

Climex  
Rules and Regulations  
for Spot contracts

Version 14 December 2008

## Introduction

Dear Reader,

The easy to use and low cost internet based trading platform “Climex”, offers spot trading and clearing in Carbon Emission Rights within the EU’s Emissions Trading Scheme. Climex is working with regional Distribution Partners throughout Europe to provide easy access to all potential participants, both small and large traders ranging from power producers and financial players to energy intensive users and small compliance industries. APX B.V. (based in The Netherlands) and APX Commodities Ltd. (based in the UK) are central clearing counterparties.

For more information see [www.Climex.com](http://www.Climex.com).

In order to become a member of Climex you will need to:

- either be registered with a Local Registry in the EU and hold at least one Operator Holding Account or be an Affiliate of such an entity and hold a Personal Holding Account;
- AND/OR be regulated by a local Financial Markets Regulator (for instance: AFM in The Netherlands, BAFIN in Germany or FSA in Great Britain) AND hold at least one Personal Holding Account with a Local Registry;
- AND/OR have a specific reason to trade EUAs, CERs and/or ERUs

On Climex you can apply for cleared SPOT trading. For SPOT trading the APX BV is the central counterparty and will therefore manage the counterparty risk. (For APX UK Members, APX Commodities Ltd. is the central counterparty who will manage the counterparty risk.)

If you would like to participate in SPOT trading on Climex you will need to sign

- the Climex Participation Contract with Climex and
- a Clearing Participation Agreement, being either the APX Agreement CASS with APX or the APX Master Service Agreement MSA with APX Commodities Ltd for APX UK Members.

This document contains the Climex Documentation belonging to the above mentioned contracts. The APX Agreement CASS including its Appendices is not enclosed in this document. Because the APX Appendix A also has to be signed, it is enclosed in the APX Agreement CASS.

The Climex Documentation contains:

- The Definitions section with all definitions of terms used in the complete documentation that is part of the Climex Information Package.
- The Climex General Terms and Conditions that manages the relationship between Climex BV the legal identity of Climex, and the individual participant.
- The Climex Trading Rules that describes the rules which apply to establishing transactions on the Climex trading platform.
- The Climex Rule Book that describes the proper and fair behavior that is expected of participants to prevent market abuse and how Climex might respond in case of market abuse.

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## CLIMEX DEFINITIONS

The following words or phrases, where they appear in the Climex General Terms and Conditions, Climex Trading Rules, Climex Rule Book or Climex Participation Contract Spot Contracts and/or the Clearing House Documentation have the following respective meanings.

"**AAU**" shall have the same meaning as the definition of "Assigned Amount Unit" in the Registry Regulation.

"**Access Code**" means the user name, password and other information required to use the Services.

"**Accession Requirements**" means the requirements the Applicant has to meet in order to access services provided by the Clearing House with regard to the Clearing and Settlement of Spot Transactions.

"**Act**" means the implementation act or acts enacting the EU ETS Directive by the Member State under the law of which that Participant is incorporated.

"**Advisory Committee**" means a committee set up by Climex that provides advice regarding the Climex Trading Platform, consisting of representatives of Climex and of Participants, as well as external advisors.

"**Affected Party**" shall have the meaning as defined in Article 16.1.

"**Affiliate**" means, in relation to a corporate body, any subsidiary or holding company of such corporate body, and any subsidiary of any such subsidiary or holding company from time to time.

"**Agreement**" means the agreement between Climex and the Participant, consisting of a Climex Participation Contract of which the Climex General Terms and Conditions, the Climex Trading Rules and the Climex Rule Book form part, on the basis of which Climex' services are provided to that Participant.

"**Appeals Committee**" means the committee where the Applicant or Participant has the possibility to appeal against decisions made by the Clearing House.

"**Applicant**" means any legal entity wishing to participate in the Clearing and Settlement of Spot Transactions.

"**APX**" means APX B.V. and APX Commodities Ltd.

"**APX CASS Participant**" means a Participant that has entered into a Clearing Participation Agreement with APX that has not been terminated.

"**APX UK Member**" means a Participant that has entered into a Clearing Participation Agreement with APX Commodities Ltd. that has not been terminated.

"**Authorised User**" means an employee or other representative of a Participant and whom that Participant has authorised to place Orders and conduct Transactions on the Climex Trading Platform.

"**Broker**" means an independent 3<sup>rd</sup> party that is able to enter Transaction Data agreed upon without the use of the Climex Trading Platform on behalf of 2 Participants. The broker must have signed a Climex Participation Agreement for Spot Contracts to have an Access Code for the Climex Trading Platform to be able to enter the Transaction Data and the Broker must be a Participant.

**"Broker fee"** means a fee payable to the Broker by Participants for whom the Broker enters the Transaction Data as referred to in Article 4.7 of the Climex Trading Rules.

**"Carbon Emission Rights"** means for the purposes of a Spot Transaction EU Allowances and/or CERs and/or ERUs held by the Clearing House within the Clearing House Holding Account which Carbon Emissions Rights are denominated in units of one (1) tonne of CO<sub>2</sub> and the Participant's balance as shall be shown in its Climex Holding Account. For the purpose of the Agreement, AAUs and RMUs shall not be considered Carbon Emission Rights.

**"CER"** or **"Certified Emission Reduction"** means a unit issued under the CDM mechanism pursuant to article 12 of the Kyoto Protocol and other relevant requirements and which is equal to one metric tonne of CO<sub>2</sub>e and which meets (i) the requirements of the EU ETS Directive and (ii) EU Linking Directive for use in the EU Emissions Trading Scheme. For the purpose of the Agreement, ICER and TCER are excluded from this definition.

**"C.E.T."** means Central European Time.

**"Clearing"** means the process whereby the Clearing House acts as counterparty for its members who are buyers and sellers of Spot Transactions and takes care of the Settlement of the Spot Transactions.

**"Clearing Accession Procedure"** means a the Accession Procedure Cass, specified in appendix A to the Clearing Participation Agreement, operated by the Clearing House which regulates the requirements which an Applicant must meet to be admitted to participate in the Clearing and Settlement of Spot Transactions.

**"Clearing House"** means the entity providing services with regard to the Clearing and Settlement of Spot Transactions on the basis of the Clearing House Documentation. The Clearing House for an APX UK Member will be, exclusively and at all times, APX Commodities Ltd.. The Clearing House for an APX CASS Participant will be, exclusively and at all times unless officially organised otherwise, APX B.V.

**"Clearing House Cash Account"** means an account in Euros that the Clearing House opens for a Participant but in the name of the Clearing House at a bank selected by the Clearing House with regard to which the relevant conditions are contained in the Clearing House Documentation.

**"Clearing House Documentation"** means any documentation entered into by a Participant and the Clearing House (or applicable between them) with regard to the Clearing and Settlement of Spot Transactions.

**"Clearing House Holding Account"** means a person holding account of the Clearing House for Carbon Emission Rights held at a Local Registry.

**"Clearing House Settlement System"** means the system provided and operated by the Clearing House whereby Spot Transactions in Carbon Emission Rights by Participants on the Climex Trading Platform are subject to Clearing and Settlement.

**"Clearing Participation Agreement"** means the participation agreement between the Clearing House and a Participant for the Clearing and Settlement of Spot Transactions.

**"Climex"** means New Values B.V a private limited liability company, acting under the name Climex and through the trademark Climex.

**"Climex Cash Account"** means an account denominated in Euros that the Clearing House opens for a Participant in the Climex Settlement System with respect to which the relevant conditions are contained in the Clearing House Documentation

**"Climex Definitions"** means this document.

**"Climex Documentation"** means any documentation entered into by the Participant and Climex with regard to the trade in Carbon Emission Rights (or applicable between them), including but not limited to the Climex General Terms and Conditions, Climex Trading Rules, Climex Rule Book, Climex Participation Contract and the Climex Definitions.

**"Climex General Terms and Conditions"** means the general terms and conditions of Climex that apply to the relationship between the Participant and Climex.

**"Climex Holding Account"** means an account with the Clearing House, funded by a Participant, denominated in Carbon Emission Rights, that the Clearing House opens for a Participant for the purpose of holding Carbon Emission Rights for collateral or settlement purposes with regard to which a Participant has granted the rights and powers as taken up in the Clearing House Documentation.

**"Climex Participation Contract"** means the participation contract entered into by Climex and the Participant.

**"Climex Rule Book"** means the rule book established by Climex that applies in addition to the Climex Trading Rules to the use of the Climex Trading Platform by a Participant.

**"Climex Settlement System"** means the system used by the Clearing House to define the Climex Cash Account and the Climex Holding Account and to store the real-time trade balances for Participants in the Climex Trading Platform

**"Climex Trading Platform"** means the electronic communication system, including all relevant hardware and software, operated by or on behalf of Climex that is accessible exclusively to Participants only in order to trade Carbon Emission Rights.

**"Climex Trading Rules"** means the trading rules established by Climex that apply to the use of the Climex Trading Platform by the Participant.

**"Collateral"** means for each Participant, the balance of the Clearing House Cash Account, the bank guarantee provided on behalf of the Participant and any other form of collateral lodged in a form acceptable to the Clearing House, pursuant to the Clearing House Documentation.

**"Community Independent Transaction Log"** has the meaning given to the 'independent transaction log' in Article 20 of the EU ETS Directive.

**"Compliance Period"** means the compliance period in which a Carbon Emission Right is allocated.

**"Confirmation"** means a confirmation of a Transaction that Climex sends to Participants electronically.

**"CO<sub>2</sub>e"** is the unit of measurement used to indicate the global warming potentials defined in decision 2/CP.3 of the Marrakech Accords or as subsequently revised in accordance with Article 5 of the Kyoto Protocol.

**"Dispute Committee"** means a committee set up or designated by Climex that is authorised to provide binding advice with respect to disputes based on a measure that Climex imposes on a Participant within the meaning of Article 4 of the Climex Rule Book.

**"Distribution Partner"** means an organisation which is contractually allowed to acquire Participants for Climex and with whom there are agreements to generate liquidity on Climex and to actively distribute and promote Climex Exchange in the agreed region.

**"Encumbrances"** means any liens, pledges, servitudes, security interests, adverse claims and other encumbrances.

**"ERU"** shall have the same meaning as the definition of "Emission Reduction Unit" in the EU Linking Directive.

**"EU Allowance"** means an "allowance" as defined in the EU ETS Directive that has been issued by a competent authority pursuant to Article 11(4) of the EU ETS Directive.

**"EU ETS Directive"** means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC as amended from time to time.

**"EU Linking Directive"** means Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms as amended from time to time.

**"EU Emissions Trading Scheme"** means the scheme of transferring EU Allowances, CERs and ERUs (a) between persons within the European Community and (b) between persons within the European Community and persons in third countries, in either case as recognised in accordance with, and subject to, the procedure of Article 24 of the EU ETS Directive established in, and as implemented by the national laws of, each member state.

**"Euro"** means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union.

**"Excess Emissions Penalty"** means a penalty in respect of excess emissions of carbon dioxide pursuant to the Relevant Legislation.

**"Fair and orderly market"** means a market shown in the order book, consisting of bids and offers and where no bid is higher than the lowest offer or where offer can be lower than the highest bid with the exception of a situation where the highest bid cannot match against the lowest offer due to the fact that partial transaction is not allowed.

**"Force Majeure"** has the meaning given in clause 16 of the Climex general terms and Conditions

**"Greenhouse Gases"** or **"GHGs"** means any of the six gases listed in Annex A to the Kyoto Protocol.

**"ICER"** shall have the same meaning as the definition of "Long Term CER" in the Registry Regulation;

**"Installation"** means an installation defined in Article 3 of the EU ETS Directive.

**"Intellectual Property Rights"** means all patents, trademarks, trade names, base rights, copyrights and other intellectual property rights and domain names.

**"Local Financial Markets Regulator"** means the relevant agency or body responsible for the regulation of financial markets in the relevant jurisdiction of a Participant as described in Article 22 of the Investment Services Directive (93/22/EU), as amended.

**"Local Registry"** means the registry established by any Member State pursuant to the EU ETS Directive and the Registry Regulation, in order to ensure the accurate accounting of the issue, holding, transfer, acquisition, surrender, cancellation and replacement of Carbon Emission Rights.

**"Member State"** means any one of the members states to the European Community from time to time.

**"New Authorised User Form"** is the form which a registered Participant needs to sign and send in if it wants to add a new or extra Authorised User.

**"Obvious error"** means an error made in the placing process of an Order or in entering an order which contains a clear error in the volume and/or price in relation to what is at that moment happening in the market.

**"Operator Holding Account"** means the account of a Participant as described in Article 4 of the Registry Regulation upon which the Relevant Authority annually credits the Carbon Emission Rights in accordance with the relevant national allocation plan.

**"Order"** means an offer to sell Carbon Emission Rights or a bid to purchase Carbon Emission Rights on the Climex Trading Platform.

**"Participant"** is any legal person or company permitted to place Orders and/or enter into Transactions with regard to Carbon Emission Rights on the Climex Trading Platform, and in respect of Spot Transactions meets the Accession Requirements and has completed the Clearing Accession Procedure. For the purposes of this definition a **"Participant"** may include (i) any Affiliate of any company which operates an Installation or (ii) any entity that is duly licensed by its Local Financial Markets Regulator and, in each case has a Person Holding Account.

**"Parties"** means Climex and the Participant, in the case of the Clearing Participation Agreement, the Clearing House and the Participant.

**"Party"** means Climex or the Participant, in the case of the Clearing Participation Agreement, the Clearing House or the Participant.

**"Permit"** means a greenhouse gas emissions permit issued to an Installation pursuant to the EU ETS Directive.

**"Personal Data"** means all data that Climex collects about a Participant, its Authorised Users and the Orders placed and Transactions conducted by the Participant.

**"Person Holding Account"** is an account of a Participant as described in Section 5 of the Registry Regulation held at a Local Registry.

**"Purchase Order"** means an order to purchase Carbon Emission Rights on the Climex Trading Platform.

**"Purchase Price"** means the price agreed by the Participant for the sale and purchase of Traded Carbon Emission Rights.

**"Registry"** shall have the same meaning as in the Registry Regulation.

**"Registry Regulation"** means the EU Commission Regulation No. 994/2008 for a standardised and secured system of registries pursuant to Article 19(3) of Directive 2003/87/EC and Article 6(1) of Decision 280/2004/EC, as amended from time to time.

**"Relevant Authority"** means the competent authority, the registry administrator and/or the Central Administrator as those terms are defined in the Registry Regulation or any other authority having power pursuant to the EU ETS Directive and/or the Registry Regulation to issue, allocate, block, suspend, refuse, reject, cancel or otherwise affect the transfer (whether in whole or in part) of Carbon Emission Rights.

**"Relevant Legislation"** means the Act and all rules, regulations and legislations under or pursuant thereto.

**"Relevant Tax"** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest or penalties) that is imposed by any government or other taxing authority directly in respect of any payment or transfer request under the Agreement other than stamp, registration, documentation or similar tax. Relevant Tax does not include, without limitation, income tax, taxes on emissions or the activities giving rise to emissions (as the term "emissions" is defined in Article 3 of the EU ETS Directive) or taxes imposed generally on a Participant's business.

"RMU" shall have the same meaning as the definition of "Removal Unit" in the Registry Regulation

**"Required Authorizations"** means all governmental and other licenses, authorizations, permits, consents, contracts and other approvals (if any) that are required, whether from any Member State, the EU or any agency or other emanation of any of the foregoing, to enable the Participant to fulfill any of its obligations under the Agreement.

**"Sales Order"** means an order for the sale of Carbon Emission Rights on the Climex Trading Platform.

**"Services"** means access to the Climex Trading Platform and the supply of services by Climex for the purposes of facilitating the Participant's Orders and Transactions as described in Article 4 of the Climex Trading Rules.

**"Settlement"** means in respect of a Spot Transaction the payment to or from the Climex Cash Account and the delivery to or from the Climex Holding Account, between a Participant and the Clearing House.

**"Specified Compliance Period"** means in relation to a Transaction and a Traded Carbon Emission Right Quantity, the compliance period of issue of Carbon Emission Rights as agreed between the Participants at the time of entering into the Transaction.

**"Spot Transaction"** means a Transaction which is concluded and settled in accordance with article 4 of the Climex Trading Rules.

"TCER" shall have the same meaning as the definition of "Temporary CER" in the Registry Regulation,

**"Traded Carbon Emission Right"** means in relation to a Transaction, a Carbon Emission Right that the selling Participant agrees to sell to the buying Participant and the buying Participant agrees to purchase from the selling Participant that is of the Specified Compliance Period.

**"Traded Carbon Emission Right Quantity"** means in relation to a Transaction the number of Traded Carbon Emission Rights.

**"Transaction"** means the acceptance of an Order by a Participant on the Climex Trading Platform, resulting in the purchase and sale of Carbon Emission Rights

**"Transaction Data"** means any data (i) to be provided by Climex to the Clearing House or (ii) to be provided to Climex pursuant to Articles 3.6 of the Climex Trading Rules, as the case may be.

**"Unusual situations"** means none intentional or accidentally created situations that occur at Climex despite the effort of the participant to comply with the Climex Rule Book.

**"Use-related fee"** or Transaction fee means the fee set by Climex in euro cents per tonne.

**"Value Added Tax" or "VAT"** (a) means any value added tax imposed by any Member State or (b) any replacement or other tax levied by reference to value added to a transaction.

**"Workdays"** means Monday to Friday, when banks in the Netherlands are open for business and which are not official holidays in the Netherlands, from 9 a.m. to 5 p.m. Central European Time.

## Climex General Terms and Conditions

### **Article 1. Applicability of these Climex General Terms and Conditions**

- 1.1 These Climex General Terms and Conditions apply to all of Climex' offers, the Agreement and the Services. If there is any conflict between the Clearing House Documentation, the Climex Participation Contract, the Climex General Terms and Conditions, the Climex Trading Rules, a Confirmation and/or the Climex Rule Book, the documents will prevail in the following order:
- (i) a Confirmation;
  - (ii) the Clearing House Documentation;
  - (iii) the Climex Participation Contract;
  - (iv) the Climex General Terms and Conditions;
  - (v) the Climex Trading Rules; and
  - (vi) the Climex Rule Book.
- Numbers (i), (ii), (iii), (iv), (v), and (vi) give the order with regard to conflicts between any Participant and Climex, a Participant and the Clearing House or any other conflicts.
- 1.2 The applicability of the Participant's general terms and conditions is excluded. With regard to any Orders and/or Transactions on the Climex Trading Platform the Participants hereby relinquish any rights they might have vis-à-vis each other pursuant to any other agreement with regard to trading in general and particularly with regard to trade in Carbon Emission Rights and/or similar rights and/or any derivatives rights on the aforesaid, with the exception of any rights arising from or in connection with the Climex Documentation and with the exception of any rights which both Participants have agreed with one another will apply vis-à-vis each other if a Confirmation is not issued by Climex including in the situation of the outcome of the verification procedure for reporting Transaction Data as mentioned in Article 4.6 and 4.7 of the Climex Trading Rules being that the balance of the Climex Cash Account and/or the balance of the Climex Holding Account of one or both Participants are not sufficient.
- 1.3 If any provision or any portion of a provision contained in the Agreement is void or nullified, the remaining provisions of the Agreement will remain fully in force, and the Parties will consult in order to agree on a new provision to replace the void or nullified provision, in which context the purpose and purport of the void or nullified provision will be taken into consideration to every extent possible.
- 1.4 Climex may at any time amend the Climex Documentation, in which case the amended Climex Documentation will also apply to Agreements that are already in force. Climex will inform the Participant at least one (1) month prior to the time at which any such amendment to the Climex Documentation enters into force. If the Participant does not accept an amendment to the Climex Documentation, the Participant will be entitled to terminate the Agreement as from the date on which the amendment to the Climex Documentation enters into force. This Article does not apply to adjustments of the Use-related fee referred to in Article 9.
- 1.5 Notwithstanding Article 1.4, Climex will inform the Participant as soon as possible if it is necessary to amend the Climex Documentation on the ground of amendments to any applicable law and regulations, in which case it will not be possible to terminate the Agreement unless the Agreement has been substantially amended.
- 1.6 If Climex exercises its rights pursuant to Article 1.4 above, such amendment of the Climex Documentation will not affect the validity of any previously executed and/or completed Transaction and, by virtue of such amendment, no such previously executed and/or completed Transaction which was at the time of its execution and/or completion valid under the Climex Documentation (as drafted at that time) may be deemed to be invalid or in any way a breach of the Participant's obligations under the Climex Documentation.

### **Article 2. Registration and Agreement**

- 2.1 In order to be able to make use of the Services, each Participant must (i) (a) be registered with a Local Registry and have an Operator Holding Account or (b) be duly licensed by its Local

- Financial Markets Regulator and be registered with a Local Registry and have a Person Holding Account or (c) be an Affiliate of an entity referred to in 2.1 (i) (a) above and have a Person Holding Account and (ii) conclude a Climex Participation Contract with Climex. In addition, Participants that wish to place Orders for Spot Transactions and wish to enter into Spot Transactions must (i) have an Clearing House Cash Account, a Climex Holding Account and a Climex Cash Account opened and (ii) conclude a Clearing Participation Agreement with the Clearing House. The Participant must complete the Climex Participation Agreement for Spot Contracts in full and provide Climex with any required additional information. If a possible Participant is not yet registered with a Local Registry, at that possible Participant's request Climex will, without any liability whatsoever for the accuracy thereof, provide information to it regarding the manner in which it must register with that Local Registry. A Participant may only place Orders for Spot Transactions and enter into Spot Transactions if and for so long as it has concluded a Clearing Participation Agreement with the Clearing House.
- 2.2 After receiving the Climex Participation Contract, signed by the Participant, together with all of the enclosures, Climex will verify the Participant's registration and the availability of its Operator Holding Account or Person Holding Account with the Local Registry and, if applicable, its status with the Local Financial Markets Regulator. The Agreement will be deemed concluded when Climex signs the Climex Participation Agreement for Spot Contract signed by the Participant.
  - 2.3 When the Agreement is concluded, the Clearing House will open an Clearing House Cash Account, a Climex Cash Account and a Climex Holding Account for the Participant. The Clearing House will provide the Participant with the conditions governing the Clearing House Cash Account and the Climex Cash Account, as contained in the Clearing House Documentation, before the Agreement is concluded. The costs of all payments made from the Clearing House Cash Account or the Climex Cash Account and all fees and proceeds from the Clearing House Cash Account will be charged to or credited to the relevant Participant. All statements related to the Clearing House Cash Account, and the Climex Cash Account will be sent only to the Clearing House and periodically to the Participant.
  - 2.4 Climex will inform the Participant of the current balance in the Climex Cash Account by making the balance visible to the Participant on the Climex Trading Platform and will inform the Participant about transactions in respect of the Climex Cash Account by providing an electronic overview at the end of each month of the Transactions that took place in the preceding month.
  - 2.5 In the Clearing House Documentation, the Participant will grant the Clearing House an irrevocable, unconditional, privative power of attorney in which (i) the Clearing House is authorised, for every Spot Transaction in which the Participant acts as a buyer of Carbon Emission Rights, to pay from the Clearing House Cash Account and/or Climex Cash Account that the Participant maintains the amount that the Participant owes in relation to a Transaction for the purchase of the Carbon Emission Rights; (ii) the Clearing House is authorised, for every Transaction in which the Participant acts a seller of Carbon Emission Rights, to deliver from the Climex Holding Account that the Participant maintains the Carbon Emission Rights that the Participant sells in that Transaction; (iii) the Clearing House is authorised, for every Transaction in which the Participant acts as a buyer or a seller of Carbon Emission Rights, to pay Climex from the Clearing House Cash Account or Climex Cash Account that the Participant maintains the Use-related fee referred to in Article 9.1 that the Participant owes for the purchase or sale of Carbon Emission Rights to Climex and (iv) the Clearing House is authorised, for every Transaction in which the Participant acts as a buyer or a seller of Carbon Emission Rights, to pay Climex from the Clearing House Cash Account or Climex Cash Account that the Participant maintains the Broker fee referred to in Article 9.3 that the Participant owes the Broker for entering the Transaction Data for the purchase or sale of Carbon Emission Rights to Climex.
  - 2.6 The Participant undertakes to have a sufficient balance at all times in (i) its Clearing House Cash Account and Climex Cash Account; and (ii) the Climex Holding Account that it maintains, in order to be able to meet all payment and delivery obligations arising from Spot Transactions that it concludes.

### **Article 3. Access to the Climex Trading Platform**

- 3.1 Upon receipt of duly executed copies of the Climex Participation Contract by Climex, Climex will provide the Participant with Access Codes, the number of which will be equal to the number of Authorised Users contained in the Climex Participation Contract.
- 3.2 Each Access Code is linked to an Authorised User and may not be provided to third parties by the Authorised User. The Participant will promptly inform Climex if an Authorised User is no longer working with the Participant and Climex will withdraw the Access Code. If the Authorised User is replaced by a new Authorised User the Participant needs to sign a 'New Authorised User Form' in which case Climex will a new Access Code to the new Authorised User.
- 3.3 The Participant itself solely is responsible for the security and use of the Access Codes.
- 3.4 The Participant or an Authorised User will not change the Access Codes. If the Participant or an Authorised User loses an Access Code, the Participant will promptly inform Climex and will take all measures requested by Climex.
- 3.5 Climex is entitled at any time to change any Access Code. Climex will inform the Participant as quickly as possible about any changes. Climex will make every effort to limit the inconvenience resulting from changing an Access Code with respect to the use of the Climex Trading Platform insofar as possible. For the avoidance of doubt, Climex shall not be liable for any loss suffered by the Participant as a result of any such changes.
- 3.6 Climex is not responsible or liable towards the Participant or any other person if the Participant loses or allows any persons not being an Authorised User to have access to its Access Code.
- 3.7 Climex can assume until notified to the contrary that the person using the Access Code is authorised to do so by the Participant.

### **Article 4. Services**

- 4.1 Climex will use it's best effort to supply the Services in a careful and competent manner and to provide access to the Climex Trading Platform as soon as possible after the Agreement has been concluded.
- 4.2 Climex may engage at its discretion any third parties in connection with the provision of the Services.
- 4.3 Climex may amend the technical specifications with respect to the Services, provided that the operation of the Services is not substantially changed due to any such amendment.
- 4.4 Climex and the Participant may refer to each other in marketing statements provided that they have the other Party's prior written permission to do so. Listing the full company name of Participant under the Participant's section on the Climex website is part of the membership agreement.

### **Article 5. Use of the Services**

- 5.1 The Participant must have suitable computer hardware, software and communication connections to use the Services, including, but not limited to, a personal computer with internet access (with Internet Explorer 5.5 or higher), Java Script and the acceptance of pop-ups from <http://climex.Climex.com>.
- 5.2 The Participant guarantees that it and the Authorised Users will comply with the Climex General Terms and Conditions, the Climex Trading Rules, the Climex Rule Book, the Clearing House Documentation and all applicable laws and regulations. Climex guarantees that it and its employees will comply with the Climex Documentation, the Clearing House Documentation and all applicable laws and regulations.
- 5.3 The Participant guarantees for Spot Transactions that it has legal title to the Carbon Emission Rights that it offers on the Climex Trading Platform and such Carbon Emissions Rights are not subject to any Encumbrances.

## **Article 6. Suspension of Services**

- 6.1 Climex is entitled to temporarily restrict or suspend the Services if necessary for technical reasons. Climex will inform the Participant as quickly as possible regarding any suspension of services and the expected date of resumption of the Services. For the avoidance of doubt, Climex shall not be liable for any loss suffered by the Participant as a result of any such suspension.
- 6.2 Whenever Climex sees fit or advisable in the interests of a fair and orderly market, Climex is entitled to restrict or suspend the Services and to correct Obvious errors. For the avoidance of doubt, Climex shall not be liable for any loss suffered by the Participant as a result of any such suspension.
- 6.3 Without prejudice to any other rights, Climex is entitled to temporarily suspend the Services if the Participant fails to comply with any obligation pursuant to the Agreement, unless the breach does not reasonably justify such suspension. Climex shall promptly notify the participant of such suspension and the reason for it, followed by a written confirmation.
- 6.4 Climex will resume the Services if the Participant complies with its obligations within a reasonable term once Climex is reasonably satisfied that the circumstances giving rise to such suspension no longer apply and shall notify Participant hereof.

## **Article 7. Helpdesk**

- 7.1 Climex has set up a customer service desk, which is available during Workdays for questions regarding the functioning of the Climex Trading Platform. The customer service desk is accessible by telephone +31 (0)30-2919940 and (+31-(0)20-3054073) or by e-mail ([csdesk@Climex.com](mailto:csdesk@Climex.com)).

## **Article 8. Privacy**

- 8.1 Climex processes Personal Data in the context of providing Access Codes and in order to register Orders and Transactions and settle transactions (payment and delivery), as well as insofar as it has a legal obligation to save such data and/or provide it to third parties.
- 8.2 The Participant acknowledges that Climex may process the Personal Data of the Participant's employees within the framework of the Services and the services of the Clearing House under the Clearing House Documentation.
- 8.3 The Participant guarantees that it has received its employees' approval, insofar as legally required, for Climex to process their Personal Data as referred to in Articles 8.1 and 8.2 above.

## **Article 9. Fee and payment**

- 9.1 The Participant shall pay Climex the fees referred to in the Agreement.
- 9.2 The Participant shall pay Climex a Use-related fee for each Transaction. For each Spot Transaction this Use-related fee shall be withheld by the Clearing House from the Climex Cash Account maintained by the Participant in accordance with Article 2.5. If (i) the Participant acts as the seller in a Spot Transaction, the Clearing House will deduct the Use-related fee due from the Purchase Price for the Carbon Emission Rights to be paid by it on the basis of the Transaction, and if (ii) the Participant acts as the buyer in a Spot Transaction, the Clearing House will add the Use-related fee due to the Purchase Price of the Carbon Emission Rights to be paid by the Participant to the Clearing House on the basis of the Transaction.
- 9.3 In case of a Transaction as referred to in Article 4.6, the Participant shall pay a Broker fee (and VAT, if any) for each Transaction for which the Transaction Data have been entered by the Broker. The Broker fee is agreed upon on a per-transaction basis. For each Transaction to which a Broker fee applies, each Participant confirms the applicable Broker fee on a per-transaction basis.
- 9.4 The fees to be charged by Climex are exclusive of value added tax (VAT).

- 9.5 Climex is entitled to adjust the Use-related fee or define other fees annually. Climex will inform the Participant in writing before 1 November of the year preceding the year in which the adjustment to the Use-related fee will take effect. If the Participant does not wish to accept an adjustment of the Use-related fee with respect to which Climex has notified it, the Participant is entitled to terminate the Agreement within fourteen (14) days after the date of the above-mentioned notification, effective from the date on which the amended annual fee or use-related fee would have entered into effect as indicated in Climex' notification. If the Participant does not avail itself of the opportunity to terminate the Agreement, the Participant will be bound by the adjusted Use-related fee.
- 9.6 If the Participant does not pay the fee that it owes within the agreed term, it may incur statutory interest on the outstanding amount without any notice of default being required. If the Participant fails to pay the amounts due after being given notice of default, it shall also be responsible for all out-of-court collection costs that Climex reasonably incurs.
- 9.7 The Participant may not set off the fees that it owes against any amount that Climex may owe it.

#### **Article 10. Intellectual Property Rights**

- 10.1 All Intellectual Property Rights to or in connection with the Services and the Climex Trading Platform are vested solely in Climex or its licensors.
- 10.2 Subject to Article 14, Climex will indemnify the Participant against all damage and costs resulting from or related to any legal claim based on the allegation that the use of the Services and/or the Climex Trading Platform infringes a third party's intellectual property right or industrial property right, provided that the Participant promptly informs Climex in writing about the existence and content of the claim and leaves the handling of the case, including agreeing on any settlements, entirely to Climex. Within that context the Participant will fully cooperate with Climex so that Climex can defend itself against such claims.
- 10.3 If it has been legally established that the Services infringe any intellectual property right or industrial property right of a third party, or if in Climex' opinion there is a reasonable chance that such an infringement has occurred, the Participant's sole right will be to have Climex, at Climex' cost and at its own choice, ensure that (i) the Participant acquires the right to continue using the Services and the Climex Trading Platform; or (ii) the Services are replaced or adjusted so that they no longer constitute an infringement; or (iii) if Climex cannot reasonably be expected to realise either of those options, the Agreement is terminated.

#### **Article 11. Confidential information**

- 11.1 Both Parties guarantee that all of the confidential information received from the other Party before and after the conclusion of the Agreement will be kept secret and that during a period of two (2) years after the date on which the confidential information is received, the receiving Party will not make that information known, in full or in part, to anyone other than its own representatives who must be aware of the confidential information, or the Clearing House (if the information relates to Spot Transactions), without the prior written permission of the other Party or unless otherwise permitted pursuant to the Agreement. Information will in any event be deemed confidential if the Parties specify that it is confidential or if the other Party should reasonably understand that it is confidential in view of its nature. The Access Codes and any information with regard to Orders or Transactions are considered confidential information. Climex may disclose confidential information to a third party in connection with any statistical research or to price reporting agencies as long as such information does not directly relate to one single Transaction or such disclosure could not reveal the identity of any Party.
- 11.2 In order to comply with the obligations referred to in this Agreement, the receiving Party will take the same measures to protect the information that it takes in order to protect its own similar confidential information. The receiving Party will not be liable in the event that confidential information is unintentionally made known, provided that (i) in order to prevent the confidential information becoming known, it exercised the same degree of care that it applies with respect to its own information of similar importance; and (ii) upon discovering that the information has been

unintentionally made known, it takes every measure reasonably possible in order to prevent the confidential information from being made known any further.

- 11.3 The Participant will impose on the Authorised Users the duty of confidentiality referred to in Article 11.1 above.

## **Article 12. Term and termination of the Agreement**

- 12.1 The Agreement is entered into for a period of one (1) year starting on the date Climex receives the executed Agreement (and if the Participant wishes to enter into Spot Transactions, the executed Clearing Participation Agreement and expiring on the same day a year thereafter. Upon the lapse of the initial term, the Agreement will be automatically renewed, each time for a period of one (1) year, unless one of the Parties informs the other Party in writing, no later than one (1) month before the current term lapses, that it does not wish to renew the Agreement.
- 12.2 The Agreement shall automatically terminate at the moment the Participant (i) loses its Permit, (ii) no longer operates an Installation, (iii) no longer has an Operator Holding Account, (iv) loses its license from its Local Financial Markets Regulator (if applicable), (v) ceases to be an Affiliate of an entity referred to in 2.1 (i) (a), or (vi) the Clearing Participation Agreement terminates.
- 12.3 The Participant shall forthwith notify Climex of the occurrence of any facts listed in 12.2 or if the occurrence of such events can be reasonable expected within two (2) calendar months by the Participant.
- 12.4 Either Party may terminate the Agreement extra judicially if the other Party fails to comply with any of its obligations under the Agreement and that breach is not remedied within a reasonable term after being notified in detail and in writing of the breach.
- 12.5 Either Party may terminate the Agreement in full or in part by giving written notice, effective immediately, without any notice of default or court intervention being required, if (i) the other Party is granted a suspension of payments, whether or not provisional; (ii) a petition in bankruptcy is filed or pending or granted with respect to the other Party; (iii) the other Party's business is wound up or terminated, other than for the benefit of a reconstruction or consolidation of companies; (iv) the other Party violates the duty of confidentiality within the meaning of Article 11 above; or (v) due to legislation or an amendment to legislation, the other Party is not or is no longer able to comply with its obligations pursuant to the Climex Documentation, and in the case of Climex a change in the interpretation of the legislation or an amendment to legislation.
- 12.6 Neither Party will owe any damages due to the termination of the Agreement pursuant to this Article.

## **Article 13. Consequences of the termination of the Agreement**

- 13.1 If the Participant has already received Services at the time of termination within the meaning of Articles 12.2 and 12.4 above, those services and the related payment obligations will not be subject to cancellation unless Climex is in default with respect to those Services. Fees that Climex invoiced before the termination in connection with the Services that it already provided in accordance with the Agreement will remain due in full, with due observance of the provisions contained in the foregoing sentence, and will be immediately due and payable at the time of dissolution.
- 13.2 Upon termination of the Agreement, regardless of the reason for termination, the Participant will immediately cease using the Services and Climex will block the Access Codes.
- 13.3 Upon termination of the Agreement, regardless of the reason for termination, the power of attorney that the Participant provided pursuant to Article 2.5 will lapse, with the exception that it shall remain in force in as far as such is necessary for the settlement of Spot Transactions that already existed at the time of termination of this Agreement.
- 13.4 Termination of the Agreement shall in and of itself have no effect on the outstanding Spot Transactions, if any, of the Participant.
- 13.5 Upon termination Climex shall procure that (i) any balance held by the Participant in its Clearing House Cash Account or Climex Cash Account is remitted back to that Participant at a bank

account as designated by that Participant for that purpose, and (ii) any Carbon Emission Rights held by the Participant in its Climex Holding Account are remitted back to the Participant at any Operator Holding Account or any Person Holding Account designated by the Participant for that purpose.

#### **Article 14. Liability**

- 14.1 Unless damage arises from an intentional act or gross negligence on the part of (i) one of the Parties, or (ii) one of the Parties' executives, the Parties will in no event be liable towards each other for any damage, either pursuant to the Agreement or on the basis of a wrongful act, unless otherwise expressly provided in this Article.
- 14.2 Any liability for damage other than damage within the meaning of the first paragraph of this Article, including but not limited to loss of income, profit or goodwill, lost computer time, replacement costs, an Excess Emissions Penalty, destruction or loss of or damage to data, lost savings, damage due to business stagnation or business damage, is excluded.
- 14.3 Climex is not liable for any damage suffered by a Participant acting as a seller in a Transaction if it is not possible for a buyer in a Transaction to pay any funds that might be owed to the selling Participant.
- 14.4 Climex is not liable for any damage suffered by a Participant acting as a buyer in a Transaction if it is not possible for a seller in a Transaction to deliver any Carbon Emission Rights that might be owed to the buying Participant.
- 14.5 The Participant acknowledges that the Clearing House is entrusted with the Clearing and Settlement of Spot Transactions. Climex is not liable for any damage that the Participant might incur in connection with or arising out of any action or omission of the Clearing House or any persons belonging to the Clearing House in connection with the Clearing and Settlement of Spot Transactions, or any Carbon Emission Rights or funds to a designated account of a Participant.
- 14.6 Climex cannot be held liable for damages that may be incurred as a result of default in VAT applications in any Transactions between a Participant and the Clearing House.
- 14.7 A Party's liability for non-performance of the Agreement will arise only if the other Party gives the defaulting party immediate written notice of default while granting a reasonable term to remedy the default, and the defaulting Party continues to be in default with respect to compliance with its obligations after that term has lapsed. The notice of default must contain a description of the breach that is as detailed as possible in order to allow the defaulting party to respond adequately.
- 14.8 This Article does not regulate the liability amongst any two Participants.

#### **Article 15. Indemnification**

- 15.1 Subject to Article 14, the Participant will indemnify Climex against claims of other Participants or the Local Registry or the Clearing House or any other regulatory or governmental agency as a result of (i) actions on the part of the Participant or an Authorised User that are contrary to the Climex Documentation or the Clearing House Documentation or (ii) the provision of incorrect information to Climex, the Clearing House or the Local Registry or any other regulatory or governmental agency.
- 15.2 Subject to Article 14, the Participant will indemnify Climex against claims of its employees in the event that it fails to obtain required approval of its employees for Climex to process their Personal Data as referred to in Article 8.1.

#### **Article 16. Force Majeure**

- 16.1 Force Majeure means any event, omission or circumstance or combination of them which is beyond the reasonable control of the Party affected by the event, omission or circumstance acting and having acted reasonably (**Affected Party**) that prevents or delays the Affected Party in the performance of its obligations under the Agreement but only if and to the extent that it is not within the Affected Party's control and where both:

- a. such prevention or delay; and
  - b. the occurrence and the effects of such event, omission or circumstance, could not have been prevented, overcome or remedied by the exercise by the Affected Party of a standard of foresight, care and diligence consistent with that of a prudent and competent person under the circumstances which standard shall include prudent practices including the expenditure of reasonable sums of money.
- 16.2 Neither Party will be obliged to comply with any obligation, other than the obligation to make payments of money, during the continuation of a Force Majeure (including but not limited to government measures, power failures, disruptions in the telecommunications network) which prevents it from complying with such obligation.
- 16.3 In the event of Force Majeure, the Affected Party shall:
- a. provide prompt written notice to the other Party of the occurrence of the event or circumstances, giving an estimate of its expected duration and the probable impact on the performance of the affected obligations;
  - b. use its reasonable endeavours to remove or overcome the event or circumstance of Force Majeure, provided that nothing shall require a Party to accede to demands deemed to be unreasonable by such Party in connection with a strike or labour dispute;
  - c. provide notice to the other Party of the cessation of the event or circumstance giving rise to such Force Majeure; and
  - d. resume the performance of the obligation which it was unable to fulfil as a result of such Force Majeure as soon as reasonably practicable after the removal of the event or circumstance giving rise to such Force Majeure.
- 16.4 If the Force Majeure continues for more than ninety (90) days, the Parties will be entitled to terminate the Agreement extra judicially, in which case all performances already rendered under the Agreement will be settled proportionally without the parties owing each other anything further.
- 16.5 This article does not cover Force Majeure with respect to Transactions amongst Participants. The Clearing House Documentation covers Force Majeure in connection with any Spot Transactions between the Participants and the Clearing House.

#### **Article 17. Other provisions**

- 17.1 The Parties acknowledge that an electronic signature has the same legal force as a handwritten signature.
- 17.2 During the term of the Agreement and for a period of six (6) months after its termination, neither Party will hire employees of the other Party who were involved in the performance of the Agreement or otherwise allow such employees to perform work for it.
- 17.3 Climex is entitled to transfer to a third party the rights and obligations arising from the Agreement. A Participant must obtain prior written permission from Climex if it wishes to transfer rights and/or obligations arising from the agreement to a third party.

#### **Article 18. Applicable law and disputes**

- 18.1 The Agreement and Services are governed by English law.
- 18.2 The Parties will make every effort to amicably settle any disputes related to the Agreement and/or the Services, if necessary by means of meetings amongst the Parties' directors.
- 18.3 Any disputes amongst Climex and the Participants that cannot be resolved in spite of the efforts referred to in the 18.2 will be settled by the Dispute Committee.

## Climex Trading Rules

### **Article 1. General**

- 1.1 The Participant may use the Climex Trading Platform and the Services exclusively to place Orders and to perform Transactions.
- 1.2 The Services may be used only by Authorised Users. Only Authorised Users are entitled to place Orders and perform Transactions. Authorised Users may do so only by using the Access Code assigned to them.
- 1.3 The Participant will ensure that the Authorised Users do not disclose the Access Codes to third parties or allow third parties to use the Climex Trading Platform or the Services without the written consent and approval of Climex.
- 1.4 The Participant guarantees that it is entitled to place Orders and perform Transactions and that the Authorised Users are entitled to place Orders and perform Transactions on behalf and for the account of the Participant.
- 1.5 All Orders placed and Transactions performed on the Climex Trading Platform are business-to-business Orders and business-to-business Transactions.

### **Article 2. Information and Accounts**

- 2.1 The Participant guarantees the correctness and accuracy of the data and information that it states and inputs on the Climex Trading Platform and that it is able to perform its obligations in respect of any Transaction or Spot Transaction to which it is a party in accordance with the Climex Trading Rules.
- 2.2 Climex is not obliged to verify the correctness and accuracy of the information that the Participant states on the Climex Trading Platform.
- 2.3 The Clearing House will open an Clearing House Cash Account and a Climex Cash Account in the Participant's name for each Participant that wishes to enter into Spot Transactions. Climex will individually inform the Participants as soon as possible after their Clearing House Cash Account and Climex Cash Account have been opened. Participants cannot place Orders for Spot Transactions or perform Spot Transaction until an Clearing House Cash Account and a Climex Cash Account have been opened for that Participant and such Participant has entered into a Clearing Participation Agreement with the Clearing House. The Clearing House is exclusively authorised to make payments from the Clearing House Cash Account and the Climex Cash Account and such authorisation is irrevocable during the term of the Agreement. The contra account with respect to a payment from the Clearing House Cash Account can only be an account of Climex with regard to any fees to be paid to Climex pursuant to Article 9 of the Climex General Terms and Conditions, or the designated current account of the Participant, another Clearing House Cash Account or an account of the Clearing House. Without prejudice to the provisions of Article 4.8, the Clearing House will transfer (i) an amount from the Clearing House Cash Account to any bank account by the Participant and (ii) Carbon Emission Rights from the Climex Holding Account to an account maintained by the Participant with the Local Registry, all at the Participant's first request. On the request of the Clearing House, the Participant shall forthwith provide Climex and the Clearing House with verified specimen signatures of authorised signatories of the Participant, signed for approval by the managing director(s) of the Participant. The Participant shall forthwith notify Climex and the Clearing House of any changes with regard to the authorised signatories. The costs of all payments made from the Clearing House Cash Account or the Climex Cash Account and the fees and proceeds from the Clearing House Cash Account or the Climex Cash Account will be charged to or credited to the relevant Participant.

- 2.4 Climex will inform each Participant which the Clearing House Holding Account and Climex Holding Account must be used for the performance of the Agreement. The designated Climex Holding Account is the exclusive account to which and from which Carbon Emission Rights will be transferred in connection with Spot Transactions, and the verification procedure referred to in Articles 4.8 will be conducted only with respect to the designated Climex Holding Account. A party can be admitted as a Participant only after a Climex Holding Account as referred to above has been designated with respect to that party.

### **Article 3. Orders and Transactions**

- 3.1 By providing the Climex Trading Platform, Climex offers the Participant an electronic, central venue for placing Orders and performing Transactions in Carbon Emission Rights with other Participants for its own account.
- 3.2 The Participant is entitled at all times to withdraw an Order until the time of a Transaction within the meaning of Articles 4.2, 4.3, 4.4, 4.5, 4.6 and 4.7.
- 3.3 Climex saves the history of every Order and every Transaction and all activities related to Orders and Transactions.
- 3.4 Climex keeps the Participants' identity anonymous in relation to Orders, Transactions and Spot Transactions.
- 3.5 The Participant independently establishes the number and type of Carbon Emission Rights it wishes to offer or request and at what price.
- 3.6 For each Order and Transaction, the Participant is required to state (i) the price, (ii) the number of Carbon Emission Rights, (iii) the expiry date of the Order, (iv) whether the Carbon Emission Rights are a CER, an ERU or an EU Allowance, (v) the Compliance Period of the Carbon Emission Rights (for EU Allowances only), (vi) the other Participant(s) involved in the Transactions (for Transactions as referred to in Articles 4.6 and 4.7 only) and (vii) other required data specified by Climex. All prices mentioned in Orders shall be expressed in Euro. Orders cannot be made subject to any conditions or constraints other than those that are explicitly accepted by Climex. Climex has the irrevocable right to subject Orders to certain specifications, including, but not limited to, a maximum or a minimum size of the Order.
- 3.7 A person who is not a party to the Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 3.8 Before the notification for confirmation is sent to the other Participants specified in the Transaction Data and before the Order is placed on the Climex Trading Platform, the Participant is required to electronically confirm to Climex the Transaction Data for each Order. The Climex Trading Platform is entitled to reject the display of Sales Orders if the relevant Participant does not have enough Carbon Emission Rights (of the relevant type) in its Climex Holding Account. If a Participant places a Sales Order on the Climex Trading Platform, such Participant irrevocably authorises Climex to block the portion of the Participant's Climex Holding Account that pertains to the Carbon Emission Rights to which the Sales Order is related. The Climex Trading Platform is entitled to reject the display of Purchase Orders if the relevant Participant does not have enough Collateral (calculated in accordance with Article 4.8). If a Participant places a Purchase Order on the Climex Trading Platform, such Participant irrevocably authorises Climex to block the portion of the Participant's Collateral that pertains to the amount of the Purchase Order, including the Use-related fee and VAT (if any). The same applies to the buying and selling Participant as specified in the Transaction Data as referred to in Articles 4.6 and 4.7. The prices and quantities of Carbon Emission Rights offered and requested for Spot Transactions as well as the Compliance Period of the Carbon Emission Rights offered and requested for Spot Transactions are visible to all Participants on the Climex Trading Platform. The Carbon Emission Right prices stated on the Climex Trading Platform are exclusive of VAT. The Transaction Data as entered and referred to in Article 4.6 and 4.7 are not visible to other Participants on the Climex Trading Platform until all Participants in the Transaction have confirmed the Transaction Data.

- 3.9 With regard to the ownership of Carbon Emission Rights traded in Spot Transactions their presence on the respective Climex Holding Account is binding with respect to determining their ownership.

#### **Article 4. Trade package Spot Transactions**

- 4.1 The Participant has access to information about the developments of the price and volume of Orders and Spot Transactions on the Climex Trading Platform on a daily basis 24 hours every 7 days per week. Climex offers the possibilities referred to in Articles 4.2, 4.3, 4.4, 4.5, 4.6 and 4.7 to trade Spot Transactions on the Climex Trading Platform on Workdays.
- 4.2 On Workdays, Climex offers an auto-deal function. The auto-deal function is activated by entering the desired Order. The auto-deal function automatically searches for one or more Orders the conditions of which correspond to the data in the Order entered by the Participant. If two Orders match, a Spot Transaction will be concluded and Climex will conduct the verification procedure referred to in Article 4.8.
- 4.3 In addition to the auto-deal function described in Article 4.2, the Participant has on Workdays the option to negotiate an Order anonymously with one other Participant at any given time. This option is limited to a maximum period of a half Workday a week set by Climex. Climex will block the Order that the Participants are negotiating on the Climex Trading Platform, so that other Participants cannot perform Transactions in relation to that Order. The Order blockade referred to in the previous sentence will be lifted if (i) a Spot Transaction is concluded by two Participants, (ii) either Participant terminates the negotiations, or (iii) the maximum time-limit set for the negotiation procedure is exceeded and the negotiations are terminated by the Climex Trading Platform, whichever occurs earlier. When Participants have negotiated an Order and the Participant that placed the Purchase Order or Sales Order confirms or causes confirmation of its acceptance of the Order to the anonymous Participant that placed the Sales Order or Purchase Order, respectively, a Spot Transaction is concluded and Climex will conduct the verification procedure referred to in Article 4.8.
- 4.4 In addition to directly negotiating an Order, the Participant on Workdays has the option to post a response to any Order entered. The response can contain an adjusted price and/or quantity proposed. The Participant that originally entered the Order that is subject to a response, can react to the response by accepting it or rejecting it. If the Participant that originally entered the Order accepts the response, a Spot Transaction is concluded for the amount and/or price of the response and Climex will conduct the verification procedure referred to in Article 4.8.
- 4.5 When a buying Participant directly accepts a Sales Order for Carbon Emission Rights from another Participant on a Workday without further negotiations, or when a selling Participant directly accepts a Purchase Order for Carbon Emission Rights from another Participant on a Workday without further negotiations, a Spot Transaction is concluded and Climex will conduct the verification procedure referred to in Article 4.8.
- 4.6 In addition to the transaction mechanisms as explained in Article 4.2, 4.3, 4.4 or 4.5, a buying and a selling Participant can agree on the conditions for a Transaction without the use of the Climex Trading Platform. In such case, the buying and selling Participant may wish to report the Transaction to the Climex Trading Platform to have the verification procedure conducted as referred to in Article 4.8. In order to do so, either the buying or selling Participant enters the Transaction Data, including the identity of the other Participant involved in the Transaction. The other Participant will receive a notification by e-mail requesting the confirmation of the Transaction Data on the Climex Trading Platform. After confirmation of the Transaction Data Climex will conduct the verification procedure referred to in Article 4.8.
- 4.7 In addition to reporting the Transaction as mentioned in Article 4.6, the buying and selling Participant may wish to have the Transaction Data (which they agreed upon without the use of the Climex Trading Platform) reported to the Climex Trading Platform by a Broker to have the verification procedure conducted as referred to in Article 4.8. In order to do so, the Broker enters the Transaction Data, including the identity of both Participants involved in the Transaction. Both Participants will receive a notification by e-mail requesting the confirmation of the Transaction

- Data on the Climex Trading Platform. After confirmation of the Transaction Data by both Participants, Climex will conduct the verification procedure referred to in Article 4.8.
- 4.8 After a Spot Transaction has been concluded within the meaning of Article 4.2, 4.3, 4.4, 4.5, 4.6 or 4.7, Climex and/or the Clearing House will conduct a verification procedure to establish that: (i) at the time the parties reached agreement on the Spot Transaction or reported a Spot Transaction within the meaning of Article 4.2, 4.3, 4.4, 4.5, 4.6 or 4.7, the Participant acting as the buyer of Carbon Emission Rights had a sufficient balance in its Climex Cash Account, free and clear of any Encumbrances to pay the Purchase Price payable pursuant to the Spot Transaction (increased by the fee referred to in Article 9 of the Climex General Terms and Conditions and VAT, if any) and (ii) at the time the parties reached agreement on the Transaction, the Participant acting as the seller of Carbon Emission Rights had a sufficient number of Carbon Emission Rights (of the relevant type) for the Transaction in its Climex Holding Account, free and clear of any Encumbrances. In the verification procedure the buying Participant's available Climex Cash Account balance will arithmetically be reduced for other, unsettled Spot Transactions conducted by that Participant in which it acts as the buyer. In the verification procedure the selling Participant's available Climex Holding Account balance will arithmetically be reduced for other, unsettled Spot Transactions conducted by that Participant in which it acts as the seller of Carbon Emission Rights of the relevant type. Climex and the Clearing House shall not be liable for incorrect information provided by any party other than itself. Climex, or the Clearing House will conduct the verification procedure as quickly as possible and inform the relevant Participants about the outcome within 5 minutes. Each Participant irrevocably authorises Climex, and the Clearing House to carry out the verification procedure in accordance with this Article 4.8.
- 4.9 If it appears from the verification procedure stipulated in Article 4.8 that any or both of the Participants are unable to perform the Spot Transaction, the Spot Transaction will cease to apply with immediate effect but without prejudice to any rights the Participants might have had vis-à-vis each other as described in Article 1.2 of the Climex General Terms and Conditions. In the event that any or both of the Participants are unable to perform the Spot Transaction within the meaning of Article 4.8, the Participants will not owe the Use-related fee within the meaning of Article 9.1 of the Climex General Terms and Conditions. Climex will repay any Use-related fees paid and transfer them to the Climex Cash Account. Climex or the Clearing House will inform the relevant Participants (by electronic means) about the inability as aforesaid by any Participant to perform the Spot Transaction and the relevant Orders will thereafter promptly made available on the Climex Trading Platform. Climex shall in no circumstances be liable towards any Participant by virtue of any action taken in accordance with this Article.
- 4.10 If a Spot Transaction has been concluded and the verification procedure stipulated in Article 4.8 demonstrates that the Collateral balance and the Climex Holding Account balance are sufficient, Climex will send the relevant Participants a Confirmation and the Transaction will be cleared and settled in accordance with the rules and procedures set forth in the Clearing House Documentation. Climex is exclusively authorised to inform the Clearing House of the concluded Spot Transaction in accordance with Article 4.2, 4.3, 4.4, 4.5, 4.6 or 4.7 on behalf of the Participants.
- 4.11 The conclusion and verification of a Spot Transaction shall not give rise to a concluded contract for the sale and purchase of Carbon Emission Rights under the Climex Documentation unless and until a Confirmation is issued by Climex and at that point the relevant Clearing House becomes the counterparty to each side of the Spot Transaction.

## Climex Rule Book

This Rule Book applies to all Orders placed and Transactions performed on the Climex Trading Platform.

Capitalised terms are defined in the Climex Definitions.

### **Article 1. Use of the Climex Trading Platform**

- 1.1 The Participant will not use the Climex Trading Platform or the Services for any purpose other than to place Orders and to perform Transactions.
- 1.2 When placing Orders and performing Transactions, the Participant will act responsibly and competently and will exercise the necessary care and dedication that can be expected from a diligent Participant.
- 1.3 When placing Orders and performing Transactions, the Participant will act in accordance with (i) the Climex Documentation, (ii) the Clearing House Documentation and (iii) all applicable laws and regulations.
- 1.4 The Participant guarantees the correctness and accuracy of the Orders or Transaction Data that it places on the Climex Trading Platform.
- 1.5 On the Climex Trading Platform, the Participant will refrain from, among other things, (i) acting in a manner that could have a negative effect on confidence in the Climex Trading Platform or that could affect the integrity of the Climex Trading Platform; (ii) placing Orders or performing Transactions with the intention of misleading other Participants; (iii) acting in a manner intended to artificially influence or manipulate the price or value of the Carbon Emission Rights; (iv) placing sham Orders or performing sham Transactions; and/or (v) placing Orders or performing Transactions that create a false or fraudulent impression of the market for or the price or value of Carbon Emission Rights.
- 1.6 The Participant will not in any way manipulate the technology of the Climex Trading Platform. The Participant will not in any way affect the technical operation of the Climex Trading Platform. Among other things, the Participant will not (i) breach or attempt to breach the security of the software, network, servers, data or computers connected to the Climex Trading Platform or those of a third party that hosts the Climex Trading Platform; (ii) distribute software on the Climex Trading Platform that is aimed at jeopardising the privacy or security of the Climex Trading Platform and/or its Participants; or (iii) gain unauthorised access to the Climex Trading Platform or affect its integrity in any way.
- 1.7 The Participant will not use the Climex Trading Platform (i) to send large numbers of e-mails with the same content ('spam'); (ii) to send or instruct others to send large numbers of unsolicited e-mails to one particular e-mail address ('mail bombing'); (iii) for any other improper, unlawful or prohibited use; and/or (iv) to gain access to the computers or computer systems of other Participants without permission.

### **Article 2. Use of insider knowledge**

- 2.1 A Participant that has insider knowledge is prohibited from placing Orders and performing or effecting Transactions on the Climex Trading Platform.
- 2.2 The Participant is prohibited from (i) passing on insider knowledge to another party, other than in the normal performance of one's work or in one's occupation or position; and (ii) instructing others to place Orders or perform Transactions if the Participant has insider knowledge.
- 2.3 Insider knowledge is awareness of special events or circumstances related to Carbon Emission Rights or the rights to which Carbon Emission Rights relate, to the supply of and demand for Carbon Emission Rights, or to the trade in Carbon Emission Rights:
  - a. that have not been made public; and
  - b. with respect to which disclosure can reasonably be expected to affect the price of Carbon Emission Rights, regardless of whether the price would go up or down.

- 2.4 The prohibition contained in Article 2.1 does not apply to:
  - a. a Participant acting as an intermediary that, having insider knowledge with respect to the actions of its principal(s), acts in good faith in the service of a principal;
  - b. a Participant whose employees, acting in accordance with the principle of good faith, are involved in performing or effecting the Transaction but do not have insider knowledge that is available elsewhere within the Participant;
  - c. a Participant that performs or effects a Transaction in order to comply with an exigible obligation that already existed at the time at which the Participant obtained the knowledge of the special event or circumstance referred to in Article 2.3; or
  - d. a Participant that performs or effects a Transaction that is necessary to comply with a pre-existing obligation to supply Carbon Emission Rights, on the understanding that there is no such necessity if and insofar as the Participant already has Carbon Emission Rights that it is not obliged to supply.
- 2.5 The prohibition contained in Article 2.2 does not apply to employees of a Participant who are involved in providing recommendations and do not have insider knowledge.
- 2.6 Knowledge that is available to a Participant that is nothing more than the Participant's own intentions does not constitute insider knowledge.

### Article 3. Monitoring

- 3.1 Notwithstanding the provisions contained in Article 3.8 of the Climex Trading Rules, Climex is not obliged to verify the accuracy of the Orders that the Participant refers to on the Climex Trading Platform.
- 3.2 Climex may monitor Orders and Transactions in order to ensure that the Participant acts in accordance with the Climex General Terms and Conditions, the Climex Trading Rules, the Climex Rule Book and the applicable laws or regulations.
- 3.3 Climex is entitled to investigate a Participant if it has grounds to assume that the Participant is acting contrary to the Climex General Terms and Conditions, the Climex Trading Rules, the Climex Rule Book and/or applicable laws or regulations. Climex will inform the Participant if it commences such an investigation, unless informing the Participant would not be in the interest of the investigation.
- 3.4 Climex is entitled to take measures at its discretion with respect to Orders and Transactions that in its reasonable opinion are contrary to the Climex General Terms and Conditions, the Climex Trading Rules, the Climex Rule Book and/or applicable laws or regulations, including issuing warnings or instructions, deleting an Order or temporarily suspending the Services in accordance with Article 6.2 of the Climex General Terms and Conditions. The Participant is obliged to comply with Climex' instructions promptly on receipt of such instructions.
- 3.5 Climex will immediately inform the Participant about any measures that it takes. A Participant may object to a measure taken by Climex in accordance with the procedure described in Articles 5 and 6 below.

### Article 4. Dispute Committee

- 4.1 Climex may set up a Dispute Committee, consisting of at least five persons including one Chair. Climex will appoint the Chair, after hearing the Advisory Committee. The Chair will appoint the other members of the Dispute Committee.
- 4.2 Climex employees may not be members of the Dispute Committee. The members of the Dispute Committee may not be connected to the Participant through any position and may not have been connected to the Participant in any position for a period of one year prior to appointment.
- 4.3 All appointments are for a period of three years. Each member of the Dispute Committee may be reappointed three times, in the manner indicated in Article 4.1 above in respect of the initial appointment.
- 4.4 If there is an interim vacancy in the Dispute Committee, the Chair will appoint a new member as soon as possible. If it is the Chair's position that is vacant, Climex will appoint a new Chair as quickly as possible, after hearing the Advisory Committee. A person who is appointed to fill an

interim vacancy will step down at the time at which the person whom he or she has replaced would have stepped down.

- 4.5 Climex may appoint former members of the Dispute Committee as deputy members, after hearing the Advisory Committee. Under special circumstances, the Chair of the Dispute Committee may call on a deputy member to participate in certain Dispute Committee work. Such a deputy member has advisory powers but does not have the right to vote on Dispute Committee resolutions.
- 4.6 If the Chair is absent, the Dispute Committee will appoint a temporary Chair from its members. If the Chair is absent for more than two months, Climex will appoint a deputy Chair for the duration of the original Chair's absence, after hearing the Advisory Committee.
- 4.7 Climex will appoint a Secretary on the recommendation of the Chair of the Dispute Committee. The Secretary is not a member of the Dispute Committee. The Secretary provides support services for the Dispute Committee.

## **Article 5. Dispute Procedure**

- 5.1 If the Participant disagrees with a measure that Climex takes within the meaning of Article 3.4 above, the Participant may bring a dispute before the Dispute Committee. The Participant must send all correspondence by registered post to the Dispute Committee, c/o Climex. Subject to Article 5.14 below the Participant and Climex agree to be bound by the Dispute Committee's decision.
- 5.2 The Participant can bring a dispute by submitting a petition. The petition must contain the Participant's name and address, a description of the dispute, the Participant's claim and the grounds on which the Participant bases its claim. The Dispute Committee will not accept a petition that does not meet those requirements.
- 5.3 The Secretary will notify Climex in writing that a dispute is being handled and will send Climex a copy of the petition and any other documents that the Participant submits to the Dispute Committee.
- 5.4 Climex must submit a statement of defence within ten (10) Workdays of the notification referred to in Article 5.3. The Secretary will send the Participant copies of Climex' statement of defence and any documents that Climex submits. The Dispute Committee may extend the term of ten (10) Workdays if Climex submits a substantiated request to that effect.
- 5.5 The Dispute Committee will hold a meeting to hear the dispute, at which the Participant and Climex will be given an opportunity to explain their positions. The meeting will be held within fifteen (15) Workdays after receipt of Climex' statement of defence or, if a challenge is submitted within the meaning of Article 5.6, within fifteen (15) Workdays after the date on which a decision is made on the challenge. The term of fifteen (15) Workdays can be extended if the Dispute Committee is of the opinion that there are special circumstances that justify an extension. The Secretary will inform all of the parties of the date and time when and place where the meeting of the Dispute Committee will be held.
- 5.6 Three members of the Dispute Committee, including the Chair, will hear the dispute. The Chair will appoint the other members who will hear the dispute. The Secretary will inform the Participant and Climex of the composition of the Dispute Committee and inform them of their right to submit a challenge. A member of the Dispute Committee can be challenged if there are facts or circumstances that might cast doubt on his or her impartiality in respect of the dispute brought before the Dispute Committee. A member of the Dispute Committee may excuse himself or herself. A challenge must be submitted to the Secretary in writing within ten (10) Workdays of the date of notification by the Secretary of the composition of the Dispute Committee, stating the reasons for the challenge. The Dispute Committee will not accept challenges that are not submitted in time. The Dispute Committee, with the exception of the person being challenged, will make a decision with respect to the challenge by a majority vote within five (5) Workdays of receipt of the written challenge. If the votes are equally divided, the vote of the Chair of the Dispute Committee will be decisive. The Secretary will notify all of the parties of the decision on the challenge, and if applicable of the name of the Dispute Committee member who will replace the challenged member. There is no independent legal remedy against the decision on the challenge.

- 5.7 The Chair is authorised to explain and supplement the procedural requirements contained in this Rule Book where necessary, based on the principle of reasonableness. There is no independent legal remedy against the Chair's exercise of that authority.
- 5.8 The Participant and Climex may be represented by an authorised representative, who will have the right to speak at the meeting.
- 5.9 If the Participant or Climex wishes to have a witness or expert heard at the meeting of the Dispute Committee, that party must inform the Dispute Committee accordingly in writing within the term set by the Dispute Committee for that purpose. The Dispute Committee may decide whether it will hear a witness or expert. If the Dispute Committee honours such a request, the Secretary will notify both parties in writing in a timely manner before the meeting. The Dispute Committee may also hear witnesses and experts on its own initiative.
- 5.10 The parties must provide the Dispute Committee with all of the information that it requests.
- 5.11 The Dispute Committee will render a decision on the dispute by a majority vote as quickly as possible, but in any event within fifteen (15) Workdays after the hearing of the dispute at the meeting referred to in Article 5.5 above. If the votes are equally divided, the vote of the Chair of the Dispute Committee will be decisive.
- 5.12 The members of the Dispute Committee must render their decision prudently and fairly on the basis of the general principles of equity. The Dispute Committee will render its decision in the form of a recommendation. Subject to Article 5.14 below, the parties agree to be bound by the Dispute Committee's decision. The Dispute Committee's decision, which will be laid down in writing and substantiated, will state the names of the parties involved, the date on which the decision was rendered, the names of the Dispute Committee members who rendered the decision and of the Secretary, and will be signed by the Chair and the Secretary. The Secretary will send a copy of the decision to each of the parties by registered post.
- 5.13 The Secretary may publish decisions, without mentioning the names of the parties involved, in a manner to be determined by the Dispute Committee.
- 5.14 Within six months of the date on which the Dispute Committee rendered its decision, either the Participant or Climex may issue proceedings in the English Courts in relation to the measure taken by Climex within the meaning of Article 3.4 above (and which led to the Participant bringing a dispute before the Dispute Committee under Article 5.1). If no proceedings are issued within the said period of six months the decision of the Dispute Committee shall be deemed to have been accepted by the parties in settlement of the dispute.

## **Article 6. Law and Jurisdiction**

- 6.1 Subject to Article 5 above, this Rule Book shall be governed by, and construed in accordance with English law.
- 6.2 Subject to Article 5 above, the Participant and Climex agree to submit to the exclusive jurisdiction of the English Courts over any claim or matter arising under or in connection with this Rule Book.
- 6.3 No proceedings may be brought by a Participant under Article 6.2 in relation to measures taken by Climex within the meaning of Article 3.4 above until the Participant has followed the procedure set out in Article 5 above and the Dispute Committee has rendered its decision.
- 6.4 The Participant and Climex must bring any proceedings in the English Courts within six months of the decision of the Dispute Committee referred to in Article 5.12 above.