

# Special terms and conditions for entering into Derivatives Transactions

Valid from 1 July 2020

## 1. Objective and scope

1.1 These general terms and conditions (the “**Special Terms and Conditions**”) set out the requirements applicable for all trading with currency and financial instruments covered by the Section 2-4 (7) (“**Derivative Transactions**”) that the customer (the “**Customer**”) enters into with Danske Bank A/S (the “**Bank**”) as a counterparty, also known as OTC-Trading.

1.2 These Special Terms and Conditions do not apply to spot transactions, cash purchases or sales of currency, and neither to international transfers or to currency exchange transactions in connection with settlement of a securities or derivatives transaction.

1.3 Derivatives Transactions may be a look-alike contract (“**Look-Alike Contracts**”) based on a contract traded on a regulated market (“**Reference Contracts**”), where the value of the Look-Alike Contract shall correspond to the value of the Reference Contract. Unless otherwise provided in these Special Terms and Conditions or in the specific Derivatives Transaction confirmation, the Look-Alike Contract is subject to the terms and conditions applicable to the Reference Contract.

1.4 If there are made changes in the rules applicable the relevant regulated market where the Reference Contract is traded, the Bank may at its own discretion decide to amend the terms and condition of the Look-Alike Contract to the extent necessary in order to align them with the terms and conditions of the Reference Contract.

1.5 If the regulated market where the Reference Contract is traded conduct any act in accordance with the market place’s rules, and such act affects the Reference Contract, the Bank may conduct a similar act in respect of the Look-Alike Contract in order to ensure that the development of the value of Reference Contract and the Look-Alike Contract will be corresponding. This will not apply if the act made by the regulated market is made in accordance with the market’s default rules, if the act is triggered by the Bank’s default.

1.6 In case of changes to a Look-Alike Contract as a consequence of changes in the relevant market place’s rules or as a consequence of acts carried out by the market place in accordance with its rules, the Bank shall inform the Customer as soon as practicable. In case of such changes, both the Customer and the Bank will have the right to terminate the Look-Alike Contract upon written notice to the other party.

1.7 When entering into a Look-Alike Contract with the Bank, the Customer is deemed to have represented that the Customer is not, and will not be as long as the Reference Contract is unsettled, a member of the relevant regulated market where the Reference Contract is traded.

1.8 When entering into a Look-Alike Contract, the Bank will have no obligation to trade the Reference Contract. Any Reference Contract traded by the Bank is traded on the Bank’s own behalf and for the Bank’s own account and risk, with the following exemptions: (i) if the central counterparty clearing the Reference Contracts

changes the terms and conditions of the Reference Contract between itself and the Bank, the changes made shall apply equally to the Look-Alike Contract between the Customer and the Bank, and/or (ii) if the central counterparty clearing the Reference Contract default its obligations towards the Bank, the Bank’s obligations towards the Customer shall be reduced with an amount equal to the amount not settled by the central counterparty.

1.9 Derivatives Transactions under the Framework Agreement (as defined below) must be in accordance with applicable legislation at all times, including the currency provisions set down by Norges Bank.

1.10 The Bank’s assessment of financial instruments includes financial instruments issued or provided by the Bank itself, and therefore no advice in respect of a potential or an actual Derivatives Transaction will be provided on an independent basis. For individual advice in respect of risks related with trading cf. section 6.2 below, the Customer must liaise with an independent adviser.

## 2. Before Derivatives Transactions are entered into

2.1 Prior to carrying out Derivatives Transactions, the Customer must have entered into a customer agreement on investment services with the Bank (“**Customer Agreement**”), a special derivatives agreement (such derivatives agreement, together with these Special Terms and Conditions as these reads from time to time, hereinafter referred to as the

“**Derivatives Agreement**”) and any specific security document and/or pledge agreement required by the Bank (“**Security Agreement**”). The Customer Agreement and the Derivatives Agreement together constitute a framework agreement (the “**Framework Agreement**”). The Framework Agreement applies to all Derivatives Transactions between the Bank and the Customer. Words with capital letters not defined herein shall have the meaning ascribed to such word in the Derivatives Agreement.

2.2 These Special Terms and Conditions apply to each Derivatives Transaction between the parties, even if a transaction is entered into before the Framework Agreement is signed. A single Derivatives Transaction covered by the Framework Agreement may be made up of multiple reciprocal conditional trades in respect of interest, exchange rate and currency (combination transactions).

2.3 The Framework Agreement does not prevent specific Derivatives Transactions or type of Derivatives Transaction from being regulated by another specific agreement between the parties (“**Specific Agreement**”).

2.4 The Framework Agreement does not confer any right or obligation on the parties to enter into Derivatives Transactions. This applies even if the Bank has notified the customer of the opening of a line concerning the business scope of the Framework Agreement.

2.5 The Framework Agreement applies even if it is not expressly referred to in the individual Derivatives Transaction confirmations. Each Derivatives Transaction does together constitute one legal relationship.

2.6 Customers that are corporate bodies will need to obtain a Legal Entity Identifier (“**LEI**”) in order to enter into Derivatives Transactions. It is noted that this requirement does not apply for spot transactions, and unless you are a financial counterparty, for foreign exchange forward transactions (FX forward) that are physically settled, if they are entered into in order to facilitate payment for identifiable goods, services or direct investments and are not traded on a trading venue.

### **3. Representations and warranties**

3.1 The Customer represent to the Bank that it has the power to enter into the Derivatives Agreement and to each Derivatives Transaction entered into, and that delivery and performance will not violate any other agreement, applicable law, any order or judgement of any court or other agency of government.

3.2 Each Customer that is a corporate body, also represent to the Bank that the Customer is a corporate body duly organised and validly existing under the laws of its jurisdiction of organisation or incorporation, that it has the power to deliver and to perform its obligations under each transaction entered into under the Derivatives Agreement, that no Derivatives Transaction violates any other agreement, constitutional documents or other documentation and that any consents required to be obtained by the corporate body with respect to the Derivatives Agreement to which the corporate body is a party have been obtained and are in full force and effect.

3.3 Unless the Customer is a financial counterparty, the Customer represents to the Bank on each date on which a transaction is entered into that a foreign exchange forward transaction that is physically settled and is not traded on a trading venue (each an “Exempted

Transaction”), that the Customer is entering into such transaction in order to facilitate payment for identifiable goods, services or direct investments, until such time when the Bank receives a notification from the Customer prior to entering into such new transaction, stating that the transaction is entered into for any other purpose than described above.

3.4 The representations set out in section 3.1 to 3.3 are deemed to be made by the Customer on each date on which the Customer enters into Derivatives Transactions.

3.5 The Customer represent to the Bank that it is the end user of any commodity derivative transaction entered into in accordance with this Agreement. This means that no Customer can enter into a corresponding contract with a third party based on the contract entered into between the Customer and the Bank. Moreover, the Customer represents to the Bank that when the Customer enters into a commodity derivatives transaction with the Bank the contract is objectively measurable as reducing risks directly relating to the Customer’s commercial activity.

### **4. EMIR customer categories, clearing thresholds and obligations and customer representations**

4.1 According to rules set out in Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as amended and any delegated legislation thereunder (hereafter together “**EMIR**”), customers trading OTC derivatives must be categorised in defined groups.

4.2 The categories are:

(a) “financial counterparty” (*banks, pension companies, insurance companies, a.o.*),

- (b) a “non-financial counterparty” (*corporate customers not categorised as a “financial counterparty”*) and  
 (c) customers falling outside the two categories above (*mainly private individuals*).

4.3 Private individuals are not subject to specific obligations under EMIR, but the Bank will be required to report detailed information about such Customers’ OTC trading with the Bank to a registered trade repository, cf. section 13.6 below. Such information will also be available to the Norwegian Financial Supervisory Authority and other relevant authorities.

4.4 Financial and non-financial counterparties are divided into those counterparties who are subject to clearing obligations under EMIR and those counterparties who are exempted from this requirement. Currently, the thresholds (notional amounts) are set at EUR 1 billion for credit derivatives, EUR 1 billion for equity derivatives, EUR 3 billion for interest rate, EUR 3 billion for FX derivatives and EUR 3 billion for commodity derivatives and other derivatives. Calculation of the aggregate month-end average notional amount of OTC derivatives must be performed once every year for the previous 12 months. Financial and non-financial counterparties exceeding one or more of the clearing thresholds, or who choose not to perform the required calculations, are subject to a clearing obligation.

If the Customer is a non-financial counterparty, trading related to hedging of commercial activities or financing is not included in the calculation. If a Customer exceeds one of these thresholds (calculated once every year for the previous 12 months) the Customer will become subject to the clearing obligation for the asset classes

that exceed a clearing threshold. Non-financial counterparties that do not calculate their positions become subject to the clearing obligation for all asset classes that are subject to the clearing obligation.

A financial counterparty will become subject to the clearing obligation for all asset classes, if it exceeds any of the clearing thresholds or if it does not perform the required calculations.

If a financial counterparty or non-financial counterparty exceeds (or ceases to exceed) a clearing threshold under EMIR or if it does not perform the required calculations, the Customer must notify this to the competent authorities in accordance with EMIR.

4.5 It is the Customer’s own responsibility at any time to assess if it is a financial counterparty or non-financial counterparty under EMIR and to inform the Bank of such categorisation. The Customer must also notify the Bank immediately if it becomes subject (or ceases to be subject) to clearing obligation pursuant to EMIR. If the Customer is a financial counterparty or non-financial counterparty, the Customer represents to the Bank on each date on which a transaction is entered into that it is not subject to any clearing obligations pursuant to EMIR, until such time when the Bank receives a notification from the Customer stating the contrary.

4.6 The Customer will be deemed to have represented to the Bank on each date on which a transaction is entered into that the information the Customer has provided to the Bank is correct.

4.7 A Customer is responsible for, on a day-to-day basis, assessing whether or not its Derivatives

Transactions are subject to a clearing obligation pursuant to EMIR.

4.8 If a Customer’s representation about being exempted from a clearing obligation under EMIR was incorrect or misleading, the Customer is obliged to negotiate with the Bank in good faith and without undue delay and in any event within any applicable time periods specified in EMIR, any necessary amendments to ensure that (i) transactions subject to a clearing obligation are cleared and (ii) that any additional risk mitigation techniques applicable to transactions not subject to a clearing obligation are complied with. Such necessary amendments may, include, inter alia, additional margin requirements and a re-pricing of the transactions affected by the incorrect or misleading representation.

4.9 Failure to agree upon such necessary amendments referred to in section 4.8 above will amount to a breach of the transactions affected by the incorrect or misleading representation. As a consequence hereof, the Bank will close-out the transactions affected and calculate a final settlement amount for these transactions in accordance with section 15 below as at a date designated by the Bank by giving the Customer notice hereof. For the avoidance of doubt, the termination of the transactions affected shall not constitute an event of default under section 14 below and neither of the parties may terminate early the Derivatives Agreement or any other outstanding transactions as a result thereof.

## 5. Entry into and confirmation of Derivatives Transactions.

5.1 The Customer may trade Derivatives Transactions during the Bank’s ordinary opening hours. Look-Alike Contracts based on Reference Contracts can only be

made when the relevant regulated market is open for trading. The Customer cannot enter into Look-Alike Contracts based on Reference Contracts if the Bank, due to a disruption of telephone or other relevant systems and services, cannot communicate with the relevant regulated markets or brokers dealing in the Reference Contracts.

5.2 Agreements on the entry into Derivatives Transactions, or amendment, settlement or cancellation etc. in respect of Derivatives Transactions entered into, may be made in writing or orally, including by telephone, or via electronic messaging system.

5.3 The Bank makes mandatory recordings of telephone conversations in connection with the provision of investment advice and investment activities, and of telephone conversations that are meant to lead to investment services being provided or investment activities being carried out, as further described in the general terms under the Customer Agreement. The Parties agree that recordings and printouts of any electronic log and electronic communication may be used as evidence in any dispute between the Parties.

5.4 Unless otherwise agreed, the Bank sends a written/electronic confirmation (“**Confirmation**”) of the Derivatives Transactions entered into. A Derivatives Transaction is entered into and binding for the parties once the actions described in section 5.2 have been completed. The Customer must notify the Bank in writing immediately if such Confirmation contains incorrect data. If the Customer fails to do so within one Banking Day of receipt of such Confirmation, it will be deemed to be correct, complete and confirmed by the Customer. If it becomes necessary, the Bank may at any time ask the Customer to sign and return a copy of the

Confirmation or to reconfirm the agreement in other ways. The validity of a Derivatives Transaction is not conditional on a Confirmation being issued that is signed by the Customer and returned to the Bank.

- 5.5 A Derivatives Transaction is regulated by
- (a) The Confirmation,
  - (b) The Derivative Agreement,
  - (c) The Special Terms and Conditions,
  - (d) Security Agreement (if any),
  - (e) The General business terms and conditions for trading in financial instruments, and
  - (f) The Customer Agreement for the provision of investment services,

together constituting an agreement (the “**Agreement**”). Where there is a conflict, the documents shall apply in the order of precedence specified above.

5.6 If the Customer wishes to be represented by power of attorney in dealing with the Bank, the Customer must notify the Bank in writing using a power of attorney sheet approved by the Bank, unless otherwise agreed.

## **6. Customer’s liabilities and risks**

6.1 The Customer itself will decide whether to enter into Derivatives Transactions and is responsible for selecting the transaction type. Consequently, the Customer is obliged to familiarise itself with the terms and conditions, as well as the objectives of the transaction types entered into, including the terms and conditions for any Reference Contract.

6.2 Entering into Derivatives Transactions may involve significant risk. The specific risks involved in respect of the various Derivatives Transactions are not

described in these Special Terms and Conditions. If required, the Customer should seek independent advice in order to assess the risks involved in the transactions.

6.3 The Customer is liable for losses incurred as the result of engaging in Derivatives Transactions.

6.4 If a Customer enters into Look-Alike Contracts based on commodity Reference Contracts with physical delivery, the Customer must close out the transaction three Banking Days before the expiry date of the Reference Contract, at the latest. If the Customer does not, the Bank is entitled to close out the transaction on behalf of the Customer. A transaction is closed out by either the Bank determining the market value of the transaction with payment to the part that is in-the-money or by an off-setting transaction based on current market prices.

6.5 The Bank assumes no responsibility to notify the Customer of market or currency conditions, including whether there have been unrealised losses on Derivatives Transactions that have been entered into. The Customer is responsible for consecutively keep itself up to date with information about such transactions.

6.6 The Bank is not liable for any fiscal/tax implications for the Customer of Derivatives Transactions entered into. In this context, the Bank encourages the Customer to clarify such situations, possibly by seeking legal advice or other forms of assistance.

## 7. Price, transaction costs and systematic internalisation

7.1 The price of a transaction, including client margin and liquidity premium, takes into account transaction and customer specific factors.

7.2 Danske Bank will become a 'systematic internaliser' ("SI") in a derivative instrument if the Bank, on an organised, frequent systematic and substantial basis, deals in this instrument on its own account when executing customers' orders outside a trading venue in accordance with EU Directive 2014/65 of 15 May 2014 on markets in financial instruments etc. ("MiFID II"). As SI for one or more financial instruments, the Bank will have certain obligations to publish firm quotes to its customers in the relevant financial instruments, and to publish trading information. A list of the relevant financial instruments, including any relevant derivative instruments, and the current prices will be available on the Bank's website, together with information about any restrictions/caps on Customers' access to trading these financial instruments. The Bank's Order Execution Policy describes how the Bank determines prices for the financial instruments for which the Bank is a SI.

7.3 The Bank charges brokerage and other fees on Look-Alike Contracts based on Reference Contracts. A list of transaction costs forms part of the Derivatives Agreement. The Bank may change the brokerage and other fees in accordance with the General Business Terms and Conditions for trading financial instruments.

7.4 If on any interest payment date the amount of interest due and payable from one party (the "Originally Intended Payer") for that particular payment (on account of either a negative rate or a margin deducted from a rate) is negative (the "Negative Interest"), the Originally Intended Payer is not required to pay interest

for such interest period. Instead, the other party (the "Originally Intended Receiver") in relation to such payment pays to the Originally Intended Payer the absolute value of the Negative Interest in addition to any other amount that the Originally Intended Receiver is required to pay on that interest payment date.

## 8. Settlement of Derivatives Transactions

8.1 Profit or loss on due Derivatives Transactions will be settled using the agreed settlement account with currency on the due date, unless otherwise is agreed. The Bank has a debit authorization (*belastningsfullmakt*) on the agreed settlement account from the Customer. Where a physical delivery has been agreed, the purchase and sales considerations will be settled in the agreed settlement account on the due date.

8.2 The Customer is obliged to have sufficient funds on the settlement account to make payments on the due date resulting from Derivatives Transactions it has entered into.

8.3 If there are insufficient funds on the settlement account, the Customer must immediately deposit the required amount into the account. The Bank may set a time limit of as little as 1 hour for such a deposit to be made.

8.4 If the Customer fails to make a payment on its due date, the Customer shall be charged penalty interest at the applicable interest rate at the time in accordance with the terms of the Norwegian Overdue Payment Interest Act, charged on the unpaid amount from the due date until the payment date, with the addition of 2 % for Customers that are not private individuals.

8.5 Payment and delivery for Look-Alike Contracts based on Reference Contracts follow the rules applicable to the relevant Reference Contracts, unless otherwise has been agreed. Payment and delivery of Look-Alike Contracts shall occur on the due date of the Reference Contracts.

8.6 If the parties have obligations to each other that must be satisfied on the same day, the Bank may request that payment/delivery takes place on the due date when the parties make their deposit/delivery to an agreed account and/or securities department in the Bank or to clearing systems specified by the Bank. The request may include specific existing and/or future Derivatives Transactions. For Derivatives Transactions with a term to maturity of more than 5 Banking Days, the request shall be submitted with at least 5 Banking Days' notice. For Derivatives Transactions with shorter term to maturity, the request shall be submitted when the agreement is entered into.

8.7 Deposits are to be made in the name of the depositor. Once both parties' contributions have been made, they will be immediately released. Where a party has not made a deposit on the due date, the other party may demand that their contribution shall be returned.

8.8 Where both parties have obligations to the other party that shall be satisfied on the same day in the same payment in connection with Derivatives Transactions entered into under the terms of the Framework Agreement, the Bank may demand settlement of the payments so that only net payments are exchanged.

## 9. Market value calculation,

9.1 The Bank may consecutively calculate the market value of the total net amount the Customer owes the Bank. The Bank will undertake the market value

calculation based on all existing Derivatives Transactions and closed, but not settled, Derivatives Transactions. The market value calculation will be undertaken by the Bank using the same principle set out in section 15, using mid-prices as the starting point (i.e. the rate between buy price and sell price, obtained as set out in section 15.7).

9.2 A threshold for the market value of the total net amount may be agreed, such threshold set out in the Derivatives Agreement. If the market value of the total net amount, calculated in the basis currency as defined in the Derivatives Agreement (the “**Basis Currency**”), exceeds the agreed threshold specified in the Derivatives Agreement, the Bank may in writing and without any notice close the number of Derivatives Transactions necessary in order to bring the total net amount below the agreed threshold, alternatively demanding that the Customer puts up [supplementary] security, cf. section 10.

9.3 If Specific Agreements contain other provisions in respect of the calculation of total net amount, these provisions shall take precedence over the provisions of the Framework Agreement in this respect, for the Derivatives Transactions covered by the scope of such Specific Agreement. The result of such calculation is included in the Framework Agreement calculations.

## **10. Collateral arrangements and offsetting**

10.1 Any collateral arrangements, including margin deposits and agreed thresholds, will be shown in a Security Agreement and/or mortgage documents and the Derivatives Agreement.

10.2 Even if the Bank has not imposed collateral requirements when entering into single Derivative Transactions, the Bank will be entitled to demand

collateral if the Customer's relationship with the Bank, at the Bank's own discretion, gives reason for doing so.

10.3 The Bank may, at any time, demand that additional collateral shall be provided in order to cover Derivatives Transactions covered by the Framework Agreement.

10.4 In the event of a breach committed by one party, the other party's obligations as set out in the Framework Agreement, to the degree stipulated in the Norwegian Trading Securities Act chapter 18, for Customers being corporate bodies and categorised as a professional party the Norwegian Financial Collateral Act Section 6, if applicable, or by any corresponding regulations that supersede these, may be offset to market value without impediment of sections 7-3 and 8-1 of the Norwegian Creditors Security Act.

10.5 The Bank is entitled to offset each amount owed against each demand, whether due or not, that the Bank has against the Customer. Offsetting may be carried out on every amount on deposit in the Bank, in every account and in every currency, provided that no applicable law requires anything to the contrary. .

## **11. Transaction registering/reporting and regular information**

11.1 As a general rule, the Bank will register the Derivatives Transactions of a Customer under the Customers organisation number (national identification number [No. *fødselsnummer*] for private individuals).

11.2 Customers will receive a monthly statement of Derivatives Transactions made, but not yet settled, and their market value. The Bank calculate market value using the principles defined in section 15 (final settlement) below, based on the Bank's middle price

(meaning the middle rate between bid and ask). For Look-Alike Contracts based on Reference Contracts Customers will only receive a quarterly statement showing such transactions which the Customer has entered into.

11.3 Customers being corporate bodies and categorised as a financial counterparty or a non-financial counterparty must, from the time EMIR enters into force in Norway report within one Banking Day the details of all its Derivatives Transactions under this Derivatives Agreement to a trade repository.

11.4 The Bank will report the Derivatives Transactions to relevant authorities where the Bank has a regulatory obligation to do so under EMIR, Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments as amended and any delegated acts thereunder (hereafter “**MiFIR**”) or any other applicable regulation.

11.5 The Bank will however not report any Derivatives Transactions to a trade repository on behalf of a Customer, and the Customer will be obliged to report its own Derivatives Transactions with the Bank, unless the Bank has separately agreed to perform such services for the Customer.

11.6 Customers being private individuals are not subject to any obligations under EMIR or MiFIR and will not be required to report any Derivatives Transactions. However, the Bank may be required to provide certain information about such transactions to a trade repository cf. section 4.3 above.

## **12. Risk-mitigation techniques (for customers that are corporate bodies)**

### 12.1 Portfolio reconciliation

Customers being corporate bodies and categorised as a financial counterparty or a non-financial counterparty are required under EMIR or rules implementing EMIR to perform a reconciliation of its outstanding Derivatives Transactions with the Bank under the Framework Agreement.

Portfolio reconciliations shall be performed at daily, weekly, quarterly, yearly (or any other) intervals in accordance with EMIR. The frequency depends on the number of outstanding OTC Derivatives Transactions and whether the Customer exceeds the clearing thresholds set out in EMIR.

Unless the Bank and the Customer have agreed otherwise, the Bank shall on the date of each portfolio reconciliation send to the Customer one or more lists of the Customer's outstanding Derivatives Transactions containing information about the key terms (including the Bank's valuation) of each transaction. The Customer must notify the Bank without undue delay, if the Customer is not in agreement with the data contained in such list. If the Customer fail to notify the Bank of any discrepancies within five Banking Days of receipt of the data, it will be deemed to be correct, complete and confirmed by the Customer.

A Customer's failure to dispute data set out in a reconciliation list does not amount to a waiver of any right to dispute the accuracy of such data for any other purposes than complying with applicable rules on portfolio reconciliation.

### 12.2 Portfolio compression

Customers being corporate bodies and categorised as a financial counterparty or a non-financial counterparty

with at least 500 outstanding OTC Derivatives Transactions with the Bank, are required two times a year to analyse together with the Bank and, if it is appropriate, carry out a portfolio compression exercise in order to reduce the counterparty credit risk.

### 12.3 Dispute resolution

If a dispute arise between a Customer being a corporate body and the Bank regarding the Framework Agreement or any Derivatives Transactions executed under it, the disputing party shall give notice hereof to the other party without undue delay. The disputing party shall specify its reasons for disputing the matter in writing. The parties shall hereafter consult each other and seek to resolve the dispute in a timely manner. However, a Derivative Transactions shall be considered to be concluded regardless of whether it is disputed. This section does not apply to disputes regarding collateral arrangements.

If a dispute relates to the Bank's valuation of one or more Derivatives Transactions under the Framework Agreement, the Customer may request that the Bank seeks quotes from at least two and up to four reputable, independent market participants. If the quotes obtained deviate materially from the Bank's valuation, then the average value of such quotes shall replace the Bank's valuation and the Bank shall bear the costs of obtaining the quotes. If the quotes obtained do not deviate materially from the Bank's valuation, then the Bank's valuation shall prevail and the Customer shall bear the costs of obtaining the quotes. If no quotes are obtained the Bank's valuation shall prevail. The Bank may disregard one or more quotes obtained if the Bank believes that the inclusion of such quote(s) would not produce a commercially reasonable result.

If a dispute has not been resolved within five Banking Days, each party shall refer the matter to senior members of its staff, who shall seek to resolve the dispute within 30 Banking Days.

The parties may at any time choose to refer a dispute to a competent court. The Bank is obliged to report any disputes concerning amounts exceeding EUR 15 millions which have not been resolved within 15 Banking Days to the Financial Supervisory Authority.

## 13. Customer's obligation to disclose information

13.1 The Bank may at any time ask a Customer to send information of an accounting, budgeting or auditing nature, including long-form audit reports, which the Bank consider to be necessary in order to evaluate the Customer's financial condition or other matters, such as information about persons authorised to act on the Customer's behalf.

13.2 In addition, the Bank may at any time request the Customer to deliver such information/documentation as the Bank deems necessary to obtain in relation to an obligation of the Bank to provide information about a Customer's affairs, as required in accordance with law, public authorities' regulations or decisions and/or agreement with such authorities, agreed trading rules or contracts/terms relating to certain securities.

13.3 The Customer is obliged to disclose such information/documentation referred to above in section 13.1 and 13.2, as soon as possible upon the Bank's request.

13.4 The Customer must immediately notify the Bank when:

- (a) the Customer becomes aware of that its financial situation may be materially negatively impacted,
- (b) the Customer becomes aware of a possible breach (as defined in section 14) and which measures must be implemented to rectify the situation,
- (c) an outlay transaction or seizure has been undertaken with the Customer,
- (d) the Customer and/or a guarantor cancels its payments,
- (e) the Customer and/or a guarantor becomes insolvent,
- (f) the Customer and/or a guarantor applies for any sort of debt renegotiation
- (g) a winding up petition has been raised against the Customer and/or a guarantor
- (h) the Customer and/or a guarantor has been placed under bankruptcy proceedings.

13.5 The Bank is entitled to compensation in accordance with section 15 for losses suffered as the result of the Customer's failure to satisfy its disclosure obligations.

13.6 Danske Bank an/or any of the Bank's affiliates will, at any time pass on any information about the Customer, the Customer's Derivatives Transactions, etc., to the extent such disclosure is required by the rules of a regulated market, a clearing house, any systems or platforms used by a clearing house, providers or operators of electronic trading/matching facilities, trade repositories, or to any other persons, if required by a competent court, governmental authority or similar body or by applicable law.

13.7 Further Information about Danske Bank's processing of personal data are to be found in the General business terms and conditions for trading financial instruments etc in Danske Bank section 30 and in the bank's privacy notice, available on [www.danskebank.no](http://www.danskebank.no).

#### 14. Events of Default

14.1 Each of the following events will be regarded as serious breaches (No.: *vesentlig mislighold*) when:

- a) A party does not make a contractual payment or delivery on a due date in relation to the Agreement.
- b) The Customer breaches another provision in the Agreement, including not providing the agreed security, the required security in accordance with section 10, cf. Security Agreement, information appears to be incorrect or inaccurate in a significant misleading way or failure to deliver information/documentation required under section 13.
- c) A party and/or a guarantor is insolvent, files a bankruptcy petition, cancelled its payments, initiates negotiations with creditors, initiates debt negotiations or equivalent measures.
- d) The Customer at the Bank's discretions is regarded as being unable to pay its debts, as they fall due.
- e) The Customer changes its residence/business location to another country without entering into agreement with the Bank in respect of the changed conditions.
- f) The Customer, in relation to its affairs with the Bank or other companies within the group of the Bank, fails to meet its obligations.
- g) Other circumstances arise that, in relation to Norwegian law, may be regarded as constituting

breaches of the Agreement or other Derivatives Transactions.

Even if it is not stated in any Special Agreement, a breach of the Framework Agreement is also regarded as a breach of the Special Agreements.

14.2 Upon the occurrence of an event of default (and as long as it is continuing), the non-defaulting party is entitled, by notifying the defaulting party ("**Notification of Breach**"): (I) to demand that all Derivatives Transactions are closed and (II) to cancel the Agreement with immediate effect.

14.3 In the event of cancellation as the result of an event of default as described in section 14.1, the Bank shall be held indemnified for any losses incurred by the cancellation of such Derivatives Transactions, including losses incurred as a result of changes in the exchange rate and market quotas in the time between the cancellation date and the date the Bank makes its calculation in accordance with section 15.

#### 15. Final Settlement (Close-out netting)

15.1 If one or more Derivatives Transactions have been revoked as a result of an event of default or otherwise terminated in accordance with these Special Terms and Conditions, the Parties' outstanding account shall be settled and a final settlement shall be produced as per the cancellation date as stipulated in section 15.2-15.9 ("**Final Settlement**"). The Bank may implement final settlement without the impediment of sections 7-3 and 8-1 of the Norwegian Creditors Security Act, cf. section 18-2 of the Norwegian Securities Trading Act, and for Customers being corporate bodies and categorised as a professional



party cf. section 6 of the Norwegian Financial Collateral Arrangements Act.

15.2 The Bank conducts Final Settlement as a net settlement of all Derivatives Transactions covered by the Framework Agreement with the Customer. During Final Settlement, the Bank calculate the current value of each individual Derivatives Transaction on the basis of its market value on the cancellation date, which is then settled (offset) against the other Derivatives Transactions covered by the Framework Agreement. The market value is set based on sale- and bid prices, depending on what is relevant for the Derivatives Transaction in question, as further described in Section 15.7 below.

15.3 When calculating the current value, the Bank shall either add or deduct each unpaid amount. In this context, 'Unpaid Amount' refers to the total net amount (positive or negative) for the Bank made up of (I) each amount that was payable on the cancellation date, but has not been paid, (II) the market value of a physical delivery on the cancellation date that should have been received prior to the cancellation date but has not been delivered and (III) the value of securities on the cancellation date of each security the Customer has transferred to the Bank.

15.4 The total amount calculated by the Bank pursuant to this section shall, following receipt of a demand from the party that has a claim on the amount, be paid in the Basis Currency. Amounts outstanding in other currencies shall be converted to the Basis Currency at the rate applicable on the cancellation date. All Derivatives Transactions outstanding on the cancellation date and which become due thereafter shall be included in the Final Settlement. This shall not

apply to Derivatives Transactions that are not covered by the Notification of Breach.

15.5 The Final Settlement Amount is the difference between each party's total payment obligations in accordance with the Final Settlement.

15.6 If any Special Agreements have been entered into that contain provisions concerning Final Settlement in respect of specific Derivatives Transactions or transaction types, these provisions shall take precedence over the provisions of the Framework Agreement. However, the result of these calculations is included in the Framework Agreement's settlement (Final Settlement) in accordance with section 15.

15.7 Information about market prices/terms and conditions may be retrieved via the electronic information systems used by market participants or on the basis of prices retrieved from recognised exchanges, financial institutions or others who are known to be market participants in relation to the transaction type in question.

15.8 If the relevant markets are closed on the cancellation date, the current value of Derivatives Transactions will be calculated on the basis of prices retrieved on the following day, where prices are set on this market.

15.9 The Final Settlement Amount may be used for offsetting to this extent unless otherwise dictated by unalterable legislation, allowing the Bank to offset in each included amount or each obligation to cover each demand or obligation the Bank holds or may arise under this Agreement.

## **16. Amendments to the Special Terms and Conditions**

16.1 The Bank reserves the right to make changes to these Special Terms and Conditions. Material amendments will take effect from the time the Bank has informed the Customer about the amendments in writing. The Customer has accepted to receive information about amendments by e-mail if the Customer has provided its e-mail address to the Bank. Other amendments will enter into effect as soon as they are published on the Bank's webpage. Amendments will not have any effect for orders, Derivatives Transactions, etc. already placed or entered into before the amendment entered into effect.

16.2 The Bank may also in its sole discretion make amendment and/or deviate from these Specific Terms and Conditions with effect for one specific Customer. Such amendments will enter into effect by amendment to the Derivatives Agreement with the relevant Customer.

## **17. Termination**

17.1 The parties may terminate the Framework Agreement in writing giving 14 days' notice. Such notice of termination will not apply to Derivatives Transactions already concluded. Derivatives Transactions that have been entered into cannot be terminated before expiry, see however section 9, 14 and 18.

17.2 If a Reference Contract ceases to be traded on a regulated market, the Bank may terminate any Look-Alike Contracts based on such Reference Contract with a Customer. The Bank will close-out the transactions on the day when the reference contract is no longer traded and calculate the final settlement amount according to the principles in section 12 above.

### 18. Changes in laws and regulations

18.1 If, due to changes in laws or regulations (or in the interpretation thereof by courts or other authorities) occurring after a Derivative Transaction is entered into, such Derivatives Transaction becomes unlawful under any applicable law, or one or both of the parties are prohibited from paying or delivering as agreed, or from performing or complying with any other obligations under the Framework Agreement, the party affected by the changes in laws or regulations must promptly notify the other party in writing. Both parties will have the right to terminate, in writing and at any time, the Framework Agreement and each transaction forming part hereof.

18.2 If changes in laws or regulations concerning capital adequacy or liquidity requirements applicable to the Bank impose increased costs or reduce the Bank's earnings when the Bank perform, maintain or finance its obligations in respect of the Framework Agreement, the Bank will have the right to terminate, in writing and at any time, the Framework Agreement and each transaction forming part hereof.

18.3 If the Bank terminates the Framework Agreement under this section 18, the Bank will close out all transactions and calculate a final settlement amount as at the early termination date in accordance with section 15 above. The early termination date is the Banking Day on which the termination of the Framework Agreement takes effect.

### 19. Other conditions

19.1 Unless otherwise agreed, communications may be in Norwegian or in English, by email or letter and sent to the addresses indicated in the Derivatives Agreement.

19.2 If a Customer contacts the Bank via e-mail or otherwise provides its e-mail address to the Bank, the Customer will be deemed to have consented to the receipt of emails from the Bank which are not encrypted or password-protected. Customers using electronic and any type of digital solutions, are deemed to have consented to receiving information in a durable medium other than paper. The Customer must inform the Bank about changes by at least five Banking Days' notice.

19.3 Communication received by the Bank outside normal opening hours is deemed to have been received on the following Banking Day.

19.4 A Banking Day is a day during which the banks in Norway are open for business (including for currency and securities trading), excluding Saturdays and Sundays ("**Banking Day**").

19.5 For the purpose of delivery of financial instruments or for payment or determination of interest rates in relation to a currency other than Norwegian kroner or euro, a Banking Day is a day when banks are open for usual banking transactions (including currency and securities trading) in the country of delivery of the relevant financial instrument or in the country of the relevant currency.

19.6 For purposes of paying or determining interest rates in relation to euro, a Banking Day is a day when the TARGET system (Trans-European Automated

Real-time Gross settlement Express Transfer system) is open.

### 20. Key information document (retail clients)

20.1 The Bank is obliged to ensure that Customers qualifying as non-professional (retail clients) are provided with a key information document for certain Derivatives Transactions. A key information document is a standardised document, which sets out certain key information in a particular as regards the nature and features of the transaction including the costs and risk profile of the transaction as well as relevant performance information and certain other specific information which may be necessary for understanding the features of the transaction.

20.2 Customers are deemed to have accepted that the key information document will be provided by means of reference to the Bank's website, unless the Customer has notified the Bank otherwise. Customers can receive the key information documents on paper upon request.

20.3 Key information documents are available on and may be downloaded from the Bank's webpage ([www.danskebank.no](http://www.danskebank.no)).

### 21. Choice of law and legal domicile

21.1 This Agreement and the individual Derivatives Transactions are subject to Norwegian Law, with Oslo as legal venue.