not made in timely fashion or incorrect or a failure to make such notification, unless the liability is attributable to gross negligence or wilful misconduct of the Bank.
11. The Customer shall be liable to the Bank for loss suffered by the Bank (in particular due to penalty(ies) imposed on the Bank) as a consequence of the Customer's failure to perform any of his obligations referred to in § 15.4 – 15.9 above. In particular, if the Bank so requests, the Customer shall promptly cover any and all damage and reimburse the Bank for all the costs incurred by the Bank in connection with the Customer's failure from such obligation(s).
12. Pursuant to the EMIR Legislation the obligation to report the Derivative Transactions Notifications (in particular any change thereto or termination thereof) arising from the EMIR Legislation shall rest with each Party to the Derivative Transaction, i.e. on the Bank and on the Customer independently. However, despite the fact that subject to § 15.4 above the Derivative Transactions (in particular any change thereto and termination thereof) shall be notified by the Bank on behalf of the Customer, a penalty resulting from failure to fulfil the EMIR Legislation in the above-specified scope may be imposed directly on the Customer.
13. The Bank shall not be liable towards the Customer for non-performance or improper performance by the Trade Repository of the obligations imposed thereon by virtue of law (including the EMIR Legislation) or the agreement between the Bank and the Trade Repository.
14. The Bank shall not be liable towards the Customer for any loss inflicted upon the Customer in connection with it being impossible to make Derivative Transaction Notification (in particular any change thereto and/or termination thereof) to Trade Repository for a technical reason, due to occurrence of an event of Force Majeure, or for any other reason unless the failure to make the notification is attributable to gross negligence or wilful misconduct of the Bank.
15. The Bank reserves the right to charge fees for making the Derivative Transaction Notifications (in particular any changes thereto and termination thereof) to Trade Repository in accordance with "Tariff of Commission Fees and Banking Charges for Small and Medium Business and Corporate Customers applicable at mBank." The Bank shall inform the Customers of introduction of a new fee or any change to the fee levels one (1) month in advance.
16. Pursuant to provisions of the EMIR Legislation, the Customer hereby authorises the Bank to make, on behalf of the Customer, notifications of Derivative Transactions entered into between the Customer and the Bank (in particular any changes thereto and/ terminations thereof) to ESMA (in line with the principles set out in §§ 15.1 to 15.15 above) in case a Trade Repository is unavailable, in order for the Derivative Transactions to be registered in accordance with the requirements stipulated in the EMIR Legislation.

17. Subject to § 15.4 above, the Customer represents to the Bank that, unless the Bank and the Customer agree otherwise, the Customer shall not, while acting on his own, make any Derivative Transaction Notification (in particular any change to Derivative Transaction or the fact of termination thereof) to any Trade Repository or ESMA if such Derivative Transaction(s) is/are subject to the authorisations referred to in § 15.1 and § 16.1 above.
18. Provisions of § 15.1 to § 15.17 shall not apply to Customers who have their registered seats (or, if there is no registered seat, then the place of conducting business) outside the European Union.

### **§ 16. Portfolio Compression**

In the event that the number of the applicable Derivative Transactions 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 Derivative Transaction (including the Transaction Package) may be compressed in order to limit the credit risk of the counterparty.

### **§ 17. EMIR Legislation Presumptions**

1. For the purpose of performance by the Bank and the Customer of their respective obligations resulting from the EMIR Legislation, and, as far as the Bank is concerned, for the purpose of performance of the agreement executed by the Bank with the Trade Repository, the Bank shall have the right to act under the presumption that unless the Customer notifies the Bank to the contrary (and the notice shall be effective as of the Business Day following the day of delivery thereof to the Bank):
  - 1/ the Customer has the status of the customer within the meaning of the EMIR Legislation conforming with the status presented to the Bank upon execution of the Master Agreement or with the status presented to the Bank in accordance with § 17.2 below;
  - 2/ the Customer, who is not a FC Counterparty or an entity having its registered seat (or, if there is no registered seat, then the place of conducting business) outside the territory of the European Union, is an NFC Counterparty that is not an NFC+ Counterparty;
  - 3/ the Customer who is an NFC Counterparty shall enter into Derivative Transactions in order to limit the risk directly related to the Customer's business activity or his activity in terms of management of assets and liabilities within the meaning of the EMIR Legislation; and
  - 4/ the Derivative Transaction entered into by the Customer shall be executed in his own name and on his own account.
2. If the Customer changes his status, in particular, an NFC Counterparty gains or loses his status of an NFC + Counterparty, the Customer shall promptly, however no later than before execution of another or change to the existing Derivative Transaction executed with the Bank, inform the Bank of change of his status (in particular when he gains a new one or loses his current status); with the provision that, if it is necessary for the sake of the Bank's or the Customer's performance of the obligations under the EMIR Legislation the Parties shall in good faith agree on the further mode of procedure, in particular within the scope of execution or settlement of the Derivative Transactions.
3. If a Customer who is an NFC Counterparty has exceeded (or, as a result of contemplated execution or change of Derivative Transaction with the Bank is to exceed) the threshold referred to in Article 10(1)(b) of the EMIR Regulation (or any other successor provision), the Customer shall each time promptly, however no later than before execution of another or change to the existing Derivative Transaction with the Bank (or before execution or change to a Derivative Transaction as a result of execution of which or change to which the Customer would have exceeded the threshold), inform the Bank by telephone before execution or change to such Transaction that he has exceeded the threshold (or that the threshold shall be exceeded as a result of the planned execution or change to the Derivative Transaction with the Bank).
4. Provisions of § 15.10 and § 15.11 shall apply accordingly.

### **§ 18. Types of Collateral**

1. In respect of the Transactions executed as a part of the Transaction Package the Customer shall establish a Collateral. In order to establish a Collateral or to agree that the Customer should be released from the obligation to establish a Collateral, the Customer is obligated to enter into the Credit Support Agreement with the Bank.
2. The Required Collateral shall be established under the Credit Support Agreement through transferring by the Customer, acting pursuant to Article 102 of the Banking Law, the title to cash funds or any other currency agreed between the Parties in favour of the Bank. The Bank may also agree that the Required Collateral be established in a form different than that specified in the foregoing sentence.
3. The Additional Collateral shall be specified in the Credit Support Agreement.

### **§ 19. Required Collateral**

1. The Customer may be requested to establish the Required Collateral on any Business Day.
2. The amount of the Required Collateral shall be equal to the value of the Customer's Exposure calculated on the Pricing Date less the Amount of the Limit.
3. The method of calculation of the Customer's Exposure shall be determined in the Credit Support Agreement.
4. If, pursuant to the Credit Support Agreement, the Customer is discharged from the obligation to establish the Required Collateral, the discharge from the obligation to establish the Required Collateral shall be effective on the fifth (5<sup>th</sup>) day from the day the Customer has fulfilled any and all conditions specified in the Credit Support Agreement unless the Bank has notified the Customer (by telephone, e-mail or telefax) that the Customer is discharged from such obligation.

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

1. Until the end of the Business Day following the Pricing Date the Bank shall provide the Customer with a Collateral report containing the following information:
  - 1/ Value of the Required Collateral established by the Customer as at the Pricing Date;
  - 2/ Value of the Required Collateral due from the Customer as of the second (2nd) Business Day after the Pricing Date.
2. If the value of the Required Collateral established as at the Pricing Date is lower than the value of the Required Collateral payable, the Customer shall supplement the value of the established Required Collateral up to the payable amount of the Required Collateral.
3. For the purpose of establishing or supplementing the value of the Required Collateral, in the event where:
  - 1/ the Customer has a Settlement Account with the Bank, the Bank shall debit the Settlement Account specified in the Credit Support Agreement with the amount constituting the difference between the value of the Required Collateral payable and the value of the Required Collateral established by the Customer (without the Additional Collateral, if any) up to an amount of the funds available on the second (2nd) Business Day after the Pricing Day, as at one (1) Business Day after the Pricing Date;
  - 2/ the Customer has no Settlement Account with the Bank, the Customer shall transfer, no later than on the second (2nd) Business Day after the Pricing Date, funds to the account specified by the Bank in order to establish or supplement the payable Required Collateral;
  - 3/ On the Business Day referred to in § 20.3.1 above, the Customer has failed to provide funds on the Settlement Account in an amount required to establish or supplement the payable Required Collateral, the Bank shall have the right to debit another Settlement Account of the Customer 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.
4. The Bank may request the establishment of the Required Collateral before the Transaction is entered into. In such case, the Bank shall collect the agreed amount of the Required Collateral from the 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 § 20.5 below.

5. If the value of the established Required Collateral exceeds the value of the payable Required Collateral, the Bank shall refund a portion of the established Required Collateral in the amount constituting a difference between the established Required Collateral and the payable Required Collateral. The Bank shall credit the Settlement Account of the Customer (if maintained by the Bank) or transfer the funds to the Settlement Account of the Customer maintained with a different bank, respectively (in the latter situation, the moment of placing a transfer order by the Bank shall be deemed to be the day of the refund), and the refund shall be made to the Settlement Account specified in the Credit Support Agreement maintained in the same currency as the currency in which the Required Collateral was collected. The Bank shall refund the Required Collateral in the minimum amount of PLN 25,000.00 or the equivalent thereof in a different currency converted in accordance with the fixing rate of the National Bank of Poland determined on the Pricing Date.
6. In the Credit Support Agreement or a separate document sent by the Customer and approved by the Bank, the Parties may agree on method(s) of collecting or refunding portions of the Required Collateral other than the principles stipulated in § 20.5 above.
7. In the event that the Required Collateral is established in a currency other than Polish Zloty, then, for the purpose of determining the value of the established Required Collateral, the Bank shall convert the Collateral at the exchange rate according to the Exchange Rates Table applicable at the time the account is debited or credited.

### **§ 21. Satisfaction of claims**

1. The Bank may satisfy the following claims from the Collaterals established in favour of the Bank:
  - 1/ payment of the due and payable amounts resulting from settlement of Transactions entered into between the Customer and the Bank, in particular the Early Termination Amount;
  - 2/ covering unauthorised debit on the Settlement Account maintained by the Bank as a result of settlement of the Transaction or the Early Termination;
  - 3/ late payment interest due to the Bank on the Customer's liabilities not satisfied on their payment date;
  - 4/ covering of any documented fees, charges and expenses incurred by the Bank in connection with the Early Termination.
2. The priority of satisfaction of the claims referred to in § 21.1 above as well as satisfaction from the Collaterals shall be determined by the Bank.
3. If the amount of the claims referred to in § 21.1 above is denominated in a currency different than the Collateral established by the Customer, the Bank, 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 at the buying rate of exchange of the currency, as specified in the Currency Exchange Rates Table applicable at the time of satisfaction of the claim, unless the Parties agreed on a different conversion rate.
4. If the currency pair of the exchange rate of the claim and the Collateral is not quoted in the Exchange Rates Table, then the Bank shall convert the following into Polish Zloty:
  - 1/ the amount of the Bank's claim at the sell rate of exchange of specific currency; or
  - 2/ the amount of Collateral established by the Customer at the buy rate of specific currency,
 the said exchange rates being quoted in the Exchange Rates Table applicable at the time the account is debited or credited 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 but outstanding amounts receivable from the Customer under a Transaction or the Master Agreement.
6. Notwithstanding any provision of the Master Agreement and the Terms and Conditions, the Parties agree that the Bank may set off:
  - 1/ receivables payable to the Bank from the Customer under Transactions executed pursuant to the Master Agreement (in particular the Early Termination Amount, and the unauthorised debit on the Settlement Account of the Customer), against the receivables of the Customer from the Bank (including those not yet due and payable) on the following grounds:
    - a/ the Master Agreement or the Transactions entered into under the Master Agreement or other transactions on the financial instruments entered into between the Parties;
    - b/ receivables under bank account agreements of the Customer maintained with the Bank (in particular the term deposit accounts) and receivables under the Term Deposits;
    - c/ the Collaterals for the Customer's liabilities under the Transactions, as referred to in this § 21.1 above, established by the Customer in favour of the Bank whether in the form stipulated in the Terms and Conditions or any other form agreed between the Bank and the Customer;
  - 2/ The Customer's due receivable towards the Bank under the Early Termination Amount against any receivables of the Bank from the Customer, whether due or not, in particular any Bank's claims for payment of documented expenses incurred by the Bank in connection with the Early Termination of the Transaction.
  - 3/ Performance of the set off shall not require making a separate statement of intent by the Bank in this respect. The Bank shall convert the amounts being set off denominated in currencies other than the Early Termination Amount into the currency in which the Early Termination Amount is denominated in accordance with the Foreign Exchange Rates Table as of the Early Termination Date. After the set off, the Bank shall send the list of the Transaction claims that have been set off.
7. For the avoidance of doubt, provisions of § 21.6 shall not apply to calculation of the following: the Early Termination Amount, the Transaction Settlement performed by way of debiting of the Settlement Account or the security deposit account with the settlement amount or the Early Termination Amount.
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.

### **§ 22. Personal Data Processing**

1. The Bank with its registered seat in Warsaw, at ul. Senatorska 19, as the personal data administrator within the meaning of Personal Data Protection Act dated 29 August 1997, the Bank hereby informs that for the purpose of implementation of the terms of agreements entered into with the Bank, the personal data of the Customer, proxies and persons authorised to enter into Transactions on behalf of the Customer shall be processed in the banking data collection.
2. Pursuant to the provisions of the Personal Data Protection Act, the Customer, the proxies and persons authorised to enter into, on behalf of the Customer, Transactions under the Master Agreement, shall have the right to:
  - 1/ access and correct their personal data;
  - 2/ object to the processing of their personal data for the purpose of direct marketing of the Bank's products and services.

### **§ 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 (fourteen) 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. An absence of notice of termination of the Master Agreement within the deadline specified in the foregoing sentence shall be deemed as 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:
  - 1/ all calculations are performed by the Bank,

- 2/ 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 guaranty 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 his/her 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/ more specific information on the Bank Guarantee Fund can be found at the website [www.mbank.pl/download/bfg-info/](http://www.mbank.pl/download/bfg-info/).
5. A Customer with respect to whom the Amount of the Limit has been determined 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;
  - 2/ copy of annual financial statement – promptly as soon as it is prepared and again - after it has been audited by the auditor, if such 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/or present documents concerning his financial standing other than those referred to in § 24.5 above.
7. The definitions and terms specified in the Rules and Descriptions of Transactions correspond to the statutory terms as presented below.

<b>mBank's terminology</b>	<b>Terminology used in the Act on Trading in Financial Instruments</b>
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.

## § 25. Termination of the Master Agreement

1. The Master Agreement may be terminated:
- 1/ by the Customer at any time upon one (1)-month's written notice of termination effective as at the end of the following calendar month or upon mutual agreement of the Parties, provided that all Transactions executed in performance of the Master Agreement have been settled. The Master Agreement may, however, be terminated no earlier than once all obligations resulting therefrom have been met, or

- 2/ by the Bank at any time upon one (1) month's written notice of termination effective as at the end of the following calendar month, provided that there are no unsettled Transactions for the Client and all obligations arising from the Master Agreement have been met at the time of sending the notice of termination to the Client.
2. Notwithstanding the rules stipulated in § 25.1 above, the Bank shall have the right to terminate the Master Agreement effective immediately as soon as premise(s) for the Early Termination arise(s). 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 Settlement of the outstanding Transactions (other than the Derivative Transactions) save for the Term Deposit Transactions. Provisions of § 10 shall apply accordingly.
3. The Credit Support Agreement shall be terminated as of the date of termination of the Master Agreement.