



# Terms and Conditions of Providing Securities Services by ING Bank Śląski S.A.





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## I. General terms. Definitions.

### § 1

1. In these Terms and Conditions, the Bank lays down the rules for opening, maintaining and closing Custody Accounts for Residents and Non-Residents that are legal persons and entities without legal personality.
2. These Terms and Conditions in the current wording set out hereinbelow shall replace and supersede the previous Terms and Conditions of Providing Securities Services in effect in the Bank to date.
3. As of the effective date of these Terms and Conditions, all references to the 'terms and conditions' referred to in Section 2 above made in the agreements or other documents executed to date with ING Bank Śląski S.A., shall be deemed to refer to these Terms and Conditions.

### § 2

The capitalized terms in these Terms and Conditions shall have the following meanings:

**Act** - Act on trading in financial instruments of 29 July (consolidated text: Journal of Laws of 2021, items 328, 355, 680, 1505, as amended)..

**Account Holder** - a party to the Agreement with the Bank holding a Custody Account.

**Agreement** - the Securities Services Agreement executed by and between the Bank and the Account Holder.

**AML/CFT Act** - Act of 30 March 2021 on Amending the Act on Counteracting Money Laundering and Terrorism Financing of 30 March 2021 and Certain Other Acts (consolidated text: Journal of Laws of 2021, item 815, as amended).

**Application** - Custody Account Application, i.e. a document constituting an integral part of the Agreement, information on the Account Holder, information on the Custody Account and setting forth a list of services available to the Account Holder once the form is completed and approved by the Bank.

**Applicant** - the person representing the Account Holder in filing the Application, authorized to make statements of will as regards property rights and obligations of the Account Holder.

**Assets** - shall mean the Financial Instruments registered in Custody Accounts, cash funds deposited in the Settlement Accounts, as well as any Financial Instruments and/or cash funds as may be registered/deposited in these Accounts.

**Attorney Authorization Form** - a document whereby the Bank will verify authorizations and execute Instructions placed for and on behalf of the Account Holder.

**Bank** - ING Bank Śląski Spółka Akcyjna, with its registered office in Katowice, ul. Sokolska 34, 40-086 Katowice, entered in the Trade Register of the National Court Register kept by the District Court for Katowice-Wschód, 8<sup>th</sup> Commercial Registry Division of the National Court

Deposit, under no. KRS 0000005459, with share capital of PLN 130,100,000.00 and paid-in capital of PLN 130,100,000.00, NIP no. 634-013-54-75.

**Bank's Office Hours** - 8:30 am - 5:00 pm on each Business Day.

**Block Date or Block Day** - the earliest of:

- date on which the Account Holder admits or confirms in writing that it is no longer able to timely pay its liabilities;
- date on which the Account Holder defaults under any of its obligations or liabilities under the Agreement or these Terms and Conditions;
- date on which the Bank begins to have a reasonable suspicion that the Account Holder has lost or, in the Bank's reasonable estimation, will be unlikely to have the ability to pay its liabilities to the Bank;
- date of making a block in connection with an Instruction placed by the Account Holder.

**Business Day** - a day falling from Monday to Friday, excluding non-working days on which the Bank is open for business.

**Certain Financial Collateral Act** - means the Certain Financial Collateral Act of 2 April 2004 (amended and restated text in Polish Journal of Laws of 2016, item 891, as amended), regulating the principles for posting and enforcing collateral on cash funds, loan-related claims or financial instruments (financial collateral) cash claims or claims involving delivery of financial instruments.

**Central Securities Depository or CSD** - means a legal person operating a securities settlement system, referred to in Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014.

**Third country CSD** - means any legal entity established in a third country providing a service similar to the basic service referred to in Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014;

**Collateral Account** - a bank account other than a Settlement Account, maintained by the Bank for the Account Holder in PLN for the purpose of depositing therein funds set aside as collateral for Derivatives registered in the Custody Account and for other cash settlements in connection with Derivatives.

**Corporate event** - Pursuant to Commission implementing regulation (EU) 2018/1212 of 3 September 2018 means an action initiated by the issuer or a third party which involves the exercise of the rights flowing from the shares and which may or may not affect the underlying share, such as the distribution of profits or a general meeting

**Custody Account** - an account(s) maintained by the Bank for the Account Holder, jointly consisting of a securities account used to record dematerialized Securities, a Derivatives account, a register of Securities kept by the Bank in non-dematerialized form, a register of rights to Financial Instruments kept or registered in favor of the Account Holder by other licensed institutions in Poland and/or abroad and the register of other Financial

Instruments which may be registered in the Custody Account pursuant to a separate agreement by and between the Bank and the Account Holder.

**Deposit Certificate** – a registered document issued by the Bank for the Account Holder within the meaning of the Act.

**Derivatives** – derivative instruments of the stock exchange index futures contracts as well as options listed on the WSE.

**Domestic Regulated Market** – a regulated market in Poland within the meaning of the Act.

**e-Custody Module** – a communication module ensuring access to Custody Accounts, securities services in ING Business's e-banking system.

**Electronic Data Carriers** – systems of exchange of electronic information, including SWIFT messages relayed in e-banking and other electronic systems approved by the Bank.

**EMIR** – Regulation (EU) no. 648/2012 of the European Parliament and the Council of the European Union of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, item 1) and delegated and implementing legislation promulgated thereunder by the European Commission.

**FATCA Regulations** – the Agreement between the Government of the United States of America and the Government of the Republic of Poland to Improve International Tax Compliance and to Implement FATCA together with the Memorandum of Understanding, signed in Warsaw on 7 October 2014 (Journal of Laws of 2015, item 1647) (hereinafter the "IGA") as well as other national-level laws and regulations governing the Bank's compliance with the obligations set out in the IGA and/or the FATCA, in particular the Act of 9 October 2015 on the Implementation of Agreement between the Government of the United States of America and the Government of the Republic of Poland to Improve International Tax Compliance and to Implement FATCA (Journal of Laws of 27 October 2015, item 1712) together with secondary legislation, laying down the rules applicable to the Bank's obligation to report information on Assets held by persons/entities subject to tax liability in the USA.

**Financial Instruments** – financial instruments within the meaning of the Act on trading in financial instruments of 29 July 2005 (consolidated text: Journal of Laws of 2021, items 328, 355, 680, 1505, as amended).

**Financial Instruments Transfer** – an operation involving the transfer of Financial Instruments between Custody Accounts or Portfolios of one and the same Account Holder on the basis of a Settlement Instruction issued by the Account Holder.

**Financial Pledges** – financial pledges over the Assets, posted in accordance with the Agreement and these Terms and Conditions.

**Force Majeure** – An external event being out of the Bank's control, which could neither be prevented nor foreseen by the Bank, and which directly or indirectly resulted in a failure to perform or to improper performance of the agreement by the Bank. The following events, meeting the

premises specified above, are considered to be force majeure:

1. flood, earthquake, lightning discharges, hurricane, tornados, volcano eruption, or other similar atmospheric phenomena,
2. power outage for the reasons being out of the Bank's control.
3. occurrence of unnatural and unforeseeable circumstances beyond the control of the party claiming to be affected thereby, the consequences of which would have been inevitable notwithstanding best efforts.

Provisions relating to Force Majeure also apply to government sovereign acts (such as international agreements, legal acts, ordinances, orders, resolutions of authorised government/administration bodies), whereunder a given transaction or transactions of a particular kind/type or transactions with specified entities or transactions at a specified time, may not be processed by the Bank. The Bank shall inform the general public of the occurrence of Force Majeure and of its anticipated duration, if possible.

**Instruction** – an order placed by the Account Holder whereby the Bank will be instructed to take an activity provided for in the Agreement or these Terms and Conditions. Instruction Forms are available on [www.ing.pl/dokumenty-fis-i-korporacji/regulaminy-i-wnioski](http://www.ing.pl/dokumenty-fis-i-korporacji/regulaminy-i-wnioski)

**Investment company** – means any legal person, whose activity, run in a professional and regular manner, consists in the provision of one or more investment services to third parties or in the exercise of one or more types of investment activities.

**Issue Program** – means a procedure for launching issues of Debt Securities (DPW) as laid down in Issue Program Agreements – in relation to single or multiple issues.

**KDPW** – the Polish National Depository for Securities officially known as Krajowy Depozyt Papierów Wartościowych S.A.

**KDPW\_CCP** – a subsidiary of KDPW S.A.

**LEI Code** (Legal Entity Identifier) – a 20 digit alpha-numeric entity ID code consistent with the standard ISO17442, allocated by coding agencies affiliated with the Global Legal Entity Identifier Foundation (GLEIF), which constitutes the given entity's globally unique identifier. In Poland, KDPW has the status of a coding agency affiliated with GLEIF.

**MiFID Category** – a classification category for the Account Holder assigned in compliance with MiFID and the requirements introduced pursuant to the Regulation of the Minister of Finance of 24 September 2012 regarding procedures and conditions to be followed by investment firms, the banks referred to in Art. 70(2) of Act on trading in financial instruments and custodian banks.

**MiFID** – acronym for the Markets in Financial Instruments Directive – an EU directive implemented in the European Economic Area comprising all 27 member states of the

European Union, Norway, Island and Liechtenstein. The primary goal of the MiFID Directive is to protect investors, to promote further competition in the financial services sector and to enhance market transparency.

**Non-Resident** – a taxpayer without a registered office or management in the territory of the Republic of Poland or, in case of natural persons, a taxpayer without a center of personal or economic interests and/or not residing in Poland for more than 183 days in a Tax Year, subject to taxation only in relation to income generated in Poland – this definition shall be applied subject to applicable DTT Treaties.

**NKK** – Classification Number assigned to the Account Holder by KDPW S.A. and/or KDPW\_CCP, as the case may be.

**Onboarding questionnaire** – Questionnaire completed by the Client at the stage of establishment of relations with the Bank.

**Omnibus Account** – a securities account within the meaning of the Act in trading in financial instruments of 29 July 2005 (consolidated text: Journal of Laws of 2021, items 328, 355, 680, 1505, as amended).

**Personal Data Form** – a document, which is used to obtain personal data of representatives, proxies and other persons, whose actions have direct consequences for the Account Holder.

**Portfolio** – a sub-account within the NKK in which Derivatives are registered separately.

**Reporting Obligation** – the duty laid down in Article 9 Regulation (EU) no. 648/2012 of the European Parliament and the Council of the European Union of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, item 1).

**Securities** – securities within the meaning of the Act on trading in financial instruments of 29 July 2005 (consolidated text: Journal of Laws of 2021, items 328, 355, 680, 1505, as amended).

**Settlement Failure** – means inability to settle or partial settlement of transactions in securities on the intended settlement date, caused in particular by: lack of securities or cash, regardless of the reason therefor, sending settlement instructions after the cut-off times indicated in the Schedule of Dates, indication in the settlement instruction of the future intended settlement dates, suspension of settlement instructions.

**Settlement Instruction** – an Instruction whereby the Bank is instructed to make a Settlement in respect of a Transaction executed by the Account Holder and/or a Transfer of Financial Instruments. Forms of Settlement Instructions are available on [www.ing.pl/dokumenty-fis-i-korporacji/regulaminy-i-wnioski](http://www.ing.pl/dokumenty-fis-i-korporacji/regulaminy-i-wnioski) in tab Custody Services.

**Settlement Period** – monthly cycle of accrual and calculation of fees for maintaining the Custody Account and the securities services.

**Signature Specimen Card** – document used to record signature specimens of Account Holder's authorized signatories.

**Repository** – a trade repository selected by KDPW\_CCP as

appropriate to ensure compliance with the Reporting Obligation under EMIR as regards the clearing of transactions by KDPW\_CCP.

**Resident** – taxpayer with a registered office or management in the territory of the Republic of Poland or, in case of natural persons, a taxpayer with a center of personal or economic interests and/or residing in Poland for more than 183 days in a Tax Year, subject to taxation on all of its income regardless of where generated.

**Registration Application** – an application filed by the Account Holder to reach access and modify rights in relation to the ING Business System, including the e-Custody Module.

**Secured Claims** – Bank's claims against the Account Holder regarding:

- the payment of fees and commissions in accordance with § 6-7 of these Terms and Conditions,
- the delivery of Financial Instruments in accordance with § 47 of these Terms and Conditions,
- the payment of the amounts due in accordance with § 47 of these Terms and Conditions.

**Settlement Account** – a bank account maintained by the Bank for the Account Holder in PLN or foreign convertible currencies, used for the purpose of Settling Transactions on Financial Instruments and charging fees for securities services provided by the Bank.

**Sub-Custodian** – national or foreign entity authorized to safe-keep, or maintain a register of, Financial Instruments held by the Account Holder pursuant to an agreement executed with the Bank for the safekeeping of part of the Account Holder's Assets;

**System** – the ING Business internet banking system (providing access to bank accounts, products and services via the Internet).

**SWIFT** – acronym for the Society for Worldwide Interbank Financial Telecommunication, an association and a computer system used to clear transactions between financial institutions.

**Tax Year** – a year construed by the Bank in its capacity as CIT/PIT payer for fiscal purposes to be equivalent to and fully overlap with a calendar year.

**Tax Residency Certificate** – For legal persons, pursuant to Article 4a(12) of the Corporate Income Tax Act of 15 February 1992: certificate confirming the tax jurisdiction of the Account Holder's registered office, issued by the relevant tax administration in the country of the Account Holder's registered office or place of residence, as the case may be.

**Tax Formalities** – activities undertaken by the Bank (as a 'messenger agent' within the meaning of the Polish Civil Code) consisting in:

- exchange of documents and information by and between the Account Holder and the Sub-Custodian in connection with the Account Holder seeking to pay a reduced tax rate applicable under a relevant Double Taxation Treaty ("DTT Treaties");
- exchange of documents and information by and

between the Account Holder and the Sub-Custodian in connection with the Account Holder seeking a tax refund under DTT Treaties.

**Technical account** - Account or accounts maintained by the Bank for financial instruments, which remained in the Deposit Account after its closure, and which are not bank accounts.

**Transaction Settlement Date** - the date on which the Account Holder's Settlement Account and Custody Account will be simultaneously debited and credited, respectively, with an amount equal to the Transaction value and the number of Financial Instruments in respect of which the Transaction was executed. The term 'Transaction Settlement Date' shall also apply to operations involving a transfer of Financial Instruments without any payment being made in exchange and Transfers of Financial Instruments executed pursuant to Settlement Instruction.

**Transaction Settlement** - settlement of transactions on Financial Instruments executed on a national or foreign market, consisting in the Custody Account and the Settlement Account being credited or debited, respectively and as the case may be, with an appropriate number of Financial Instruments and cash amounts as a result of a purchase or sale of Financial Instruments. Settlements shall also be made in relation to transfers of Financial Instruments without any payment being made in consideration therefor and Transfers of Financial Instruments made pursuant to a Settlement Instruction.

**Transaction Settlement involving tolerance limits** - settlement of a Transaction against a payment being made, as further defined in the rules and regulations of applicable securities settlement systems.

**Tax Status** - the status of the Account Holder determined on the basis of a Tax Residency Certificate or generally applicable legal regulations and other documents acceptable to the Bank.

**Table of Fees and Commissions** - Table of Fees and Commissions of ING Bank Śląski S.A. for services to residents and non-residents who are legal persons and entities with no legal personality.

**Time Schedule** - the Time Schedule of dates for accepting Settlement Instructions, made available on <https://www.ing.pl/dokumenty-fis-i-korporacji/regulaminy-i-wnioski> in tab Securities Services.

**Transaction** - an agreement for the purchase or sale, or another agreement transferring rights to Financial Instruments, executed in an appropriate form befitting the specific type of Financial Instruments.

**Terms and Conditions** - these Terms and Conditions of Providing Securities Services by ING Bank Śląski S.A.

**Terms and Conditions for Opening and Maintaining Bank Accounts** - Terms and Conditions for opening and maintaining bank accounts by ING Bank Śląski S.A., laying down the principles for opening and maintaining bank accounts denominated in PLN and foreign convertible currencies, as well as the rules for the provision of payment-banking and other services by ING Bank Śląski S.A.

**User** - The Account Holder, who is a natural person, or another natural person indicated by the Account Holder, authorised to use the System.

**User Manual** - manual describing how to use the e-CustodyModule in the ING Business e-system supplied to the Account Holder together with the Agreement.

**WSE** - the Warsaw Stock Exchange officially known as Giełda Papierów Wartościowych w Warszawie S.A.

## II. Deposit Account

### A. Procedure and Conditions for Execution of the Agreement

#### § 3

1. The Bank will open and maintain Custody Accounts pursuant to the Agreement executed with the Account Holder.
2. The Agreement shall be executed for an indefinite or fixed term, as indicated in the Agreement.
3. At the Account Holder's request, the Bank may open an Omnibus Account.
4. To open a Custody Account, the Applicant:
  - a) must file the Application or complete and file any other form provided for this purpose by the Bank (e.g. an Instruction in the form of SWIFT message MT599) and/or any other form as may be agreed with the Bank, executed by persons authorized to make statements of will as regards property rights and obligations, by indicating in the Application, among others, the Settlement Account dedicated to depositing funds connected with settlements performed with the use of the Custody Account, and if the settlement is to be made in foreign currencies, accounts maintained by the Bank in these currencies.
  - b) must submit documents confirming the legal status of the entity seeking to execute the Agreement;
  - c) The Account Holder submits the FATCA representation and the CRA representation, including, in particular, on the Client's reporting status, tax residency and tax identification number
  - d) must indicate persons (representatives /attorneys-in-fact) authorized to make statements and to give Instructions for an on behalf of the entity thereby incurring liabilities on its behalf, subject to the stipulations referred to in § 4 of Terms and Conditions;
  - e) must submit other documents requested by the Bank;
5. To open more Custody Accounts under one and the same Agreement, the Applicant must submit

an Application any another form provided for this purpose by the Bank (e.g. an Instruction in the form of SWIFT message and/or any other form as may be agreed with the Bank, to be executed by persons authorized to make statements of will as regards property rights and obligations.

6. The Applicant must provide the documents referred to in Section 4 above in original or notarized copies or in any other form as may be agreed with the Bank.
7. In case of documents issued abroad, the Bank requires that the submitted documents have apostille or be certified by the competent Polish diplomatic or consular office. or otherwise, as may be agreed with the Bank. If a document is issued in a foreign language, the Bank may request translations of this document into Polish, prepared by a sworn translator. The costs of execution and translation of the documents will be borne by the Account Holder.
8. If the contents of the documents referred to in this paragraph change, the Account Holder will be required to immediately provide the Bank with current documents in the appropriate form. The Account Holder shall also be required to notify the Bank in writing about any changes likely to affect its legal situation or have a material impact on the maintenance of the Custody Account, including regarding the name of the Account Holder, address details, address details required to issue a VAT invoice
9. Having received all documents referred to in this paragraph, the Bank will make a decision to open a Custody Account and will draft the Agreement using the form from time to time in effect at the Bank. The Bank may agree to the Agreement being worded in a manner different from the prevailing form. In such an event, the Agreement with the Account Holder will stipulate the extent to which these Terms and Conditions will apply to the scope and manner of provision of securities services. The Bank may consent to the Applicant providing the documents required to open an account by mail.
10. The Bank may refuse to open a Custody Account without providing a reason, of which it will inform the Applicant in writing within no later than 14 days of the Application filing date.
11. In accordance with mandatory legal regulations (the AML/CFT Act), the Bank takes measures to counteract money laundering and terrorism financing and is required to take financial security precautions such as, e.g. identification and verification of the Account Holder, persons representing the Account Holder, as well as the ultimate beneficiary, including the ownership and dependence structure of the Account Holder.
12. For the purpose of compliance with the financial security precautions referred to in Section 11, the Account Holder is obligated, at the request of the

Bank, whether at the time of executing the Agreement or thereafter, to provide all documents and information as may prove necessary to implement these tasks and to comply with these measures. In particular, the Account Holder is required to:

- a) provide and document information and data allowing the Bank to determine the ownership structure – on every level – and dependencies of the Account Holder, in order to identify and verify the ultimate beneficial owner,
  - b) notify the Bank on learning of the change of the country of residence of the beneficial owners, representatives of the Account Holder and persons authorised to act on behalf of the Account Holder.
  - c) for Account Holders being companies issuing bearer shares – deposit at an independent custodian and provide, in addition to the information and data specified above, the representation of an independent custodian, that they will not release the shares and will not accept an instruction to transfer the ownership of the said shares without the Bank's prior consent thereto,
  - d) enable making by the Bank of a copy of the ID documents of the Account Holder and persons authorised to act on their behalf.
13. In accordance with generally applicable FATCA and CRS Regulations, the Bank will identify and report to national tax administration authorities all information about the Assets held by person/entities subject to tax liability in the USA. For this purpose,
- a) The Account Holder submits the FATCA representation and the CRA representation, including, in particular, on the Client's tax residency or an adequate foreign tax identification number
  - b) The Account Holder acknowledges that the Bank does not act as an advisor in relation to FATCA and CRS Regulations.
  - c) The Account Holder represents that it acts on its own account and that it makes its own independent decisions as regards the submission of a statement to comply with the requirements set out in the FATCA and CRS Regulations.
  - d) Any information or clarification provided by the Bank (whether written, electronic, oral or otherwise) with regard to FATCA and CRS Regulations does not constitute a consulting or advisory service, in particular tax advice. For this reason, the Bank is not liable in this regard towards the Account Holder.
14. Subject to applicable regulations, the Bank may download and process any information regarding the Account Holder from public registers and other publicly available databases, in particular

information disclosed by the Central Information Bureau of the National Court Register.

#### § 4

1. The Account Holder, in the Attorney Authorization Form, the Signature Specimen Card or other forms agreed and provided by the Bank:
  - a) will indicate persons authorized to represent the Account Holder and Attorneys authorized to use the Custody Account, who will provide specimens of their signatures, and/or
  - b) will indicate persons (Users) so that their rights may be defined in the e-Custody Module;
  - c) will define the combination of signatures necessary for an Instruction to be deemed valid and effective;
2. Signatures of the authorized persons indicated in the Attorney Authorization Form and/or the Signature Specimen Card ought to be subscribed on the Personal Details Form in the presence of an employee of the Bank or notarized or confirmed in another manner as may be agreed with the Bank.
3. The Account Holder is required to immediately notify the Bank in writing or any other manner acceptable to the Bank about any change in the persons authorized to use the Custody Account or any change in the Signature Specimen Card.
4. Unless otherwise agreed by the Bank and the Account Holder, the notice referred to in Section 3 above shall be effective vis-à-vis the Bank starting from the next Business Day following the day of receipt by the Bank.
5. As a condition to the attorney signing the Agreement, the attorney must be granted a power of attorney to do so, such power of attorney shall be signed by persons authorized to make statements of will as regards property rights and obligations of the Applicant. The power of attorney must be notarized or otherwise confirmed in a manner agreed with the Bank. The provisions of § 9 Terms and Conditions shall apply accordingly to verification of the identity of the attorney.
6. Any statements to be made by the Bank and the Account Holder in connection with trading in Financial Instruments as well as other activities stipulated in the Agreement, such as in particular the submission by the Account Holder of an Application, a Registration Application, an Attorney Authorization Form, the execution of the Agreement as well as any amendments or revisions thereto, may be made electronically via the System.
7. A statement of will shall be deemed submitted via the System if signed electronically by the Account Holder and the Bank. An electronic

signature of the person representing the Account Holder and/or the Bank consists in the representative giving his/her full name and attaching unique and exclusive ID data,

i.e. an individual code unequivocally identifying the representative, assigned to each single person acting for and on behalf of the Account Holder and/or the Bank.

8. Subject to the stipulations of the Agreement, all statements of will submitted via the System electronically will fulfill the 'written form' requirements under Art. 13 of the Act, including in situations where the written form for a given service or statement was stipulated on pain of nullity.

#### § 5

1. Subject to terms and conditions agreed by and between the Bank and the Account Holder in the Agreement, the Bank will attend to Tax Formalities. As a condition to be eligible for Tax Formalities purposes, the given Custody Account must be added to the pool of accounts where the Tax Formalities functionality is available.
2. The Bank agrees to provide the Account Holder with such documents and information as may be necessary to obtain a preferential tax rate or to seek a tax refund, provided that the Bank received the same from the Sub-Custodian or tax advisor.
3. The Bank undertakes to provide the Account Holder with information on deadlines by which the Account Holder is required to submit correctly and fully completed documents referred to in point 2 above, provided that the Bank received the same from the Sub-Custodian or tax advisor.
4. The Account Holder agrees to provide the Bank with the documents referred to in Section 2 by no later than the deadline set out in Section 3 or, if no such deadline was specified, by no later than 3 months of the day on which the Bank advises the Account Holder that the required documents are missing.
5. The Bank does not guarantee that documents received following the deadline will be provided to the Sub-Custodian or tax advisor.
6. If, in the Sub-Custodian's or tax advisor's estimation, the expected tax refund does not warrant the initiation of Tax Formalities, the Bank has the right to abstain from attending to any such Tax Formalities in relation to the particular refund.
7. The Bank shall only be liable for providing the Account Holder with documents previously received from the Sub-Custodian or tax advisor.
8. The Bank shall only be liable for providing the Sub-Custodian or tax advisor with the documents previously received from the Account Holder. The Bank hereby waives its liability for the contents of these documents. Likewise, the Bank will not be

liable for the choice of the tax advisor and his/her activities.

9. The Bank will not be liable for:
  - a) the failure to obtain a reduced tax rate for the Account Holder;
  - b) the failure to obtain a tax refund for the Account Holder;
  - c) circumstances arising due to reasons attributable to the Account Holder,
  - d) sub-Custodian and its agents (Sub-Custodians on local markets),
  - e) local issuers,
  - f) actions taken by local tax administration and other third parties.
10. The Bank's liability for failure to perform or undue performance of the Tax Formalities is capped at the amount of the actual damage incurred by the Account Holder as a result.
11. The liability referred to in Section 10 above shall be excluded in relation to damage incurred by the Account Holder as a result:
  - a) the operation of a Force Majeure preventing the Bank from duly attending to Tax Formalities, or
  - b) failure to perform or undue performance of the Account Holder's obligations provided for in these Terms and Conditions.

#### § 6

The activities provided for in these Terms and Conditions only include activities connected with the Bank acting as 'messenger agent' within the meaning of the Polish Civil Code, which do not constitute tax advisory activities.

### B. Bank fees and commissions.

#### § 7

1. In consideration of services provided in connection with the Custody Account and settlement transactions executed therein, as well as other activities in connection with the maintenance of the Custody Account, the Bank will charge fees and commissions as per the Table of Fees and Commissions. The Account Holder which has negotiated individual fee rates for the Custody Account will pay fees and commissions as per the table attached to the Agreement or the Depositary Services Agreement executed by the Bank in its capacity as depositary for an investment or pension fund. Fees and commissions will accrue in settlement periods corresponding to and overlapping with subsequent calendar months.
2. If the Agreement is terminated during a Settlement Period, the Bank will charge a pro-rated fee proportionate to the period in which it provided its services, with the provision that the balance of Financial Instruments as at the end of the

Settlement Period directly preceding the period in which the Agreement was terminated will be used as basis for calculating the fee.

3. If the market value of Financial Instruments or a fee for a given service is denominated in a currency different to that used to pay for the Bank's securities services, a mid-rate exchange rate published by the National Bank of Poland as at the last day of the Settlement Period will be used for currency conversion purposes.
4. The Bank issues the VAT invoice. The Account Holder is required to pay for the invoice in accordance with the payment date specified in the invoice, subject to § 7 item 6.
5. The Account Holder may authorise the Bank to send the invoices electronically, by providing the adequate data in the Application.
6. In special cases, resulting from separate agreements with the Bank the Bank will debit the Settlement Account with fees and commissions notwithstanding the account balance and with no separate consent required to be granted for this purpose by the Account Holder. The Settlement Account will be debited on the day specified in the VAT invoice following the end of each Settlement Period. The Bank's failure or omission to debit the Settlement Account within the time period referred to above shall be without prejudice to the Bank's right to debit the Settlement Account with any and all overdue fees and commissions at a later date. If the account is debited with fees and commissions which cannot be covered with funds standing to the credit of the Settlement Account, a negative balance will arise on which extra interest will accrue in accordance with the rules specified in the Terms and Conditions for Opening and Maintaining Bank Accounts. If there are no sufficient funds standing to the credit of the Settlement Account specified in the Application to cover due and payable liabilities, the Bank has the right to debit another bank account of the Account Holder for the amount of fees and commissions.
7. The interest rate charged on a negative balance in the Settlement Account and/or other bank accounts is provided for in the Terms and Conditions for Opening and Maintaining Bank Accounts.

#### § 8

1. Fees and commissions may change due to important reasons. Such important reasons may include, in particular, changes in fees charged by institutions used by the Bank in its activities, changes in the scope of services provided, inflation and/or other factors affecting the Bank's increased costs of operation.
2. An Account Holder is obligated to refund external costs incurred by the Bank in connection with stamp duty and other fees, including:

- a) fees charged by the Bank's correspondent banks,
  - b) fees charged by stock exchanges,
  - c) postal fees,
  - d) insurance fees,
  - e) transport fees,
  - f) fees connected with representing the Account Holder at General Meetings of Shareholders,
  - g) fees connected with services provided to assist the Account Holder in the process of claiming tax refunds or benefiting from a reduced tax withholding rate,
  - h) fees connected with additional reporting duties not provided for in the Table of Fees and Commissions,
  - i) foreign money transfer fees,
  - j) other fees not specified in the Table of Fees and Commissions, expenses incurred by the Bank in connection with the services provided for the benefit of the Account Holder as maybe customary on the market in which the Account Holder makes investments.
3. The Bank reserves the right to charge the said costs when the Bank bears them and to include them in the invoice.
  4. The Bank will also charge the Account Holder with the costs of the National Securities Deposit, CSD or third country CSD, transferred to the Account Holder by the National Securities Deposit, CSD or third country CSD, borne in relation to the settlements concerning the Account Holder and the Corporate Action.
  5. The Account Holder shall be required to disclose its Tax Status. If the Account Holder fails to disclose its Tax Status, the Bank will infer the Tax Status on the same principles as those applicable to the foreign exchange status, i.e. on the basis of the Account Holder's registered address or place of residence. If the Account Holder's Tax Status is different to the foreign exchange status, the Account Holder is required to notify the Bank accordingly.
  6. The Account Holder is obligated to inform the Bank on an on-going basis about any changes in data relating to its tax residency status and its legal situation, i.e. type and extent of capital links affecting the correctness of tax clearings, including registry and address data, and if s/he/it fails to do so it will be liable for all legal consequences as a result of the Bank failing to take these changes into account and with the Bank being explicitly exempted from any liability for any such omission.
  7. The Bank, in its capacity as an entity obligated to report information and file tax returns, may request that the Account Holder provide such

information and documents as may enable the Bank to duly comply with its statutory obligations.

8. If the Bank acts as tax withholding agent, the Bank shall assess and debit the Settlement Account indicated by the Account Holder in the Application for the correct tax amount, including in particular fixed-rate income tax and VAT, if obligated to withhold any of these taxes under tax laws and regulations. The Bank shall also be required to compile information necessary for tax clearing purposes, as required under applicable regulations, on the basis of data available to it at the time. The Bank will also take into account in any such documents information on Transactions executed without the Bank's participation provided that the Account Holder provides such information to the Bank.
9. The Bank may apply a tax rate provided for in the applicable Double Taxation Treaty or other regulations on condition that the Account Holder provides documentary evidence to prove its Tax Status.

### C. Disposing of Custody Account

#### § 9

1. The Account Holder manages the Custody Account and Financial Instruments deposited in the Custody Account independently or by an attorney, based on the granted power of attorney.
2. The Attorney is authorised to place orders in relation to the Financial Instruments in the Custody Account within the scope of his/her power of attorney.
3. The power of attorney to manage the Custody Account and Financial Instruments in the Custody Account should be granted in writing, or else null and void, in the form available at ING Bank or sent in the manner and form of communication agreed on with the Bank. The Bank may consent to certifying the signature of the proxy by the notary public competent for the country, where the activity is performed. Provisions of item 6 shall apply accordingly.
4. In justified cases, the Bank may consent in writing to the power of attorney being granted in a manner different to that provided for in Section 3.
5. The power of attorney must include at least:
  - a) full name of the person granting the power of attorney / Account Holder (corporate name);
  - b) (registered) address of the person granting the power of attorney / Account Holder;
  - c) particulars included in the Personal Details Form, including among other things: full name (corporate name), (registered) address, description and number of the attorney's ID document, PESEL identification

number for Polish citizens, and in case of a person without the PESEL number, the number of the foreigner's ID document or the country code if the passport is used

d) scope of the power of attorney.

6. If the power of attorney is received by post, the Account Holder's signature should be certified by a notary public. Provisions of item 7 shall apply accordingly.

7. The granting, amending or revoking a power of attorney must be verified in terms of its authenticity in the following manner:

- a) in Poland – by a notary;
- b) abroad: in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents (Journal of Laws of 2005, no. 112, item 938) or by a relevant authority/public notary in a country with which Poland signed an agreement on legal assistance in civil matters.

8. A power of attorney on behalf of a legal person or entity with no legal personality, entered in a relevant register must be executed by persons authorized to make statements of will as regards property rights and obligations of the Account Holder, as per the current registry document presented to the Bank.

9. The authorisations of the proxyholder shall be suspended when the ID document, specified in the power of attorney, becomes invalid. The authorisations of the proxyholder shall be suspended until the details of the ID documents are updated.

#### § 10

1. The power of attorney may be revised or revoked by the Account Holder on the basis of its written Instruction executed by persons authorized to make statements of will as regards property rights and obligations of the Account Holder or as otherwise agreed with the Bank.

2. Unless the Bank and the Account Holder agree otherwise, the granting, revising and/or revoking of a power of attorney will be effective as of receipt of a written Instruction from the Account Holder by a member of the Bank's staff, starting from the Business Day directly following receipt of the document by the Bank.

### **D. Procedure and terms and conditions for rescission or termination (including with notice or otherwise) of the Agreement and handling the Account Holder's Assets if the Custody Account is closed**

#### § 11

1. The Custody Account shall be maintained

provided that the Client has an active Bank Account or Loro Account.

2. The Custody Account will be closed:

- a) if terminated by a party, as of the last day of the notice period.
- b) with the expiration of the Agreement,
- c) when the Client closes all Bank Accounts or Loro Accounts, whereas in this case the notice period, referred to in item 3 and § 12 item 1, automatically begins on the day of closing by the Bank of the last Bank Account of the Client (or Loro Account respectively),

3. The Account Holder may terminate the Agreement in writing with a one-month notice.

4. The Agreement may be terminated, as specified in item 2, with the end of the notice period, if the Account Holder:

- a) Pays all due fees and commissions;
- b) Settles all concluded transactions
- c) Instructs the Bank to transfer the financial instruments registered in the Custody Account, in line with § 11

5. The Agreement may also be terminated by mutual agreement of the parties.

#### § 12

1. The Bank may terminate the Agreement with a one-month notice, unless the Agreement provides for a different notice period.

2. The Bank has the right to terminate the Agreement against the notice period set out in item 1, in particular in case of:

- a) no turnover and a zero balance in the Custody Account for 6 consecutive months;
- b) if the Account Holder enters into liquidation.
- c) failure to fulfil the requirements, referred to in § 3 item 12 hereof, including failure to provide the required documents and information,
- d) including the Account Holder in the "Polish Financial Supervision Authority's Public Warning List",
- e) including the Account Holder in the international sanctions lists or internal sanctions lists applicable in ING Group
- f) the product is withdrawn from the offer of the Bank or there are circumstances on the Bank's side, which make maintenance of the account on the current terms and conditions impossible,
- g) There are discrepancies between the actual method of acting of the Account Holder and one declared when the relationship was established, in particular,

failure to perform activities undertaken by the Account Holder, including lower than declared turnover in the Custody Account and lower than declared balance in the Settlement Account.

3. The Bank may terminate the Agreement with immediate effect without any notice period if the following occur:

- a) The Bank obtains information justifying suspicions that the Account Holder or the persons acting on behalf of the Account Holder (including but not limited to members of their bodies, commercial proxyholders, proxies or employees) committed a crime relating to the Account Holder's activities, including crimes with the use of the Custody Account or crimes against the Bank,
- b) Failure to provide by the Account Holder of information indispensable to maintain the Custody Account or to provide by the Account Holder of information, which is incorrect or inconsistent with the actual state of facts, and whose content or nature could induce the Bank to not conclude the Agreement or to change its terms and conditions, including if the Account Holder uses outdated, incorrect, altered, forged or expired documents,
- c) Failure to observe the Agreement and the Terms and Conditions by the Account Holder,
- d) Failure to perform by the Account Holder of the provisions of the Agreement or the Terms and Conditions or failure to respond to the Bank's requests to perform requirements relating to the FATCA or CRS provisions, including failure to submit by the Client of the representation regarding the FATCA provisions or the representation regarding the CRS provisions, or failure to adequately update the representation, if the circumstances, affecting its content, change or if errors in the content of the representations are identified, including regarding providing the correct foreign tax identification number of the Client
- e) Violating by the Account Holder of the law, or committing another act which may lead to losing Bank's trust;
- f) Finding that the transactions performed by the Account Holder in the Account, did not comply with the information provided in the Onboarding Questionnaire, completed by the Account Holder when the relationship was established.
- g) Refusal to provide information on transactions or assets, including on their sources, by the Account Holder.

4. The Bank may terminate the Agreement with a

one-month notice, in cases other than those listed in Section 1, and in particular:

- a) no turnover and a zero balance in the Custody Account for 6 consecutive months;
- b) if the Account Holder enters into liquidation.

5. The Agreement must be terminated by written instrument executed on behalf of the Account Holder by persons authorized to make statements of will as regards property rights and obligations, otherwise it shall be null and void.
6. The Bank may close the Custody Account prior to the end of the notice period when the Custody Account balance is zero.

#### § 13

1. If the Agreement is terminated (with notice or otherwise) by the Account Holder, referred to in § 11 or the Bank referred to in § 12 item 1, 2, the Account Holder will be obligated to place with the Bank, within 14 days of termination notice or representation on termination of the Agreement, an Instruction whereby the Account Holder will instruct the Bank how to proceed with the Financial Instruments registered in the Custody Account.
2. During the notice period, the Bank shall have the right to refuse Instructions from the Account Holder other than those purposed to liquidate the Custody Account.
3. In case of the Agreement termination by the Bank, referred to in § 12 item 3, if on the Custody Account closing date there are financial instruments in the Custody Account, the Account Holder is obliged to issue an instruction to transfer the financial instruments from the Custody Account on the Agreement termination day and not later than within 7 business days.
4. If the Account Holder does not issue the Instruction referred to in item 1 and 3 above, the Bank, acting with due diligence, pursuant to a power of attorney hereby irrevocably granted:
  - a) Is entitled to sell the financial instruments deposited in the Custody Account on terms and conditions under the Bank's sole discretion;
  - b) Is entitled to issue an instruction to write off financial instruments if it is not possible to sell the financial instruments deposited in the Custody Accounts;
  - c) will credit the proceeds from the sale to the Settlement Account or any other bank account maintained for the Account Holder with the Bank, or another account indicated by the Account Holder, to which the Account Holder irrevocably consents
  - d) If crediting the Settlement Account or any other bank account maintained for the Account proves impossible, the Bank will Custody the proceeds with the relevant

court. All costs of sale and/or court Custody shall be charged to the Account Holder and will be deducted from the proceeds received by the Bank from the sale of Financial Instruments.

5. The power of attorney referred to in item 4 above will authorize the Bank to take all factual and legal activities in connection with the sale of Financial Instruments in the cases referred to in § 13 of the Terms and Conditions, and in particular to:
  - a) open securities accounts in the Account Holder's name with brokerage firms selected by the Bank;
  - b) submit a statement on behalf of the Account Holder regarding the allocation of a relevant MiFID Category to the Account Holder;
  - c) place an instruction to sell/purchase Financial Instruments;
6. The Bank will close a Custody Account immediately after it has de-registered all Financial Instruments from the Custody Account.
7. If on the Custody Account closing day, despite activities referred to in item 3, the financial instruments still remain in the Custody Account, the Bank shall transfer them to the technical account maintained by the Bank.

### III. Custody services

#### A. Principles of disposing of financial instruments

##### 1. The use of Financial Instruments in a Custody Account

###### § 14

1. Legal regulations or applicable contractual obligations incurred by the Account Holder may adversely affect the freedom to dispose of the Financial Instruments in the Custody Account.
2. The Bank will execute those Instructions placed by the Account Holder which, as at the Settlement Date, are covered by cash funds (in the case of Financial Instruments purchases) or an adequate number/quantity of Financial Instruments (in the case of sale). If the Settlement Account has a negative balance, the Bank will launch the procedures set out in Chapter E. 2 of these Terms and Conditions.
3. The Bank may withhold the execution of an Instruction to Transfer Financial Instruments registered in a Custody Account, if the Account Holder defaults under its financial liabilities towards the Bank as a result of the Account Holder's failure to comply with the obligations under the Agreement.

###### § 15

1. When placing Financial Instruments in the Bank's custody or making a Financial Instruments Transfer from another institution maintaining Securities accounts, the Account Holder shall be required to inform the Bank of all limitations on the disposal of these Financial Instruments.
2. In particular, the Bank needs to receive from the Account Holder information about the Account Holder's liabilities secured by the Financial Instruments transferred, and rights attaching to these Financial Instruments (including, e.g., tax exemptions) acquired prior to the day on which these Financial Instruments are registered in the Custody Account maintained for the Account Holder by the Bank, to the extent such information may be essential for the purpose of the Bank duly performing the Agreement, unless such information is explicitly provided in the text of the Security or in generally available documents under which the Financial Instruments were issued.
3. If the Bank does not receive the information referred to in Section 1 by the day on which the Financial Instruments are registered in the Custody Account maintained for the Account Holder by the Bank or such other day as will enable the Bank to take or omit relevant action, the Bank will not be held liable for the consequences of the Account Holder failing to comply with its liabilities towards third parties or for the due exercise of the rights attaching to Financial Instruments acquired by the Account Holder.

###### § 16

1. At the request of the Bank, the Account Holder will be obligated to
  - a) provide information on the value of a Transaction on the Financial Instruments registered in the Custody Account in a situation where the Transaction is not financially cleared via the Settlement Account.
  - b) immediately provide information, clarifications and documents concerning each transaction settled by the Account Holder,
2. The Bank may withhold settlement of the Transaction until additional information is obtained from the Account Holder, required to perform the AML/CTF analysis and to verify whether the securities or the Issuer was listed in the international sanctions lists or internal sanctions lists applicable in ING Group.
3. The Bank may refuse to settle the Transaction if the Transaction refers to securities or the Issuer, which were listed in the international sanctions lists or internal sanctions lists applicable in ING Group.
4. The Bank shall not be liable towards the Account Holder and/or third parties if the Bank withholds or refuses to settle the Transaction.

5. In compliance with the AML/CFT Act, the Bank shall be obligated to vet Transactions in accordance with the procedure set out therein.
6. When executing Transactions regulated by the AML/CFT Act through the intermediary of the Bank, the Account Holder is required to specify a basis for payment (or Transfer) and, if requested by the Bank, provide legally required documents.
7. The Bank will not be liable to the Account Holder and/or third parties if a Transaction is suspended by the Bank in compliance with the AML/CFT Act.

#### § 17

1. The Account Holder shall place with the Bank Instructions in relation to Financial Instruments deposited in the Custody Account via the e-Custody Module or a SWIFT communication channel. In the case of a major disruption to the operation of the communication channels referred to above (including malfunction and/or operation of a Force Majeure), the Bank will accept Instructions in a different form as may be agreed with the Bank.
2. Instructions placed by the Account Holder via channels other than those specified in Section 1 shall be processed by the Bank subject to terms and conditions as may be individually agreed by and between the Account Holder and the Bank. In no event, however, will the Bank be liable for a delay, distortion, interrupted connection or any other consequences arising as a result of such communication channels being.
3. If transmitted data is distorted, or there are doubts regarding authenticity, or other reasons adversely affect the automatic processing of a received Instruction, the Bank may request that the Account Holder confirm in writing the Instruction placed via electronic or other channels, and suspend the execution of the Instruction until confirmation has been obtained. The Bank will not be liable for the consequences of suspension or delay in the execution of an Instruction as a result of the Account Holder failing to confirm it.

#### § 18

1. All Instructions placed by the Account Holder in relation to Financial Instruments deposited in the Custody Account must be signed by persons authorized to make statements of will as regards property rights and obligations of the Account Holder.
2. The Bank will only accept Instructions from the Account Holder in the Bank's Office Hours. Instructions placed by the Account Holder with the Bank after the Bank's Office Hours will be deemed placed on the following Business Day.
3. Instructions placed in accordance with Sections 1 and 2 above shall serve as the only basis on which the Account Holder may seek claims for

errors in their execution.

#### § 19

The Bank shall have the right to refuse to execute an Instruction placed by the Account Holder:

- a) if it contains incomplete information thereby rendering the execution of the Instruction impossible,
- b) if it is in breach of the provisions of the Agreement,
- c) if the Transaction would cause a negative balance in the Custody Account or the Settlement Account, subject to § 13 Terms and Conditions,
- d) after a debt enforcement authority made an attachment on the Custody Account (up to the amount so attached), and/or
- e) in other legally justified cases.

#### § 20

1. Unless otherwise agreed in the Agreement, the Account Holder must place a Settlement Instruction with the Bank to settle a Transaction involving the purchase or sale of Financial Instruments into/from the Custody Account or transfer Financial Instruments to another account.
2. A Settlement Instruction must specify:
  - a) type of Transaction (delivery against payment, delivery without payment, receipt against payment, receipt without payment);
  - b) Transaction Settlement Date;
  - c) transaction identifier (reference number assigned to it by the Account Holder or the entity executing the Transaction);
  - d) transaction execution date and the market where it was executed;
  - e) financial Instrument's name and identifier unequivocally identifying the Financial Instruments purchased (series number, ISIN code, etc.);
  - f) quantity of Financial Instruments;
  - g) account Holder name and Custody Account number;
  - h) transaction value (amount, currency to be provided to the seller or received from the buyer in return for the Financial Instruments);
  - i) Custody Account or securities account number of the other party to the Transaction and name of the institution maintaining this account or name of the entity acting as an intermediary in the Transaction (if the other party to the Transaction is unknown to the Account Holder).
3. A Settlement Instruction in respect of instruments

cleared through the intermediary of Sub-Custodians must additionally specify:

- a) transaction settlement place;
- b) foreign Sub-Custodian delivering/receiving the Financial Instruments;
- c) name of the counterparty;
- d) details as may be necessary to correctly settle the Transaction in the market where the Transaction settlement will be effected – depending on local market requirements or Transaction type, e.g. tax ID, information whether the settlement is connected with the transfer of ownership, settlement type

#### § 21

1. Unless otherwise stipulated in the Agreement, purchase or sale Transactions in which the Bank is a party to the Transaction, executed by the Account Holder as agreed between the Bank and the Account Holder, will be cleared on the basis of the Bank's internal documents confirming the terms of the Transaction, without the Account Holder being required to place a Settlement Instruction.
2. The Account Holder will irrevocably authorize the Bank to debit or credit the Settlement Account with Transaction value as at the Transaction Settlement Date, as well as with amounts resulting from regulations of the National Securities Depository/CSD/third country CSD in case of settlement failure.
3. The Account Holder may cancel a previously placed Settlement Instruction in such a form and by such deadlines as apply to the placing of Settlement Instructions.
4. The Bank may refuse to cancel a Settlement Instruction already submitted to KDPW/CSD or another third country CSD relevant for the Transaction. The Bank shall also have the right to refuse to cancel a Settlement Instruction which has already been cleared.

#### **2. Detailed rules for performing operations on Financial Instruments admitted to trading on the Domestic Regulated Market.**

#### § 22

1. In the Custody Account maintained for the Account Holder, the Bank will register the balance of Financial Instruments admitted to trading on the Domestic Regulated Market.
2. The Settlement Instruction referred to in item 2 § 20 Terms and Conditions shall constitute a 'confirmation' of a Transaction executed on the Domestic Regulated Market within the meaning of Article 121 of the Act.
3. Settlement Instructions in respect of Transactions executed on or outside the Domestic Regulated

Market will be accepted by the Bank as per the Time Schedule.

4. The Bank will settle Transactions on the basis of data provided by the Account Holder in a Settlement Instruction. Data in the Settlement Instruction must be consistent with data regarding Transaction terms and conditions received from the intermediary taking part in the Transaction execution or an entity representing the other party to the Transaction.
5. The Bank will settle a Transaction on condition that by 10:00 am on the Transaction Settlement Date the Account Holder will have deposited adequate cash funds in its Settlement Account (in the case of a purchase Transaction), or an adequate number of Financial Instruments in its Custody Account (in the case of a sale Transaction) for the purpose of Transaction Settlement.

#### § 23

1. If a Settlement Instruction placed by the Account Holder is inconsistent in terms of its settlement value with Settlement Instructions placed by the other party to the Transaction, and the difference between the cash amounts indicated does not exceed the value agreed in accordance with rules applicable to Transaction Settlement involving tolerance limits, the Bank will proceed with the Transaction Settlement in accordance with the procedures of the KDPW/CSD.
2. If the Account Holder fails to meet the conditions specified in § 23(4)-(5) of the Terms and Conditions, the Bank will not be liable for the consequences of the Transaction Settlement not being made on time.
3. The Bank will debit the Settlement Account maintained for the Account Holder for handling fees as per the Table of Fees and Commissions and/or a relevant table of fees and commissions attached to the Agreement in the following cases:
  - a) if a Settlement Instruction is sent after deadline hours indicated in the Time Schedule;
  - b) if a Settlement Instruction is cancelled;
  - c) if a Settlement Instruction form is incorrectly completed.

#### § 24

If Financial Instruments are transferred on behalf of an Account Holder who is not a professional client within the meaning of the Act to an account of another entity for which the Bank maintains a Custody Account in the course of a Transaction or a legal event in the secondary trading outside of an organized trading system, the Bank will take measures to transfer Financial Instruments as soon as the Account Holder (i.e. the transferor) has presented relevant documents requested by the Bank.

### **3. Detailed Rules for disposing of Securities in non-dematerialized form held in the Bank's custody**

#### **§ 25**

1. The Bank may accept Securities in non-dematerialized form into custody having first agreed with the Account Holder the rules for these services in the Agreement.
2. The Bank will register the Securities held in custody in the Custody Account.
3. Regulations applicable to the terms of issue of the given Securities shall apply to all activities undertaken by the Bank in connection with the safekeeping of Securities not admitted to organized trading.
4. The Bank may refuse to perform a service at any time with or without a cause.

#### **§ 26**

1. Subject to § 25(1) Terms and Conditions, the Bank will accept Securities in documentary form into custody and will register them in the Custody Account having first confirmed authenticity of these Securities with the issuer or another entity authorized to do so by and on behalf of the issuer.
2. Unless otherwise stipulated in the Agreement, the Account Holder will be responsible for obtaining the issuer's confirmation of authenticity of the Securities accepted into custody.
3. If the Account Holder and the Bank agree that the activities referred to in Section 2 above shall be performed by the Bank, the Bank will charge the Account Holder for the costs incurred by the Bank in connection with the above and, unless otherwise stipulated in the Agreement, such fee as the Bank may determine in its sole discretion.
4. If the Bank has doubts regarding the status of Securities accepted into custody, at the request of the Bank the Account Holder will be obligated to provide a relevant legal opinion.
5. The provisions of Section 1 above shall not apply to transfers of Securities between deposits maintained with the Bank, including transfers of Securities purchased from the Bank.

#### **§ 27**

1. Subject to § 25(1) Terms and Conditions, the Bank will accept or release Securities in documentary form on the basis of Account Holder's Instructions having first verified and approved them. The Bank may request the Account Holder to provide a document confirming the Account Holder's ownership right.
2. Activities in connection with acceptance and/or release of the Securities shall be made in the presence of the Account Holder or its attorney solely at the Bank's registered office in Warsaw, at ul. Puławska 2, on the day and time agreed by and

between the Bank and the Account Holder.

3. Securities in non-dematerialized form will be released from the Bank's custody after the Account Holder or party requesting the release thereof presents such proof of ownership as agreed with the Bank.
4. A record shall be drawn up each time Securities are accepted and/or released, such record to be signed by the Bank and the Account Holder. On the basis of the acceptance/release record, the Bank will register a relevant change in the Custody Account.

### **4. Detailed Rules for disposing of rights to Financial Instruments held in custody or registered by Sub-Custodians**

#### **§ 28**

1. The balance of Financial Instruments and any changes thereto will be registered in the Custody Account maintained for the Account Holder.
2. Before executing a purchase Transaction or placing an Instruction to register Financial Instruments in the Custody Account, the Account Holder shall be required to satisfy itself, in accordance with the procedure set out in Section 3 below, whether and subject to what terms the Financial Instruments may be registered in the Custody Account maintained by the Bank.
3. Unless otherwise stipulated in the Agreement, if the Account Holder executes a purchase/sale Transaction, the Bank will provide the Sub-Custodian with Settlement Instructions subject to the following conditions:
  - a) the Account Holder will place with the Bank a Settlement Instruction by the deadline specified in the Time Schedule;
  - b) unless otherwise stipulated in the Agreement, the Account Holder will hold in the Settlement Account adequate cash funds in the transaction currency by 10.00 am on the Transaction Settlement Date;
  - c) the Account Holder will hold Financial Instruments standing to the credit of the Custody Account in the required amount on the Transaction Settlement Date;

and will register a change in the ownership status in the Account Holder's Custody Account on condition that the Bank receives a Transaction Settlement confirmation from the Sub-Custodian.

#### **§ 29**

1. Regulations governing the terms of issue of the given Financial Instruments, as well as the laws of the jurisdiction applicable to the agreements signed by the Bank with Sub-Custodians shall apply to the performance by the Bank of all activities in connection with the registration of

rights attaching to Financial Instruments.

2. If a Transaction Settlement Date or a date for disbursement of distributions under Financial Instruments falls on a day on which the Bank is not open for business, a change of ownership in the Custody Account and a disbursement of distributions under Financial Instruments will be made on the immediately following Business Day.
3. Settlement Instructions in respect of Transactions cleared with the participation of National Sub-Custodians shall be delivered to the Bank by the deadline indicated by the Bank in the Time Schedule for Settlement Instructions on [www.ingbank.pl](http://www.ingbank.pl).

#### § 30

1. The Bank is obligated to select Sub-Custodians with due diligence. The Bank will not be liable for Sub-Custodians' actions and/or omissions provided that it has exercised due diligence in the process of selecting them.
2. The Bank will make entries in the Custody Account and perform other operations in respect of the Financial Instruments on the basis of a Settlement Instruction received from the Account Holder and documents and information received from Sub-Custodians.
3. If an operation is made in error due to reasons attributable to the Sub-Custodian, the Bank will correct such an operation only after it has obtained confirmation that the error has been corrected by the Sub-Custodian.
4. If correction of the error referred to in Section 3 entails the necessity of refunding cash funds initially credited to the Settlement Account, the Bank will be authorized to debit the Settlement Account for the correction amount. The Bank will notify the Account Holder about the correction made in such a form as may be agreed by the parties.

#### § 31

1. If cash funds cannot be paid into the Settlement Account in the Transaction currency because the Bank is unable to maintain a bank account denominated in this currency, the Account Holder must possess in the Settlement Account cash funds in an alternative currency indicated in the Settlement Instruction. The Account Holder hereby authorizes the Bank to perform a currency exchange transaction whereby the Bank will purchase cash funds in the transaction currency in an amount sufficient to settle the Transaction, at the exchange rate available to the Bank as at the Transaction Settlement Date.
2. The Account Holder hereby authorizes the Bank to debit the Settlement Account for an amount equal to the Transaction value as at the purchase Transaction Settlement Date or another date in accordance with the customary practice generally

followed by the Sub-Custodian.

3. If Financial Instruments are not provided by the seller on the Transaction Settlement Date, the Bank will suspend the Transaction Settlement until the seller has supplied the Financial Instruments.
4. The Account Holder irrevocably authorizes the Bank to debit or credit the Settlement Account with the amounts resulting from the third countries CSD regulations in case of settlement failure.

#### 5. Detailed rules for disposing of Securities not admitted to trading on the Domestic Regulated Market, issued in dematerialized form for which the Bank keeps securities records

#### § 32

Unless the context suggests otherwise, the term "Securities" as used in this Chapter shall refer to securities in dematerialized form, not admitted to organized trading, in particular bonds and bank securities.

#### § 33

The Bank shall register in Custody Accounts the Securities in respect of which the Bank and the Securities issuer have executed an agreement whereby the Bank will be authorized to keep records of purchasers of these Securities.

#### § 34

1. If the Account Holder executes a Securities purchase Transaction, the Bank will register a change in the balance of the Custody Account on the day specified as the Transaction Settlement Date in accordance with the Account Holder's Settlement Instruction.
2. If a Transaction is executed to purchase Securities from the Bank, the Bank will make the Transaction Settlement in accordance with the information in its possession about the terms of the executed Transaction.
3. The Bank will perform a Transaction Settlement in respect of the purchase of Securities on condition that the Account Holder possesses adequate cash funds standing to the credit of the Settlement Account by no later than 3:00pm on the Transaction Settlement Date.
4. If no relevant Settlement Instruction is received from the seller, or if Securities are not credited to the seller's account by 3:00pm on the Transaction Settlement Date, the Bank will suspend the Transaction Settlement until the Securities have been provided by the seller, unless in the meantime the Account Holder cancels the Settlement Instruction.

#### § 35

1. If the Account Holder executes a Transaction to sell the Securities, the Bank will register on the Transaction Settlement Date a change in the

balance of the Account Holder's Custody Account as per the Settlement Instruction.

2. If a Transaction to sell Securities is executed with the Bank or through the intermediary of the Bank, the Bank will perform the Transaction Settlement in accordance with the information in the Bank's possession about the terms of the executed Transaction.
3. The Bank will perform a sale Transaction Settlement by the deadline specified in the Securities purchase contract on condition that the Account Holder fulfills settlement conditions, and in particular that it holds an adequate number of Securities standing to the credit of the Custody Account on the date specified in the Securities purchase contract but in no event later than 4:00pm on the Transaction Settlement Date.
4. If cash funds are not delivered for the purpose of Transaction Settlement by the purchaser by 4:00 pm on the Transaction Settlement Date, the Bank will suspend the Transaction Settlement until such time as the purchaser provides cash funds, unless in the meantime the Account Holder cancels the Settlement Instruction.
5. The Bank will perform the Account Holder's Instruction to accept or surrender Securities to another bank on condition that the above is consistent with the terms of the Issue Program for these Securities and that the Bank is in possession of all documents necessary to perform this operation.

## B. Derivatives

### 1. Detailed rules for securities services in the scope of registration of Derivatives in the Custody Account

#### § 36

1. The Bank will register Derivatives in the Custody Account and make clearings in connection with the Account Holder holding them subject to and otherwise in compliance with applicable KDPW\_CCP regulations.
2. Before launching operations on a Derivatives market, the Account Holder will place with the Bank an Instruction to obtain or confirm that it already has a Client Classification Number (Polish: *Numer Klasyfikacyjny Klienta* – "NKK") and a LEI number allocated by KDPW\_CCP, and will supply all documents regarding cooperation with brokerage firms as may be necessary.
3. All cash settlements in connection with the registration of Derivatives acquired by the Account Holder shall be performed in Collateral Accounts OR Cash Security Deposit Accounts opened under a separate Agreement, for each Portfolio separately.
4. Settlements of Transactions executed on a Derivatives market will be performed on the basis

of transaction confirmations received from the brokerage firm through the intermediary of the Account Holder will execute the transactions and on the basis of a Custody statement received from KDPW\_CCP.

#### § 37

Derivatives may be transferred on the basis of an Instruction between the Account Holder's Portfolios maintained by the Bank. The number of transferred Derivative positions must not exceed the closing balance of all Derivative positions opened as of the day preceding the Transfer date. The Instruction will be performed on condition that on the Transfer completion day the Account Holder has not placed an Instruction triggering the relay of information to the brokerage firm about Transferred positions and positions correlated with the Derivatives so transferred. The Account Holder shall be obligated to place a Transfer Instruction by no later than 1:00 pm on the Transfer date.

#### § 38

1. To secure Derivatives positions opened by the Account Holder, the Bank will deliver an initial margin to KDPW\_CCP.
2. In order for the Bank to deliver an initial margin to KDPW\_CCP, before a transaction is executed on a Derivatives market, the Account Holder will be obligated:
  - a) to ensure that readily available funds are standing to the credit of the Settlement Account so that the Bank can execute an Instruction to deliver an initial margin to KDPW\_CCP in an amount required by KDPW\_CCP;
  - b) to give the Bank the Instruction to deliver an initial margin to KDPW\_CCP.
3. The completion by the Bank of the Instructions referred to in Section 2 above shall involve the transfer of cash funds from the Settlement Account into the Collateral Account and the subsequent delivery of an initial margin to KDPW\_CCP.
4. To enable the Account Holder to execute a Transaction via a brokerage firm on a Derivatives market, the Account Holder shall be required to indicate to the Bank a brokerage firm through the intermediary of which it intends to execute such transactions, issuing a "Brokerage Firm Selection" Instruction to the Bank. In connection with the above, the Bank, as long as the Instruction is in effect, will provide the following information to the brokerage firm each time before it begins a Derivatives trading session in the market:
  - a) Custody Account number;
  - b) account Holder's NKK number;
  - c) portfolio name;
  - d) list of open Derivatives positions registered in the Custody Account;

- e) amount of the variation margin provided by the Bank to KDPW\_CCP in connection with open Derivatives positions registered in the Custody Account;
  - f) amount of the initial margin contributed by the Bank to KDPW\_CCP on the basis of the Instruction.
5. The Account Holder may change its selection of the brokerage firm while the Instruction referred to Section 4 is in effect, by issuing an Instruction to the Bank whereby a new brokerage firm will be selected. The instruction indicating a new brokerage firm must be given to the Bank by 2:00 pm and shall take effect as of the next Business Day, subject to the stipulations of the following sentence. The Instruction referred to above may be issued and take effect as of the issue date on condition that on that particular day the Account Holder has not executed any Derivatives transactions via the brokerage firm to be replaced.
  6. Subject to the stipulations in Section 5, the Account Holder may place with the Bank in respect of each Portfolio on the given transaction date an Instruction indicating only one brokerage firm to which the information referred to in Section 4 ought to be provided.

#### § 39

1. The Bank will make all cash clearings in connection with Derivatives registered in the Custody Account via the Collateral Account, except the clearing of fees due to the Bank for the services rendered. The Account Holder shall be obligated to ensure sufficient funds in the Collateral Account to make such clearings, in particular for the purpose of deposits required by the KDPW\_CCP in connection with the Account Holder's Derivatives positions.
2. In addition to the clearing of the initial margin, as referred to in § 39 Terms and Conditions, the clearings referred to in Section 1 shall include:
  - a) clearings of relevant collateral deposits contributed by the Bank to KDPW\_CCP to secure the Account Holder's open Derivative positions;
  - b) clearings of additional deposits made by the Bank to KDPW\_CCP to secure the Account Holder's open Derivative positions;
  - c) clearings of current market clearings in relation to the Account Holder's open Derivative positions;
  - d) final clearings of amounts payable / liabilities in connection with the expiry or exercise of the Account Holder's open Derivative positions.
3. The Account Holder is obligated to ensure that there are readily available cash funds in the Collateral Account in the amounts specified in KDPW\_CCP regulations for the purpose of the

clearings referred to in Section 2 above, subject to Section 4. Adequate readily available cash funds must be ensured in the Collateral Account to comply with the liabilities referred to in Section 2 above by the deadline specified in the applicable KDPW\_CCP regulations by which the Bank and KDPW\_CCP will make relevant clearings.

4. The Bank and the Account Holder may include in the Agreement the Account Holder's obligation to ensure readily available funds in the Collateral Account to pay initial margins and variation margin in amounts other than those specified in the KDPW\_CCP regulations.
5. In connection with the Account Holder's obligation referred to in Section 3 above, the Bank will provide the Account Holder with information, in the manner specified in the Agreement, about the amounts to be cleared on the following Business Day in connection with the activities referred to in Section 2 above and the amounts of initial margin made to KDPW\_CCP, as at the end of each Business Day after the Bank has received a Custody statement from KDPW\_CCP.
6. The Bank will not be liable for any delay in the performance of the obligation referred to in Section 5 above provided that such delays are a result of the time at which the Bank received a Custody statement from KDPW\_CCP.
7. Any delay in the communication of the information referred to in Section 2 above shall not release the Account Holder from the obligation to timely ensure readily available cash funds in the Collateral Account for the purpose of clearings between the Bank and KDPW\_CCP in connection with the activities referred to in Section 2.

#### § 40

1. If the Account Holder fails to timely ensure readily available cash funds in the Collateral Account for the purpose of clearings between the Bank and KDPW\_CCP in connection with the activities referred to in Section 2, the Bank will debit the Collateral Account for an amount equal to the amount received as a result of the clearing between the Bank and KDPW\_CCP thereunder, and will subsequently proceed to take the following action:
  - a) it will cover the negative balance in the Collateral Account from the cash funds readily available in the Settlement Account;
  - b) if there are no readily available funds in the Settlement Account to cover the negative balance in the Collateral Account, the Bank will request that the Account Holder cover the negative balance in the Collateral Account by no later than 9:00 am on the following Business Day, in which case the Account Holder will be obligated to cover the negative balance by the stipulated deadline.

2. If the Account Holder fails to comply with the obligation referred to Section 1(b), the Bank shall have the right to:
  - a) close any of the Account Holder's open Derivative positions, however only in the following order of priority (except correlated positions):
    - WIG 20 futures contracts with a maturity of less than 3 months;
    - WIG 20 futures contracts with a maturity of more than 3 months but less than 6 months;
    - futures contracts in respect of corporate stock with the nearest maturity date;
    - other Derivatives not referred to above.
  - b) block any securities in the Custody Account in the amount of at least the value of the uncovered overdraft,
  - c) take actions as agreed with the Account Holder.
3. If the Bank is advised by KDPW\_CCP about a change in the manner of calculating an appropriate variation margin as a result of a change in the market situation and, consequently, there is a shortfall in the variation margin contributed in respect of the Account Holder's open Derivatives positions, the Bank will request the Account Holder to immediately provide readily available funds for the Bank to top up the proper variation margin with KDPW\_CCP. In such a case, the Account Holder will be required to ensure readily available cash funds in the Collateral Account in an amount indicated by the Bank within 60 minutes of receipt of the said request.
4. For the purposes of transactions triggering the closing of an already open Derivatives position or transactions triggering the opening of a correlated position, the Account Holder will not provide any collateral unless as a result of the position being closed there is no collateral for a previously correlated position.
5. The unblocking of Assets blocked as variation margin before the expiry of the period for which the block was established under the Account Holder's previous instruction, or in the case of blocks made with no fixed expiry date, will be effected on the basis of an instruction to unblock funds set aside for collateral deposits, placed by the Account Holder with the Bank. The Account Holder should submit the instruction by 14:00.
6. The Bank will execute an instruction to unblock after it has established whether or not the Assets to be unblocked have been used as collateral for a transaction previously executed on Derivatives.

## 2. Rules for reporting Transactions on Derivatives in accordance with the EMIR Regulation

### § 41

1. For the purposes of compliance with the Account Holder's Reporting Obligation, the Bank, acting for and on behalf of the Account Holder (or on behalf of entities for the benefit of which the Account Holder opened the Custody Accounts), will instruct KDPW\_CCP to report Derivatives Transactions on condition that it receives an instruction to this effect from the Account Holder.
2. The Bank, acting for and on behalf of the Account Holder, will in each instance send such data and submit such representations to KDPW\_CCP as may be necessary to comply with the Reporting Obligation.
3. The Account Holder hereby authorizes the Bank to provide KDPW\_CCP with all required information regarding the Account Holder as may be necessary to duly comply with the Reporting Obligation by ordering a Derivatives Transaction reporting service in the Application.
4. The Account Holder is obligated to immediately report any changes in the data referred to in Section 3 above to the Bank.
5. The Account Holder undertakes to provide the Bank with all information, make all representations and statements and take all action which, in the Bank's reasonable opinion, may be necessary for the Bank to duly and timely comply with the Reporting Obligation.

### § 42

1. The Bank will not be liable for the failure to perform or undue performance of the Reporting Obligation by KDPW\_CCP or the Repository unless any such failure is attributable to the Bank.
2. The Account Holder may individually fulfill the Reporting Obligation by reporting mandatory data. In such an event, the Account Holder will be obligated to report to the relevant Repository all updates to the data previously reported to the Repository by the Bank.
3. Before the Account Holder commences to fulfill the Reporting Obligation in the scope referred to in Section 2 above, the Account Holder shall be required to notify the Bank in writing about the intention to individually fulfill this obligation. The notice will be effective vis-à-vis the Bank within 5 Business Days from the date of receipt by the Bank.
4. The Bank will not bear any liability in connection with a situation where the Account Holder individually fulfills its Reporting Obligation.
5. The Account Holder agrees to bear all costs paid by KDPW\_CCP S.A. to the Repository in connection with compliance with the Reporting Obligation in

relation to Derivatives Transactions executed by the Account Holder and cleared by the Bank in the Custody Account.

6. The Repository's fees will be re-invoiced by the Bank and charged to the Account Holder.
7. The Account Holder agrees to pay fees for the Bank's activities in connection with the proper configuration and ongoing servicing of the Custody Account in terms to the Reporting Obligation in accordance with the stipulations of the Agreement.

### C. Corporate action

#### 1. Rules for services in connection with corporate events and exercising rights attaching to Financial Instruments

##### § 43

1. The Bank may provide services in connection with corporate events in the national and foreign markets subject to terms and conditions individually agreed with the Account Holder in the Agreement and pursuant to a valid power of attorney granted by the Account Holder.
2. In case of services regarding corporate actions, the Bank requires that the Account Holder update their details on an ongoing basis with the use of the Application or in another manner agreed on with the Bank.
3. The Bank will notify the Account Holder via the e-Custody Module or the SWIFT channel about the upcoming corporate events of which it has been duly informed.
4. If the Account Holder is notified of an optional event as a result of which rights attaching to Financial Instruments have been registered in the Custody Account, the Account Holder, so as to declare its intention to participate in the event, is required to place with the Bank a relevant Instruction as well as documentation required by the Bank to provide its services in connection with the event by the deadline specified in the notice.

##### § 44

1. The Bank will provide services consisting in representing Account Holder at general meetings of shareholders on the basis of a valid power of attorney referred to in Section 1 above and the Account Holder's Instruction.
2. The Bank will accept a power of attorney executed in accordance with the following requirements:
  - a) the power of attorney must be executed in writing or electronically, in compliance with the requirements of the Bank and the issuer,
  - b) the power of attorney must include an authorization for the Bank to take part in the general meeting of shareholders and to

vote on behalf and for the benefit of the Account Holder,

- c) the power of attorney may concern a specific general meeting or a specific item on the agenda for such a meeting, or several general meetings in a year, or provide for a general authorization to represent the shareholder at any general meeting for an indefinite term,
- d) the power of attorney must be notarized and, if the Account Holder has no Resident status, additionally duly apostilled.

3. The Account Holder's Instruction ought to include voting instructions with respect to each individual item on the agenda for the general meeting.

##### § 45

1. For the purpose of disbursements of distributions under Financial Instruments, the Bank will credit the Settlement Account with the proceeds received in connection with the above on the date of receipt, on condition the Bank receives the same from entities obligated to make any such disbursement. In the event of disbursement of a distribution in connection with the redemption or expiry of a Financial Instrument, the Bank will register the resulting change in the Custody Account at the same time crediting the Settlement Account.
2. The Bank will charge fees for the provision of services in the scope of corporate services as per the table of fees and commissions applicable to the Account Holder.

#### 2. Procedure, conditions and reasons for blocking or unblocking the Account Holder's Financial Instruments and rights to receive Financial Instruments

##### § 46

1. At the request of the Account Holder, the Bank will issue in writing, separately for each type of Securities, a Deposit Certificate or another document confirming the depositing of the Securities in the Bank. At the request of the Account Holder, the Deposit Certificate may cover all or some of the Financial Instruments registered in the Custody Account.
2. A Deposit Certificate shall confirm eligibility to exercise rights attaching to the Financial Instruments specified therein which rights are not or must not be exercised solely on the basis of them being registered in the Custody Account.
3. At the request of the Account Holder, such request to be made no sooner than upon a notice of a general meeting of shareholders being published and no later than the first Business Day following the registration of participation in the general meeting, the Bank will issue a certificate made out in the Account Holder's name confirming the

Account Holder's eligibility to take part in the general meeting. The Bank will notify KDPW of such certificate being issued in compliance with applicable regulations.

4. As of the issuance of a Deposit Certificate, the number of Financial Instruments indicated therein must not be traded in until the said certificate expires or is returned to the issuer thereof prior to its expiry date. For this period, the Bank will block the relevant number of Financial Instruments in the account indicated in the Deposit Certificate.
5. In the period referred to in Section 4 above, more than one certificate may be issued in respect of the same Financial Instruments provided that each such certificate is issued for a different purpose. In such an event, the Bank will annotate each subsequent Deposit Certificate it issues to the effect that it has already blocked the Financial Instruments and explain why they were blocked.
6. As long as a certificate confirming eligibility to participate in a general meeting is valid, Financial Instruments covered by the certificate are not subject to the limitations set out in Section 5 above.

#### **D. Method, procedure, dates and scope of communication of information on securities services to the Account Holder.**

##### **§ 47**

1. The Bank will prepare bank statements in respect of a Custody Account no less frequently than once a year and will provide them subject to the rules determined by the Account Holder and agreed with the Bank within one month of each calendar year end.
2. At the Account Holder's written request, the Bank may prepare a bank statement from the Custody Account stating the balance of Financial Instruments at any day indicated by the Account Holder subject to a fee as per the Table of Fees and Commissions.
3. Statements from a Custody Account, unless transmitted via the e-Custody Module or a SWIFT channel, may only be issued by the Bank to persons listed in the Signature Specimen Card or other persons authorized in writing or in any other authorized manner by the Account Holder.
4. The Account Holder shall be obligated to check on an on-going basis its Custody Account balance on the basis of bank statements received, and if it detects any irregularities, it must report them to the Bank in writing or in any other manner as may be agreed by the parties within no later than 14 days of receipt of the bank statement. The Bank will not be liable for any damage arising as a result of the Account Holder failing to report account balance-related irregularities by the above deadline.

5. If an irregularity arising for any reason whatsoever is identified by the Bank in an account balance, the Bank will make an appropriate correction and will provide a corrected bank statement regarding the Custody Account to the Account Holder.

#### **E. Other Provisions**

##### **1. Measures to be taken by the Bank if the Account Holder fails to provide cash funds by the deadline stipulated in the Agreement or applicable regulations**

##### **§ 48**

1. The Account Holder must ensure a sufficient amount of Financial Instruments and cash funds necessary for the purpose of settlement of Transactions executed in connection with Settlement Instructions placed by the Account Holder, in particular Settlement Instructions received by the Bank from an investment firm indicated by the Account Holder.
2. For this purpose the Account Holder is required to possess Financial Instruments in the Custody Account and cash funds in the Settlement Account on dates and in amounts necessary to duly perform Transaction Settlement.
3. To secure the execution of the Transactions referred to in Section 2 above the Bank will have the right to block Financial Instruments and/or cash funds subject to the terms and conditions set out in the Agreement.
4. If no sufficient cash funds are provided by the time required to settle the executed Transactions, the Bank may reject a Settlement Instruction. All costs in connection with no Transaction Settlement being made or it being made at a later date will be borne by the Account Holder.
5. If the Bank executes Settlement Instructions to purchase Financial Instruments placed by the Account Holder notwithstanding insufficient cash funds on the Settlement Date, the Bank will have the right to sell the Financial Instruments purchased under the said Settlement Instruction. If the sale of these Financial Instruments proves, in the Bank's estimation, impossible or substantially difficult, or if proceeds from the sale are insufficient to cover the Bank's claims in connection with the executed Settlement Instructions, the Bank will have the right to sell Financial Instruments selected by the Bank, registered in the Account Holder's Custody Account in an amount necessary to cover the Bank's claims under the executed Settlement Instructions.
6. If the Bank executes Settlement Instructions to sell Financial Instruments placed by the Account Holder despite insufficient amount of Financial Instruments as at the Settlement Date, the Bank

will have the right to repurchase for the Account Holder the Financial Instruments sold on the basis of the executed Settlement Instructions. If cash funds in the Settlement Account are insufficient to purchase these Financial Instruments, the Bank will have the right to sell Financial Instruments selected by the Bank, registered in the Account Holder's Custody Account in an amount necessary to cover the Bank's claims under the executed Settlement Instructions.

7. The Account Holder will be obligated to cover all costs as may arise in connection with the Bank exercising its rights under this paragraph.
8. The Bank will have the right to debit the Settlement Account or another bank account maintained for the Account Holder with the costs referred to in this paragraph.

## **2. Provisions securing the Bank's interests if the Account Holder fails to perform its obligations or liabilities, and methods of claims enforcement by the Bank**

### **§ 49**

1. The Bank has the right, without having to seek the Account Holder's approval, to sell any Financial Instruments from the Custody Account as the Bank may deem fit and to debit any of the Account Holder's bank accounts in the following cases:
  - a) if the Account Holder fails to pay fees and commissions in connection with the Custody Account or fees for the safekeeping of Securities, as well as other fees due to the Bank under the table of fees and commissions following the termination of the Agreement,
  - b) there being a difference between the proceeds from the sale of Securities referred to in Chapter 15 above and the Account Holder's liability towards the Bank as a result of the acquisition of Securities or other costs incurred by the Bank.
2. The Bank may sell the Account Holder's Financial Instruments referred to in Section 1 only to the extent necessary to satisfy the claims referred to in Section 1(a) – (b).

### **§ 50**

1. This paragraph supplements the provisions of a Financial Pledges Agreement.
2. As a condition to Financial Pledges being effectively established over Assets, the Assets must be blocked.
3. Financial Pledges may be enforced in one of the following manners:
  - a) foreclosure by the Bank on all or some of the Assets;
  - b) sale by the Bank of all or some of the Assets;

- c) setoff, whereby the Bank will set off its claim against Account Holder regarding the return of all or some of the Assets against the Secured Claims.

4. The choice of the enforcement method is in the Bank's discretion.
5. The value of the foreclosed Assets admitted to trading in the Domestic Regulated Market will be determined in accordance with the Certain Financial Collateral Act. If the foreclosed Assets are not admitted to trading on the Domestic Regulated Market, the Asset value will be determined by the Bank based on a market valuation.
6. The value of Assets subject to be set off will be reasonably determined by the Bank based on market valuation.
7. Financial Pledges will be established for a period starting on the day specified in the Financial Pledges Agreement and ending upon the enforcement of all Secured Claims, but for no less than the term of the Agreement.

## **3. Rules for handling Financial Instruments encumbered with a limited right in rem or with limited tradability**

### **§ 51**

1. The Account Holder's Financial Instruments standing to the credit of its Custody Account may be used as collateral to secure claims, in particular by way of transfer of ownership, registered pledge, pledge overrides established in accordance with the Civil Code, or a block on securities, provided that the form of the collateral instrument and the method of claims enforcement by a creditor thereunder must comply with requirements stemming from relevant legal regulations.
2. The Account Holder is obligated to provide the Bank with documents constituting the basis for establishing security instruments and the agreement under which it arises. The Bank will take measures to establish collateral instruments securing claims subject to terms and conditions agreed with the Account Holder.

### **§ 52**

1. The Bank will block Financial Instruments in the Account Holder's Custody Account in accordance with the documents and relevant Instruction received.
2. The Bank will maintain a block on Financial Instruments for as long as transpires from the documents on the basis of which it was established.
3. As long as a block is in place, the Bank will not execute any Instructions to unblock, transfer or sell the blocked Financial Instruments on behalf of Account Holder, except transfers of blocked

Financial Instruments to another account where they will continue to be blocked, such transfers to be made in accordance with the agreement establishing the block or applicable legal regulations arising from the Act.

4. The Bank may refuse to take measures in connection with the establishing of collateral security in respect of claims if in its reasonable estimation the agreement is likely to be aimed at circumventing applicable legal regulations.
5. The Bank may lift the block whether in full or in part. A block on Financial Instruments will be lifted in the following cases:
  - a) for blocks established for an indefinite term until revoked or until the liability secured thereby is performed – immediately after the creditor or the Account Holder, subject to the creditor's written consent, files an instruction to lift the block;
  - b) for irrevocable blocks – on the next day after the contractual block period expires;
  - c) if the creditor places an Instruction to sell the Account Holder's Financial Instruments on the claims maturity date, pursuant to a power of attorney granted to it by the Account Holder in the agreement providing for the block.

#### § 53

1. If claims are secured by way of registered pledge, the Bank will block relevant Financial Instruments after it has received a relevant Instruction, the pledge agreement and an excerpt from the pledge register.
2. Relevant provisions of these Terms and Conditions applicable to blocks established for the purpose of securing claims shall apply to the posting, maintaining and lifting blocks on Financial Instruments in connection with pledges.

#### 4. Scope of the Bank's liability for damage as a result of the Bank failing to perform or unduly performing liabilities in connection with the execution of the Agreement

#### § 54

1. The Bank will be liable for damage arising as a result of a Transaction Settlement not executed on time or unduly executed, unless attributable to circumstances beyond the Bank's control, and in particular as a result of:
  - a) Errors in the contents of an Instruction/Settlement Instruction;
  - b) Fault of third parties taking part in the transaction/settlement process in respect of the given Transaction;
  - c) Operation of Force Majeure;

- d) Failure of electronic transaction/clearing systems.

2. The Bank will only be liable up to the value of actual damage incurred by the Account Holder, to the explicit exclusion of lost profits.
3. The Bank shall not be liable for damages resulting from performance of the contents of the Instruction submitted by the Client or their proxy.

## IV. System

### A. e-Custody - a system for communication with the Bank

#### § 55

1. The Bank offers access to securities services available in the ING Business internet banking system via the e-Custody Module.
2. A detailed description of features and types of Instructions which may be submitted to the Bank using the e-Custody Module is provided in the e-Custody Module User Manual.
3. The Bank offers the e-Custody Module for use 24 hours a day, 7 days a week. The Bank reserves the right to suspend access to the e-Custody Module for the purpose of indispensable scheduled maintenance and in other justified cases.
4. The Bank will notify the Account Holder about all scheduled suspensions of access to the e-Custody Module by sending messages via the ING Business internet banking system. The Bank shall make best efforts to ensure that messages to this effect are distributed as soon as possible.
5. The Bank shall not be liable for any damage sustained as a result of no access to e-Custody Module.

#### § 56

1. The Bank will offer access to securities services provided within the ING Business internet banking system subject to the Account Holder fulfilling the following conditions:
  - a) executing an ING Business internet banking system Agreement;
  - b) filing a Registration Application;
  - c) executing the Agreement;
  - d) filing a Custody Account Application to the Bank or indicating an already active Custody Account opened for the Account Holder.
2. The Bank agrees to execute the Account Holder's Instructions submitted via the e-Custody Module on condition that each time the Account Holder uses the authorization methods indicated in the Terms and Conditions for Opening and Maintaining Bank Accounts.

3. Instructions placed by the Account Holder and information provided by the Bank to the Account Holder via the e-Custody Module shall be binding on the parties upon receipt, on condition that the requirements stipulated in the Agreement are fulfilled and further provided that:

- a) 'Receipt by the Account Holder' shall mean the Bank making a message available via the e-Custody Module for the Account Holder to download it;
- b) 'Receipt by the Bank' shall mean the Account Holder executing and sending an Instruction via the e-Custody Module in accordance with the approval procedure in effect.

4. If a Settlement Instruction or any other Instruction is incomplete, inconsistent with another Settlement Instruction or an Instruction placed by the Account Holder, or if there are no sufficient cash funds to execute a Settlement Instruction or another Instruction, or if other circumstances prevent the Bank from accepting it, the Bank will not execute a Settlement Instruction or another Instruction and will inform the Account Holder accordingly via the e-Custody Module.
5. The Bank will not be liable if a duly authorized Settlement Instruction or another Instruction is sent by an entity different than the Account Holder or users authorized by the Account Holder or if third parties intercept information addressed to the Account Holder's attention.
6. The Bank will not be liable for damage occasioned as a result of internet hacking or attacks, computer viruses or any other hazards connected with the use of computer networks.
7. If the e-Custody Module is unavailable, Instructions will be placed in the manner specified in § 15(2) Terms and Conditions and otherwise as individually agreed with the Account Holder.

#### § 57

1. The Account Holder will bear exclusive liability for giving authorizations to e-Custody Module users and defining their powers in the context of a holding group. Reports generated from accounts of all members of a holding group will be available to a user operating within a holding group.
2. Unless otherwise provided in the Agreement, the Bank will charge fees for the e-Custody Module service as per the Table of Fees and Commissions.

### V. Complaints Procedure

#### § 58

1. The Bank will only accept complaints in writing.
2. Complaints shall be sent in writing to:  
Centrum Wsparcia Klientów

Strategiczny ING Bank Śląski S.A.  
ul. Puławska 2  
02-566 Warsaw

3. The Bank will confirm receipt of a complaint and provide information about the complaints procedure results in written or any other form as may be agreed with the Account Holder.
4. Complaints which do not require the collection of evidence, information, opinions or explanations will be processed immediately and without any delay but within no later than 14 Business Days of receipt of the complaint by the Bank.
5. Complaints necessitating arrangements, an enquiry into the matter, preparation of an opinion or a review of documentation will be processed by the Bank immediately and without any delay but in no event later than 30 days of receipt by the Bank.
6. If a complaint is not capable of being processed by the deadlines set out in Sections 1 and 2 above, the Bank will notify the complaining party why the matter cannot be closed by the stipulated deadline, will explain measures which must be taken before the complaint can be processed and will indicate a new tentative deadline for considering the manner which cannot be longer than 60 calendar days.
7. The Account Holder may file complaints about the penalties for settlement failures to the KDPW/CSD/third countries CSD via the Bank two days before the deadline specified in the regulations of the National Securities Depository/CSD/ third countries CSD.

### VI. Procedure, dates and conditions for amendments to these Terms and Conditions as well as the manner in which the Account Holder will be informed of the amendments

#### § 59

1. The Bank reserves the right to amend these Terms and Conditions during the term of this Agreement in compliance with the procedure set out in Sections 2
- 7 below. These Terms and Conditions may be amended due to important reasons, in particular:
- a) A change in legal regulations and their binding interpretation,
  - b) A change in the scope of services offered by the Bank,
  - c) The Bank's permit/license status.
2. By proposing amendments to these Terms and Conditions, the Bank will be deemed to terminate, in full or in part, relevant provisions of these Terms and Conditions and will send a notice of amendments and their wording to the Account Holder. The Account Holder's lack of agreement to

the amended Terms and Conditions will automatically trigger termination of the Agreement.

3. The notice period shall be 30 days as of the day of effective delivery to the Account Holder.
4. The notice referred to in Section 2 above shall be mailed electronically or traditionally by registered post or courier mail to the most recent mailing address of the Account Holder known to the Bank, with the proviso that the address provided for the purposes of the Custody Account shall be taken into account as the Account Holder is obligated to update this address.
5. As of the day on which the notice is sent or during the 30-day notice period at the latest, the Account Holder may receive from the Bank a publicly available amended and restated text of these Terms and Conditions. At the Account Holder's request, the Bank will deliver the amended and restated text of these Terms and Conditions to Account Holder's address.
6. Unless, within 30 calendar days from the date of delivery of a notice of amendments to these Terms and Conditions, the Account Holder submits a written statement to the effect that it does not accept the amendments to these Terms and Conditions, the amended Terms and Conditions shall be deemed approved by the Account Holder starting as of the 31<sup>st</sup> calendar day as of the day of delivery of the notice.
7. The Bank reserves the right to revise the scope of services in relation to the Custody Account in keeping with amendments to legal regulations and implementation of technologically advanced clearing forms.

## VII. Miscellaneous

### § 60

For the purpose of communication of information, the Bank will make available to the Account Holder the means of communication described in detail in the Terms and Conditions for Opening and Maintaining Bank Accounts.

### § 61

As at the day of these Terms and Conditions, the Financial Instruments registered in Custody Accounts maintained

by the Bank are subject to the compensation system under Articles 132 - 146 of the Act in relation to the entities specified therein. The purpose of the compensation system is to compensate custody bank clients, up to a statutory threshold, for the value of financial instruments lost by them if the Bank goes bankrupt or a bankruptcy petition filed in respect of the Bank is lawfully dismissed on the grounds that the Bank's assets will not suffice to cover the costs of lawsuit or if the Polish Financial Supervision Authority determines that the Bank is unable to fulfill liabilities claimed by the Account Holder, due to reasons strictly connected with its financial situation, and that it will not be able to do so in the near future. As at the day of these Terms and Conditions, the aforesaid system provides a 100% compensation for lost financial instruments with a total value up to the PLN equivalent of EUR 3,000, and a 90% compensation for any amounts in excess of the aforesaid threshold, with the proviso that the upper limit for the compensation system is set at the PLN equivalent of EUR 22,000.

### § 62

These Terms and Conditions were drafted in Polish and English. The Polish version shall prevail.

### § 63

1. The Parties jointly agree that Polish law shall be applied to settle all disputes arising in connection with the Agreement, including these Terms and Conditions.
2. Unless otherwise agreed by the Parties in writing, any disputes arising in connection with the performance of the Agreement, including these Terms and Conditions, will be referred by the parties for resolution by the applicable court of law.
3. These Terms and Conditions shall supersede and replace the previous Terms and Conditions introduced pursuant to the Decree issued by the Bank's Management Board President on 17 May 2017.
4. These Terms and Conditions shall take effect as of the day stipulated in the Decree issued by the Bank's Management Board President to promulgate these Terms and Conditions, except the stipulations in of § 8 (4), § 21 (2), § 31 (4) and § 58 (7) of these Terms and Conditions, which shall take effect as of 1 February 2022.