

# General Terms and Conditions for the sale and purchase of Certificates

*Version January 2021*

## 1 Introduction

These Terms, as amended from time to time, apply to the provision of Services by AFS to you.

## 2 Definitions

In this document:

### **AFS, us, we, our(s) etc.**

means AFS Energy B.V. a company organized under the laws of the Netherlands (Registered No:37086118), having its office address at Beursplein 5, 1012 JW, Amsterdam Netherlands;

### **Certificates**

Registry certificates introduced by a regulation or voluntary system with a centralized register in which a transfer of ownership can take place;

### **Client(s), Counterparty, you, your(s) etc.**

means any party contracted under a Agreement for Services with AFS;

### **Financial Instruments**

bears the meaning given in [Section 1.1 WFT / Section C of Annex I of MiFID II];

### **MiFID II**

means Directive 2014/65/EU of 15 May 2014 on markets in financial instruments, as amended and all rules and regulations made there under;

### **Party, Parties**

means AFS and its Clients

### **Services**

means our services regarding the sale or purchase of Certificates;

### **Agreement**

means the agreement between AFS and the Client regarding the sale or purchase of Certificates which can be under a master agreement, a sale or purchase agreement for one transaction or by any other agreement, including but not limited to written or verbal sale or purchase agreements;

### **Terms**

means these general terms and conditions under which we offer our Services to you and which are set out in this document, or which are included in any variation of, or supplement to, these Terms which we may agree with you in writing;

### **Transaction**

means the purchase or sale of one or more Certificates, or any other transaction entered into between us which is either executed or received and transmitted by us under these Terms, including a withdrawal or cancellation thereof;

## **TC**

Means the written confirmation of a Transaction of one or more Certificates

### **3 No Financial Instruments, no regulation**

AFS and its Services are not regulated by any financial regulator. Certificates are not financial instruments as defined by MIFID II, which means MIFID II does not apply to the Transactions nor to AFS. For the transaction of Financial Instruments such as but not limited to EUAs (Carbon Reduction scheme), AFS uses the services of a sister company AFS Equity & Derivatives, regulated by the Dutch Financial Regulator (AFM).

### **4 Professional Counterparty**

AFS accepts transactions only on the basis that the Counterparty declares to be *professional*: sufficiently enough to assess the risks of any transaction including but not limited to the exposure of market risk, credit risk, operational risk and other risks directly or indirectly the consequence of any transaction. AFS does not provide investment services that includes a legal duty of care, unless explicitly agreed between AFS and the Counterparty.

### **5 Payment and delivery of Certificates**

AFS will not accept payments or delivery of Certificates from two separate legal entities, unless explicitly agreed upon. Such arrangement is always subject to consent prior to the transaction. Payments shall be made within 15 business days of receipt of invoice unless agreed otherwise.

### **6 Broker or Principal Agent**

6.1 AFS can act as name passing broker or in the capacity as Principal Agent.

#### *Name passing broker*

As name passing broker AFS will arrange a Transaction between the Counterparty and a third party. AFS is not responsible for the documentation regarding the Transaction. AFS has not given any investment advice unless explicitly agreed.

#### *Principal Agent*

As Principal Agent AFS will be the legal counterparty to the Transaction. AFS only accepts transactions as Principal Agent based on written and signed contracts.

### **7 KYC requirements**

You agree and consent to be subject to any know-your-customer procedure, which may include to disclose financial information, ultimate beneficiary owners and other necessary legal information AFS requires to have on record.

## 8 Representations and Warranties

- 8.1 You represent, warrant, covenant and undertake to us, both in respect of yourself and any person or legal entity for whom you act as agent or representative, that:
- a. You are familiar with and aware of the risks and potential losses that may result from trading Certificates and you shall always do your own *due diligence* of Certificates and specific Transactions;
  - b. You are authorized to enter into any Transaction;
  - c. You acknowledge that we do not act as your (financial) advisor when we provide Services to you in connection with any Transaction;
  - d. You shall comply with any applicable laws and/or regulations including anti money laundering rules;
  - e. Any information provided to us is not misleading and will be true and accurate;
  - f. You will immediately inform us of any relevant changes in the information you provided to us.
- 8.2 If you are a seller of Certificates then you also represent and warrant on each delivery date that:
- a. You are legally entitled to dispose of the relevant Certificates;
  - b. such Certificates are not subject to any pledge, interest or other encumbrance;
  - c. the Certificates are transferable; and
  - d. the Certificates correspond to the conditions agreed in the relevant Transaction.

## 9 Termination

- 9.1 Any Party can terminate the Agreement at any time by serving a written notice to the other Party if the other Party:
- a. is subject of a bankruptcy order or become insolvent or make any arrangements or compositions with or assignment for the benefit of your creditors or go into liquidation, either voluntary or compulsory, or if a receiver or administrator is appointed over your assets;
  - b. commits an irremediable material breach of the Service Agreement or these Terms;
  - c. commits any material breach of your obligations under the Service Agreement or these Terms and – if the breach is rectifiable - fails to rectify such breach to our satisfaction within a reasonable amount of time after a written demand to do so.
- 9.2 Upon termination pursuant to this clause, any amount, property, asset or liability or obligation due by the other Party will become immediately due, payable or deliverable to the terminating Party.

## 10 Limitation of Liability

The liability of each Party or its employees, officers, contractors and/or agents for any damage, loss, cost or expense (collectively 'loss') incurred by the other Party in connection to the (non-)performance of an Agreement is limited to any loss that is directly caused by gross negligence or wilful misconduct. The liability does in no event include any indirect or consequential damages loss of profit, goodwill, business opportunity or anticipated savings. Each Party shall use best effort to mitigate in commercially reasonable manner, any damage, loss, cost or expense

in connection with any agreement or transaction.

## 11 Force Majeure and hardship

- 11.1 Force Majeure means in relation to either Party any event or circumstance which is beyond the reasonable control of such Party and which results in or causes the failure of that Party to perform any of its obligations under any agreement. If a Party is prevented from carrying out any one or more of its obligations by reason of Force Majeure, then the Party is relieved of such obligations to the extent that it is prevented by Force Majeure from complying with them, subject to the remaining provisions of this clause, as long as:
- (a) the Party advises the other Party in writing as soon as reasonably practicable:
    - I. the event or circumstance constituting Force Majeure **and**
    - II. its estimate of the likely effect of that Force Majeure on its ability to perform its obligations **and**
    - III. its estimate of the likely period of that Force Majeure.
  - (b) the Party uses all reasonable efforts to terminate or overcome the event or circumstance constituting Force Majeure and resumes full performance of its obligations as soon as reasonably practicable.
- 11.2 If a Party is relieved from its obligations due to Force Majeure, the corresponding obligations of the other Party shall also be relieved ("Total Suspension of Obligations").
- 11.3 In case the continued performance of contractual duties have become excessively onerous for a Party due to an event beyond its reasonable control which could not have reasonably been expected to take into account at the time of the conclusion of the contract, the Parties are bound, within a reasonable time of the invocation of this clause, to negotiate alternative contractual terms which reasonably allow to overcome the consequences of the event.

## 12 Recording of communication

- 12.1 We will record telephone conversations and (electronic) communications with you that result or may result in a Transaction, even if these conversations or communications do not result in the conclusion of a Transaction with you. Such records will be our property and will be accepted by you as evidence of your orders, instructions or any terms or conditions. During a period of five years you may request access to such records of telephone conversation and communications relating to a specific Transaction, for which we may charge a fee. We are also obliged to provide these records to the national competent authority on their request.
- 12.2 Each Party waives further notice of such recording and acknowledges that it has obtained all necessary consents of its officers and employees to such recording.
- 12.3 Our records, unless shown to be wrong, will be evidence of your dealings with us in connection with our Services and Transactions. Without prejudice to the foregoing, you remain responsible for keeping your own records.

### **13 Confidentiality, data protection**

- 13.1 We will treat information which we hold about you as private and confidential and will only use and disclose this information: (i) when necessary for the performance of our obligations towards you, or (ii) when permitted or required by law, or (iii) for any marketing or other commercial purpose.
- 13.2 We process personal data in accordance with the applicable data protection rules as set out in our privacy statement.

### **14 Amendment and publication**

AFS retains the right to change any of these Terms without further notice. These Terms are published on [www.afsgroup.nl/terms&conditions](http://www.afsgroup.nl/terms&conditions). You can always contact [compliance@afsgroup.nl](mailto:compliance@afsgroup.nl) to obtain the latest applicable Terms if needed.

### **15 Language, governing law and jurisdiction**

These terms and conditions and the Service Agreement, unless explicitly agreed otherwise, shall be exclusively governed by and interpreted in accordance with the laws of the Netherlands, without reference to the conflict of laws rules thereof, and excluding the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention, 1980). The District Court of Amsterdam has the exclusive jurisdiction on any dispute that may arise between Parties. AFS communicates in the English language to its clients, unless clients explicitly request to communicate in a different language and AFS has agreed with it. AFS may communicate also in other languages however the English version prevails.

### **16 Anti-corruption Law**

Each Party shall in relation to the performance of this Agreement comply with and not engage in any practices which would violate the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or any applicable anti-corruption law.

### **17 Complaints**

Any complaint regarding the services of AFS can be sent to [compliance@afsgroup.nl](mailto:compliance@afsgroup.nl), during and after any transaction. The Head of Compliance of AFS shall promptly respond to any complaints received in connection to the services delivered by AFS. You shall be informed of the results of any investigation and the conclusions no later than thirty (30) days from date of receipt of the complaint.

### **18 Non-assignment**

You are not authorized to assign or otherwise transfer your rights or obligations under a Service Agreement or these Terms without our prior written consent.

### **19 Partial invalidity**

If any provision of these Terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of these Terms nor the

legality, validity or enforceability of such provision under the law of any other jurisdiction shall be affected or impaired thereby.

## **20 Conflicting clauses**

When clauses in an Agreement between Parties conflict with clauses in these Terms, the interpretation of the Agreement between Parties prevails.