

GIS MANUAL

(Version 1.0)

**Manual for the Sale and Purchase of Assigned Amount Units
under a Green Investment Scheme**

DISCLAIMER: This GIS Manual and the GIS Model Agreement do not constitute or substitute legal advice. Using the GIS Manual or Model Agreement is at own risk. It is recommended that expert legal advice is sought prior to using any part of the GIS Manual or Model Agreement.

Introduction

This Manual for the Sale and Purchase of Assigned Amount Units under a Green Investment Scheme (the "**GIS Manual**") sets out the basic principles of sale and purchase transactions of Assigned Amount Units (AAUs) under a Green Investment Scheme (GIS) and the legal issues related thereto. Attached to the GIS Manual is a Model Agreement for the Sale and Purchase of Assigned Amount Units under a Green Investment Scheme (the "**GIS Model Agreement**").

The GIS Manual first gives a brief introduction to International Emissions Trading under Article 17 of the Kyoto Protocol and the rationale of a Green Investment Scheme. Subsequently, it presents the background and a general description of the process of drafting the GIS Model Agreement and of its main concepts. The remainder of the GIS Manual follows the structure of the GIS Model Agreement and provides clause by clause explanations and comments. Where appropriate, alternative language or optional clauses are discussed.

The GIS Manual and Model Agreement aim to provide certain standard provisions which could serve as a "toolbox" to assist in contract negotiations and structuring sale and purchase transactions of AAUs under a GIS, incorporating various options, generally acceptable to the market. However, the documents are not intended as binding instructions or imperative drafts. There may be various alternative ways of drafting this type of agreement and/or structuring a GIS transaction which are not contemplated in the GIS Model Agreement and this GIS Manual.

The elaboration of the GIS Manual and Model Agreement was commissioned by the European Bank for Reconstruction and Development (EBRD), with financing from the EBRD-Netherlands Technical Assistance Co-Operation Fund, as part of EBRD's Sustainable Energy Initiative.¹ The Amsterdam-based international law firm De Brauw Blackstone Westbroek N.V. was appointed as lead consultant to develop the GIS Manual and GIS Model Agreement, in cooperation with Point Carbon.

The GIS Manual and Model Agreement are publicly available open source documents. Users and reviewers are encouraged to provide their comments and drafting suggestions for possible inclusion in a subsequent version of the GIS Manual and Model Agreement. EBRD would welcome to receive your feedback at gis@ebrd.com.

¹ See: <http://www.ebrd.com/country/sector/energyef/sustain.htm>.

Contents

	Page
Introduction.....	2
1 Background	4
1.1 International Emissions Trading	4
1.2 Green Investment Schemes	4
2 Development of the GIS Model Agreement	6
2.1 Objectives	6
2.2 Consultation process	7
2.3 Acknowledgement	7
3 Key Concepts of the GIS Model Agreement	8
3.1 Nature of transaction.....	8
3.2 Commercial contract or treaty	9
3.3 Participation of private parties	10
3.4 Greening	10
3.4.1 <i>Additionality</i>	11
3.4.2 <i>Greening ratio</i>	11
3.4.3 <i>Project selection and fund allocation</i>	11
3.4.4 <i>Supervision and verification</i>	12
3.4.5 <i>Timeframe</i>	12
3.4.6 <i>State aid and competition</i>	13
3.5 Engagement of third parties	17
3.6 Payment and delivery mechanisms	19
3.7 Optional provisions	23
3.8 Schedules	24
4 Clause by Clause Annotation.....	25
5 Explanation of the Schedules	46
6 List of Abbreviations.....	48

Annex: Model Agreement for the Sale and Purchase of Assigned Amount Units under a Green Investment Scheme

1 BACKGROUND

1.1 International Emissions Trading

International Emissions Trading (IET) is mostly referred to in the context of trading Assigned Amount Units (AAUs)², measured in metric tons of CO₂-equivalent (CO₂e). Under Article 17 of the Kyoto Protocol, countries with quantitative emission reduction or limitation targets³ can utilise the flexible mechanism of IET to sell part of their allocated national emissions cap (Assigned Amount) in case a surplus is envisaged or buy additional emission rights in case a shortage of such rights is expected during the Kyoto Protocol compliance period (2008-2012). Traditionally, countries with economies in transition, which have suffered economic downturn since the early 1990s, are considered the primary suppliers of AAUs. However, concerns that their AAU surpluses are a result of the state of their economies rather than genuinely planned emission reduction policies undermined the perception of the environmental integrity of the mechanism and drew criticism from non-governmental groups.

1.2 Green Investment Schemes

Public pressure and the need to ensure accountability of the use of taxpayer money have compelled both selling and buying governments to consider enhancing the environmental component of IET, introducing the idea of Green Investment Schemes (GIS) in which the proceeds from such trade are used to further mitigate greenhouse gas (GHG) emissions or support other environmental activities.⁴

Several studies looking into GIS possibilities and options have been published in recent years. The first one was prepared for Russia in 2002; later the World Bank prepared a series of GIS option studies for Bulgaria (2004), Ukraine (2006), and Latvia (2007). A study looking into GIS opportunities in Romania was prepared in 2006 by the Regional Environmental Center. Most recently an options study was launched in Russia by the World Bank and Climate Strategies published a comprehensive GIS study.⁵

² However, Article 17 of the Kyoto Protocol covers the international transfer of *all* Kyoto emission rights, i.e. not only AAUs, but also Removal Units (RMUs), Emission Reduction Units (ERUs) and Certified Emission Reductions (CERs).

³ Quantitative emission reduction or limitation targets are recorded in Annex B to the Kyoto Protocol.

⁴ K. Tangen, A. Korppoo et al., *A Russian Green Investment Scheme - Securing Environmental Benefits from International Emissions Trading*, Climate Strategies 2002.

⁵ See: <http://www.climatestrategies.org/our-research/category/0/104.html>.

Currently the most favoured option for the international community appears to be so-called “greening” of AAUs, where the seller country’s income from AAU trading is reinvested in GHG emission reduction projects or other projects beneficial to the environment, including setting up the institutional and legal framework, capacity building activities, environmental education, awareness raising and adaptation.

2 DEVELOPMENT OF THE GIS MODEL AGREEMENT

2.1 Objectives

IET is still in an early stage of development, with some countries pioneering the market through negotiating AAU sale and purchase agreements on a bilateral basis with provisions for channelling transaction proceeds to climate-friendly projects, thus providing environmental integrity to IET.

To date, because of the infancy of the IET market, there has been no need to develop standardised provisions regarding the sale of AAUs and implementation of a Green Investment Scheme. However, because of the increasing interest in the development of GIS, particularly from within EBRD's countries of operation as well as the sovereign participants in the EBRD-EIB Multilateral Carbon Credit Fund (MCCF)⁶, a need to focus attention on this area has been identified. Accordingly, EBRD initiated the drafting of a GIS Manual and Model Agreement that can be used as a common non-binding starting point for negotiating the sale of greened AAUs between countries, with a strong emphasis on the greening component.

With its support for this assignment, EBRD aims to facilitate expansion of this new segment of the international carbon finance market. AAU trading is the only Kyoto flexible mechanism which has experienced very few and very small transactions to date.⁷ EBRD engages in this assignment to contribute to the creation of a contractual architecture that would reduce transaction costs and negotiation time for the parties to such transactions. Although AAUs are country assets, trading is not per definition restricted to sovereigns only. Private sector entities may be authorised by their

⁶ Ireland and Spain have committed EUR 15 mln and EUR 25 mln, respectively, to the MCCF Green Fund that facilitates the purchase of AAUs under GIS.

⁷ According to Point Carbon, only 8 million AAUs were traded on the carbon market under some kind of green investment scheme in 2008, which volume was sold by Hungary in two transactions (2 million AAUs were sold to Belgium and 6 million to Spain). Two further AAU transactions under a green investment scheme were reported to be prepared in 2008 but will likely be finalised early 2009: Latvia's sale of 10 million AAUs to Japan, Netherlands, Austria, and two private Japanese buyers and Ukraine's 30 Mt transaction with the Japanese government. A similar volume is reportedly being discussed for a transaction between the Czech Republic and Japan, which could also close in the course of 2009. In addition, Point Carbon reports that Slovakia has sold 10 million AAUs to a private company, but not under a green investment scheme (i.e. without specific greening arrangements).

respective governments to trade AAUs.⁸ In Japan, for instance, voluntary commitments provide the incentive for private sector interest in this emerging market.

The GIS Manual and Model Agreement are publicly available and may be particularly interesting for EBRD's countries of operation that have voiced an interest in selling surplus AAUs. As it was of great importance for the development of the GIS Manual and Model Agreement to ensure a balanced result, giving due account of both buyers' and sellers' needs, a number of consultation sessions were convened.

2.2 Consultation process

On the basis of the first draft of the GIS Model Agreement, an initial stakeholder consultation session took place in Kiev (Ukraine) on 20 October 2008. Based on the results of the input from the consultation session the GIS Manual and a second draft of the GIS Model Agreement were prepared and circulated to a broad group of stakeholders, including sovereigns, the private sector, multilaterals and NGOs. These drafts were also made available on the EBRD website. In addition, conference calls were organised for stakeholders to discuss the documents.

The second consultation session took place in Poznan (Poland) on 8 December 2008, during the UNFCCC Conference (COP/MOP). Subsequently, the GIS Manual and Model Agreement were finalised and made publicly available.⁹

2.3 Acknowledgement

Acknowledgement and thanks go to all stakeholders that have contributed to the development of the GIS Manual and Model Agreement. We are particularly grateful to the persons that have participated in the consultation sessions and/or kindly submitted their input and comments on the discussion documents. We hope that the GIS Manual and Model Agreement will be found useful in practice and be further improved and fine-tuned as they enter their next phase of life within the open source arena.

⁸ Paragraph 5 of the Modalities, Rules and Guidelines for Emissions Trading (Annex to Decision 11/CPM.1) provides that a Party that authorises legal entities to transfer and/or acquire emission rights under Article 17 shall remain responsible for the fulfilment of its obligations under the Kyoto Protocol and shall ensure that such participation is consistent with the applicable rules.

⁹ See www.ebrd.com/country/sector/energyef/carbon/mccf.

3 KEY CONCEPTS OF THE GIS MODEL AGREEMENT

Below, certain key concepts included in the GIS Model Agreement (the "**Agreement**") are discussed. Unless otherwise indicated, capitalised terms have the meaning given to them in Schedule 1 (*Definitions*) to the Agreement.

The Agreement aims to be of a generic nature and usable for all Annex I Parties eligible for trading AAUs as per Article 17 of the Kyoto Protocol. The Agreement has not been drafted to be project- or country-specific, but to provide a general framework of issues. Therefore, it sets out a number of options and conditions which may be considered by eligible Annex I governments (or potentially private sector buyers), leaving plenty of room for negotiations between the Parties entering into an AAU transaction under a Green Investment Scheme.

3.1 Nature of transaction

An AAU transaction under a GIS can be described as a combination of (i) International Emissions Trading (the sale and purchase of AAUs followed by the transfer of the sold AAUs to the Buyer), and (ii) greening (the implementation of Greening Activities in the country of the Seller with the revenues of the AAU sale). International emissions trading is regulated by Article 17 of the Kyoto Protocol and related regulations.¹⁰ The Greening Activities, however, are not covered by Article 17 or any international regulation, but form a contractual obligation of the Seller country vis-à-vis the Buyer country to fulfil certain conditions set forth in their GIS agreement.

It should be noted that the qualification of AAUs under the national laws of Buyer and Seller countries may affect their room for negotiating certain options and thereby the structure of the GIS transaction and the provisions of the Agreement. The treatment of AAUs (also for tax and accounting purposes) differs from country to country, depending on the legal status of AAUs under the relevant national laws and regulations.¹¹ Therefore, a univocal legal qualification cannot be given.¹² In our view, AAUs are state assets (rights) which are created (issued) and transferable pursuant to international rules (the Kyoto Protocol and derivative regulations).

¹⁰ In particular the Modalities, Rules and Guidelines for Emissions Trading (Annex to Decision 11/CMP.1).

¹¹ See e.g. the Background Paper for the International Workshop on the Legal Nature of Emissions Reductions by the Foundation for International Environmental Law and Development (FIELD).

¹² In any case, AAUs should not qualify as financial instruments. The EU Markets in Financial Instruments Directive (MiFID) is not applicable to AAUs as such.

3.2 Commercial contract or treaty

An AAU transaction may be structured either as (i) a commercial contract under private international law, or (ii) a treaty under public international law. The Agreement is drafted as a commercial contract, but could serve as (the basis for) a treaty as well, if certain modifications are made.

Certain countries may have a preference for structuring the Agreement as a commercial contract for *inter alia* the following reasons:

- (a) the nature of the transaction; and
- (b) to avoid potential lengthy ratification processes in case of adopting a treaty (e.g. ratification by the parliament).

If Parties wish to execute the AAU transaction as a commercial contract, they should ensure that the Agreement includes, amongst other things:

- (i) Recital (H), which states the intention of the Parties to enter into a commercial contract not falling within the scope of the Vienna Convention on the Law of Treaties; and
- (ii) Clause 16.1, i.e. the choice of law clause.

Some countries may be prevented from entering into commercial agreements with respect to AAUs by national (constitutional) law.¹³ Those countries would have to execute the Agreement as a treaty.

If the Agreement is to be concluded as a treaty, several amendments should be made, including the following¹⁴:

- Recital (H) should be deleted.
- The wording on page 3 "IT IS HEREBY AGREED AS FOLLOWS" should be replaced by "HAVE AGREED AS FOLLOWS".
- Clauses are to be headed and referred to as Articles.
- Clause 1 (Definitions) and Clause 2 (Interpretation, Headings and Schedules) are to be combined in one, headed "Use of Terms".
- Sections 16.1 and 16.2 should be deleted.
- The UNFCCC arbitration clause in Section 16.4 could be inserted and the other arbitration clauses deleted.

¹³ Certain countries may not be able to enter into an agreement which includes a choice of law (for a different jurisdiction than their own) or to insert an arbitration clause, for reasons of (national laws preventing them from waiving) immunity.

¹⁴ This is not intended to be a complete list of changes necessary to make the Agreement qualify as a treaty.

3.3 Participation of private parties

Since currently only few countries are planning to allow or have allowed private entities to use AAUs for compliance purposes under (national) emission trading schemes, the Agreement does not include special provisions to accommodate the participation of a private sector Buyer. However, the Agreement could be used as a basis for negotiating transactions where a private entity is acting as Buyer¹⁵, provided that the laws of the Seller country allow this possibility. Should Parties consider using the Agreement for this purpose, they should review the Agreement carefully, seek appropriate legal advice and make the necessary amendments. Below is a non-exhaustive list of clauses and concepts that will need to be reviewed and amended:

- The Agreement should be concluded as a commercial contract.
- Recital (B) should be amended to refer to the ratification of the UNFCCC and Kyoto Protocol by the country that authorises the participation of the private Buyer.
- References to the Eligibility Requirements or the Buyer's eligibility will not apply to a private Buyer but should be amended to reflect the eligibility of the authorising Annex I country.
- Any references to the national laws of the Buyer should also be amended accordingly.
- Section 11.2 should only make reference to the Buyer having the right to terminate the Agreement if the circumstances therein described were to occur in respect of the Seller.

3.4 Greening

Greening is the process that links the sold AAUs to activities that can deliver climate or other environmental benefits: the AAU proceeds are earmarked for Greening Activities in the seller country, which may consist of emission reduction projects, other projects beneficial to the environment, or a combination thereof. The Parties should elaborate the agreed Greening Activities, project selection methods, fund allocation structure, monitoring and verification procedures and other greening matters in the Greening Plan (Schedule 7 to the Agreement). If these issues are already provided for in the national (greening) laws of the Seller country, it may suffice to include references to such laws in the Greening Plan.

As there is no international regulation with respect to the greening, this is at the discretion of the two governments involved and countries have great flexibility in drawing up their Greening Plan. The Greening Plan may contain certain Greening

¹⁵ A private sector Buyer would need to be authorised by an Annex I country to participate in International Emissions Trading. See para. 5 of the Modalities, Rules and Guidelines for Emissions Trading (Annex to Decision 11/CMP.1).

Milestones, i.e. clearly described targets in respect of the implementation of the Greening Activities and/or the environmental benefits to be generated by these Greening Activities.

3.4.1 Additionality

Certain Buyers may wish to be assured of the environmental integrity and the so-called "additionality" of the Greening Activities, i.e. that the GIS revenues do not replace budgetary spendings already allocated, planned or foreseen, or are used towards compliance with present or planned EU regulations or other international or national commitments in the pipeline, and that the Greening Activities are not aimed to effect emission reductions or environmental benefits that would also have occurred otherwise. For this purpose, representation 8.2(g) is included in the Agreement.

3.4.2 Greening ratio

Some Buyers may be satisfied if the Seller ensures that all AAU proceeds are invested in Greening Activities. However, other Buyers may wish the Seller to guarantee that each AAU sold corresponds to a certain amount of GHG emission reductions achieved by the Greening Activities. This is called the "greening ratio". If the Parties agree that each transferred AAU must eventually be matched by a GHG emission reduction of one metric ton of CO₂e, the greening ratio is 1:1. This would only be possible if the Parties have agreed (in the Greening Plan) on Greening Activities that can deliver measurable and quantifiable emission reductions.

3.4.3 Project selection and fund allocation

The Greening Plan should also include the way in which the GIS funds will be allocated to the Greening Activities and how project selection is to take place. If this is already provided for in the national laws of the Seller country, then references to such laws may suffice.¹⁶ Projects could be selected via public tenders, but GIS schemes may also follow a bottom-up disbursement approach, whereby projects have to be initiated and proposed by investors through an open application procedure. If so desired, the Buyer could be involved in the selection process. It is up to the Parties to agree and specify the role of the Buyer (if any) in the Greening Plan. Such role could be an active one, whereby the Buyer is involved in the actual decision-making. For instance, if project selection is effected via tenders, a representative of the Buyer country could have a seat on the selection committee. The Buyer could also be granted the right to approve or veto the final award of the funds. Alternatively, the Buyer could have an advisory role in the project selection process, or leave the project selection and fund allocation entirely to the Seller and restrict its involvement to being periodically informed about the implementation of the Greening Activities. It should be noted that if the Buyer is more

¹⁶ Certain seller countries may have national laws and regulations on GIS (prescribing the types of projects on which GIS funds may be spent, the way these funds may be disbursed etc). If the Buyer is comfortable with these, the GIS agreement could refer to the relevant GIS law where applicable.

actively involved in the selection process, it may also assume a certain degree of legal responsibility with respect to the Greening Activities. This could make it harder for the Buyer to argue later on (if the outcome of the Greening Activities should be disappointing) that the Greening Activities are not in conformity with the Agreement.

There are several methods to allocate the proceeds of the sale of the AAUs to the ultimate beneficiaries thereof, i.e. the parties implementing the relevant Greening Activities. Fund allocation may e.g. be structured through grants, loans, credit guarantees, or equity. The choice and specific structure of the fund allocation method will depend on the project or program type, type of beneficiary, administrative capacity to manage associated risks, market conditions and impact on the sector. Some methods create more unwanted distortions than others, e.g. encourage unwanted behaviour or discourage private financial institutions from providing commercial capital to climate-friendly projects. This may undermine sustainability and the scale of investments in this sector. Parties are advised to consult experienced financial institutions to manage such risks.

3.4.4 Supervision and verification

The Buyer may wish the implementation of the Greening Activities under the GIS to be supervised and the Greening Effect thereof to be monitored. If the Parties have agreed on a certain greening ratio, the amount of GHG reductions achieved by the Greening Activities should be assessed and verified. The Buyer may wish to be involved in the supervision, monitoring and verification, or leave it to the Seller or an independent third party (which may be a private entity such as a Designated Operational Entity as in CDM or an Accredited Independent Entity as in track 2 JI). If the Buyer is not directly involved in the supervision, it may wish to be kept informed and periodically updated about the implementation of the Greening Activities.

3.4.5 Timeframe

Two different timeframes can be discerned: (i) the timeframe for the disbursement of the GIS funds on the Greening Activities, and (ii) the period within which these projects should "deliver" their environmental benefits. If a greening ratio has been agreed, the latter could be called the "crediting period" (similar to JI and CDM), i.e. the period in which the relevant GHG reduction is to take place. Some Buyers may be satisfied if the fund disbursements take place within a certain period (i.e. all AAU proceeds are invested in Greening Activities within that timeframe), in which case the term of the agreement could be limited to that period. However, if a greening ratio has been agreed (i.e. if each AAU sold is to be matched by a certain amount of GHG emission reductions generated by the Greening Activities), then the term of the agreement will have to be much longer, in order to allow for monitoring and verification of the relevant GHG emission reductions.

If the Buyer needs the AAUs for compliance purposes within the Kyoto Protocol commitment period, the transfer of the AAUs under the Agreement will have to take place before the end of the Kyoto compliance period.¹⁷ However, since the Greening Activities under the GIS are not covered by Kyoto regulations, these could be extended post 2012. This would entail that initially "ungreened" AAUs are transferred to the Buyer (and used for compliance), which are to be greened later. The downside of such approach for the Buyer may be that if the Greening Activities do not deliver as envisaged, the buyer will have used ungreened AAUs for compliance purposes, which involves a reputational risk.

3.4.6 State aid and competition

The earmarking of GIS funds for Greening Activities and the allocation of these funds to certain projects or entities may raise questions of state aid and public procurement, especially within the European Union.

State aid

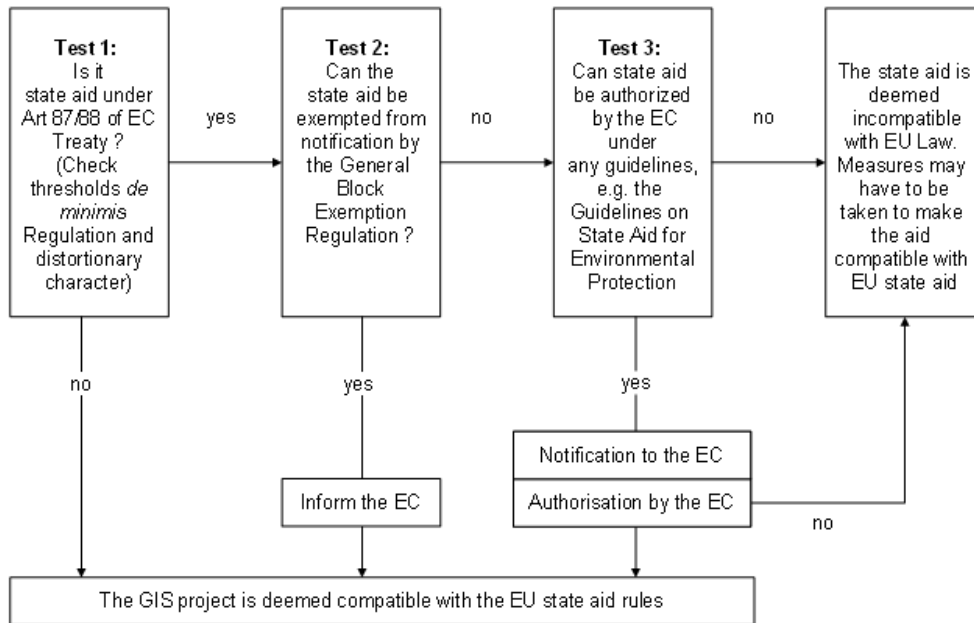
The Treaty establishing the European Community prohibits any aid granted by or through a Member State which has the potential to distort competition and trade between Member States and is not approved by the European Commission. Generally, any advantages granted by public authorities to an undertaking engaged in an economic activity (in any form, such as grants, soft loans, interest subsidies, guarantees, tax exemptions, etc) may constitute state aid which should be notified to the European Commission and authorised *ex ante*.

In the diagram on the next page¹⁸, the general steps to be followed when assessing stated aid are set out.

¹⁷ The first commitment period under the Kyoto Protocol runs from 1 January 2008 up to and including 31 December 2012 (Article 3, paragraph 7, of the Kyoto Protocol). The actual deadline for the Parties' compliance with their emission limitation and reduction commitments under the Kyoto Protocol will be set at a later date. The annual GHG inventory for the last year of the commitment period (2012) is to be submitted in 2014. When this inventory is reviewed, an additional 100-day true-up period will start, during which Parties have the opportunity to undertake final transactions necessary to achieve compliance with their commitments (see paragraph 2.2 and 2.3 of the Kyoto Protocol Reference Manual on Accounting of Emissions and Assigned Amounts, published by the UNFCCC Secretariat in February 2007). The suggested Long Stop Date in the Agreement is 28 February 2013, in order to allow the Parties sufficient time to enter into alternative emissions transactions to achieve compliance with their Kyoto commitments before the compliance deadline.

¹⁸ Adapted from: G. Peszko, EBRD, presentation at the Regional Green Investment Scheme (GIS) Forum, Warsaw, 25-26 June 2008.

Do Greening Activities comply with the EU state aid rules?



Step 1

The first step to be investigated is whether the above-mentioned advantages distort competition and trade. For example, financial support to households or non-selective subsidies do not constitute state aid and can be awarded by a member state without even informing the European Commission. Subsidies are also not considered state aid if they remain below the thresholds set out in the European Commission’s Regulation on *de minimis* aid. For Greening Activities projects to be exempted under the *de minimis* Regulation, the aid granted to one company may not exceed EUR 200,000 (or EUR 100,000 for undertakings active in road transport) over a period of three fiscal years. Such aid should furthermore be “transparent”, which in short means that it should be possible to calculate precisely the gross grant equivalent in advance. The Regulation does not apply to certain categories of aid, such as aid granted to undertakings active in fishery and agricultural products.

Step 2

If the support is considered state aid within the meaning of the Treaty, the second step to be investigated is whether it requires notification to and approval of the European Commission. For example, if the aid falls within the scope of the European Commission’s General Block Exemption Regulation on state aid (GBER) it is then exempted from the obligation to be notified to the Commission and obtain prior authorisation, provided that it fulfils certain conditions included in the GBER. The Member State has to inform the Commission about such aid and publish the full text of

the aid measure on the internet. The categories of aid that are exempted from the notification obligation by the GBER are in short:

- regional aid;
- SME investment and employment aid;
- aid for the creation of enterprises by female entrepreneurs;
- aid for environmental protection;
- aid for consultancy in favour of SMEs and SME participation in fairs;
- aid in the form of risk capital;
- aid for research, development and innovation;
- training aid; and
- aid for disadvantaged and disabled workers.

The GBER is a highly detailed framework exempting certain specific types of aid and applies to all sectors unless they have been excluded by the Regulation. Whether certain state aid can profit from the GBER should thus be determined on a case-by-case basis.

The general conditions that must be fulfilled for exemption under the GBER are that the aid leads to new activities that would not otherwise have taken place and that it promotes economic development without unduly distorting competition. Moreover, the aid has to be transparent and may not exceed certain thresholds laid down in the GBER. As regards the environmental aid exempted under the GBER, the following specific categories have been identified:

- investment aid to go beyond Community standards for environmental protection;
- aid for acquisition of transport vehicles which go beyond Community environmental standards;
- aid for early adaptation to future Community environmental standards for SMEs;
- investment aid in energy savings measures;
- investment aid in high-efficiency cogeneration;
- investment aid for the promotion of energy from renewable energy sources;
- aid for environmental studies; and
- aid in the form of reductions in environmental taxes.

Environmental aid does not need to be notified if (i) the above-mentioned general conditions of the GBER are met, (ii) it does not exceed EUR 7.5 million per project, and (iii) it complies with the maximum aid intensity levels. The maximum aid intensity levels vary (between 10% and 80% of eligible costs), depending on the type of aid.

The GIS funding can also be structured under block exemptions applicable to regional development aid or SMEs without requiring notification to the European Commission.

Step 3

If the support granted under the GIS distorts competition and trade, is not *de minimis* and cannot be exempted by the GBER (e.g. the size of aid is above the threshold listed in GBER), it has to be notified on a case-by-case basis to the European Commission, which has the competence to determine whether such aid can be authorised or not. If the Seller violates these procedural rules or grants state aid without authorisation, it risks a possible infringement procedure as well as possible suspension of the project for which the state aid was granted, and even the requirement to have the aid returned by the beneficiaries.

The Commission has adopted several guidelines and communications setting out its policy with regard to specific categories of aid. Examples of these policy documents relevant to state aid granted in the course of Greening Activities are primarily the Guidelines on State Aid for Environmental Protection, but also the Guidelines on National Regional Aid and the Community Framework for State Aid for Research & Development & Innovation. Any of these guidelines can be used to justify compatibility of GIS with state aid law.

In the Guidelines on State Aid for Environmental Protection, the Commission makes a distinction between a standard assessment and a detailed assessment. The standard assessment focuses on whether conditions and parameters such as aid intensities are fulfilled. The Commission applies a detailed assessment method for certain large aid amounts to individual enterprises. The following table summarizes the maximum aid intensity¹⁹ for specific forms of environmental aid under the standard test.

Type of aid measure	Small enterprise	Medium-sized enterprise	Large enterprise
Aid for undertakings going beyond Community standards or increasing the level of environmental protection in the absence of Community standards	70% 80% if eco-innovation 100% if tender	60% 70% if eco-innovation 100% if tender	50% 60% if eco-innovation 100% if tender
Aid for environmental studies	70%	60%	50%
Aid for early adaptation to future Community standards - more than 3 years	25% 20%	20% 15%	15% 10%

¹⁹ Under the guidelines on state aid for environmental protection, the aid intensities refer to percentages of eligible costs, i.e. not the total project cost, but only extra investment cost necessary to achieve the specific environmental objective of the aid category.

- between 1 and 3 years before the entry into force			
Aid for waste management	70%	60%	50%
Aid for renewable energies	80% 100% if tender	70% 100% if tender	60% 100% if tender
Aid for energy saving Aid for cogeneration installations	80% 100% if tender	70% 100% if tender	60% 100% if tender
Aid for district heating using conventional energy	70% 100% if tender	60% 100% if tender	50% 100% if tender
Aid the remediation of contaminated sites	100%	100%	100%
Aid for relocation of undertakings	70%	60%	50%

Under the detailed assessment, the Commission will conduct a detailed economic investigation of the effects of the aid on the basis of positive elements and negative elements. The investigation will focus *inter alia* on the existence of market failure, whether state aid is an appropriate instrument, the incentive effect, the necessity and proportionality, exclusionary effect etc. The Commission will then balance the effects of the measure and determine whether the state aid can be authorized.

Public procurement

When selecting the Greening Activities, there may also be certain project procurement rules that have to be taken into account (e.g. regulations stemming from the European Public Procurement Directives). These rules may entail that the Greening Activities must be put out to public tender and that project companies from other jurisdictions than the Seller's should also be eligible to participate in the tender.²⁰

Covenant

In view of the above-mentioned state aid and procurement concerns, Clause 8.4 of the Agreement includes a covenant that the Greening Activities will take place in accordance with applicable state aid and public procurement rules.

3.5 Engagement of third parties

The Agreement provides for several possible scenarios for delivery and payment (see para. 3.6 below). Some Scenarios include the option for Seller and Buyer to engage certain instrumental third parties to structure the transaction in different manners. These parties are introduced below and their role is further explained in para. 3.5. The use of

²⁰ For the avoidance of doubt, the Greening Activities would still take place in the jurisdiction of the Seller, but it may be a foreign company that is awarded the assignment to implement the Greening Activities.

these parties is not required, but merely one of the options provided for in the Agreement in accordance with practices in other segments of the carbon market.

Custodian

Parties may choose to engage a third party to take custody of the AAUs. This Custodian would be a private entity, independent of the Buyer and the Seller, e.g. a professional recognised custodian or provider of trust services. The Custodian must open an account in its own name in the National Registry of an Annex I country that authorises the holding of AAUs by a private entity and will hold the AAUs first on behalf of the Seller and subsequently (once the purchase price is paid) on behalf of the Buyer. The use of the Custodian will help mitigate the risk of not meeting the Eligibility Criteria by both Parties in the course of the Agreement and prevent ungreened AAUs from being transferred to the Buyer. Furthermore, the Custodian provides a safeguard for both Parties, since it will not release the AAUs to the Buyer until the purchase price has been paid and certain greening results (so-called Greening Milestones) have been achieved.

Escrow Bank

Parties may also choose to have the purchase price held in escrow. The Escrow Bank would be an international bank chosen by the Parties (with a credit rating to the satisfaction of both Parties). The Escrow Bank will set up an Escrow Account in its own name, where it will receive the purchase price for the AAUs from the Buyer, to be released to the Seller only upon joint instruction of the Seller and the Buyer after the achievement of the agreed Greening Milestones and simultaneous with the release of the relevant AAUs to the Buyer by the Custodian. The Escrow Bank could provide a certain protection for both the Seller and the Buyer, as the Proceeds will be kept outside the control of the Parties until a release instruction is given.

The Custodian and the Escrow Bank have been included in Scenario A in the Agreement, as their roles would be complementary. However, the Parties may also choose to only use a Custodian or an Escrow Bank, or one entity that can provide both services. In any event, the Buyer and the Seller will both have to enter into a separate Custody Agreement and/or Escrow Agreement with the Custodian and/or Escrow Bank to arrange the terms and conditions under which such services will be provided (such Custody Agreement and/or Escrow Agreement to be attached to the Agreement as Schedule 4 and/or Schedule 5).

Greening Agent

Parties could agree that a greening agent is appointed, i.e. a third party that will implement the Greening Activities or assist the Seller in implementing the Greening Activities. The greening agent would have a separate contractual relationship with the Seller, which could take the form of a Co-Operation Agreement or another legal instrument. The greening agent can be either a National Greening Agent (one or more national implementation agencies in the jurisdiction of the Seller) or an International Greening Agent (one or more international institutions). The Agreement contains certain

suggestions for the division of responsibilities between the Seller and the greening agent. However, these are not cast in stone and the Parties may agree on different provisions. In the case of a National Greening Agent, the Agreement provides that the Seller retains final responsibility for the implementation of the Greening Activities. In the case of an International Greening Agent, the Agreement provides for two options: (i) the Seller retains final responsibility for the implementation of the Greening Activities by the International Greening Agent, or (ii) the Seller will be deemed to have complied with its greening obligations under the Agreement when the purchase price is paid to the International Greening Agent. In all of these cases, the Agreement provides that the Seller will remain in charge of monitoring the Greening Activities and periodically reporting to the Buyer on the implementation thereof. Of course, the Parties may deviate from the suggestions in the Agreement and agree on a different division of responsibilities.

3.6 Payment and delivery mechanisms

There are several possibilities for structuring the exchange of payments and AAUs under a GIS transaction, depending on the balance between the interests of Buyer and Seller countries and the desired risk-sharing mechanism. The Agreement does not prescribe one solution, but contains five possible transfer and payment scenarios, A through E, from which the Parties can elect the one that best fits their needs (the "**Scenarios**"). Once the Parties have agreed on the preferred Scenario, the references to the other Scenarios throughout the Agreement should be deleted (e.g. if Scenario A is chosen, the paragraphs marked as Scenario A should be included in Clauses 5, 6 and 7, and references to Scenarios B, C, D and E in those Clauses should be deleted). In all Scenarios, the proceeds from the AAU sale are to be appropriated for Greening Activities. The nature and scope of the Greening Activities is to be agreed between the Parties in a so-called Greening Plan (Schedule 7 to the Agreement).

Scenario A (custody and escrow arrangement):

- (i) Seller transfers the AAUs to a Custody Account with a Custodian.
- (ii) Buyer transfers the purchase price to an Escrow Account with an Escrow Bank.
- (iii) Seller is responsible for implementing the Greening Activities in accordance with the Greening Plan.
- (iv) Upon achievement of certain Greening Milestones (to be agreed in advance by the Parties in the Greening Plan), the relevant tranche of AAUs is released to the Buyer and the corresponding portion of the purchase price is released to the Seller.

It should be noted that in this scenario, if the Buyer needs the AAUs for compliance purposes, all Greening Milestones should be achieved and all transfers of AAUs should be effected before the end of the Kyoto compliance period (see para. 3.5 above).

Scenario B (payment upon delivery):

This Scenario comprises three sub-scenarios, B1 through B3, providing for three different payment mechanisms: (1) payment directly to the Seller, (2) payment directly to a greening agent, or (3) payment to the Seller, who is to forward the payment to a greening agent. Option (3) was included as option (2) may not be feasible for certain Seller countries whose national laws prescribe that the proceeds of an AAU sale always have to flow through the national budget first.

Scenario B1 (payment to Seller):

- (i) Seller transfers the AAUs to Buyer (either all at once, or in certain periodical portions in accordance with a delivery schedule).
- (ii) Buyer transfers the purchase price for the delivered AAUs to Seller.
- (iii) Seller is responsible for implementing the Greening Activities in accordance with the Greening Plan.
- (iv) Seller monitors and periodically reports to Buyer on the status of the Greening Activities.
- (v) In case of a Greening Default (i.e. a default in the implementation of the Greening Activities), the AAUs are not returned to the Seller, but the Buyer may elect certain remedies under the Agreement (*inter alia* replacement Greening Activities, or repayment of the purchase price or a part thereof, which the Buyer itself then reinvest in greening, either on its own territory or elsewhere).

Scenario B2 (payment to greening agent):

- (i) Seller transfers the AAUs to Buyer (either all at once, or in certain periodical portions in accordance with a delivery schedule).
- (ii) Buyer transfers the purchase price for the delivered AAUs to a greening agent (either a National Greening Agent or an International Greening Agent).
- (iii) The greening agent implements the Greening Activities in accordance with the Co-Operation Agreement and the Greening Plan.
- (iv) Seller monitors and periodically reports to Buyer on the status of the Greening Activities.
- (v) If the greening agent is a National Greening Agent, the Seller remains responsible for the implementation of the Greening Activities. In case of a Greening Default (i.e. a default in the implementation of the Greening Activities), the AAUs are not returned to the Seller, but the Buyer may elect certain remedies under the Agreement (*inter alia* replacement Greening Activities, or repayment of the purchase price or a part thereof, which the Buyer itself may then reinvest in greening, either on its own territory or elsewhere).
- (vi) If the greening agent is an International Greening Agent, there are two options:
 - >**Option 1:** The Seller remains responsible for the implementation of the Greening Activities by the International Greening Agent. In case of a Greening Default (i.e. a default in the implementation of the Greening Activities), the AAUs are not returned to the Seller, but the Buyer may elect certain remedies under the Agreement (*inter alia* replacement Greening Activities, or repayment

of the purchase price or a part thereof, which the Buyer itself may then reinvest in greening, either on its own territory or elsewhere).

>Option 2: The Seller is deemed to have complied with its greening obligations when the purchase price is transferred to the International Greening Agent. The Seller should then procure that the Co-Operation Agreement with the International Greening Agent provides that if the Greening Activities are not implemented in accordance with the Greening Plan or if a Greening Milestone is not achieved at the relevant date, the International Greening Agent is obliged to repay the relevant part of the purchase price directly to the Buyer (which the Buyer itself may then reinvest in greening, either on its own territory or elsewhere).

Scenario B3 (payment to greening agent via Seller):

- (i) Seller transfers the AAUs to Buyer (either all at once, or in certain periodical portions in accordance with a delivery schedule).
- (ii) Buyer transfers the purchase price for the delivered AAUs to the Seller, who forwards the payment to a greening agent (either a National Greening Agent or an International Greening Agent).
- (iii) The greening agent implements the Greening Activities in accordance with the Co-operation Agreement and the Greening Plan.
- (iv) Seller monitors and periodically reports to Buyer on the status of the Greening Activities.
- (v) If the greening agent is a National Greening Agent, the Seller remains responsible for the implementation of the Greening Activities. In case of a Greening Default (i.e. a default in the implementation of the Greening Activities), the AAUs are not returned to the Seller, but the Buyer may elect certain remedies under the Agreement (*inter alia* replacement Greening Activities, or repayment of the purchase price or a part thereof, which the Buyer itself may then reinvest in greening, either on its own territory or elsewhere).
- (vi) If the greening agent is an International Greening Agent, there are two options:
 - >Option 1:** The Seller remains responsible for the implementation of the Greening Activities by the International Greening Agent. In case of a Greening Default (i.e. a default in the implementation of the Greening Activities), the AAUs are not returned to the Seller, but the Buyer may elect certain remedies under the Agreement (*inter alia* replacement Greening Activities, or repayment of the purchase price or a part thereof, which the Buyer itself may then reinvest in greening, either on its own territory or elsewhere).
 - >Option 2:** The Seller is deemed to have complied with its greening obligations when the purchase price has been forwarded to the International Greening Agent. The Seller should then procure that the Co-Operation Agreement with the International Greening Agent provides that if the Greening Activities are not implemented in accordance with the Greening Plan or if a Greening Milestone is not achieved at the relevant date, the International Greening Agent is obliged to repay the relevant part of the purchase price directly to the Buyer (which the

Buyer itself may then reinvest in greening, either on its own territory or elsewhere).

Scenario C (advance payment of base price upon delivery; additional price upon greening):

- (i) Seller transfers the AAUs to the Buyer (either all at once, or in certain periodical portions in accordance with a delivery schedule).
- (ii) Buyer pays a "base" purchase price for the delivered AAUs to Seller.
- (iii) Upon achievement of certain Greening Milestones (to be agreed in advance by the Parties in the Greening Plan), the Buyer pays an additional "greened" purchase price per delivered AAU to the Seller.

Some countries have indicated that they may not be able to use this Scenario C due to budgetary constraints. Other countries are concerned that this Scenario provides for the trading of AAUs which have not been greened. It should be noted that this Scenario C is only one of the possible options for the Parties and should in any case be seen in relation to the other provisions of the Agreement. The Scenario aims to provide for an advance payment of part of the Unit Price that could enable the Seller to implement the Greening Activities while the payment of the remaining portion of the Unit Price will be effected upon the achievement of agreed Greening Milestones.

Scenario D (delivery upon achievement of Greening Milestones, payment upon delivery):

- (i) Seller transfers the AAUs to the Buyer in tranches, upon achievement of certain Greening Milestones (to be agreed in advance by the Parties in the Greening Plan).
- (ii) Buyer transfers the purchase price for the delivered AAUs to the Seller upon receipt.

It should be noted that in this scenario, if the Buyer needs the AAUs for compliance purposes, all Greening Milestones should be achieved and all transfers of AAUs should be effected before the end of the Kyoto compliance period (see para. 3.5 above).

Scenario E (payment upon achievement of Greening Milestones, delivery upon payment):

- (i) Buyer pays to the Seller in instalments the purchase price for the AAUs to be delivered upon achievement of certain Greening Milestones (to be agreed in advance by the Parties in the Greening Plan).
- (ii) Seller transfers the AAUs to the Buyer in tranches, upon receipt of the relevant payment.
- (iii) This concept of delivery upon payment (or advance payment) could *mutatis mutandis* also be implemented in the other Scenarios described above.

It should be noted that in this scenario, if the Buyer needs the AAUs for compliance purposes, all Greening Milestones should be achieved and all transfers of AAUs should be effected before the end of the Kyoto compliance period (see para. 3.5 above).

3.7 Optional provisions

Apart from the various alternative Scenarios, the Agreement also contains several words, Clauses and parts thereof which are put between [square brackets]. These may indicate:

- (i) that the relevant details are to be agreed and filled in by the Parties (e.g. Parties should fill in their names at the heading of the Agreement and the expiry date in Clause 11.1)²¹, or
- (ii) that there are several options from which the Parties must choose (e.g. in Clause 6.2 under Scenario B1, the Parties must opt for either a National Greening Agent or an International Greening Agent), or
- (iii) that the relevant Clause is optional and the Parties may choose to either include it or delete it (e.g. if the Parties wish to include an option for the Buyer to purchase additional AAUs, Clauses 4.3 and 4.4 must be included; otherwise, these Clauses must be deleted); or
- (iv) that the relevant wording is optional and the Parties may choose to either include it or delete it (e.g. in the definition of Greening Effect in Schedule 1, Parties may elect to include the wording "or indirect" to express that the Greening Activities can consist of both emission reduction projects and other projects beneficial to the environment; or
- (v) that the relevant wording is only to be included if a certain Scenario or option is elected (e.g. Clauses 6.6 and 6.7 should only be included if Scenario A is elected; the reference to an International or National Greening Agent in Clause 7.4 is only relevant if one of the Scenarios B is elected; and the wording "or the Option AAUs, respectively" in Clause 5.3 is only to be inserted if the Parties have chosen to include the Option (Clauses 4.3 and 4.4) in the Agreement).

The square bracketed parts on which the Parties do not agree (or that are not relevant to the chosen Scenario), should be deleted.

²¹ In certain cases, the relevant details have already been filled in, merely as a provisional suggestion. E.g., in Clause 9.8(d) it is provided that Repayment shall take place within 30 calendar days and in Clause 25.1 it is provided that all payments shall be in Euro by wire transfer, but Parties are, of course, free to agree on a longer or shorter repayment term and/or a different currency and payment method.

3.8 Schedules

The Agreement consists of a main body and several Schedules. For ease of use (during negotiations and drafting sessions), certain key elements are included in the Schedules. These are further explained below (in section 5).

4 CLAUSE BY CLAUSE ANNOTATION

RECITALS

WHEREAS:

- (A) Seller has ratified the United Nations Framework Convention on Climate Change on [date] and the Kyoto Protocol on [date].
- (B) Buyer has ratified the United Nations Framework Convention on Climate Change on [date] and the Kyoto Protocol on [date].
- (C) Seller and Buyer are parties included in Annex B to the Kyoto Protocol.
- (D) Article 17 of the Kyoto Protocol provides that the parties included in Annex B to the Kyoto Protocol may participate in emissions trading for the purpose of fulfilling their commitments under Article 3 of the Kyoto Protocol.
- (E) Seller wishes to sell and Buyer wishes to purchase Assigned Amount Units under the terms and conditions of this Agreement.
- (F) The Parties wish the Proceeds of the Assigned Amount Units to be appropriated solely for Greening Activities in the country of Seller.
- (G) Buyer wishes to use the Assigned Amount Units solely for compliance purposes under the Kyoto Protocol (or its successor treaty).
- (H) The Parties wish to enter into a contract not falling under the scope of the Vienna Convention on the Law of Treaties.

The Agreement is drafted as a commercial contract under private international law. If the Agreement is to be entered into as a treaty under public international law, recital (H) should be deleted and certain other amendments should be made. Please refer to para. 3.1 above.

It is assumed that the Agreement is between two sovereign states (parties to the Kyoto Protocol). However, the Agreement could also serve as (the basis for) a contract between an AAU-selling country and a private sector buyer (authorised by an Annex I country), provided that certain modifications are made. Please refer to para. 3.2 above.

1. DEFINITIONS

Unless the context otherwise requires, capitalised terms used in this Agreement and its preamble shall have the meaning ascribed thereto in Schedule 1.

It should be noted that certain key elements of the Agreement are to be included in Schedule 1, such as the number of AAUs to be sold (which is to be included in the definition of "Contract AAUs") and the purchase price thereof (which is to be included in the definition of "Unit Price").

2. INTERPRETATION, HEADINGS AND SCHEDULES

- 2.1 In this Agreement, unless the context requires another meaning, a reference:
- (a) to any document (including this Agreement) is to that document as varied, amended, novated, ratified or replaced from time to time;
 - (b) to any Party includes that Party's successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
 - (c) to the singular includes the plural and vice versa, and to a gender includes all genders;
 - (d) to a Party means a Party to this Agreement, and to a Clause or Schedule means to an Clause or Schedule of this Agreement (unless specified otherwise);
 - (e) to any International Rules, statute or to any treaty or statutory provision includes any statutory modification or re-enactment of it or any treaty or statutory provision substituted for it, and all protocols, rules, modalities, guidelines, procedures, ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it; and
 - (f) to the words "including", "include", "included", "such as", "consisting of" and the like shall be deemed to be completed by the expression "but not limited to".
- 2.2 The terms of this Agreement shall be interpreted in a manner that is consistent with the International Rules.
- 2.3 The Schedules to this Agreement are incorporated by reference herein and form an integral part hereof.
- 2.4 The headings of the Clauses and Schedules are inserted for convenience of reference only and do not affect the interpretation of this Agreement.

This Clause contains certain standard provisions on the interpretation of the Agreement. It is explicitly stated, *inter alia*, that the Schedules form an integral part of the Agreement.

Clause 2.2 provides that the Agreement shall be interpreted in a manner that is consistent with the International Rules (which are defined in Schedule 1 to the Agreement as means the UNFCCC, the Kyoto Protocol and any relevant decisions, guidelines, modalities and procedures made pursuant to them, each as amended from time to time). As indicated above, the Kyoto Protocol and related regulations constitute

the legal framework of any international emissions trade. Therefore, consistency of (the interpretation of) the Agreement with these regulations should be ensured.

3. ENTRY INTO FORCE; CONDITIONS PRECEDENT

3.1 Subject to Clause 3.2, this Agreement will enter into force upon execution by both Parties.

3.2 The entry into force of Clauses 4, 5, 6, 7 and 8.1 (the "**Conditional Provisions**") is conditional upon each of the conditions listed in Schedule 2 (the "**Conditions Precedent**") having been met.

3.3 If not all Conditions Precedent have been satisfied [or waived in writing by the relevant Party] within [**] months after the date of this Agreement, the Conditional Provisions shall not become binding and enforceable and, without prejudice to Clause 3.4, this Agreement may be terminated with immediate effect by either Party giving notice to such effect to the other Party.

3.4 The Parties may agree to set a new date for fulfilling the Conditions Precedent if the Conditions Precedent shall not have been satisfied or waived in writing within [**] months after the date of this Agreement, or as soon as it is reasonably foreseeable that such Conditions Precedent will not have been met by that date.

3.5 Seller and Buyer will use all reasonable efforts and co-operate in good faith to ensure that the Conditions Precedent are met as soon as practicable.

3.6 Seller shall provide Buyer with a written [monthly][quarterly] progress report as to the fulfilment of the Condition Precedent sub (a) and (e) and Buyer shall provide Seller with a written [monthly][quarterly] progress report as to the fulfilment of the Condition Precedent sub (b), the first of such reports to be issued by each Party [one month][three months] after the date of execution of this Agreement.

The entry into force of certain provisions of the Agreement can be made dependent on the Conditions Precedent listed in Schedule 2 having been met. The other provisions of the Agreement will enter into force upon execution of the Agreement by both Parties.

If the Conditions Precedent are not satisfied or waived within the period agreed by the Parties, the Agreement may be terminated (Clause 3.3). The Parties may also agree to set a new date for fulfilling the Conditions Precedent (Clause 3.4).

The first two Conditions Precedent concern the Eligibility Requirements and the International Transaction Log (ITL). Parties must meet the eligibility criteria of the Kyoto Protocol rules in order to participate in IET (Decision 11/CMP.1) and their national registries must be connected to the ITL in order to be able to actually transfer and receive AAUs. The Agreement provides that Parties shall keep each other informed about the fulfilment of these Conditions Precedent through periodical progress reports (Clause 3.6).

The Conditions Precedent may also include legal opinions (to be issued by reputable law firms in the jurisdictions of Buyer and Seller, respectively), confirming the authority

of persons signing the Agreement on behalf of the Parties, as well as the enforceability of the Agreement.

4. SALE AND PURCHASE OF ASSIGNED AMOUNT UNITS; OPTION

4.1 Seller agrees to sell and Deliver and Buyer agrees to purchase and receive the Contract AAUs in accordance with the terms of this Agreement.

4.2 Seller and Buyer agree that the Proceeds from the purchase of the Contract AAUs [and the Option AAUs] shall be allocated solely to Greening Activities in accordance with the terms and conditions of this Agreement, including the Greening Plan.

4.3 [In consideration of Buyer's purchase of the Contract AAUs, Seller grants the Option to Buyer. For the Option, Buyer shall pay the Option Fee to Seller.

4.4 [Buyer may exercise the Option by providing Seller written notice thereof, in the form of Schedule 3 (the "**Option Notice**"), not later than [**] [, stating the number of Option AAUs it wishes to purchase].]

The Seller sells the Contract AAUs to the Buyer (Clause 4.1) and the proceeds of the sale shall be appropriated solely for Greening Activities in accordance with the Greening Plan (Clause 4.2). The number of AAUs is to be included in the definition of Contract AAUs in Schedule 1.

Clauses 4.3 and 4.4 are optional and should only be included if Parties agree that the Buyer shall, in addition to the Contract AAUs, also purchase an Option for additional AAUs. The number of these AAUs is to be included in the definition of Option AAUs in Schedule 1. In consideration of the Option, the Buyer may agree to pay an Option Fee to the Seller. The amount and nature of the fee (upfront or periodical) is to be included in the definition of Option Fee in Schedule 1.

Buyer may exercise the Option by proving the Seller with a written Option Notice (Clause 4.4), in the form of Schedule 3. If Parties do not wish to include the Option in the Agreement, the references to Option, Option AAUs, Option Fee, Option Notice and Option Purchase Value should be deleted throughout the Agreement.

5. TRANSFER OF ASSIGNED AMOUNT UNITS

5.1 **[[Scenario A]** Within [**] ([**]) calendar days from the date of fulfilment of the Conditions Precedent, Seller shall (i) transfer the Contract AAUs from the National Registry of Seller to the Custodian in the Custody Account in accordance with the Custody Agreement free and clear from any Liens, and (ii) send an Invoice in respect of the Delivered AAUs to Buyer.]

[[Scenarios B and C] Within [**] ([**]) calendar days from the date of fulfilment of the Conditions Precedent, Seller shall (i) transfer [all] [the relevant portion of the] Contract AAUs [in accordance with the Delivery Schedule] from the National Registry of Seller to Buyer in Buyer's Account and (ii) send

an Invoice in respect of the Delivered AAUs to Buyer.]

[[**Scenario D**] Within [**] ([**]) calendar days from achievement of a Greening Milestone, as set out in the Greening Plan, Seller shall (i) transfer the relevant tranche of Contract AAUs [or Option AAUs, as the case may be], in accordance with the Greening Plan, from the National Registry of Seller to Buyer in Buyer's Account and (ii) send an Invoice in respect of the Delivered AAUs to Buyer.]

[[**Scenario E**] Within [**] ([**]) calendar days of receipt of payment of the Invoice in accordance with Clause 6.2, Seller shall transfer the relevant tranche of Contract AAUs [or Option AAUs, as the case may be], in accordance with the Greening Plan, from the National Registry of Seller to Buyer in Buyer's Account.]

5.2 [Within [**] ([**]) calendar days from the date of the Option Notice, Seller shall

[[**Scenario A**] (i) transfer the Option AAUs in respect of which the Option Notice has been issued to the Custodian in the Custody Account in accordance with the Custody Agreement free and clear from any Liens and (ii) send an Invoice in respect of these Option AAUs to Buyer.]

[[**Scenarios B and C**] (i) transfer the Option AAUs in respect of which the Option Notice has been issued to Buyer in Buyer's Account free and clear from any Liens and (ii) send an Invoice in respect of these Option AAUs to Buyer.]]

5.3 Upon receipt of the Contract AAUs [or the Option AAUs, respectively,]

[[**Scenario A**] in the Custody Account, the Custodian shall immediately notify Buyer and Seller [and the Escrow Bank] thereof in accordance with the Custody Agreement.]

[[**Scenarios B, C, D and E**] in Buyer's Account, Buyer shall notify Seller thereof within [**] ([**]) calendar days.]

5.4 [[**Scenario A**] If on [the Long Stop Date or on] the Termination Date, as the case may be, not all AAUs from the Custody Account have been transferred to Buyer's Account pursuant to this Agreement, the remaining AAUs shall be returned by the Custodian to Seller in accordance with the Custody Agreement, unless a dispute between the Parties is pending, in which case the AAUs shall remain in the Custody Account until the dispute is settled in accordance with this Agreement, to be released in accordance with the relevant settlement agreement or arbitral award.]

This Clause concerns the transfer of the AAUs. As indicated above (para. 3.6), the Agreement provides for several possible Scenarios, A through E, for the exchange of the AAUs and the payment(s). Each Scenario requires different "building blocks" to be included in Clause 5. For instance, if the Parties choose Scenario A, the paragraphs marked "[Scenario A]" should be included in Clauses 5.1, 5.2, 5.3 and 5.4, and the paragraphs referring to Scenarios B, C, D and E should be deleted.

If the Parties have agreed that the Buyer shall, in addition to the Contract AAUs, also get an Option for additional AAUs (see also Clause 4.3 and 4.4) and if they have chosen Scenario A, B or C, then Clause 5.2 should be included to regulate the delivery of the Option AAUs. If the Parties have chosen Scenario D or E, the delivery of the Option AAUs is already provided for in Clause 5.1, and Clause 5.2 can be deleted (it should be noted that in this case, the relevant tranches of the Option AAUs should be included in the Greening Plan).

6. PRICE, PAYMENT AND COSTS

6.1 [Subject to the terms and conditions of this Agreement, Buyer agrees to pay an amount equal to the Unit Price multiplied by the number of Delivered Contract AAUs (the "**Purchase Value**") [and an amount equal to the Option Unit Price multiplied by the number of Delivered Option AAUs (the "**Option Purchase Value**") in accordance with this Clause 6.]

6.2 [[**Scenario A**] Within [**] ([**]) calendar days of the later of (i) receipt of the notification by the Custodian under Clause 5.3 and (ii) receipt of the Invoice referred to in Clause 5.1[and, as the case may be, the Invoice referred to in Clause 5.2], Buyer shall pay an amount equal to the Unit Price multiplied by the number of Contract AAUs received by the Custodian in the Custody Account [or, as the case may be, an amount equal to the Option Unit Price multiplied by the number of Option AAUs received by the Custodian in the Custody Account] into the Escrow Account in accordance with, and to be applied by the Escrow Bank pursuant to, the Escrow Agreement.]

[[**Scenario B1**] Within [**] ([**]) calendar days of the later of receipt of (i) the [relevant] Contract AAUs [or Option AAUs, as the case may be], or (ii) the Invoice referred to in Clause 5.1[and, as the case may be, the Invoice referred to in Clause 5.2], Buyer shall pay to Seller an amount equal to the Unit Price multiplied by the number of Contract AAUs received.]

[[**Scenario B2**] Within [**] ([**]) calendar days of the later of receipt of (i) the [relevant] Contract AAUs [or Option AAUs, as the case may be], or (ii) the Invoice referred to in Clause 5.1[and, as the case may be, the Invoice referred to in Clause 5.2], Buyer shall pay to the account of the [International Greening Agent][National Greening Agent] an amount equal to the Unit Price multiplied by the number of Contract AAUs received.]

[[**Scenario B3**] Within [**] ([**]) calendar days of the [later of receipt of (i) the [relevant] Contract AAUs [or Option AAUs, as the case may be], or (ii) the Invoice referred to in Clause 5.1[and, as the case may be, the Invoice referred to in Clause 5.2], Buyer shall pay to Seller an amount equal to the Unit Price multiplied by the number of Contract AAUs received and Seller will [immediately] transfer to the account of the [International Greening Agent][National Greening Agent] an amount equal to the aggregate amount received from Buyer hereunder.]

[[**Scenario C**] Within [**] ([**]) calendar days of the later of receipt of (i) the [relevant] Contract AAUs [or Option AAUs, as the case may be], or (ii) the Invoice referred to in Clause 5.1[and, as the case may be, the Invoice referred to in Clause 5.2], Buyer shall pay to Seller an amount equal to the Base Unit Price multiplied by the number of Contract AAUs received.]

[[**Scenario D**] Within [**] ([**]) calendar days of the later of receipt of (i) the [relevant] Contract AAUs [or Option AAUs, as the case may be], or (ii) the Invoice referred to in Clause 5.1, Buyer shall pay the invoiced amount to Seller.]

[[**Scenario E**] Within [**] ([**]) calendar days from achievement of a Greening Milestone, as set out in the Greening Plan, Seller shall send an Invoice to Buyer in respect of the relevant tranche of Contract AAUs [or Option AAUs, as the case may be], for an amount equal to the Unit Price multiplied by the relevant number of Contract AAUs [or the Option Unit Price multiplied by the relevant number of Option AAUs, as the case may be]. Within [**] ([**]) calendar days of receipt of the Invoice, Buyer shall pay the invoiced amount to Seller.]

6.3 Payments shall be made by Buyer in [Euros] and to [Seller's Bank Account, the details of which shall be notified by Seller to Buyer not later than [15 (fifteen)] calendar days prior to the due date of the relevant payment][the Escrow Account][the account of the [International Greening Agent][National

Greening Agent]].

6.4 **[[Scenario A]** If on [the Long Stop Date] or on the Termination Date, as the case may be, not all amounts from the Escrow Account have been transferred to Seller's Bank Account pursuant to this Agreement, the remaining amounts shall be returned by the Escrow Bank to Buyer in accordance with the Escrow Agreement, unless a dispute between the Parties is pending, in which case the amounts shall remain in the Escrow Account until the dispute is settled in accordance with this Agreement, to be released in accordance with the relevant settlement agreement or arbitral award.]

6.5 [Each Party shall bear its own][Seller shall bear the][Buyer shall bear the] costs and expenses in connection with the preparation and negotiation of this Agreement. Each Party shall bear its own costs and expenses in connection with the performance of its obligations hereunder. For the avoidance of doubt, the costs of implementing the Greening Activities shall be borne as specified in the Greening Plan.

6.6 [The costs of the Custodian and the Custody Account shall be borne by [**].]

6.7 [The costs of the Escrow Bank and the Escrow Account shall be borne by [**].]

6.8 [The costs of the [International Greening Agent][National Greening Agent] and the account of the [International Greening Agent][National Greening Agent] shall be borne as specified in the Greening Plan.]²²

6.9 [The Buyer [and the Escrow Agent when making payments on behalf of Buyer] may, without prejudice to any other right or remedy which may be available to [it][each of them], whether under this Agreement or otherwise, set off against any sums payable by or on behalf of Buyer to Seller hereunder, and/or deduct or withhold from payment of any such sums, any liability of Seller to Buyer, howsoever arising, whether in contract, tort (including negligence), breach of statutory duty or otherwise, and whether such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination (and Buyer may for such purpose convert or exchange any currency).]

This Clause concerns the payment(s) for the AAUs. In principle, the Buyer will pay the Unit Price (to be defined in Schedule 1) for each delivered Contract AAU. If the Parties have chosen to include the Option in the Agreement (Clauses 4.3 and 4.4), the Buyer shall also pay the Option Unit Price (to be defined in Schedule 1) for each delivered Option AAU.

Each Scenario requires different "building blocks" to be included in Clause 6. For instance, if the Parties choose Scenario B1, the paragraphs marked "[Scenario B1]" should be included in Clause 6.2, and the paragraphs referring to Scenarios A, B2, B3, C, D and E in Clauses 6.2 and 6.4 should be deleted.

Clauses 6.5 through 6.8 set out the allocation of different costs associated with the entering into and the performance of obligations, other than the Greening Activities, under the Agreement by the Parties. Different options for the allocation of these costs are provided between square brackets for the Parties to negotiate. All costs regarding the implementation of the Greening Activities will need to be described in the Greening Plan, which costs are in principle to be covered by the Proceeds from the AAUs.

²² See relevant comments in Greening Plan.

Clause 6.9 should only be included if the Parties agree that the Buyer (and/or the Escrow Agent, as applicable) shall have a right of set-off.

7. GREENING ACTIVITIES; SUPERVISION

7.1 Seller shall use the Proceeds solely for Greening Activities in accordance with the Greening Plan.

7.2 [Seller][Seller and Buyer] shall supervise the implementation of the Greening Activities [and monitor and verify the Greening Effect thereof] [and publish [annual] [independently audited] financial and progress reports on the Greening Activities] in accordance with the principles set out in the Greening Plan. [Upon request of Buyer, the supervision shall be taken over by a supervisory committee consisting of representatives of both Seller and Buyer.]

7.3 [Upon request of Buyer,]Seller shall periodically inform Buyer about the implementation of the Greening Activities in accordance with the Greening Plan and grant Buyer access to all relevant information in relation thereto.

7.4 The costs of supervising, monitoring and reporting, as well as the reasonable costs of administering the Greening Activities [by the International Greening Agent][by the National Greening Agent] shall be borne as specified in the Greening Plan.

7.5 **[[Scenario A]** Upon achievement of a Greening Milestone, as set out in the Greening Plan, Seller and Buyer shall jointly (i) instruct the Custodian to release and transfer the relevant tranche of Contract AAUs [or Option AAUs, as the case may be,] into Buyer's Account, in accordance with the Custody Agreement (the "**Released AAUs**"), and (ii) instruct the Escrow Bank to transfer an amount equal to the number of Released AAUs multiplied by the Unit Price [or the Option Unit Price, as the case may be,] into Seller's Bank Account, in accordance with the Escrow Agreement.]

[[Scenarios B2 and B3 > Option 1:] Seller shall remain responsible for the implementation of the Greening Activities by the [National Greening Agent][International Greening Agent.] [Seller shall procure that the [Co-Operation Agreement][the relevant arrangement with the National Greening Agent] shall provide that (i) if the Greening Activities are not implemented in accordance with the Greening Plan or if a Greening Milestone is not achieved at the relevant date, the [International Greening Agent][National Greening Agent] shall be obliged to submit a remedial proposal to [Seller][and Buyer] for the implementation of the Greening Activities and/or alternative Greening Activities against new deadlines, and (ii) if such remedial proposal is rejected by [Seller][and Buyer], or if the proposal is accepted and the Greening Activities and/or alternative Greening Activities are not timely implemented in accordance with the new deadlines, the [National Greening Agent][International Greening Agent] shall repay the relevant part of the Proceeds [directly to Buyer][to Seller].]

[[Scenarios B2 and B3 > Option 2:] Upon payment by Buyer in accordance with Clause 6.2 and confirmation of receipt of such payment by the International Greening Agent, Seller will be deemed to have complied with its obligation to use the Proceeds for Greening Activities pursuant to this Agreement and the Greening Plan. [Seller shall procure that the Co-Operation Agreement shall provide that (i) if the Greening Activities are not implemented in accordance with the Greening Plan or if a Greening Milestone is not achieved at the relevant date, the International Greening Agent shall be obliged to submit a remedial proposal to [Seller][and Buyer] for the implementation of the Greening Activities and/or alternative Greening Activities against new deadlines, and (ii) if such remedial

proposal is rejected by [Seller][and Buyer], or if the proposal is accepted and the Greening Activities and/or alternative Greening Activities are not timely implemented in accordance with the new deadlines, the International Greening Agent shall repay the relevant part of the Proceeds [directly to Buyer][to Seller].]

This Clause concerns the Greening Activities. As indicated above (para. 3.3), the nature and scope thereof are to be laid down in the Greening Plan in Schedule 7. Depending on how involved the Buyer wishes to be, the Parties may agree that the monitoring of the Greening Activities shall be done by the Seller or jointly by the Seller and the Buyer (Clause 7.2). In addition, Parties may agree that the Seller shall periodically keep the Buyer informed about the implementation of the Greening Activities, or that the Seller is only obliged to inform the Buyer upon request (Clause 7.3). It should be specified in the Greening Plan which Party or Parties shall bear the costs of supervising, monitoring and reporting (Clause 7.4).

Each Scenario requires different "building blocks" to be included in Clause 7.5. For instance, if the Parties choose Scenario B2, option 1, the paragraph marked "[Scenario B2- option 1]" should be included in Clause 7.5, and the paragraphs referring to the other Scenarios should be deleted.

8. REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 Each Party represents and warrants to the other Party, as of the date of this Agreement and as of the date on which any AAUs and/or Proceeds are due to be transferred pursuant to this Agreement that:

- (a) it has the power and authority to execute and deliver this Agreement, including the power and authority to hold, transfer, sell and purchase (as the case may be) AAUs, to enter into and implement a green investment scheme as well as any other agreements necessary in connection therewith, and to perform its obligations hereunder;
- (b) this Agreement and the obligations arising out of this Agreement are legally valid and binding for it;
- (c) all of the information provided by it to the other Party is true and correct and may be relied upon by the other Party;
- (d) all Consents necessary for the performance of its obligations under this Agreement have been obtained and are in full force and effect;
- (e) there are no claims, actions, suits, proceedings or investigations pending or, to its knowledge, threatened against or relating to it or the Contract AAUs [or the Option AAUs] before any court, administrative body, arbitral tribunal or otherwise which might materially adversely affect its ability to meet and/or carry out its obligations under this Agreement.

8.2 Seller represents and warrants, as of the date of this Agreement and as of each date on which any AAUs and/or Proceeds are due to be transferred pursuant to this Agreement that:

- (a) this Agreement, the execution and delivery of this Agreement and the fulfilment and compliance with the terms of this Agreement, including the implementation of the Greening Plan, by it will not conflict with, or require the consent of any person under, any of its national laws, rules or guidelines, or other agreement to which Seller is a party, which have not been obtained;
- (b) it will have, upon their issuance and immediately prior to the AAUs being due to be transferred pursuant to this Agreement, full legal title to all of the Contract AAUs [and Option AAUs] to perform this Agreement;
- (c) the relevant transfer of AAUs does not lead to a breach of its commitment period reserve obligations under the International Rules;
- (d) it has made all necessary budgetary and institutional arrangements for the Greening Activities to be implemented, in accordance with the Greening Plan;
- (e) all Consents necessary for the implementation and operation of the Greening Activities have been obtained and are in full force and effect;
- (f) it has not directly or indirectly transferred, issued, sold, delivered, assigned, novated, licensed, disposed of, granted or otherwise created any interest in the Contract AAUs [and Option AAUs] to any Third Party.
- (g) the Greening Activities (including the Greening Effect thereof) are additional to any greening activities already present, planned, budgeted or otherwise anticipated in the country of Seller.

8.3 Each Party covenants to the other Party that it shall:

- (a) use its best efforts to ensure that it [will meet and] shall continue to meet the Eligibility Requirements and that in the event that a question on implementation regarding its compliance with the Eligibility Requirements is raised by the enforcement branch of the Compliance Committee, it shall within [**] ([**]) calendar days of receiving a notification from the Compliance Committee notify the other Party thereof and of its intended response to the Compliance Committee;
- (b) duly perform its obligations under this Agreement;
- (c) not enact any laws or regulations that contradict or run counter to this Agreement, including the Greening Plan;
- (d) not attempt to request the repayment of Proceeds that have been allocated to a Third Party [and/or [International Greening Agent][National Greening Agent]] in good faith and in accordance with the Greening Plan for the purpose of such Third Party [and/or [International Greening Agent][National Greening Agent]] implementing the Greening Activities.

8.4 Seller covenants to Buyer that the Greening Activities [including Tenders] shall take place in accordance with applicable state aid and public procurement rules.²³

8.5 [Buyer covenants to Seller that if any part of the Proceeds is repaid to Buyer under this Agreement because the Greening Activities are not implemented in accordance with the Greening Plan or a Greening Milestone is not achieved at the relevant date, then Buyer shall allocate such repaid amount(s) exclusively to alternative greening activities.]

²³ To be further specified in the Greening Plan.

Clause 8.1 contains certain reciprocal representations and warranties that each Party provides to the other Party regarding matters that are relevant for the validity and the performance of the Agreement.

Clause 8.2 contains certain specific representations and warranties that the Seller provides to the Buyer. Sub (c), the Seller represents that the AAU transfer will not lead to a breach of the Seller's commitment period reserve obligations. Pursuant to the Modalities, Rules and Guidelines for Emissions Trading (11/CMP.1), each Annex B Party must maintain in its national registry a so-called commitment period reserve, which should not drop below 90 per cent of such Party's Assigned Amount, or 100 per cent of five times its most recently reviewed inventory, whichever is lowest. An international AAU transfer (under Article 17 of the Kyoto Protocol) cannot proceed if, as a result thereof, the aggregate amount of Kyoto units in the national register of the transferring Party would fall below the commitment period reserve.

The representation sub (g) concerns the additionality of the Greening Activities (see para. 3.3.1 above).

Clause 8.3 contains certain reciprocal covenants that each Party provides to the other Party. Clause 8.4 contains a specific covenant that the Seller provides to the Buyer. This is to ensure that the Greening Activities will not violate applicable state aid and/or public procurement rules (see para. 3.3.6 above). This should be further specified in the Greening Plan.

Clause 8.5 contains a specific covenant that the Buyer provides to the Seller. This is to ensure that any repayment in respect of failure to implement the Greening Activities or to meet a Greening Milestone will be allocated by the Buyer to alternative greening activities (to be further described or agreed upon by the Parties, if so desired). Such covenant was suggested by certain countries as a way to avoid that the Agreement results in ungreened AAUs.

9. EVENTS OF DEFAULT; REMEDIES

9.1 The occurrence at any time with respect to a Party of any of the following events constitutes an "**Event of Default**" with respect to such Party ("the **Defaulting Party**"):

- (a) the Party fails to pay when due any amount payable by it under this Agreement and such failure is (i) not caused by a banking system failure which has not been cured within [**] ([**]) calendar days, or (ii) not remedied within [**] ([**]) calendar days after written notice of such failure is given to such Party by the other Party;
- (b) the Party fails to comply in any material respect with, or to perform in any material respect, any of its obligations under this Agreement other than the events that are specifically and expressly

covered elsewhere in this Clause 9.1 and (if it is capable of remedy) such failure is not remedied to the reasonable satisfaction of the other Party in respect of whom the obligations are to be performed within [**] ([**]) calendar days after written notice of such failure is given to the Defaulting Party by such other Party;

- (c) the Party's eligibility is suspended as a result of such Party not meeting one or more of the Eligibility Requirements, and such eligibility is not reinstated by the enforcement branch of the Compliance Committee within [**] ([**]) weeks after the Party's eligibility has been suspended (an "**Eligibility Default**");
- (d) any representation or warranty made or repeated or deemed to have been made or repeated by the Party in this Agreement proves to have been incorrect or misleading (in any material respect when made or repeated or deemed to have been made or repeated);
- (e) in respect of Seller:
 - (1) if Seller fails to Deliver all or part of the Contract AAUs [or the Option AAUs, as the case may be,] under and in accordance with this Agreement (a "**Delivery Default**") and such Delivery Default has not been remedied with [**] ([**]) calendar days after written notice of such default is given to Seller;
 - (2) if (i) the Greening Activities are not implemented in accordance with the Greening Plan, or (ii) a Greening Milestone is not achieved at the relevant date, or (iii) the Greening Activities do not yield the Greening Effect envisaged in the Greening Plan, and such default (a "**Greening Default**") is continuing and has not been remedied within [**] ([**]) calendar days after written notice of such Greening Default is given to Seller by Buyer.

9.2 Upon the occurrence of any Event of Default, the non-defaulting Party may exercise one or more rights provided for in this Agreement [or under applicable law]. The selection of any one or more rights or remedies shall not operate as a waiver of any other rights or remedies provided for in this Agreement.

9.3 The Party invoking an Event of Default shall deliver to the Defaulting Party a written notice of default specifying in reasonable detail the Event of Default upon which the notice is based.

9.4 If an Eligibility Default has occurred and is continuing, the non-defaulting Party upon providing written notice to the Defaulting Party may suspend any of its obligations under this Agreement until the Eligibility Default has been remedied [provided that such suspension shall not affect the obligations of the Parties in respect of monitoring in accordance with the Greening Plan].

9.5 If a Delivery Default has occurred and is continuing, and has not been caused by Force Majeure:

- (a) Buyer may, upon written notice to Seller, suspend any pending payments under this Agreement until the Event of Default has been cured; or
- (b) Seller shall compensate Buyer for any Losses incurred as a result of such Delivery Default which Losses shall be deemed to be equal to the positive difference, if any, between (a) the Market Price of an amount of AAUs equal to the amount of Contract AAUs [or Option AAUs, as the case may be,] that fail to be Delivered by Seller under and in accordance with the terms of this Agreement, and (b) the Unit Price multiplied by the number of Contract AAUs [or Option AAUs,

as the case may be,] not Delivered under and in accordance with the terms of this Agreement.

9.6 If an Event of Default in respect of a non-acceptance of AAUs has occurred and is continuing, and has not been caused by Force Majeure ("**Acceptance Default**"):

- (a) Seller may upon written notice to Buyer, suspend any transfer of Contract AAUs [or Option AAUs, as the case may be,] until the Acceptance Default has been cured [provided that such suspension shall not affect the obligations of Seller in respect of monitoring in accordance with the Greening Plan]; or
- (b) Buyer shall compensate Seller for any Losses incurred as a result of such Acceptance Default which Losses shall be deemed to be equal to the positive difference, if any, between (a) the Unit Price [or Option Unit Price, as the case may be,] multiplied by the amount of Contract AAUs [or Option AAUs, as the case may be,] not accepted as a result of such Acceptance Default in accordance with the terms of this Agreement [, assuming the total volume of AAUs to be Delivered hereunder amounts to [**] AAUs,] and (b) the Market Price of such AAUs.

9.7 The amounts set out in Clauses 9.5(b) and 9.6(b) are the Parties' reasonable pre-estimate of the losses that would result from a Delivery Default and an Acceptance Default, respectively, and each Party waives the right to contest those payments as an unreasonable penalty or otherwise.

9.8 If a Greening Default has occurred and is continuing, and has not been caused by Force Majeure, Seller shall, at the election of Buyer:

- (a) authorise Buyer to carry out, or arrange to carry out, whether by Buyer or by any Third Party, any or all of the monitoring activities in accordance with the Greening Plan, and recharge all costs and expenses thereby incurred in connection with the same to Seller and Seller hereby irrevocably grants to Buyer all of the necessary power and authority, with the right of substitution, to act on its behalf and shall provide all necessary assistance and cooperation required by Buyer in order to give full effect to the provisions of this paragraph (a), including access to the location of the Greening Activities and to monitoring equipment, if applicable, as well as the right to speak to the relevant authorities, contractors, staff and employees; or
- (b) enforce any remedies under any contracts with Third Parties [or [the International Greening Agent][the National Greening Agent]] implementing the Greening Activities that would lead to equivalent environmental benefits under conditions that are satisfactory to Buyer, in its sole discretion; or
- (c) propose and implement replacement Greening Activities that would lead to equivalent environmental benefits under conditions that are satisfactory to Buyer, in its sole discretion; or

repay the relevant part of the Proceeds to Buyer [or to a[n International Greening Agent][National Greening Agent] as Buyer and Seller may agree] in accordance with the Greening Plan within [thirty (30)] calendar days.

This Clause may be included if the Parties agree on the applicability of Events of Default and remedies. Different types of default are defined, including:

- Eligibility Default (Clause 9.1(c)): failure of a Party to (continue to) meet the Eligibility Requirements;
- Delivery Default (Clause 9.1(e)(1)): failure of Seller to deliver (all or part of) the AAUs;

- Greening Default (Clause 9.1(e)(2)): a failure in the implementation of the Greening Activities; and
- Acceptance Default (Clause 9.6): failure of Buyer to accept delivery of the AAUs.

It should be noted that some Events of Default may not be relevant in certain Scenarios (for instance, if the Parties have chosen a Scenario where the purchase price is only transferred to the Seller upon achievement of certain Greening Milestones, there will be no need for a repayment remedy in case of Greening Default).

Different types of Greening Default may occur (Clause 9.1(e)(2)), depending on the Greening Activities agreed between the Parties. If the Parties have agreed that certain actions or investments (in Greening Activities) are to take place by a certain date, a Greening Default will occur if the relevant actions or investments are not timely made. If the Parties have agreed that a certain Greening Effect should have occurred by a certain date, the absence of such Greening Effect will constitute a Greening Default.

As a general remedy for all continuing Events of Default, Clause 11.3 provides that the non-defaulting Party may terminate the Agreement. In addition, there are certain specific (optional) remedies for:

- Eligibility Default: suspension of the obligations under the Agreement until the Eligibility Default has been remedied (Clause 9.4);
- Delivery Default: suspension of payments and compensation for losses (Clause 9.5);
- Greening Default: step-in rights for the Buyer with respect to the Greening Activities, enforcement by the Buyer of remedies under contracts with third parties (including the International or National Greening Agent), replacement Greening Activities or repayment of the purchase price or a part thereof, which the Buyer may then reinvest in greening itself (Clause 9.8); and
- Acceptance Default: suspension of delivery and compensation for losses (Clause 9.6).

The specific remedies are an alternative to termination. When faced with a continuing Event of Default, the non-defaulting Party may choose to either terminate the Agreement, or opt for a specific remedy.

10. FORCE MAJEURE

A Party's failure to perform any of its obligations under this Agreement due to Force Majeure shall, provided that the affected Party notifies the other Party in writing within [**] [**]) calendar days of becoming aware of the occurrence of such Force Majeure and the manner and extent to which its obligations are likely to be prevented or delayed by it, have the following consequences:

- if any delay occurs, the date for performance of the obligation affected shall be postponed for so long as is necessary by the Force Majeure;
- the affected Party shall not be liable for any Losses of the other Party arising from the Force

Majeure;

- (c) each Party must use its best efforts to mitigate the effects of any Force Majeure on the other Party;
- (d) if any of a Party's obligations under this Agreement are postponed by reason of Force Majeure for more than [**] ([**]) consecutive calendar days or more than [**] ([**]) calendar days in aggregate within one Year, the other Party may terminate this Agreement with no liability arising to it in respect of such termination;

if a Force Majeure continues to exist on [the Long Stop Date], each Party may at its sole discretion elect to terminate this Agreement by giving notice thereof to the other Party, with no liability arising to it in respect of such termination.

Force Majeure is defined in Schedule 1 as an event or circumstance beyond the control of a Party, which makes it impossible for that Party, after using all reasonable efforts to mitigate, to perform its obligations. Force Majeure may include war, strikes, fires, earthquakes and other natural disasters. If a Party is unable to perform its obligations under the Agreement due to Force Majeure, such obligations are suspended for the duration of the Force Majeure.

If a Force Majeure has suspended a Party's obligations for a certain number of consecutive or aggregate days (to be agreed by the Parties), the other Party may terminate the Agreement (Clause 10(d)). If a Force Majeure continues to exist on the Long Stop Date (to be agreed by the Parties), either Party may terminate the Agreement.

11. TERM; TERMINATION

11.1 This Agreement has been entered into for a term expiring on [**]. Parties may agree that the Greening Activities will continue after this Agreement terminates.

11.2 Each Party has the right to terminate this Agreement upon written notice to the other Party if the other Party withdraws or attempts to withdraw from the UNFCCC or the Kyoto Protocol.

11.3 [Upon the occurrence of an Event of Default or at any time thereafter while such Event of Default is continuing for [twenty (20)] calendar days, the non-defaulting Party may terminate this Agreement, with no liability arising to it in respect of such termination, upon written notice to the Defaulting Party of its intention so to terminate observing a notice period of [twenty (20)] calendar days, provided that in case of a Delivery Default occurring on or after [1 January 2013], the Buyer may at its sole discretion elect to terminate this Agreement with immediate effect, with no liability arising to it in respect of such termination.]

11.4 Each Party may terminate this Agreement on or at any time after the occurrence of a Change in Law, provided that the Parties, after using their best efforts, are not able to agree to amend this Agreement pursuant to Clause 4.5.

In Clause 11.1, the Parties should indicate the term of the Agreement. The term will depend on the type(s) of Greening Activities and on the greening ratio (if any) agreed between the Parties (see para. 3.3.5 above). Parties may agree that the Greening Activities will continue after the expiry of the Agreement.

Clause 11.2 provides that each Party may terminate the Agreement if the other Party withdraws or attempts to withdraw from the UNFCCC or the Kyoto Protocol. Clause 11.3 contains the general remedy for continuing Events of Default: termination. In addition, Clause 11.4 provides that the Agreement may be terminated upon the occurrence of a Change in Law, provided that the Parties first try to amend the Agreement in order to accommodate the Change in Law (in accordance with Clause 25.3). A Change in Law is any change in an applicable law (excluding the national laws of Seller and Buyer) that renders the Agreement, in whole or in part, illegal or unenforceable or results in a Party becoming unable to perform its obligations under this Agreement.

12. TAXES

12.1 Any Taxes under the laws of Seller that may be due or payable as a result of this Agreement with regard to the sale, purchase and/or transfer of, or payment for, the Contract AAUs and Option AAUs, as the case may be, pursuant to this Agreement shall be for the account of Seller.

12.2 Any Taxes under the laws of Buyer that may be due or payable as a result of this Agreement with regard to the sale, purchase and/or transfer of, or payment for, the Contract AAUs and Option AAUs, as the case may be, pursuant to this Agreement shall be for the account of Buyer.

It is provided that each Party shall bear the Taxes (if any), including VAT, that may become due in their own jurisdiction. The treatment of AAUs for accounting and tax purposes differs from country to country, depending on the legal status of AAUs under national laws and regulations.

13. INFORMATION

Each Party shall upon request of the other Party provide information with regard to the fulfilment of its obligations under this Agreement. Each Party shall promptly inform the other Party of any event or situation, which may affect the Agreement.

This Clause contains standard information provisions.

14. CONFIDENTIALITY

14.1 Each Party shall be allowed to disclose such information regarding this Agreement as required by law in that Party's jurisdiction, the UNFCCC or the Kyoto Protocol.

14.2 The Parties shall not disclose or divulge any information regarding the commercial aspects of this Agreement to Third Parties. Information related to the terms of this Agreement, including prices, obligations and liabilities are considered confidential. Except as otherwise agreed between the Parties in writing, this confidentiality undertaking will survive the termination or expiration of this Agreement [and continue to be effective until [**] years after such termination or expiration].

14.3 The Parties shall jointly decide whether any press releases or other public communications shall be issued in respect of the Agreement.

This Clause contains standard confidentiality provisions to safeguard the Parties' commercial interest and other sensitive information regarding the Agreement.

15. INDEMNITIES

If so desired and agreed, the Parties may include certain indemnities in Clause 15. It may e.g. be agreed that each Party indemnifies the other Party for any breach of its obligations under the Agreement, provided that no Party shall have the right to be indemnified or held harmless for any losses arising out of its own gross negligence or wilful misconduct. In addition, specific Seller or Buyer indemnities may be included. For instance, Seller may agree to indemnify and hold Buyer harmless against any Third Party demands, claims or actions.

16. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

16.1 [This Agreement is governed by and to be construed in accordance with the laws of [**].

16.2 This Agreement is a commercial contract between the Parties not falling under the scope of the Vienna Convention on the Law of Treaties. Any dispute arising out of or in connection with this Agreement shall not qualify as a dispute concerning the interpretation or application of the UNFCCC (within the meaning of Article 14 of the UNFCCC) nor as a dispute concerning the interpretation or application of the Kyoto Protocol (within the meaning of Article 19 of the Kyoto Protocol).²⁴

16.3 The Parties shall attempt in good faith negotiations to resolve any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, promptly by negotiations. Each Party may commence such negotiations by giving other Party written notice of any dispute not resolved in the normal course of business.

16.4 [If the dispute has not been resolved by negotiation within [**] ([**]) calendar days of delivery of aforementioned notice, the dispute may be settled by arbitration in accordance with the [UNCITRAL

²⁴ To be deleted if the Agreement is to be concluded as a Treaty.

Arbitration Rules] [ICC Arbitration Rules] [rules for arbitration of disputes relating to natural resources and/or the environment of the Permanent Court of Arbitration] as at present in force. The number of arbitrators shall be three (3). Each Party shall appoint one (1) arbitrator and the two (2) arbitrators thus appointed shall jointly appoint the third arbitrator, who shall act as chairman of the arbitral tribunal. The arbitration shall take place in [**]. The language of the arbitration shall be English. The award of the arbitrators shall be final and binding upon the Parties.]²⁵ OR [If the dispute has not been resolved by negotiation within [**] ([**]) calendar days of delivery of aforementioned notice, the dispute may be settled by arbitration in accordance with Article 14 of the UNFCCC.]²⁶ The award of the arbitrators shall, in addition to dealing with the merits of the case, determine the costs of the arbitration and provide which of the Parties shall bear such costs or in what proportions such costs shall be borne by the Parties.

In Clause 16.1, the Parties may include their choice of law. The Parties should seek legal advice by a lawyer qualified in the jurisdiction of their chosen law as to the validity and enforceability of the Agreement under that law.

As indicated above (para. 3.1), the Agreement may be executed either as a treaty under public international law, or a commercial contract under private international law. If the Parties wish to execute the Agreement as a treaty, Clauses 16.1 and 16.2 should be included.

Clause 16.3 provides that the Parties shall attempt to resolve any dispute arising out of or in connection with this Agreement by negotiations in good faith. In addition, the Parties may include an arbitration clause to cover the situation that the negotiations in good faith do not result in an amicable settlement of the dispute. Clause 16.4 provides for some options (UNCITRAL, ICC, PCA). These are non-exhaustive and the Parties may of course choose another arbitration forum.

17. AMENDMENTS

Except as otherwise provided herein, this Agreement may not be amended except by a written agreement executed by the Parties hereto.

This is a standard provision on amendments to the Agreement, which require written agreement between the Parties.

²⁵ This Clause may be inserted if the Agreement is concluded as a commercial agreement under international private law.

²⁶ This Clause may be inserted if the Agreement is to be concluded as a Treaty.

18. NOTICES

18.1 Any notice or other communication to be given by one Party to another under, or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by letter delivered by hand or sent by registered mail or facsimile, and shall be deemed to have been received:

- (a) in the case of delivery by hand, on the calendar day delivered; or
- (b) in the case of registered mail or courier, on the [5th] ([fifth]) calendar day calendar day after the date of posting; or
- (c) in the case of delivery by facsimile, and a valid transmission report confirming good receipt is generated, on the calendar day of transmission.

18.2 The addresses for sending notices shall be:

For Seller: [**]

For Buyer: [**]

18.3 Each Party shall furnish to the other Party sufficient evidence of the authority of the person or persons who will, on its behalf, take any action to execute any notices or other documents required or permitted to be taken or executed by the respective Parties under this Agreement, and the authenticated specimen signature of each such person.

This Clause contains standard provisions on notices under the Agreement. In Clause 18.2, the Parties' contact details should be filled in.

19. ASSIGNMENT

No Party is permitted to assign or transfer its rights or obligations under this Agreement to any Third Party [nor to [any [International Greening Agent][National Greening Agent]][the Escrow Agent][the Custodian]] without the prior written consent of the other Party.

This Clause contains a standard assignment provision.

20. SURVIVAL OF PROVISIONS

The respective rights and obligations of the Parties contained within Clauses [14, 16, 18 and 20] will survive any termination of this Agreement.

In this Clause, the Parties can include the provisions they wish to survive termination of the Agreement. For instance, the Parties may agree that their arrangements regarding confidentiality, applicable law and settlement of disputes and communication (notices)

shall remain in force after the rest of the Agreement has ceased to be in effect. For avoidance of doubt, it is also provided that this Clause 20 itself shall survive termination of the Agreement.

21. EXECUTION IN COUNTERPARTS; LANGUAGE

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Agreement. The Agreement is executed in the English language. The language for all correspondence in relation to the Agreement shall be English.

This Clause contains standard provisions on execution and language. Execution in counterparts means that the Parties do not sign on the same page, but that each Party signs on a separate signature page.

22. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any representations previously given or made with respect to its subject matter other than those given or made in the Agreement, but nothing in this Clause 22 limits or excludes any liability for fraud in relation to those representations.

This Clause contains standard entire agreement provisions.

23. SEVERABILITY

If any provision or part of a provision of this Agreement is found by a court, arbitrator or other authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision is to be deemed deleted from this Agreement and the remaining provisions to continue in full force and effect. The Parties shall in this event seek to agree upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void and unenforceable.

This Clause contains standard severability provisions.

24. THIRD PARTY RIGHTS

A person who is not a Party to this Agreement [except for [the [International Greening Agent][National Greening Agent]][the Escrow Agent][the Custodian]] has no right under any law regarding Third Party rights in any jurisdiction to enforce any term of this Agreement, but this does not affect any right or

remedy of a Third Party which exists or is available apart from such law.

This Clause contains standard provisions on third party rights. Depending on the law chosen by the Parties (in Clause 16.1) to govern the Agreement, a reference to a specific act may be included in Clause 24 (e.g. a reference to the *Contracts (Rights of Third Parties) Act 1999* if the Agreement is to be governed by English law). A lawyer qualified in the jurisdiction of the Parties' chosen law should advise on appropriate third-party rights provisions.

25. MISCELLANEOUS

25.1 Payments

All payments under this Agreement shall be made in [Euro] by [wire transfer].

25.2 Interest

Any overdue payments shall bear interest from [**] at a rate [**].

25.3 Buyer's Account

Buyer shall give the [Seller] [Custodian] written notice of the account details of Buyer's Account to which a Delivery is to be made at least [**] ([**]) calendar days prior to the anticipated date of the relevant Delivery. It shall be at the sole discretion and expense of Buyer to establish more than one Buyer's Account.

25.4 Change in Law

Each Party shall inform the other Party on or at any time after it becomes aware of the occurrence of a Change in Law. If as a result of such Change in Law any provision of this Agreement (or part thereof) becomes illegal, unenforceable or otherwise invalid, that provision or part thereof shall be deemed to be severed from this Agreement and the remainder of the Agreement shall remain in force. The Parties shall forthwith negotiate in good faith to agree upon a new provision to replace the severed provision, which shall reflect their original intent as much as possible. This Clause 25.4 shall have no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

25.5 Further assurances

Each Party hereby covenants and undertakes to the other Party that it shall, at its own cost, do and perform (or procure the performance of) such other and further acts and execute and deliver (or procure the execution and delivery of) such other and further documents as may be required by law or as may be necessary or desirable in connection with the execution and performance of this Agreement.

This Clause contains various standard provisions. Clause 25.2 provides that overdue payments shall bear (default) interest. The Parties should include the interest rate.

5 EXPLANATION OF THE SCHEDULES

Schedule 1 Definitions

This Schedule contains the definitions of the capitalised terms used in the Agreement. It should be noted that certain key elements of the Agreement are to be included in Schedule 1 (e.g., the number of AAUs to be sold in the definition of "Contract AAUs" and the purchase price thereof in the definition of "Unit Price").

Schedule 2 Conditions Precedent

This Schedule lists the Conditions Precedent that have to be fulfilled, as the Parties may choose, in order for the main provisions of the Agreement to enter into effect.

Schedule 3 Form of Option Notice

The Agreement provides for the possibility that in addition to the Buyer's purchase of the Contract AAUs, the Seller grants to the Buyer an Option to purchase additional AAUs (Clause 4.3). The Buyer may exercise the Option by notifying the Seller by means of a written Option Notice (Clause 4.4). Schedule 3 contains the form for such Option Notice.

Schedule 4 Form of Escrow Agreement

Parties may opt for the Scenario where the purchase price is kept in escrow by an Escrow Bank on an Escrow Account (see para. 3.4 and 3.5 - Scenario A above). In that case, an Escrow Agreement should be concluded between the Seller, Buyer and Escrow Bank. A form for such Escrow Agreement can be included in Schedule 4.

Schedule 5 Form of Custody Agreement

The Parties may opt for a Scenario where the AAUs are kept in custody by a Custodian in a Custody Account (see para. 3.4 and 3.5 - Scenario A below). In that case, a Custody Agreement should be concluded between the Seller, Buyer and Custodian. A form for such Custody Agreement can be included in Schedule 5.

Schedule 6 Delivery Schedule

Under the Agreement, the AAUs may be delivered to the Buyer either all at once, or in certain periodical portions. In the latter case, Parties will have to agree on a Delivery Schedule, which is then to be included in Schedule 6.

Schedule 7 Greening Plan

The Parties will have to agree on the nature and scope of the Greening Activities (see para. 3.3 above). These are to be laid down in the Greening Plan in Schedule 7.

Schedule 8 Form of Invoice

The Agreement provides that the Seller shall send an Invoice to the Buyer for the delivered AAUs. A form of Invoice can be included in Schedule 8.

6 LIST OF ABBREVIATIONS

AAU	Assigned Amount Unit
CDM	Clean Development Mechanism
CER	Certified Emission Reduction
CO ₂ e	CO ₂ -equivalent
COP/MOP	the Conference of the Parties to the UNFCCC serving as the Meeting of the Parties to the Kyoto Protocol
EBRD	European Bank for Reconstruction and Development
EC	European Commission
ERU	Emission Reduction Unit
EU	European Union
GBER	General Block Exemption Regulation on state aid
GHG	Greenhouse gas
GIS	Green Investment Scheme
IET	International Emissions Trading
ITL	International Transaction Log
JI	Joint Implementation
MCCF	Multilateral Carbon Credit Fund
NGO	Non-Governmental Organisation
RMU	Removal Unit
UNFCCC	United Nations Framework Convention on Climate Change