

SECTION MMM - CONTRACT RULES: ICE FUTURES-~~ECX~~ EUA AUCTION CONTRACT

- MMM.1 Contracts for the Transfer of Carbon Emissions Allowances between Accounts by way of Auction
- MMM.2 Quantity
- MMM.3 Other Definitions
- MMM.4 Price
- MMM.5 Delivery under an EUA Auction Contract
- MMM.6 Exclusion of Liability
- MMM.7 Payment under an EUA Auction Contract
- MMM.8 Buyer's Obligations
- MMM.9 Buyer's Security
- MMM.10 Failure to Perform and/or Delay in Performance of Obligations and Delivery Costs under an EUA Auction Contract
- MMM.11 Arbitration and Dispute Resolution
- MMM.12 Force Majeure

MMM.1 CONTRACTS FOR THE TRANSFER OF CARBON EMISSIONS ALLOWANCES BETWEEN ACCOUNTS BY WAY OF AUCTION

- (a) The ICE Futures EUA Auction Contract Rules contained in this Section MMM, and the provisions of Sections NNN, are applicable to the auctioning of EUA Auction Contracts.
- (b) An EUA Auction Contract shall be for the sale by the Clearing House and purchase by the Buyer of Carbon Emissions Allowances for transfer from the Account of the Clearing House ~~(where such Carbon Emissions Allowances are held in escrow)~~ to the Account of the Buyer during the Delivery Period specified in the EUA Auction Contract in accordance with, or pursuant to, these ICE Futures EUA Auction Contract Rules, the Administrative Procedures and the Clearing House procedures. For the purposes of these ICE Futures EUA Auction Contract Rules, Transfer of Carbon Emissions Allowances as between Accounts of the Buyer and the Seller maintained in the Registry pursuant to Rule MMM.5 shall, subject to Rule MMM.1(d), constitute “delivery”. ~~The transfer of Carbon Emissions Allowances between the Auctioneer Seller and the Clearing House shall also be deemed to be pursuant to an EUA Auction Contract but the obligations of the Auctioneer Seller under such EUA Auction Contract shall only extend to those expressly set out in this Section MMM and not be under any obligation pursuant to this Section MMM, Section NNN or the Clearing House procedures in relation to the EUA Auction Contract. Such obligations shall be in addition to and shall not, except as otherwise expressly agreed between the Auctioneer Seller and the Exchange or the Clearing House. Accordingly any provision which could be interpreted as binding the Auctioneer Seller shall be interpreted instead as solely being information as to expected processes and procedures. Nothing in this Section MMM, Section NNN, the Clearing House Rules and procedures or any agreement between the Exchange or the Clearing House and the Auctioneer Seller shall~~ exclude any obligation of the Auctioneer Seller under the ~~Auction~~Auctioning Regulation.
- (c) All deliveries under an EUA Auction Contract shall be made to and from the Registry.
- (d) The Clearing House shall from time to time determine and notify Members of one or more Accounts which it will use for the delivery of Carbon Emissions Allowances under an EUA Auction Contract in accordance with Clearing House procedures.
- (e) The Exchange shall from time to time, in its absolute discretion, determine the Allowance Types for the purposes of identifying the Carbon Emissions Allowances which may be delivered under an EUA Auction Contract. The Exchange shall from time to time issue a list of such Allowance Types and may, at any time, upon such notice as considered appropriate by the Exchange circulated to Members, add or withdraw an Allowance Type from such list (and any such change may, according to its terms, have effect on existing as well as new Carbon Allowance Contracts including EUA Auction Contracts).

MMM.2 QUANTITY

- (a) Subject to Rule MMM.2(b), EUA Auction Contracts shall be for one or more lots of Carbon Emissions Allowances to be delivered during the Delivery Period as specified in the EUA Auction Contract (it being understood that a lot refers to 500 Carbon Emissions Allowances).
- (b) The EUA Auction Contracts shall be traded and delivered in a minimum number of lots or multiples thereof.

MMM.3 OTHER DEFINITIONS²

In these ICE Futures EUA Auction Contract Rules and the related Administrative Procedures, the following terms shall bear the meanings set out opposite each:

“Account”	means an account maintained by the Registry pursuant to the Registry Regulations in order to record the holding and transfer of Carbon Emissions Allowances;
“Account Holder”	means a person who has an Account in the Registry as referenced in the Registry Regulations;
“Allowance Type”	means any type of EUA, determined and notified to Members by the Exchange from time to time. For any Allowance Type, the Exchange may specify such criteria as it deems appropriate, including without limitation the type, nature and source of an EUA;
<u>“Auction”</u>	<u>means an auction of EUA Auction Contracts pursuant to this Section MMM and Section NNN of the Exchange Rules;</u>
“Auction Clearing Price”	means, in respect of an EUA Auction Contract, the auction price determined by the Exchange in accordance with the Administrative Procedures;
“Auction Monitor”	means an <u>the</u> auction monitor appointed in relation to an auction <u>Auction</u> pursuant to Chapter VI of the Auction <u>Auctioning</u> Regulation;
“Auction Participant”	means <u>with respect to participation in a particular Auction</u> , an Exchange Member, a client of an Exchange Member, a client of such client, or other person that meets the eligibility requirements of Articles 18 and 19 of the Auction Regulation and, in the case of an Exchange Member, is registered with the Exchange for participation in Auctions. <u>Auctioning Regulation;</u>
“Auction Platform”	means the ICE Futures Europe WebICE application on which the EUA Auction Contracts will be listed and which will be accessible to Auction Participants for the submission of bids during an Auction <u>a Bidding Window</u> ;
“Auction Regulation”	means Commission Regulation (EU) No 1031/2010 of 12 November 2010 as amended from time to time, including, without limitation, by Commission Regulation (EU) No 1210/2011 of 23 November 2011;
the “Auction Specifications”	means, in relation <u>to an auction</u> <u>Auction</u> , the document setting out information about the EUA Auction Contracts to be auctioned, the timing for the bidding process, participation criteria and other matters in writing in the format of the template Auction Specifications set out in Annex B to Section NNN of the Regulations;
the “Auction Window”	means, in relation to an auction, the time window specified by the Exchange in the Auction Specifications for the submission of bids;
“Auctioneer Seller”	means the auctioneer, as such term is defined in the Auction <u>Auctioning</u> Regulation, <u>with respect to a particular Auction</u> ;
<u>“Auctioning Regulation”</u>	<u>means Commission Regulation (EU) No 1031/2010 of 12 November 2010 as amended from time to time, including, without limitation, by Commission Regulation (EU) No 1210/2011 of 23 November 2011;</u>
“Authorised Representative”	means a natural person authorised pursuant to Article 21 of the Registry Regulations to represent an Account Holder and submit process requests to the Registry on behalf of such Account Holder;
<u>the “Bidding Window”</u>	<u>means, in relation to an Auction, the time window specified by the Exchange in the applicable Auction Specifications for the submission of bids;</u>

“Buyer”	means the Clearing Member that is the purchaser of Carbon Emissions Allowances under an EUA Auction Contract;
“Carbon Emissions Allowance ” or “EUA”	means an allowance issued pursuant to Chapter III of the Directive to permit the emission of one tonne of carbon dioxide equivalent during the relevant period, which falls within an Allowance Type;
“Carbon Emissions Allowance Delivery Amount”	means for each Margin Account an amount reflecting the gross number of Carbon Emissions Allowances which are to be delivered by a Seller for any Delivery Period in respect of all EUA Auction Contracts to which it is party as Seller;
<u>“Central Administrator”</u>	<u>has the meaning given to that term in the Registry Regulations;</u>
“Clearing Account”	means an account set up in the ICE Futures Europe Clearing Administration application which is identified by the relevant Exchange Member from time to time as representing a particular Auction Participant;
“Clearing House procedures”/ “Procedures”	means the procedures of the Clearing House from time to time in force as prescribed under the Clearing House Rules;
“Clearing House Directions”	means any instructions or requests that the Clearing House may issue to the Buyer or other Clearing Member from time to time in respect of the delivery of Carbon Emissions Allowances under an EUA Auction Contract;
“Commitment Period Reserve”	means the commitment period reserve that each Annex 1 Party (including EU Member States, other than Cyprus and Malta) is required to maintain in the Registry in accordance with paragraphs 6 to 10 of Decision 11/CMP.1 of the Meeting of the Parties to the Kyoto Protocol and under Article 17 of the Kyoto Protocol as amended from time to time;
“Community Independent Transaction Log” “CITL”	means the predecessor log to the EUTL established pursuant to Commission Regulation (EC) No 2216/2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council;
“Communication Link”	means the electronic exchange of messages/notifications (1) by which a Buyer and Seller communicate with the Registry, and/or (2) by which the Registry communicates with CITL or EUTL, as the case may be, and/or (3) by which CITL or EUTL, as the case may be, communicates with the UNFCCC International Transaction Log (where applicable), and/or (4) by which the Registry communicates with the UNFCCC International Transaction Log (where applicable), which in any case is necessary to facilitate a Transfer;
“Competent Authority”	means the authority or authorities designated by a Member State pursuant to Article 18 of the Directive;
“Contract Date”	means for an EUA Auction Contract between a Buyer and the Clearing House, the Closing Time for the relevant auction;
“Delivery Costs”	means an amount payable by a Buyer which is attributable to a Transfer Request Failure referred to the Exchange under Rule MMM.10(c) or a Transfer Request Delay. For Transfer Request Failures such reasonable costs may include, but will not be limited to, any losses, costs, damages and expenses suffered or incurred by the Buyer as a result of it taking steps to acquire Carbon Emissions Allowances in the event of a Transfer Request Failure. Delivery Costs resulting from Transfer Request Failures and Transfer Request Delays shall not under any circumstances include any Excess Emissions Penalties which a Buyer may incur under the Scheme;

“Delivery Period”	<p>means:</p> <p>(i) for an EUA Auction Contract which is a two-day spot contract, the period beginning at 18.30 hours on the Contract Date of an EUA Auction Contract <u>immediately after the announcement of the results of a particular Auction (in accordance with Rule NNN.1(kk))</u>, and ending at 19.30 hours on the second Business Day following the relevant Contract Date. Where a Transfer Request Delay occurs, the period shall end at such later time as the Clearing House may direct under Rule MMM.5, which in any event shall not be a time beyond 19.30 hours on the third <u>fourth</u> Business Day after the relevant Contract Date. During this period, delivery of Carbon Emissions Allowances is to take place in accordance with the terms of these ICE Futures EUA Auction Contract Rules, the Administrative Procedures and the Clearing House procedures; and</p> <p>(ii) for an EUA Auction Contract which is a five-day futures contract, the period beginning at 18.30 hours on the Contract Date of an EUA Auction Contract <u>immediately after the announcement of the results of a particular Auction (in accordance with Rule NNN.1(kk))</u>, and ending at 19.30 hours on the fifth Business Day following the relevant Contract Date. Where a Transfer Request Delay occurs, the period shall end at such later time as the Clearing House may direct under Rule MMM.5, which in any event shall not be a time beyond 19.30 hours on the sixth <u>seventh</u> Business Day after the relevant Contract Date. During this period, delivery of Carbon Emissions Allowances is to take place in accordance with the terms of these ICE Futures EUA Auction Contract Rules, the Administrative Procedures and the Clearing House procedures.</p>
“Directive”	means Directive 2003/87/EC of the European Parliament and the Council of 13 October 2003 establishing a scheme for greenhouse gas emissions allowance trading and amending Council Directive 96/61 EC, as amended from time to time, including, without limitation, by Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009;
“EUA Auction Contract”	means a Contract made pursuant to these ICE Futures EUA Auction Rules and the Administrative Procedures for the delivery of Carbon Emissions Allowances;
“European Union” or “EU”	means the international organisation of European states established by the Treaty on European Union 1992 as amended from time to time;
“European Union Transaction Log” or “EUTL”	means the independent transaction log provided for in Article 20(1) of the Directive, for the purpose of recording the issue, transfer and cancellation of allowances under the Scheme and established, operated and maintained pursuant to Article 4 of the Registry Regulations;
“Excess Emissions Penalties”	means any excess emissions penalties for which a person may be liable for failure to surrender sufficient allowances to cover its emissions during any period pursuant to Article 16 of the Directive, as implemented by relevant national law;
“Governmental Authority”	shall have the meaning given to that term in the Clearing House Rules;
“Kyoto Protocol”	means the protocol to the UNFCCC adopted at the Third Conference of the Parties to the UNFCCC in Kyoto, Japan on 11 December 1997 as may be amended;
“Margin Account”	means, in relation to a Clearing Member, either its Proprietary Account or Customer Account, in which the positions in its Position-Keeping Accounts are notionally recorded by the Clearing House for the purpose of calling margin on that Clearing Member’s positions in accordance with the

	Clearing House procedures;
“Position-Keeping Account”	means any sub-account within the Clearing House’s clearing system in which an Exchange Member’s positions with the Clearing House are recorded, being either: (1) any of the following commonly designated Position-Keeping Accounts: H, N, S, L, D, U, F, W or Z (and, in the case of a non-clearing Member, including an identifying three letter Member mnemonic); or, (2) any other account that the Clearing House makes available within its clearing system from time to time;
“Registry”	means the single Union registry established pursuant to the Registry Regulations in order to ensure the accurate accounting of the issue, holding, transfer, acquisition, surrender, cancellation, and replacement of Carbon Emissions Allowances under the Scheme;
“Registry Regulations”	means, in each case, as applicable and as amended from time to time: (1) Commission Regulation (EU) No 920/2010 of 7 October 2010 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council, and (2) Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council and amending Commission Regulations (EC) No 2216/2004 and (EU) No 920/2010;
“Required Authorisations”	means all governmental and other licences, authorisations, permits, consents, contracts and other approvals (if any) that are required to enable a Buyer to fulfil any of its obligations under an EUA Auction Contract;
“Scheme”	means the scheme for transferring EUAs established pursuant to the Directive, as implemented by relevant national law;
“Seller”	means the Clearing House or the Auctioneer Seller as the seller of Carbon Emissions Allowances under an EUA Auction Contract;
“Transfer”	means the transfer of all Carbon Emissions Allowances required to be delivered (i) under an EUA Auction Contract; or (ii) in the case of a transfer from the Auctioneer Seller, the Auction <u>Auctioning</u> Regulation, from one Account to another under and in accordance with the Scheme;
“Transfer Request”	means a request to effect a Transfer submitted by (i) the Auctioneer Seller; (ii) the Clearing House or (ii) the Buyer, to the Registry in respect of a Delivery Period, in the manner required by the Registry Regulations and otherwise in accordance with these ICE Futures EUA Auction Contract Rules, the Administrative Procedures and the Clearing House procedures, <u>and as agreed between the Auctioneer Seller and the Clearing House</u> ;
a “Transfer Request Delay”	is deemed to have taken place where: (a) (i) for an EUA Auction Contract which is a two-day spot contract, the Buyer’s Account is credited after 19.30 hours on the second Business Day after the relevant Closing Time but on or before 19.30 hours on the third <u>fourth</u> Business Day after the relevant Closing Time in compliance with a Clearing House Direction or otherwise, provided that a Transfer Request Delay will cease to exist where a Transfer Request Failure takes place; or (ii) for an EUA Auction Contract which is a five-day futures contract, the

- Buyer's Account is credited after 19.30 hours on the fifth Business Day after the relevant Closing Time but on or before 19.30 hours on the ~~sixth~~seventh Business Day after the relevant Closing Time in compliance with a Clearing House Direction or otherwise, provided that a Transfer Request Delay will cease to exist where a Transfer Request Failure takes place; or
- (b) the Account of the Clearing House has not been credited by the start of the ~~Auction~~Bidding Window.
- a "Transfer Request Failure" is deemed to have taken place where:
- (a) (i) for an EUA Auction Contract which is a two-day spot contract, the Buyer's Account has not been credited by 19.30 hours on the ~~third~~fourth Business Day after the relevant Closing Time; or
- (ii) for an EUA Auction Contract which is a five-day futures contract, the Buyer's Account has not been credited by 19.30 hours on the ~~sixth~~seventh Business Day after the relevant Closing Time; or
- (b) the Clearing House has declared that there is a Transfer Request Failure in accordance with Rule MMM.5(b).
- "UNFCCC" means the United Nations Framework Convention on Climate Change; and
- "UNFCCC International Transaction Log" means the international transaction log established, operated and maintained by the Secretariat of the United Nations Framework Convention on Climate Change; and

MMM.4 PRICE

- (a) The price of an EUA Auction Contract shall be in Euros and Euro cents per Carbon Emissions Allowance. EUA Auction Contracts may be traded with minimum fluctuations of €0.01 (1 cent) per Carbon Emissions Allowance.
- (b) The price of an EUA Auction Contract shall be exclusive of any charges payable by either the Buyer, the Auctioneer Seller or the Clearing House to any third party in respect of the maintenance of Accounts, submission of Transfer Requests or effecting Transfers.
- (c) The price of an EUA Auction Contract shall be exclusive of any Value Added Tax or any other duty that may be or become payable on the sale or transfer of Carbon Emissions Allowances under an EUA Auction Contract and any such duties shall be borne by the Buyer.

MMM.5 DELIVERY UNDER AN EUA AUCTION CONTRACT

For a Delivery Period:

- (a) In respect of an EUA Auction Contract to which the Clearing House is party as the seller, delivery shall be effected upon the completion of the Transfer and confirmation by the Registry of the credit to the Buyer's nominated Account of Carbon Emissions Allowances in accordance with the ~~Auction~~Auctioning Regulation, the Registry Regulations and this Rule MMM.5. The Clearing House shall effect the Transfer by submitting a Transfer Request in accordance with these ICE Futures EUA Auction Contract Rules, and in particular Rule MMM.5, stipulating the receiving account as the Buyer's Account in the Registry.
- (b) If at any time during the Delivery Period the Exchange or the Clearing House becomes aware of the refusal or rejection by the Registry, the Registry administrator, the CITL or EUTL, as the case may be, or the UNFCCC International Transaction Log, as applicable, of a Transfer Request because the Transfer Request would cause the Registry to breach its

Commitment Period Reserve, the Clearing House and affected parties may take such steps to rectify the situation in compliance with any Clearing House Directions provided that such steps ensure that delivery still occurs in accordance with the terms and deadlines of these ICE Futures EUA Auction Contract Rules, the Administrative Procedures and the Clearing House procedures. In the event that appropriate steps cannot be taken, and delivery cannot therefore occur in accordance with the terms and deadlines of these ICE Futures EUA Auction Contract Rules; the Administrative Procedures; and the Clearing House procedures, because the Transfer Request would cause the Registry to breach its Commitment Period Reserve, the Clearing House shall declare that there is a Transfer Request Failure and Rule MMM.10 shall apply.

- (c) Where a Transfer Request Delay or Transfer Request Failure occurs due to a failure by the Clearing House to deliver the relevant Carbon Emissions Allowances in whole or in part and such failure is due to circumstances outside the control of the Clearing House, the Clearing House will Transfer such Carbon Emissions Allowances at the earliest opportunity and the Buyer will, in accordance with Article 48 of the ~~Auction~~ Auctioning Regulation, accept Transfer at that later date and nothing else in this Rule MMM.5 provides for any other remedy on the part of the Buyer in such circumstance.
- (d) The Clearing House does not guarantee performance by the Auctioneer Seller and does not have any obligation to deliver Carbon Emissions Allowances to the Buyer under an EUA Auction Contract in the event that the Auctioneer Seller, through actions, omissions, performance or non-performance, fails to ~~create~~ transfer or procure the transfer of any Carbon Emissions Allowance ~~or transfer the same~~ to the Clearing House.

MMM.6 EXCLUSION OF LIABILITY

- (a) Save as specifically provided in these ICE Futures EUA Auction Contract Rules, the Administrative Procedures, the Clearing House procedures, the Regulations and the Clearing House Rules (and to the extent permitted by law), the Exchange and the Clearing House accept no liability in connection with an EUA Auction Contract, its performance, non-performance or its termination whether based on breach of contract, warranty, negligence or tort or the performance or non-performance of any Auctioneer Seller. In particular, but without limitation, neither the Exchange nor the Clearing House are responsible for or shall have any liability whatsoever to any Buyer or Seller for:
 - (i) the availability, suitability, unavailability or malfunction of a Communication Link or any part thereof;
 - (ii) the performance or non-performance by the Registry, CITL or EUTL, as the case may be, or UNFCCC International Transaction Log of their respective obligations under the Registry Regulations or otherwise;
 - (iii) the validity or non-validity of any Carbon Emissions Allowance for the purposes of meeting the requirements of the Directive;
 - (iv) any act or omission of any operator of a Communication Link or any part thereof;
 - (v) any act or omission of an Authorised Representative of any other party;
 - (vi) the actions, omissions, performance or non-performance of ~~any~~ the Auctioneer Seller, the Auction Monitor, the European Commission, the Central Administrator, or any Competent Authority or Governmental Authority, including the failure of any Auctioneer Seller to create any Carbon Emissions Allowance or transfer or procure the transfer of the same to the Clearing House; or
 - (vii) the Auctioneer Seller or the Auction Monitor being wound up, dissolved, liquidated, merged or otherwise ceasing to exist ~~or ceasing to be an auctioneer appointed pursuant to Article 22(1) of the Auctioning Regulation or an auction monitor~~

[appointed pursuant to Article 24 of the Auctioning Regulation, as applicable, for Auctions:](#)

- (b) Without prejudice to the rights and obligations of any person party to a Corresponding Contract arising pursuant to a Corresponding Contract, a person who is not the Buyer, Auctioneer Seller, the Exchange or the Clearing House shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision contained in an EUA Auction Contract made pursuant to these ICE Futures EUA Auction Contract Rules.

MMM.7 PAYMENT UNDER AN EUA AUCTION CONTRACT

- (a) Subject to delivery under Rule MMM.5 and without prejudice to paragraph (b) of this Rule MMM.7, the Buyer shall pay the Auction Clearing Price determined in accordance with the Administrative Procedures. Payment will be made by the Buyer at the latest on the earlier of (i) 09.00 hours on the day after the Closing Time; or (ii) [prior to the time of Transfer of the relevant Carbon Emissions Allowances to the relevant Buyer, provided that the Auctioneer Seller is in receipt of the relevant sums](#), save that where either of the times in (i) and (ii) occur on a day which is not a Business Day such sums shall be paid no later than on the next Business Day.
- (b) A Buyer that fails to meet its payment obligations under this Rule MMM.7 may receive a Clearing House Direction to:
 - (i) pay interest for each day beginning with the date on which payment was due and ending on the date on which payment is made, at an interest rate calculated on a daily basis at the interest rate specified by the Clearing House; and / or
 - (ii) pay a penalty, which shall accrue to the Auctioneer Seller less any costs deducted by the Clearing House.
- (c) In the event of a failure of settlement, the Carbon Emissions Allowances shall be auctioned at the next two auctions scheduled by the Exchange [in accordance with Article 45\(5\) of the Auctioning Regulation](#).

Payment will be made by the Clearing House to the Auctioneer Seller at the times and in the amounts required pursuant to the ~~Auction~~ [Auctioning Regulation and as agreed between the Clearing House and the Auctioneer Seller](#).

MMM.8 BUYER'S OBLIGATIONS

- (a) In respect of an EUA Auction Contract to which the Clearing House is party as the seller, the Buyer shall:
 - (i) conduct its affairs so as not to give the Registry or any Competent Authority cause to refuse, reject or cancel (whether in whole or in part) any Transfer Request or to suspend or restrict the Buyer's ability to receive any Transfer (including, without limitation, suspension or cancellation of any relevant Account);
 - (ii) maintain in full force and effect all Required Authorisations at all appropriate times;
 - (iii) ensure that it has and maintains such Communication Links and complies with such other conditions and requirements as are necessary to effect Transfers in accordance with the Scheme and these ICE Futures EUA Auction Contract Rules, Administrative Procedures and [the](#) Clearing House procedures;
 - (iv) have and maintain during such periods as determined by the Exchange from time to time and at its own cost, one Account at the Registry for each Margin Account;

- (v) ensure that the Authorised Representative notified to the Clearing House pursuant to Rule NNN.3 shall be contactable by the Clearing House at all appropriate times during the Delivery Period;
 - (vi) give the Clearing House details of the Account for the purposes of delivery under Rule MMM.5 and in accordance with the Administrative Procedures and any other details required by the Clearing House as specified in the Administrative Procedures or the Clearing House procedures from time to time;
 - (vii) comply with the applicable provisions of the ~~Auction~~Auctioning Regulation, any regulations, rules, guidance or procedures published by the Auctioneer Seller, the Registry Regulations, these ICE Futures EUA Auction Contract Rules, the Administrative Procedures, the Clearing House procedures and any Clearing House Direction in order that the Transfer Request input by the Clearing House is accepted by the Registry, actioned by the CITL or EUTL, as the case may be, and/or the UNFCCC International Transaction Log if appropriate, and the Account of the Buyer updated by the Registry for a Delivery Period;
 - (viii) notify the Clearing House immediately, in accordance with the Clearing House procedures, if the Buyer fails to comply, or may fail to comply, in respect of any delivery obligations or deadlines under these ICE Futures EUA Auction Contract Rules, the Administrative Procedures, the Clearing House Rules, the Clearing House procedures or any Clearing House Direction;
 - (ix) make payment of any amounts due and payable pursuant to and in accordance with these ICE Futures EUA Auction Contract Rules, the Administrative Procedures, the Clearing House Rules or the Clearing House procedures;
 - (x) perform all other obligations imposed on the Buyer under these ICE Futures EUA Auction Contract Rules, the Administrative Procedures and the Clearing House procedures; and
 - (xi) be and continue to be a Clearing Member as defined in the Clearing House Rules.
- (b) The Buyer shall be responsible for the performance of all of its obligations under the EUA Auction Contract, and shall perform such obligations in a timely manner. The Buyer shall be responsible for all actions and omissions of an Authorised Representative acting or purporting to act on its behalf in relation to any EUA Auction Contract or any related obligations.
- (c) Subject to Rule MMM.10 any obligation upon the Buyer to pay costs, charges or expenses of any form shall be for its own account and shall include, but not be limited to, all fees and charges levied by the Registry attributable to the Transfer Request and its Account in respect of an EUA Auction Contract to which the Buyer is party.

MMM.9 BUYER'S SECURITY

The Buyer may be required to transfer such collateral by way of buyer's security or otherwise as the Clearing House may from time to time require pursuant to the Clearing House Rules.

MMM.10 FAILURE TO PERFORM AND/OR DELAY IN PERFORMANCE OF OBLIGATIONS AND DELIVERY COSTS UNDER AN EUA AUCTION CONTRACT

- (a) On the occurrence of a Transfer Request Failure (excluding a Transfer Request Failure which falls under Rule MMM.5(c)), a Buyer may agree with the Clearing House to take delivery from the Clearing House of Carbon Emissions Allowances in a manner or on terms other than those specified in the Contract Rules and Administrative Procedures.

- (i) In the event of an agreement between the Buyer and the Clearing House under the terms of this Rule MMM.10(a), the Buyer shall immediately give written notice of the fact of such agreement to the Exchange. In the event of no agreement being reached upon the occurrence of a Transfer Request Failure in accordance with Rules MMM.10(a) the Clearing House shall refer the fact of the Transfer Request Failure to the Exchange in accordance with Rule MMM.10(b).
 - (ii) On agreement between the Buyer and the Clearing House under the terms of Rule MMM.10(a), the Clearing House shall liquidate its EUA Auction Contract with the Buyer at the Auction Clearing Price and cease, in respect of any arrangement made by the Clearing House and the Buyer under this Rule MMM.10(a), to owe any obligation towards the Buyer under such EUA Auction Contract. The relevant Buyer shall cease in respect of any such arrangement made by the Clearing House and the Buyer under this Rule MMM.10(a), to owe any obligation towards the Clearing House, under such EUA Auction Contract. For the avoidance of doubt this shall be without prejudice to any obligations owed by the Buyer under the Clearing House Rules.
- (b) Where an agreement is not reached pursuant to Rule MMM.10(a) the Clearing House shall refer the relevant Transfer Request Failure to the Exchange by the close of business on the Business Day following the day of the Transfer Request Failure and the Exchange or a body appointed by the Exchange:
- (i) shall direct the Clearing House to invoice back the affected EUA Auction Contract at a price set by the Exchange, or the body appointed by the Exchange at its discretion, taking into account any information it considers to be relevant for this purpose; and
 - (ii) shall notify the Clearing House and the Buyer, of the price set to invoice back the affected EUA Auction Contracts.

No price set by the Exchange, or a body appointed by the Exchange, to invoice back the affected Contracts shall be referred to arbitration under the Arbitration Rules but this Rule MMM.10(b) shall be without prejudice to the right of the Member to refer any other matter to arbitration under the Arbitration Rules.

Delivery Costs

- (c) (i) If, in respect of an EUA Auction Contract there is a Transfer Request Failure which is referred to the Exchange under Rule MMM.10(b) and/or Transfer Request Delay for a Delivery Period as a result of any failure or any delay on the part of the Clearing House to comply with the applicable obligations under such EUA Auction Contract and such failure was under the control of the Clearing House, then the Clearing House shall indemnify the Buyer in respect of any Delivery Costs attributable to that Transfer Request Failure and/or Transfer Request Delay;
- (ii) Without prejudice to (i) above, the Buyer shall indemnify the Clearing House against all costs reasonably incurred by the Clearing House in taking steps to mitigate the losses or, charges, expenses or penalties which would otherwise be incurred as a result of the Buyer's failure to comply with its obligations under an EUA Auction Contract;
- (iii) Where the level of Delivery Costs attributable to a Transfer Request Failure which is referred to the Exchange under Rule MMM.10(b) cannot be agreed between the Clearing House and a Buyer within seven Business Days of the Contract Date, the matter shall be referred to the Exchange, or a body appointed by the Exchange which shall, in its absolute discretion determine the Delivery Costs and notify the Clearing House and the Buyer of such Delivery Costs. In the event that either party disputes the Delivery Costs so determined, the party may, within three Business Days of

notification of the Delivery Costs by the Exchange, request in writing to the Exchange that the Delivery Costs be reviewed by the Exchange's Authorisation, Rules and Conduct Committee. The decision of this Committee shall be final and binding and no further review shall be permitted.

- (d) The Exchange and/or the Clearing House shall, under no circumstances, be liable for any indirect or consequential loss or loss of profits.
- (e) Subject to Rule MMM.5(e) the Buyer acknowledges that the right to be indemnified under this Rule MMM.10 shall be its sole remedy in respect of any failure by any other party to comply with its obligations in respect of an EUA Auction Contract. For the avoidance of doubt this shall be without prejudice to any obligations owed by the Buyer under the Clearing House Rules.
- (f) The Clearing House may take such steps in accordance with the terms of this MMM.10, without prejudice to the provisions of these ICE Futures EUA Auction Contract Rules, and any other steps or sanctions which may be taken or applied under the Regulations (including, without limitation, the provisions of Sections D and E of the Regulations), or the Clearing House Rules.
- (g) The Clearing House may, by Clearing House Directions, instruct a Buyer that partial settlement is to take place under an EUA Auction Contract to which they are party, in which case the provisions of this Rule MMM.10 as to Transfer Request Failures or Transfer Request Delays may apply to part only of such EUA Auction Contract where relevant.

MMM.11 ARBITRATION AND DISPUTE RESOLUTION

The Buyer acknowledges that, subject to Rules MMM.10(f) any disputes relating to the EUA Auction Contract shall be determined in accordance with the arbitration provisions in the Rules.

MMM.12 FORCE MAJEURE

- (a) ~~(a)~~ Nothing in this Section MMM, notwithstanding the rest of this Rule MMM.12, shall oblige the Clearing House to deliver Carbon Emissions Allowances to a Buyer as a result of any act or omission performance or non-performance of the Auctioneer Seller or other the Auction Monitor, the European Commission, the Central Administrator or any Competent Authority or Governmental Authority, including the European Commission, outside the control of the Clearing House or the Exchange which results in the Clearing House not having Carbon Emissions Allowances delivered to it by the Auctioneer Seller.
- (b) If the Scheme is, as a result of official written public pronouncement by any duly authorised body representing the European Union, to be discontinued, or is significantly amended in a manner which prevents the performance of delivery by the Clearing House pursuant to Rule MMM.5, the Clearing House shall invoice back any open contract in accordance with the Clearing House procedures, at a price to be fixed by the Exchange or a body appointed by the Exchange, in its absolute discretion. Such price shall be binding on the parties and no dispute as to such price may be referred to arbitration under the Arbitration Rules. In such case, neither the Buyer nor the Clearing House, shall have any further obligations under or in respect of the EUA Auction Contract subject of the open contract(s).
- (c) Subject to Rule MMM.12(e), a Seller who is party to an EUA Auction Contract shall not be liable in respect of any failure on its part to submit a Transfer Request in relation to any EUA Auction Contract, any rejection/non-acceptance of a Transfer Request or subsequent failure in the credit of Carbon Emissions Allowances to the Buyer's Account, nor shall a Buyer be liable in respect of any failure on its part to ensure credit is made to its Account of all Carbon Emissions Allowances under an EUA Auction Contract if performance of such obligations is prevented by Force Majeure. In such case neither party shall be held to be in

default under the EUA Auction Contract and no payment shall be made under Rule MMM.10.

- (d) Force Majeure shall, in relation to the Buyer or the Seller, as the case may be, mean the occurrence of any event (except as provided otherwise in Rule MMM.12(e)), which is outside the reasonable control of such party, and which prevents the debiting and crediting of the Buyer's or Seller's Accounts at the Registry so that a Transfer cannot be effected during the Delivery Period, or results in an amount other than the Carbon Emissions Allowance Delivery Amount being credited and debited. Without limitation to the foregoing, an event of Force Majeure shall include:

- (i) ~~(i)~~ the provisions of the Kyoto Protocol or the Scheme being suspended;
- (ii) ~~(ii)~~ a public statement by an appropriate authority, or by the Registry, of an occurrence of an event outside the reasonable control of the Registry so as to prevent a Transfer taking place during that Delivery Period, and which is endorsed by the Exchange as a declaration of Force Majeure in respect of the Registry;
- (iii) ~~(iii)~~ subject to Rule MMM.12(e)(iii), the Registry suspending the submission of Transfer Requests or the effecting of Transfers under the Registry Regulations or otherwise;
- (iv) ~~(iv)~~ for the relevant Delivery Period, the inability to make or accept a Transfer due to an interruption in, delay to or permanent halting of a Transfer resulting from the intervention of the CITL or EUTL, as the case may be, or UNFCCC International Transaction Log in relation to the Registry;
- (v) ~~any of the circumstances referred to in Rules MMM.6(a)(i),(ii),(iii),(iv),(vi) or (vii), or Rule MMM.5(d).~~

- (e) Subject to Rules MMM.12(b) and MMM.12(d), the occurrence of the following events shall not give rise to Force Majeure:

- (i) the refusal or rejection by the Registry or the CITL or EUTL, as the case may be, and/or the UNFCCC International Transaction Log if appropriate, for whatever reason, of a Transfer Request submitted by the Seller. For the avoidance of doubt, this shall include the refusal or rejection by the Registry, the Registry administrator, the CITL or EUTL, as the case may be, or the UNFCCC International Transaction Log, as applicable, of a Transfer Request where the Transfer Request would cause the Registry to breach its Commitment Period Reserve;
- (ii) the failure of a Communication Link;
- (iii) the inability to make a Transfer owing to a problem within the central systems or processes established under the Scheme for the receipt and acceptance of Transfer Requests, but only to the extent that contingency arrangements exist under the Scheme by which the Seller or the Buyer can reasonably be expected to make or accept the Transfer (as the case may be) in accordance with any Clearing House Direction;
- ~~(iv) an insufficient amount of Carbon Emissions Allowances in the Seller's Account to enable the Seller to effect the Transfer, whether caused by non-allocation or low allocation of Carbon Emissions Allowances, failure by the Auctioneer Seller to submit a Transfer Request or for any other reason;~~(v) the non-validity for any reason of any Carbon Emissions Allowances for the purposes of meeting the requirements of the Directive;

- (f) A Buyer who is party to an EUA Auction Contract shall not be entitled to relief through the occurrence of an event of Force Majeure under this Rule MMM.12 unless such party has

notified the Clearing House and the Exchange, or in the case of the Clearing House, the Clearing House shall not be entitled to relief through the occurrence of an event of Force Majeure under this Rule MMM.12 unless the Clearing House has notified the Buyer and the Exchange, as soon as reasonably practicable after the Buyer or the Clearing House as the case may be, has become aware (or after it ought reasonably to have become aware) of such Force Majeure event, and has continued to seek to perform its obligations in accordance with the EUA Auction Contract (in which event it shall be entitled to such relief with effect from the commencement of such Force Majeure event).

- (g) Upon request by the Clearing House and/or the Exchange, a party seeking Force Majeure relief under this Rule MMM.12 shall provide all information required by the Clearing House and/or the Exchange as soon as practicable to assist the Exchange in determining whether an event of Force Majeure has occurred. Whether an event of Force Majeure has occurred shall be determined by the Exchange. Where the Clearing House is not the party seeking relief through the occurrence of an event of Force Majeure, the Exchange shall consult a representative of the Clearing House in its determination.
- (h) If Force Majeure prevents the affected party from performing its obligations under an EUA Auction Contract, the EUA Auction Contract shall be invoiced back by the Clearing House, in accordance with the Clearing House procedures, at a price to be fixed by the Exchange, or a body appointed by the Exchange, in their absolute discretion. Such price shall be binding on the parties and no dispute as to such price may be referred to arbitration but completion of invoicing back shall be without prejudice to the right of either party to refer the question of the existence, extent or duration of the Force Majeure or any default or related dispute to arbitration under the Arbitration Rules.

