

**VERIFIED EMISSION REDUCTION (VERs)  
SPOT TRANSACTIONS**

**Dated [ ]**

**Between**

[ ], a company incorporated under the laws of [ ] whose registered office is at [ ] ("Party A");

and

**ENECO ENERGY TRADE B.V.**, a company incorporated under the laws of the Netherlands, whose registered office is at Marten Meesweg 5 3068 AV, Rotterdam, the Netherlands. ("Party B").

**Recital**

This spot trade agreement (the "**Agreement**") sets forth the terms and conditions under which Party A and Party B will enter into a spot trade with respect to VERs (as defined below). In consideration of the mutual undertakings in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

**1 Interpretation and Construction.**

1.1 The following interpretive provisions apply to this Agreement:

Seller:	Party [ ]
Buyer:	Party [ ]
Allowance Type:	VER
Vintage:	[ ]
Standard Rules	[ ]
Project:	[ ]
Delivery Quantity:	[ ] ton
Delivery Date:	[ ]
VER Price:	[ ] Euros per VER
Total Purchase Price:	[ ] Euros
Payment Date:	[ ]

- (a) Words in the singular are to be interpreted as including the plural, and vice versa, to the extent the context permits or requires.
- (b) Any reference to "time" is deemed to be CET unless otherwise specified.
- (c) Unless otherwise specified, where a date specified in this Agreement to be a Delivery Date would otherwise fall on a day that is not a Banking Day, then such

date will be deemed to be the next following day that is a Banking Day.

- (d) Any reference to a "clause" or "Annex" is to a clause of or annex to this Agreement.

## 2 **Terms of the Spot Transaction**

- 2.1 The Parties agree to enter into a spot purchase and sale transaction with respect to VERs (the "**Transaction**") in accordance with the terms and conditions set out below:
- 2.2 The Parties agree that, for the purposes of each Transaction, the following supplemental terms shall always apply:
- (a) Transfer of VERs specified in the Transaction shall be to the Buyer's Registry Account specified in Annex I;
  - (b) Transfer of VERs specified in the Transaction shall be from the Seller's Registry Account specified in Annex I;
  - (c) Any payments will be made to the respective Party's Cash Account specified in Annex I;
  - (d) Both Parties' VAT registration numbers for such Transactions and for the purposes of the VAT invoice shall be as specified in Annex I.

## 3 **Settlement and Payment**

- 3.1 The Seller shall Transfer the Delivery Quantity of VERs by no later than the Delivery Date set out in clause 2.1.
- 3.2 The Buyer shall pay the Seller the Total Purchase Price by 11 a.m. on the Payment Date set out in clause 2.1.
- 3.3 The Transfer of title and ownership of the VERs from Party A to Party B shall be considered to be completed as soon as irreversible payment is made and when the final notification has been sent and that all contracted VERs have been credited to the Buyer's Account in accordance with the Registries regulation, whereupon risk of loss, related to the VERs, or any portion thereof.

## 4 **Failure to Transfer / Failure to Accept**

- 4.1 Except as provided in clause 6, if the Seller fails to Transfer the Delivery Quantity of VERs to the Buyer's Registry Account by the Delivery Date and such failure is not remedied within three (3) Banking Days from the Delivery Date, the Buyer may terminate this Agreement, in which case, the Seller shall pay the Buyer's Replacement Cost.
- 4.2 If the Buyer fails to Accept the Delivery Quantity for reasons outside Seller's fault, if such Failure to Accept is not remedied within three (3) Banking Days from the Delivery Date the Seller may terminate this Agreement and Buyer shall pay the Seller's Replacement Cost.

There will be no further consequences other than those set out under this clause 4 in the event of a failure to Transfer or failure to accept.

## 5 **Events of Default**

- 5.1 Except if it is relieved pursuant to clause 6, a Party shall be in Default:
- (a) if it fails to make payment when due under this Agreement, and that failure is not remedied on or before the second (2<sup>nd</sup>) Banking Day the amount in due;

- (b) if it fails to perform a material obligation under this Agreement other than a failure to transfer pursuant to clause 4, and that failure is not remedied on or before the fifth (5<sup>th</sup>) Banking Day after the other Party has given written notice of that failure;
- (c) if any representation or warranty made, or deemed to have been made, by the Party under this Agreement proves to have been false or materially misleading at the time it was made or was deemed to have been made; and/or
- (d) if Bankruptcy Proceedings are commenced against it.

5.2 In the event of a Default by a Party (the “**Defaulting Party**”), subject to any relevant cure period, the non-defaulting Party (the “**Non-Defaulting Party**”) will have the option to terminate this Agreement immediately upon written notice to the Defaulting Party. Upon such termination, the Defaulting Party shall be required to pay the Non-Defaulting Party by way of liquidated damages, the Event of Default Loss.

## 6 **Force Majeure**

- 6.1 Upon the occurrence of a Force Majeure, either Party may, by written notice to the other Party, terminate the Transaction affected by such events.
- 6.2 If the Transaction is terminated in accordance with clause 6.1 the Parties' corresponding Transfer obligations shall be released and discharged.

## 7 **VAT**

- 7.1 All amounts, including the VER Price and Total Purchase Price, referred to in this Agreement are exclusive of any applicable VAT chargeable on the supply or supplies for which such amounts form the whole or part of the consideration for VAT purposes. The VAT treatment of any Transfer shall be determined pursuant to the VAT law of the jurisdiction where the relevant supply or supplies are deemed to take place for VAT purposes. If VAT is properly chargeable on any such supply or supplies, the Buyer shall pay to the Seller an amount equal to the VAT, if any, chargeable in the Seller's jurisdiction; provided, however, that:
  - (a) such amount shall only be required to be paid once the Seller provides the Buyer with a valid VAT invoice in relation to that amount; and
  - (b) the Buyer shall be under no obligation to make any payment to the Seller in respect of VAT which the Buyer must self-assess under the reverse charge rule or any similar system in the Buyer's jurisdiction.
- 7.2 Subject to each Party's obligations relating to VAT, each Party shall cause all royalties, taxes, duties, levies and other sums (including, without limitation, any stamp duty, other documentary taxes, climate change levy or other environmental tax or levy) (“**Other Taxes**”) legally payable by that Party arising in connection with this Agreement to be paid. In addition, in the event that the Seller is required by law to pay any Other Taxes which are properly for the account of the Buyer, the Buyer shall promptly indemnify or reimburse the Seller in respect of such Other Taxes. In the event that the Buyer is required by law to pay, deduct or withhold any Other Taxes which are properly for the account of the Seller, the Buyer may deduct or withhold such amount of any such Other Taxes from the Purchase Price, and the Seller shall promptly indemnify or reimburse the Buyer in respect of such Other Taxes not so deducted or withheld.
- 7.3 Except as otherwise expressly provided in this Agreement, each Party shall be responsible for its own costs incurred in performing its obligations under this Agreement.

## 8 **Representations and Warranties**

8.1 Each Party represents and warrants to the other Party that:

- (a) it has the power and authority to enter into and perform its obligations under this Agreement;
- (b) the person who negotiates, agrees and enters into this Transaction with the other Party on its behalf has the requisite power and authority to do so;
- (c) it shall, if the Seller, Transfer to the Buyer the VERs free and clear of all liens, security interests, claims and encumbrances or any interest in or to them by any person;
- (d) it has at all times fully complied with the Scheme rules to the extent necessary to permit the Transfer contemplated by this Agreement;
- (e) it has negotiated, entered into and executed this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (f) it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction. It is also capable of assuming, and assumes, the risks of the Transaction; and

8.2 This Agreement set forth the full extent of the Parties' obligations and liabilities arising out of or in connection with this Agreement, and there are no conditions, warranties, representations or terms, express or implied, that are binding on the Parties except as specifically stated in this Agreement. Any condition, warranty, representation or other term which might otherwise be implied into or incorporated in this Agreement, is hereby expressly excluded.

## 9 **Governing Law and Jurisdiction**

9.1 This Agreement and any non-contractual obligations arising out of or in connection with them shall be governed by Dutch law.

9.2 The Parties submit to the non-exclusive jurisdiction of the Dutch courts for the purposes of any dispute under or in connection with this Agreement and any non-contractual obligations arising out of or in connection with them.

## 10 **Notices**

Any notice or other written communication to be given or made in respect of the Agreement by one Party to the other is to be given or made in writing to the other at the address or contact number that the other Party gives to the notifying Party from time to time or, if no address or contact number has been so given, at the other Party's registered office.

## 11 **Miscellaneous**

11.1 The Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any representations previously given or made with respect to its subject matter other than those given or made in the Agreement, but nothing in this clause 11.1 limits or excludes any liability for fraud in relation to those representations.

11.2 Save as expressly provided otherwise in this Agreement, and in particular in clause 11.3 of this Agreement, neither Party shall be liable under or in connection with this Agreement for any loss of income, loss of profits or loss of contracts, or for any other indirect or consequential loss or damage of any kind, in each case howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise.

- 11.3 Nothing in this Agreement shall exclude or in any way limit either Party's liability for fraud, or for death or personal injury caused by its negligence.
- 11.4 If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.
- 11.5 Neither Party may assign or transfer all or part of this Agreement without the prior written consent of the other Party.
- 11.6 No alteration to or variation of this Agreement (including any of the Annexes) shall take effect unless and until the same is in writing and signed on behalf of each of the Parties.
- 11.7 Subject to the rights that may accrue to any successor or permitted assignees of the Parties, no provision of the Agreement is to be construed as creating any rights enforceable by a third party, and all third party rights implied by law are, to the extent permissible by law, excluded from this Agreement.
- 11.8 Each Party hereby consents generally in respect of any legal action or other proceedings arising out of or in connection with the Agreement, to the giving of any relief or to the issue of any process in connection with such action or proceedings, irrespective of the jurisdiction in question. Each Party hereby irrevocably waives any rights of sovereign immunity which it may now or which it may subsequently acquire in respect of its position or any property and/or assets (present or subsequently acquired and wherever located) belonging to it.

## 12 Definitions

In this Agreement:

**"Accept"** means the fact to accept the Delivered VER within the Buyer's Registry Account

**"Banking Day"** means any day (other than a Saturday or Sunday) in which commercial banks are open for general business in both the Party A Banking Day Location and the Party B Banking Day Location.

**"Buyer"** means the Party to the Transaction as specified in clause 2.1.

**"Buyer's Registry Account"** means the Registry Account specified in Annex I by Party A or Party B (as appropriate in the context of a Transaction), to which VERs will be Transferred.

**"Buyer's Replacement Cost"** means in the cost payable by the Seller to the Buyer in respect of a Failure to Transfer pursuant to clause 4:

(i) the positive difference, if any, between (i) the price the Buyer, acting in a commercially reasonable manner, does or would pay in an arm's length transaction for an equivalent quantity of VERs to replace the Default Quantity, and (B) the VER Price multiplied by the Default Quantity; plus

(ii) interest for the period from (and including) the Delivery Date to (but excluding) the date of the written notice demanding such Buyer's Replacement Cost calculated on the amount determined pursuant to paragraph (a) above at the Default Rate.

**"Cash Account"** means the bank account specified by Party A and Party B in Annex I into which payments to that Party will be made.

[“**CCB**” means the standard(s) of the NGO partnership, the Climate, Community & Biodiversity Alliance used to identify land management projects that simultaneously address climate change, support local communities and smallholders, and conserve biodiversity whilst promoting excellence and innovation in project design and implementation.]

"**Default Quantity**" means, in respect of the Delivery Date, the quantity equal to the positive difference between (a) the Delivery Quantity and (b) the quantity of VERs duly and timely Transferred to the Buyer on the Delivery Date.

"**Default Rate**" means one month EURIBOR interest rate for 11:00 a.m. on the Payment Date, plus two percent (2%) per annum.

"**Delivery Date**" means the delivery date on which the VERs are to be Transferred to the Buyer as specified in clause 2.1.

"**Delivery Quantity**" means the number of VERs to be Transferred on the Delivery Date as specified in clause 2.1.

"**Event of Default Loss**" means an amount that the Non-Defaulting Party reasonably determines in good faith to be its total losses and costs in connection with the termination of the Agreement pursuant to clause 5.2, any loss of bargain, cost of funding (based on the actual costs of the Non-Defaulting Party, whether or not greater than market costs) or, at the election of the Non-Defaulting Party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them). It includes losses and costs (or gains) in respect of any payment required to have been made and not made or non-compliance with clause 3 or 4 on or before the termination date. It does not include the Non-Defaulting Party's legal fees or out-of-pocket expenses. The Non-Defaulting Party may (but need not) determine its Event of Default Loss by reference to quotations of average relevant rates or prices from two or more leading brokers in the VERs trading market who are independent of the Parties.

"**Force Majeure**" means the occurrence of any event or circumstance, beyond the control of the affected party, that is not a Suspension Event and that could not, after using all reasonable efforts, be overcome and which makes it impossible for the affected party to either (i) if the Seller, to deliver the VERs from the Seller's Registry Account specified in Annex I or (ii) if the Buyer, to accept the VERs into the Buyer's Registry Account specified in Annex I, in accordance with the terms of the Transaction as specified in the agreement made pursuant to clause 2.1 and this Agreement. The inability of a Party (i) to make timely payments (ii) or to perform a relevant delivery or acceptance obligation as a result of it having insufficient VERs in any relevant Account (whether caused by the low or non-allocation of VERs from a Member State or non-Member State or the failure of that Party to procure sufficient VERs to meet its delivery obligations) shall not constitute a Force Majeure; provided, however, that this is not an exhaustive list of events which will not constitute a Force Majeure and is provided for the avoidance of doubt only.

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

"**GHG Reduction**" means the removal, limitation, reduction, avoidance, sequestration or mitigation of GHGs emissions.

"**Kyoto Protocol**" means the protocol to the UNFCCC adopted at the third conference of

the parties to the UNFCCC in Kyoto, Japan, on 11 December 1997, as may be amended from time to time.

"**Member State**" means any one of the signatories to the treaties establishing the European Union from time to time.

"**Other Taxes**" has the meaning ascribed to it in clause 7.2.

"**Party**" means one or other of the parties to the Agreement and "**Parties**" is to be construed accordingly.

"**Party A Banking Day Location**" means the country specified in Annex I.

"**Party B Banking Day Location**" means the country specified in Annex I.

"**Payment Date**" means the date that is one (1) Banking Day after the Trade Date.

"**Purchase Price**" means the product of the relevant Delivery Quantity and the relevant VER Price.

"**Registry**" means a registry in the form of a standardized electronic database that, amongst other things recognizes carbon credits generated under the Standard Rules and is capable of executing the processes regarding the issue, holding, transfer and cancellation or retirement of VERs.

"**Registry Account**" means any digital record of a Party or person in any relevant Registry that will be used to record the issue (if applicable), holding, transfer, acquisition, surrender, cancellation, and replacement of VERs.

"**Relevant Registry**" means a Registry through which either Party is obliged to perform a Transfer or acceptance obligation under and in accordance with this Agreement.

"**Seller**" means the Party to the Transaction as specified in clause 2.1.

"**Seller's Registry Account**" means the Registry Account specified in Annex I by Party A or Party B (as appropriate in the context of a Transaction), to which VERs will be Transferred.

"**Seller's Replacement Cost**" means in the cost payable by the Buyer in respect of a Failure to Accept pursuant to Clause 4, an amount equal to (a) the positive difference between (i) the price as agreed between the Parties as set out in the Confirmation and (ii) the price of the Buyer acting in a commercially reasonable manner does or would pay in an arm's length transaction for an equivalent quantity of VERs to be delivered; plus (b) interest for the period from (and including) the Delivery Date to (but excluding) the date of the written notice demanding such Seller's Replacement Cost calculated on the amount determined pursuant to paragraph (a) above at the Default Rate

"**Standards Rules**" means individually and together the set of rules, requirements and methodologies for the registration and issuance of greenhouse gas emissions reduction and the social and biodiversity benefits (VCS or [CCB] as defined thereafter)."

"**Trade Date**" means the date the Parties agree to the terms of a Transaction pursuant to clause 2.1, unless:

- (a) the agreement to such terms is concluded on a day that is not a Banking Day, in which case the Trade Date will be deemed to be the next following day that is a Banking Day; or
- (b) the agreement to such terms is concluded after 12 pm, in which case the Trade Date will be deemed to be the next following day that is a Banking Day.

**"Transaction"** means an agreement between the Parties made pursuant to clause 2.1 to undertake a spot transaction involving Transfers subject to the terms of this Agreement.

**"Transfer"** means (whether used as a verb or a noun) the transfer of VERs from one Registry Account to another under and in accordance with and for the purposes of the Scheme, and **"Transferred"** and **"Transferring"** are to be construed accordingly.

**"UNFCCC"** means the United Nations Framework Convention on Climate Change adopted in New York on May 9, 1992.

**"VAT"** means value added tax as levied by the Member States or non-Member States.

**"Verified Carbon Standard" or "VCS"** is standard rules applying to verified emissions projects with a methodologies for project development and a registry system addressed at <http://www.v-c-s.org/>.

**"VER"** means Verified Carbon Unit where all existing and future legal and beneficial rights arising from greenhouse gas emissions reductions delivered by the Project as described in Schedule 1. VERs are Emission Reductions measured in the unit of one metric tonne of CO<sub>2</sub> equivalent ("CO<sub>2</sub>e") as the base reference for the determination of global warming potential of greenhouse gases in units of carbon dioxide, and include any right, interest, credit, entitlement, benefit, allowance or certificate arising from or in connection to that greenhouse gas emission reduction or removal issued by the VCS Program and held in a VCS Program Registry to be delivered pursuant the terms of the Agreement.

**"VER Price"** means the price per VER in Euros as specified in the Transaction pursuant to clause 2.1.

**["Vintage"** has the meaning set forth in Clause 1].

**IN WITNESS** whereof the Parties have duly executed and delivered this Agreement on the respective dates set out below with effect from the date set out on the first page of this document.

[REDACTED]

By: \_\_\_\_\_

Name: [REDACTED]

Title: [REDACTED]

Date:

**ENECO ENERGY TRADE B.V.**

By: \_\_\_\_\_

Name: [REDACTED]

Title: [REDACTED]

Date:



### ANNEX I - Accounts

Party A's Banking Day Location:	[ ],[ ]
Party B's Banking Day Location:	Rotterdam, the Netherlands
Registry Account:	Party A Party B EU-100-5017370-0-97 (trading account)
Cash Account:	Party A [ ] IBAN: [ ] BIC: [ ]
VAT Registration Numbers:	Party A [ ] Party B NL 809784051b01