



GGGI Technical Guideline No. 7

# Mitigation Outcome Purchase Agreements

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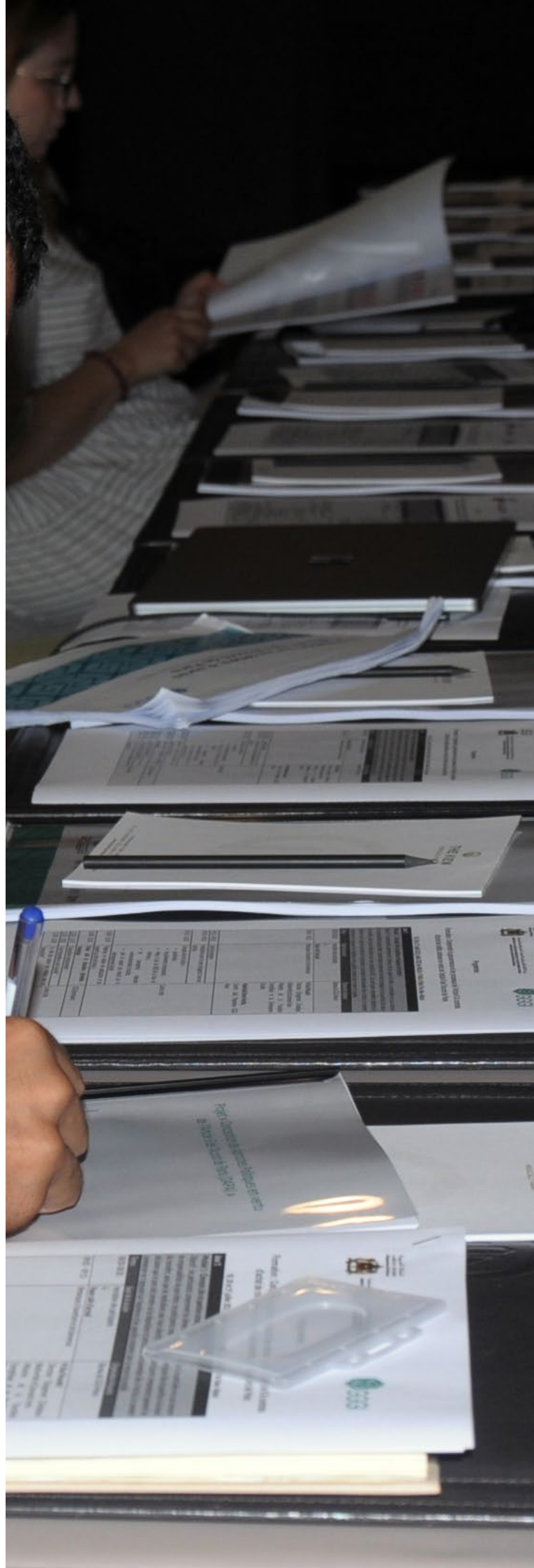
This guideline belongs to a series of deliverables from the implementation of the DAPA Program funded by the Norwegian Ministry of Climate and Environment (NMCE), a pioneer program on piloting scaled-up mitigation activities under the Paris Agreement. We would like to acknowledge the invaluable support and feedback from the NMCE team.

# ACRONYMS AND ABBREVIATIONS

<b>BTR</b>	Biennial Transparency Report
<b>CA</b>	Corresponding Adjustment
<b>CER</b>	Certified Emission Reduction
<b>CDM</b>	Clean Development Mechanism
<b>DAPA</b>	Designing Article 6 Policy Approaches
<b>ER</b>	Emissions Reductions
<b>ERPA</b>	Emissions Reduction Purchase Agreement
<b>GGGI</b>	Global Green Growth Institute
<b>GHG</b>	Greenhouse Gas
<b>ITMO</b>	Internationally Transferred Mitigation Outcome
<b>MADD</b>	Mitigation Activity Design Document
<b>MO</b>	Mitigation Outcome
<b>MOPA</b>	Mitigation Outcome Purchase Agreement
<b>MRV</b>	Measurement, Reporting, and Verification
<b>NDC</b>	Nationally Determined Contribution
<b>SDG</b>	Sustainable Development Goals
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change

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# EXECUTIVE SUMMARY

In any commercial agreement, the signature of a contract is the seal with which the Parties involved commit to comply with all the agreed terms and conditions. The formality of this document assists with clarity and enforcement and establishes the means to resolve any disputes between the Parties. In the context of carbon markets, a purchase agreement will define the type, quality, delivery schedule, and volume of verified emission reductions that a seller agrees to transfer to a buyer and that the buyer agrees to purchase from the seller. The agreement will also detail the conditions and means to transfer these emission reductions, the price the buyer will pay per ton of carbon equivalent received from the seller, and the payment method.

Purchase agreements are a common practice in all types of carbon markets, including voluntary and compliance markets, and provide confidence to investors and commercial and financial partners. Under the Kyoto Protocol, they were known as Emission Reduction Purchase Agreements (ERPAs) in the context of the Clean Development Mechanism (CDM) and Joint Implementation and evolved over time along with the implementation period of these mechanisms. Now, in the context of the Paris Agreement, it is imperative to collect all the experiences from the implementation of these Kyoto mechanisms and build an improved version of its processes and instruments that is compliant with the new requirements of Article 6.

Some of the elements from Article 6 that might be reflected in the so-called Mitigation Outcome Purchase Agreements (MOPAs) include provisions related to corresponding adjustments (CAs), registries, safeguards, and authorization of transfer. Finally, it is essential to highlight the link between the transfer of Mitigation Outcomes (MOs) and the achievement of participating countries' Nationally Determined Contributions (NDCs). Unlike other commercial agreements, a sovereign-to-sovereign MOPA in the context of Article 6 goes beyond setting out the agreed terms and conditions to carry over a transaction. MOPAs can integrate provisions related to the host country's NDC, for example, to prevent overselling and noncompliance with its unconditional targets.<sup>1</sup>

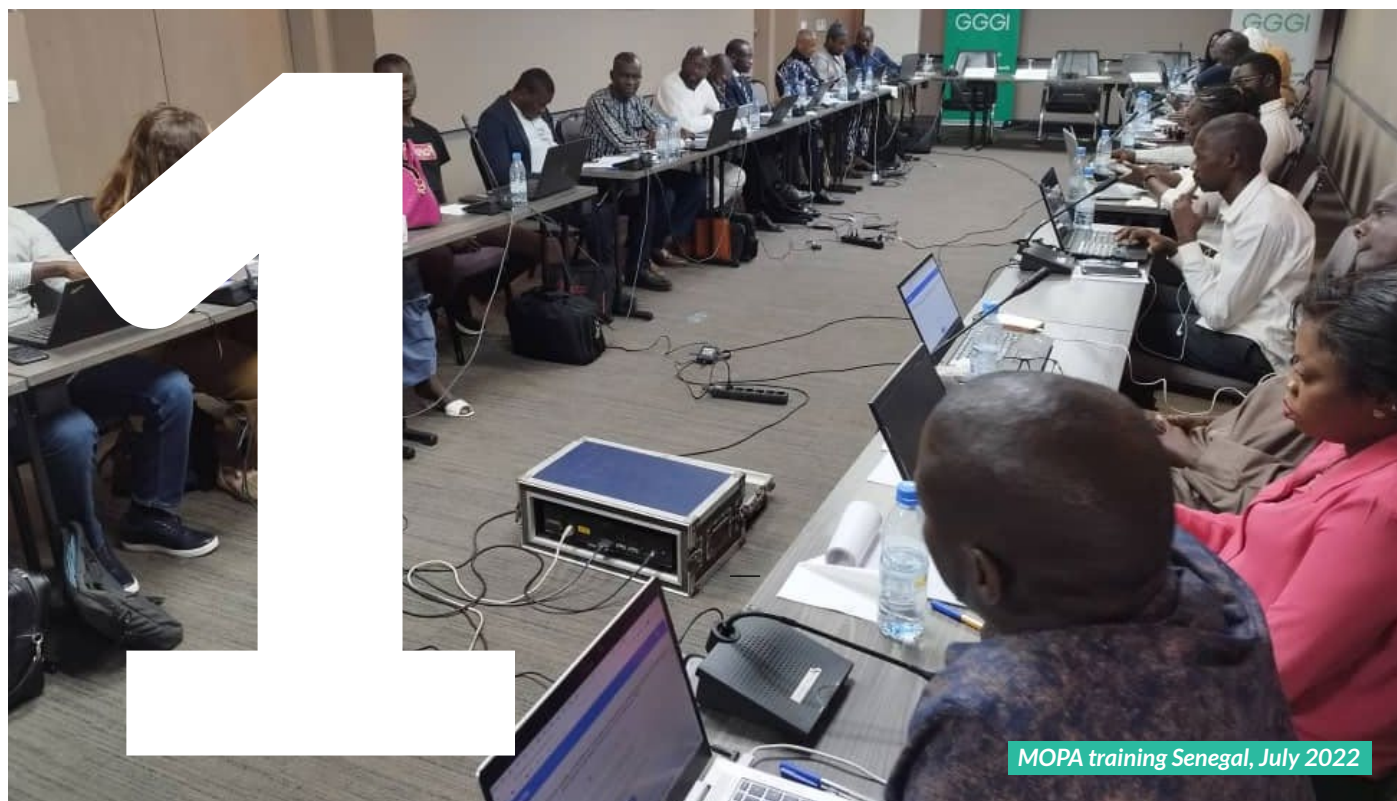
This document provides an overview of the main components of an ideal MOPA between sovereign countries, using elements and experiences gained from the CDM and the voluntary carbon markets, and highlights those features specific to the Paris Agreement that are advisable to include in the agreement. This document does not constitute legal advice but is part of the capacity building efforts the Global Green Growth Institute (GGGI) is undertaking through its Designing Article 6 Policy Approaches

(DAPA) Program. As its name indicates, the DAPA Program aims to promote approaches at the policy level, which is why it covers transactions between sovereign entities, leaving out those agreements in which private entities participate, such as single projects. In addition, there can be other arrangements engaging non-state actors; however, those will not be addressed here.

The generic contents of a MOPA are grouped into five categories: background, conditions precedent, obligations, default and termination, and annexures. A MOPA should serve the purpose of outlining potential risks, fairly allocating these risks between parties, and providing alleviatory and corrective actions; therefore, at the end of the document, a list of common risks for sellers and buyers is presented, along with potential options to address these risks as well as tips for the strategic design of a MOPA. This guidance accents those provisions that set MOPAs apart from any other sales contract, demonstrating how innovative and accurate they should be designed to respond to the new context under the Paris Agreement.

MOPAs can adopt different forms and contents depending on the nature and views of the contracting parties, type of intervention, and the legal regime of the host country involved. Therefore, signatories should seek legal advice to customize them for a specific trade and to accurately describe the agreements with the other Party. This document is intended to serve as a guide for anyone interested in learning the general purpose and structure of a MOPA as well as understanding both sides of the negotiation table, potential risks of terms and conditions, and the means to address these risks. While the document has been drafted in a neutral way so that it can be used by both sovereign buyers and sellers, special consideration has been paid to describe the risks that developing countries will face when entering into Article 6 transactions. This GGGI guideline will be updated in case of significant and relevant policy, regulatory, and legal developments with implications for the design and negotiation of MOPAs.

<sup>1</sup> Richard Saines, "From ERPA to MOPA: Practical Application of Article 6 Guidance to ITMO Transfers," ICAP-IETA, last modified 2020, <https://register.gotowebinar.com/register/1730240286441422347>.



# Contract Design Considerations

A general Mitigation Outcome Purchase Agreement (MOPA) structure for educational purposes was derived from an Emissions Reduction Purchase Agreement (ERPA) model used by the Norwegian Ministry of Climate and Environment<sup>2</sup> and the public template used by the International Emissions Trading Association (IETA).<sup>3</sup> Elements related to the Paris Agreement, come from the Global Green Growth Institute (GGGI) template for a MOPA (Sovereign Buyer/Sovereign Seller)<sup>4</sup> and contents from Designing Article 6 Policy Approaches (DAPA) training on MOPAs for host countries.<sup>5</sup>

It was observed that even though ERPAs from different Parties can follow a different structure and clauses can be more or less descriptive, there are some common elements adjacent to all the examples under analysis. The simplified structure of the background, conditions precedent, obligations, default and termination, and annexures provides a straightforward view of the general format of a contract. It is relevant to point out that requirements in compliance with Article 6 of the Paris Agreement are present throughout the purchase agreement—not in an exclusive section.

Parties to a purchase agreement or legal firms structure their contracts differently; therefore, there are no prescribed formats—only content that gets normalized over time due to legal and commercial practice. In approaching different clauses, particular attention has been paid to reflect the interest of developing countries to create a balanced agreement.

2 Norwegian Ministry of Climate and Environment, “Certified Emission Reduction Purchase Agreement,” last modified November 26, 2015, <https://www.regjeringen.no/contentassets/86680864084e47118f0086fcc0855fd/template-nmoce-erpa-2016-2020.pdf>.

3 International Emissions Trading Association, “Emissions Reduction Purchase Agreement,” Version 3.0, last modified 2006, <https://www.ieta.org/Trading-Documents>.

4 Global Green Growth Institute, “Mitigation Outcomes Purchase Agreement (Sovereign Buyer/Sovereign Seller),” Template Version 1.0, last modified January 27, 2021, confidential document.

5 Global Green Growth Institute – Carbon Limits – Climate Focus, “Training on Mitigation Outcome Purchase Agreements (MOPA) for Policy Approaches under Article 6,” last modified 2022; Global Green Growth Institute, “Mitigation Outcome Purchase Agreement under Article 6 Training for Korean Practitioners – Legal and Contractual Aspects of MOPAs,” last modified 2022.





# General Aspects

A MOPA is a legal contract between entities that governs a transaction for the purchase and sale of Mitigation Outcomes (MOs) generated by a mitigation action. This purchase and sale contract can be understood in legal terms as the “**nature**” of the agreement.

Every contract starts by stating the “**object**.” In the case of a MOPA, this is MOs generated by a mitigation activity.

Also, it is necessary to state who the signatories of the agreement are, e.g., the buyer and the seller; in the case of policy approaches, they would be sovereign countries known as “**Parties**.”

Another common element would be to define the “**principles**” that govern the transaction. These can be derived from the United Nations Framework Convention on Climate Change (UNFCCC) or the Paris Agreement. As an example, they can include:

- Pursuing sustainable development
- Ensuring environmental integrity and avoiding double counting
- Prioritizing long-term cooperation
- Not compromising NDC achievement

## BOX 1 DAPA Program

Policy approaches under DAPA Program aim to generate emission reductions that can be traded internationally to access carbon finance in the form of result-based payments. The DAPA Project supports Partner countries in increasing climate ambition through the mobilization of carbon finance under Article 6 of the Paris Agreement. These policy approaches are broader and more encompassing than the historic project-based carbon markets, creating the transformational change needed by scaling up transactions. Besides, the DAPA Program focuses on the fact that any intervention must be country-led in order to ensure full national ownership.

In addition, MOPAs can be aligned with principles specific to the trade under consideration or the motivations or priorities of the signatories. In the case of policy approaches under the DAPA Program, participants have agreed on the relevance of:<sup>6</sup>

- Implementing and following a strict monitoring, reporting, and verification (MRV) system
- Being additional to unconditional NDC targets
- Aligning with national policies
- Respecting human rights
- Being conservative and robust in mitigation estimates
- Inducing transformational impacts in the host country

All the elements above need to be understood and internalized by the Parties to incorporate them into the fundamental aspects of the final MOPA. Main considerations must also be agreed on, covering aspects such as specific transactional issues, rights, and titles to MOs, which are addressed in the following sections.

## BOX 2 Addressing Risks

**The purchase agreement denotes a series of institutional, political, and technical milestones in the context of climate action that adds reputational value for both Parties.**

**As with any contract, the MOPA creates negotiated obligations between Parties and should specify ways to mitigate potential risks.**

**In addition to the general commercial provisions, a MOPA can include provisions to address Paris Agreement requirements, including the application and reporting of corresponding adjustments, fulfillment of participation requirements, and compliance with reporting to the UNFCCC, among others.**

**Even though contracts may seem standardized, there is no such thing as a replicable transaction, and a MOPA should reflect the needs and context of countries under the agreement (GGGI, 2022b). See Appendix 1 and 2 for further information.**

**Correctly preparing a MOPA can reduce the impact of common risks; for example, monetary losses (buyer side) and overselling (seller side).**

**Potential risks shall be assessed and addressed from the negotiation stage of MOPA. Mitigating actions can be devised along the document, from conditions precedent to obligations. For example, completing due diligence can be inserted as a condition precedent.**

<sup>6</sup> These elements come from International Carbon Reduction and Offset Alliance's (ICROA) integrity principles for projects to policies, and features from the Paris Agreement were also considered. Global Green Growth Institute. "Designing Article 6 Policy Approaches (DAPA)," last modified 2022.





# Main Sections of MOPAs

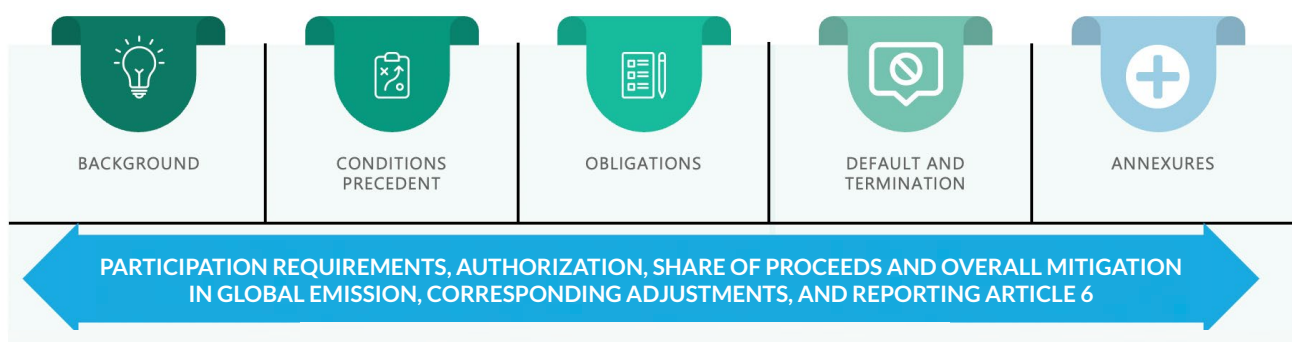
As the MOPA predecessor, the ERPA governed the purchase of Emission Reductions (ERs) from specified/defined project activities and stated the conditions for trading Kyoto Protocol units. The contract period, volume of greenhouse gas (GHG) to be reduced, price, delivery schedule, milestones that trigger payment, payment means, and other terms<sup>7</sup> were to be agreed on in a negotiating

process. Initial conditions were agreed on and often laid out in a term sheet<sup>8</sup> (commercial terms), and further discussed to narrow the scope for final arrangements in the purchase agreement (contract). The conclusion of the negotiation process was evidenced by the signature of an ERPA.

<sup>7</sup> World Bank, "What You Need to Know About Emission Reductions Payment Agreements (ERPAs)," last modified 2021, <https://www.worldbank.org/en/news/feature/2021/05/19/what-you-need-to-know-about-emission-reductions-payment-agreements>.

<sup>8</sup> There is no rule whereby prices must be negotiated beforehand, but it is a common practice to pre-negotiate core terms, including the project/activity, quantity of MOs, vintage, price, and delivery schedule.

**Figure 1** General MOPA structure and inclusion of article 6 elements



The Paris Agreement transcends the transactional aim of carbon finance with the pivotal role of voluntary cooperation in achieving sustainable development and higher global ambition. Besides regular agreements on ER transactions, MOPA contents will reflect compliance with Article 6 requirements and provisions. Furthermore, the negotiation process will not be merely commercial; it will likely be based on a memorandum of understanding or a similar instrument, bringing two countries together in the spirit of collaboration. This chapter outlines, in turn, the main sections of a MOPA and their defining features.

## 3.1 Background

This initial section identifies the Parties of the purchase agreement, provides relevant information on their motivations to sign this document, and explains their common objective, both in terms of basic aspects (e.g., definitions) and substantial ones (e.g., their intentions to trade). This is a core section that describes who is legally responsible for compliance with the conditions, and it will be used in the resolution of possible disputes. A closer look at the contents is provided in the following subsections.

### 3.1.1 Recitals

Recitals are used to set out a series of statements about motivations and objectives that Parties regard as useful before approaching the body of the contract.<sup>9</sup> They can contain essential elements that play an operative legal role throughout the contract.<sup>10</sup> For example:

“WHEREAS the Parties are committed to ensuring transparency and environmental integrity and to preventing double counting of Mitigation Outcomes by conducting reporting related to ITMOs as required by the Paris Agreement.”<sup>11</sup>

“NOW, THEREFORE, based on the mutual premises contained herein and for other good and valuable consideration the sufficiency of which the Parties acknowledge, the Parties hereby agree as follows:”

### 3.1.2 Effective date and term

The effective date and term specify that the agreement will come into force and terminate at a particular time. For example:

“This Agreement will commence on its execution by both Parties and terminate on the fulfilment of all obligations unless terminated earlier in accordance with this Agreement or extended by mutual agreement between the Parties.”<sup>12</sup>

### 3.1.3 Definitions and interpretations

This section establishes the language used throughout the agreement, describes key concepts, and provides instructions on how to approach specific terms. Concepts that can be found in a MOPA are contract volume, Internationally Transferred Mitigation Outcome (ITMO), Paris Agreement rules, and payment milestone, among others. For example:

“‘Corresponding Adjustment’ or ‘CA’ means to account for international transfers of ITMOs in accordance with paragraph 36 of decision 1/CP.21 and the Paris Agreement Rules.”

“‘Delivery’ or ‘Deliver’ means the transfer of the Delivery Amount into Buyer’s Registry.”

## 3.2 Conditions precedent

A condition precedent is an operative, technical, or legal circumstance that must prevail before starting a legal relationship between Parties. Parties agree on what would be required to happen before certain MOPA clauses and obligations become binding. Therefore, once all the agreed conditions are met, the Parties are ready to fully execute the purchase agreement. The MOPA will also stipulate what proceeds in case a particular condition precedent fails to be met.

Depending on the circumstances of the transaction and the Parties, different events can be subject to conditions precedent. They can be applicable to specific provisions, such as the sale and purchase of MOs, buyers’ obligations, or the entire MOPA. Parties can also use conditions precedent to address potential risks, for example:

“The obligations of the Parties under this Agreement shall not take effect until the following conditions are met: Seller has provided evidence of legal ownership of Mitigation Outcomes that underlie the ITMOs.”

9 Marcel Fontaine and Filip de Ly, “Chapter 2. Recitals in International Contracts,” last modified 2006, [https://brill.com/view/book/9789047440222/Bej.9781571053558.i-654\\_003.xml?language=en](https://brill.com/view/book/9789047440222/Bej.9781571053558.i-654_003.xml?language=en).

10 John Coates, “Contracts: Purposes, Types, Regulation, and Patterns of Practice,” last modified 2015, [http://www.law.harvard.edu/programs/olin\\_center/papers/pdf/Coates\\_825.pdf](http://www.law.harvard.edu/programs/olin_center/papers/pdf/Coates_825.pdf).

11 Global Green Growth Institute, “Mitigation Outcomes Purchase Agreement (Sovereign Buyer/Sovereign Seller),” Template Version 1.0, last modified January 27, 2021, confidential document. All examples will be based on the cited document, except for those that expressly contain another source.

12 Norwegian Ministry of Climate and Environment, “Certified Emission Reduction Purchase Agreement,” last modified November 26, 2015, <https://www.regjeringen.no/contentassets/86680864084e47118f0086fcc0855fd/template-nmoce-erpa-2016-2020.pdf>.



Conditions precedent should be clear and precise. Also, they can be kept to a reasonable limit as long lists can become burdensome and delay the start of the agreement. Some examples of conditions precedent can be:

- Each Party providing an explanation to the satisfaction of the other Party as to how the participation in this agreement will enhance ambition in its NDC.
- The government/entity showing they have the ownership or selling right to the ITMOs to be traded.
- Having a public carbon trading strategy and appointed institutions to perform processes such as ITMO transfer authorizations.
- Showing the existence of a registry.
- Conducting due diligence.
- Reporting in accordance with the Guidance on cooperative approaches referred to in Article 6 of the Paris Agreement.
- Having the initial report undergo Article 6 technical review without material inconsistencies identified.
- A particular regulation being enacted or commissioned.

This is a relevant section, and both Parties shall give heed to it. Conditions precedent should be balanced and preferably reciprocal to the extent relevant, avoiding overloading or benefiting a sole Party. Additionally, confirming the attainment of conditions precedent should not be discretionary or unilateral, granting the right to terminate the agreement without any liability.

Consequences of nonfulfillment can include a waiver, the extension of the compliance period, or MOPA annulment. Regarding Article 6, it is common to include diplomatic elements in accordance with the aim of voluntary cooperation. For example, a country might delay the starting of a crediting period while the host country enacts Article 6 participation requirements.

### 3.3 Obligations

As the name implies, this is where the Parties will describe all the commitments and responsibilities that they agreed and decided on. They are not only related to buying and selling aspects, such as price and volume determination, but also to transaction costs (e.g., development of monitoring plan, registration fees, and verification costs) and additional purchase options. Since the main purpose of these agreements is to reduce GHG emissions, most of the obligations will be oriented to guarantee the MOs are actually achieved. Technical aspects of the mitigation activity—MRV and crediting periods, among others—must be defined in the contract and are described in the Mitigation Activity Design Document (MADD). Failure to comply may result in termination, coupled with or without penalties as discussed in the next section.

#### Article 6 related issues



#### PARTICIPATION REQUIREMENTS

**Fulfillment of participation requirements in Article 6 can be set as conditions precedent.**

For example, host countries must establish institutional arrangements and processes to authorize MOs for ITMOs. These decisions would define which body, official, or position in the country would have the authority to authorize and transfer ITMOs.

Other requirements include having a tracking tool for ITMOs and having correctly prepared, communicated, and maintained an NDC.

#### Article 6 related issues



#### CORRESPONDING ADJUSTMENTS (CAs)

**The MOPA must guarantee that for all transfers with the purpose of NDC compliance, the host country and acquiring Parties apply CAs to avoid double claiming, which is done through an emissions balance.**

**The host country must report the deliveries (with CAs) that occur in its Biennial Transparency Report (BTR). If the seller fails to comply with this obligation, the buyer may suspend the acceptance of ITMOs for future deliveries. It is not just the host country that has reporting obligations; all participating countries do. Every ITMO transaction must include a host country CA.**

### 3.3.1 Representations and warranties

This part of the contract aims to give one another assurance about their status and condition relevant to the execution and implementation of the agreement. Representations mean assertions of fact by a contracting Party, usually given to induce the other Party to enter into the agreement. On the other hand, warranties are related to a promise that a condition or assertion was true and accurate at the moment it was made. It is worth mentioning that nonfulfillment of representations and warranties can be the object of an event of default.

“Each Party represents and warrants to the other Party on the date hereof and upon each Delivery of ITMOs under this Agreement that:

- the Person signing this Agreement on behalf of a Party is duly authorized to sign the Agreement as a representative of the Party;

- it fulfils the reporting requirements under Article 13 of the Paris Agreement, in accordance with decision 18/CMA.1 and any future decisions by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement ('CMA'), including the regular and timely submission of complete Biennial Transparency Reports.”

### 3.3.2 Price and delivery

These obligations define what will be sold and bought and what the delivery and payment dates will be. Payment can be established through certain milestones (e.g., upon delivery of ITMOs, or conditional to the application of CAs). It should be noted that the fixed-price approach was commonly used in Clean Development Mechanism (CDM) and Joint Implementation contracts. However, price determination can be defined in different ways:

**1) Fixed price:** This method or approach provides price certainty to the Parties and protects against market price fluctuations. It, consequently, disregards carbon price fluctuations, exchange rates, or broader macroeconomic events such as inflation; the price remains constant for the entire length of the agreement.

**2) Indexed price:** This refers to the price of the same carbon asset traded in other markets. The price will likely fluctuate and change with each payment (e.g., spot price as published on the Intercontinental Exchange).

**3) Fixed price + indexed price:** This guarantees a minimum price for a seller and reduces the downside impact of spot price fluctuations on the unit price. Thus, this approach would set a price floor but not a ceiling. The Parties will agree on the price index that will provide the price information.

**4) Indexed price + a price floor & ceiling:** A minimum price and a maximum price protects both Parties from significant movements in the spot price.

**5) Escalating price:** Prices escalate periodically (e.g., each year or every two years).

Options for defining the volume (quantity) include:

**1) Annual amounts** and a fixed total volume are set in the agreed delivery schedule.

**2) More seldom, the total annual volume of MOs** derived from the policy implementation, without fixing or committing to a specific amount.

**3) A share of the MOs generated by the policy;** for example, keeping a share of the verified MOs in the country while selling the rest of them internationally.

As mentioned above, price and delivery conditions must be negotiated and agreed on before signing a MOPA. Regarding the volume, conditions such as third-party verification and certification of MOs might be required.

#### Article 6 related issues



#### PAYMENT

**In the context of a sovereign-to-sovereign MOPA, the buyer can create incentives for the seller to apply the CAs, such as negotiating payment milestones concerning the application of the CAs for each ITMO transfer (GGGI, 2021a).**

**Other provisions can be part of the negotiation such as suspending the obligation of ITMO deliveries, not allowing ITMOs to be sold in other transactions, retaining part of purchase payment subject to the CA, or termination rights. Likewise, it can also prevent or limit upfront payments (ADB, 2021).**

### 3.3.3 Costs

Costs are related to delivery; for example, issuance and registry-related costs. They may include fees associated with the use of the International Registry for Article 6.2. Taxes, fees, levies, charges, etc., are payable pursuant to the MOPA, depending on the relevant jurisdiction. The MOPA determines the Party responsible for paying such concepts; typically, each Party is responsible for taxes payable in their own jurisdiction. For example, with respect to each Delivery Amount:

**(a) Seller** shall be responsible for the payment of any fees, charges, levies, taxes and other costs and expenses relating to such Delivery Amount prior to the date hereof.



(b) **Buyer** shall be responsible for the payment of any fees, charges, levies, taxes and other costs and expenses relating to such Delivery Amount arising on or after the date hereof. Each Party shall bear its own costs and expenses in connection with the preparation, negotiation, and execution of this Agreement.

### 3.3.4 Call and put options

The call option means that the seller grants the buyer the right (but not obligation) to purchase additional ITMOs at a certain pre-agreed price within a predefined period. The put option is where the buyer grants the seller the right (but not obligation) to sell additional ITMOs at a specific pre-agreed price. For example:

“In consideration of Buyer’s agreement to purchase the Contract Certified Emission Reductions (CERs), Seller irrevocably grants Buyer (or its nominee) the right, but not the obligation, to acquire all or part of the Option CERs at the Option Exercise Price (the Call Option).”<sup>13</sup>

### 3.3.5 Right of first offer

Where the volume of MOs generated exceeds the contracted ITMOs (“Additional ITMOs”), the Seller may grant the Buyer the right to purchase all or part of these additional ITMOs. This means the Seller must make the offer to the Buyer before selling additional ITMOs to any third party. In this case, the Seller imposes the economic terms unilaterally to the Buyer at the moment of offer. For example:

“...If at any time and from time to time during this Agreement, Seller proposes to offer for sale additional ITMOs from the Mitigation Activity beyond the applicable Delivery Amount(s) [...], Seller shall provide written notice to Buyer upon each such occasion specifying the number of ITMOs proposed to be sold per each Delivery...”

#### Article 6 related issues



#### SHARE OF PROCEEDS AND OVERALL MITIGATION OF GLOBAL EMISSIONS

**Article 6.2 does not mandate the use of the share of proceeds or cancellation of ITMOs for delivering overall mitigation of global emissions. However, Parties can agree on stipulating it in the MOPA.**

13 Norwegian Ministry of Climate and Environment, “Certified Emission Reduction Purchase Agreement,” last modified November 26, 2015, <https://www.regjeringen.no/contentassets/86680864084e47118f0086fccc0855fd/template-nmoce-erpa-2016-2020.pdf>. In a MOPA under the Paris Agreement, it refers to MOs instead of CERs.

## 3.4. Default and termination

This section refers to the possibilities and circumstances in which the contract will be terminated (e.g., due to the Parties’ fulfillment of all their contractual obligations or a material event of default). This can happen either on a natural course according to the terms stated in the agreement (termination) or by exercising the right to terminate the contract completely or partially, due to noncompliance with the terms (default). The MOPA should foresee and establish provisions for both cases.

### 3.4.1 Events of default and remedies

Events of default refer to the breach of a particular condition, representation, or obligation of the agreement. In case of their occurrence, the non-defaulting Party may require the defaulting Party to undertake specific actions or remedies, or even terminate the MOPA. The specific actions are previously specified and agreed upon by the Parties. Remedies in a MOPA between sovereign Parties primarily rely on the suspension of payments and termination rather than an actual claim for damages. Another example of a remedy in these cases can be the right to compensatory ITMOs in the following NDC implementation period.<sup>14</sup> For example:

**1) Events of Default:** “The occurrence at any time with respect to a Party of any of the following events constitutes an Event of Default with respect to such Party: Buyer fails to pay when due any amount payable by it under this Agreement and such failure is not remedied within [X] Business Days after written notice of such failure is given to Buyer;”

“The occurrence of any of the following events in respect of a Party shall constitute an Event of Default in respect of that Party: any Required Authorisations are revoked, suspended, not renewed or not maintained;”<sup>15</sup>

**2) Remedies:** “Upon the occurrence of an Event of Default and while such Event of Default is continuing, the non-defaulting Party, at its option, may: suspend performance of any obligation under this Agreement, including in respect of Buyer, acceptance of a Delivery Amount or remittance of any Payment Amount otherwise due notwithstanding the completion of the relevant Payment Milestone.”

### 3.4.2 Termination

Termination occurs when the Parties have fulfilled all their obligations or when other termination conditions in the MOPA become effective. The MOPA clearly states the cases in which

14 Global Green Growth Institute, “Mitigation Outcomes Purchase Agreement (Sovereign Buyer/Sovereign Seller),” Template Version 1.0, last modified January 27, 2021, confidential document.

15 IETA, “Emissions Reduction or Removal Purchase Agreement,” Version 1.0, last modified February 2023, [https://www.ieta.org/resources/Resources/Trading%20Documents/IETA\\_Primary\\_ERPA\\_Final%20Version.pdf](https://www.ieta.org/resources/Resources/Trading%20Documents/IETA_Primary_ERPA_Final%20Version.pdf).

**BOX 3****FORCE MAJEURE**

There are common force majeure events such as war and labor unrest, but there are also other events related to government actions, such as a registry not being available or being suspended, and government changes.

Generally, host country sellers would prefer a large definition of force majeure, while buyers may pursue the opposite. For example, buyers would request to exclude changes in the national laws of the host country as a case of force majeure. Therefore, these events must be clearly agreed upon between seller and buyer.

The consequences of force majeure could either terminate the contract or suspend the obligations affected for a certain pre-agreed period. This scenario can be addressed in different ways: A) To negotiate in good faith to amend the contract; B) To have a termination without liability (in the event Parties are unable to agree on amendments); C) To return advance payments made that were not set off against deliveries (where applicable); D) Others that the Parties agree on.

a Party can terminate and the consequences of this action. Termination can occur in the case of force majeure or change of law, other mutual agreement cases, or when there is an event of default that leads to termination. Termination events can be found in different clauses throughout the MOPA. They may be induced by unfulfilled conditions precedent or noncompliance of obligations by any of the Parties (in particular, but not exclusively, delivery and payment obligations). For example:

"This Agreement may be terminated at any time: by [either Party by written notice to the other Party] OR [Buyer by written notice] if: [insert termination events]."

"In the event of a notice of termination of this Agreement, this Agreement shall become void, and there shall be no liability on the part of either Party."

### 3.4.3 Resolution of disputes

A MOPA will describe the mechanism to solve disputes arising from the MOPA: diplomacy, good faith negotiations, attempting an expert determination procedure, arbitration, or litigation.<sup>16</sup> For example:

"The Parties shall endeavor to settle amicably any dispute between them arising out of or relating to this Agreement or the breach, termination, or invalidity thereof ("Dispute"). Upon the written request of either Party ("Initial Request"), the Parties shall meet promptly to consider the Dispute."

### 3.4.4 Governing law

This provision indicates which laws will apply to the resolution of potential disputes. It is directly linked to resolution of disputes. To ensure a power balance, Parties may consider a neutral law to govern the contract (e.g., the laws of a third country). For example:

"The construction, validity and performance of this Agreement and all non-contractual obligations (if any) arising from or connected with this Agreement shall be governed by the laws of England excluding that body of law known as conflicts of law."<sup>17</sup>

## 3.5 Annexures

### 3.5.1 Mitigation Activity Design Document (MADD)

The MADD is a detailed technical documentation that describes the mitigation activity. It must be prepared in accordance with the chosen carbon crediting program and can contain a plan outlining how the activity will contribute to sustainable development (Sustainable Development Plan). All MOs resulting from the implementation of the mitigation activity must be materially consistent with the MADD and be authorized. The MADD is included as an annexure of the MOPA because only the core obligations should be placed in the body of the contract. The details and specifications of the mitigation's activity—such as

<sup>16</sup> Resolutions of disputes in a sovereign-to-sovereign MOPA tend to focus on bilateral diplomatic channels.

<sup>17</sup> Norwegian Ministry of Climate and Environment, "Certified Emission Reduction Purchase Agreement," last modified November 26, 2015, <https://www.regjeringen.no/contentassets/86680864084e47118f0086fcc0855fd/template-nmoce-erpa-2016-2020.pdf>.

#### BOX 4 NDC Achievement–Overselling

The sovereign-to-sovereign MOPA may contain provisions related to monitoring and reporting on the progress of the NDC. If the BTR shows a change in the trajectory of achievement of the NDC, the Parties could agree to take action to solve it. This is not only for the interest of the host country but also for the Buyer country, due to technical, legal, and reputational aspects; a buyer who purchases an ITMO of a country that has not reached its NDC target may be considered as contributing to the failure of the NDC. (GGGI, 2021a)

Contractual provisions may differ depending on the reasons that led to overselling, e.g., A) Market, social, economic, and other developments that provoke fundamental changes in seller's capacities; B) seller overcommits (e.g., engages with too many buyers); C) poor mitigation activity design.

To prevent such a situation, it is advisable to perform due diligence, set conservative baselines, agree on risk sharing, reflect the risk in milestones, and expand definitions and provisions related to *force majeure* events.

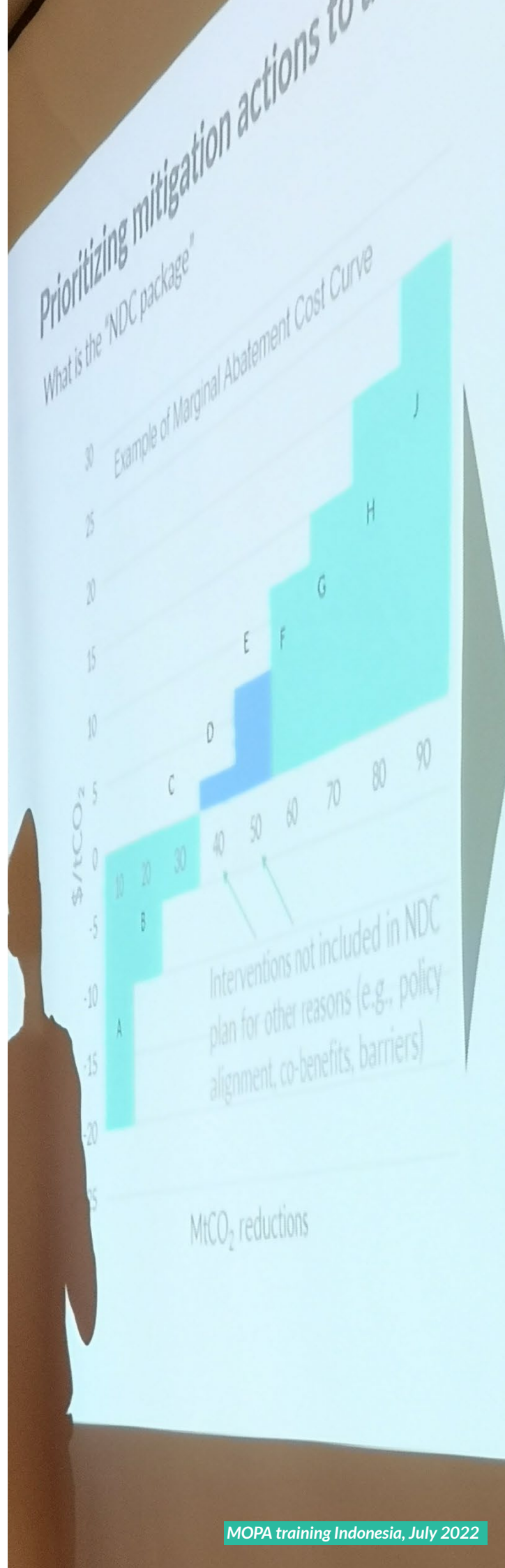
methodologies, tools, methodological guidelines, or protocols used to quantify the MOs—are meant to be described in this annexure.

### 3.5.2 Authorization letter

In this section, the authorization letter certifies that the MOs are authorized for the first transfer in accordance with Paris Agreement Article 6, following its successful verification under specific terms and conditions. It relates to the host country's designated authority for authorization, date of authorization, identification of the cooperative approach and Parties, activity type, authorized uses, and type of NDC target, among others.

### 3.5.3 Commercial terms

This contains a schedule of payments and deliveries. Besides, as mentioned before, payments can be conditioned upon the completion of pre-agreed milestones, such as applying the CA made in the NDC, delivery of the relevant amount into the buyer's registry account, or submission to the UNFCCC of the information necessary for CAs.





# Appendices

## Appendix 1. Risks for Sellers and Buyers

These appendices are intended to show the buyer and seller the risks that may arise, as well as ways to address them (Appendix 1).

Also, key messages for a strategic design (Appendix 2) are presented that intend to facilitate decision-making. The information is presented from the point of view of each Party to raise awareness regarding the interests each will be concerned with.

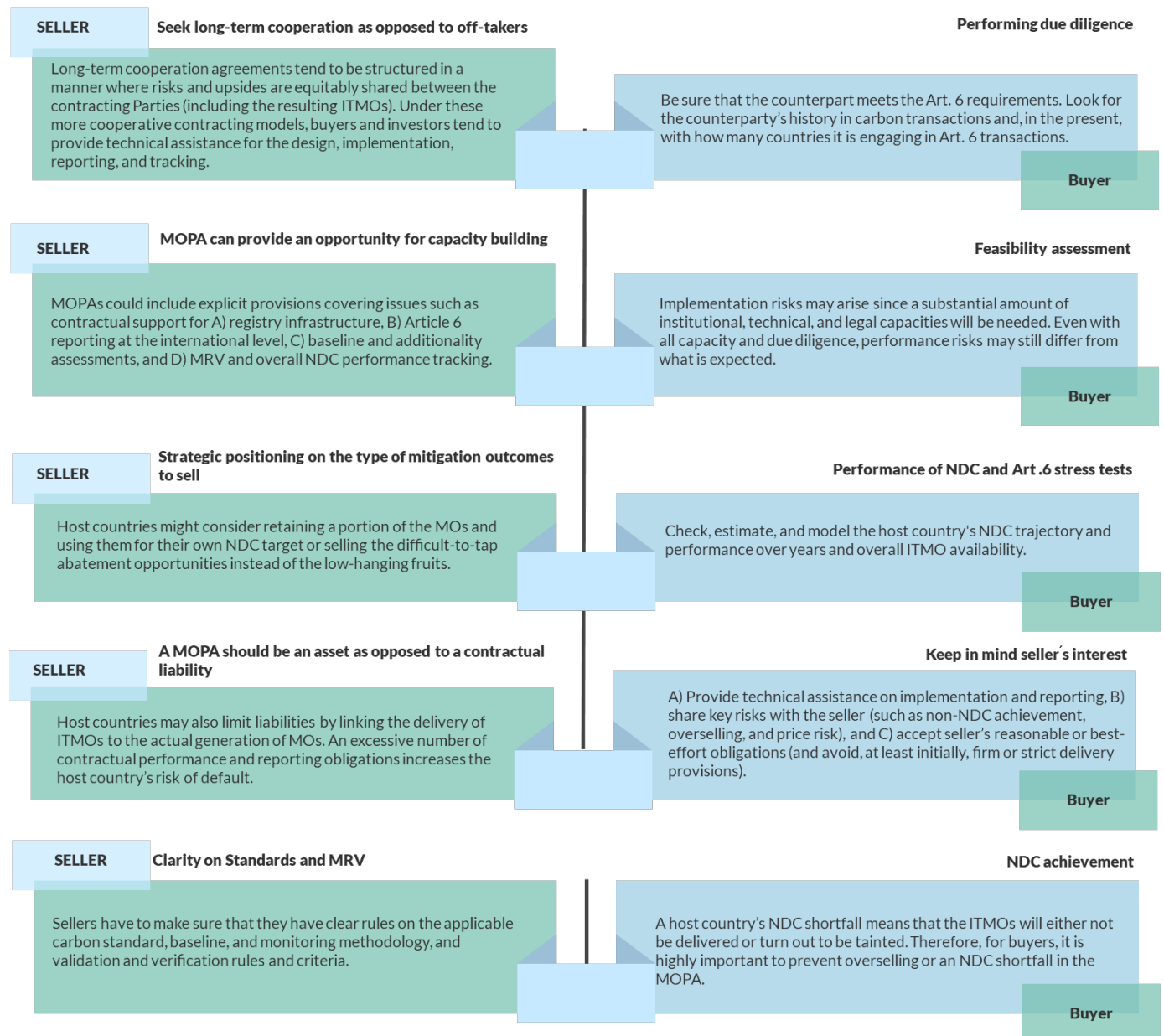
### RISKS FOR SELLERS

ASPECT	POTENTIAL RISK	SOME OPTIONS TO ADDRESS RISKS (INDICATIVE EXAMPLES)
<b>Reporting</b>	Seller government no longer meets reporting requirements	Too many reporting obligations within shorter periods could drain substantial time and resources from the seller and increase the risk of default. Therefore, it is important to establish a reasonable frequency for reporting obligations.
<b>Payment</b>	Buyer refuses to pay/buyer fails to make payment-on-delivery or advance payments	Delivery upon payment, due diligence on buyers, use of escrow account, letter of credit.
<b>Delivery</b>	Buyer rejects delivery of ITMOs	Seller may limit or not accept provisions that limit acceptance of ITMOs. Whenever seller permits the buyer to demonstrate or reject delivery, these rights come in strict windows only. Non-objection within the time frame may be deemed as approval.
<b>Verification</b>	Buyer rejects a verification result	Have verification either entirely under seller control (and then make explicit which rights the buyer has – e.g., a one-month remonstrations right – and does not have) or use independent verification.
<b>Performance</b>	Policy is slow, nonperforming, or proves impossible	Sellers may, as much as possible, negotiate and commit to reasonable or best effort obligations only. These mean that sellers commit to undertake due care and act reasonably and responsibly to achieve the objectives of the contract and to fulfill a particular obligation (but does not entail a promise to deliver a particular result to the buyer).

## RISKS FOR BUYERS

ASPECT	POTENTIAL RISK	SOME OPTIONS TO ADDRESS RISKS (INDICATIVE EXAMPLES)
<b>Corresponding Adjustments</b>	Host government releases ITMOs but fails to perform and/or report on CA	Negotiate the cancellation of the ITMO transfer in return for future deliveries.  Use bilateral and multilateral platforms to comply with Art 6.2 international obligations and those of a bilateral framework (where existing).
<b>Art 6 Participation Requirements</b>	Host government does not meet/no longer meets Article 6 participation responsibilities or reporting requirements	Make this a condition precedent to avoid this risk. This means that the inexistence of any of the participation requirements in Art 6.2 (e.g., that the Party has prepared, communicated and is maintaining an NDC in accordance with Article 4, paragraph 2) makes it impossible to continue with the agreement.
<b>Right over the MO</b>	Seller fails to demonstrate that it holds the title to the MOs (and is able to transfer it)	Seller needs to prove it has the rights over the MOs generated by the Policy: at the moment of signature or, at the latest, before transferring the MO. It can be placed in the condition precedent section.
<b>Performance</b>	Seller fails to implement the policy as agreed	Negotiate an ITMO delivery guarantee detached from specific mitigation activity. Negotiate a provision that allows ITMOs to be returned to the host country's registry account (and repay a portion of the price to buyer). Agree on firm milestones and exit events (to allow early departure in case of delays).
<b>Safeguards</b>	Safeguards	Clearly define safeguard requirements with host country.
<b>Performance</b>	Policy is slow, nonperforming, or proves impossible	Buyer could include a restrictive and exhaustive list of events of default.

## Appendix 2. Key Messages for a Strategic Design and Negotiation of the MOPA





## Appendix 3. Social and Environmental Considerations

Host countries may include additional criteria for ITMO authorization and transfer when it is necessary to ensure that the activity is in line with Article 6 principles, national regulatory and legal requirements, and the country's overall climate and development policy. This includes criteria that demonstrate that the mitigation activity aligns with Sustainable Development Goals (SDGs).

When setting up the authorization procedures, host countries must specify how the mitigation activity will demonstrate compliance with these principles. Examples are prevention of any negative environmental and social impacts, including air quality and biodiversity, social inequality, and discrimination against population groups based on gender, ethnicity, or age. Some important sections where social and environmental considerations may be included are shown below.



### MITIGATION ACTIVITY

As mentioned before, the MADD can also include a plan outlining how the activity will contribute to sustainable development by adding a Sustainable Development Plan. This is because Article 6 is intended to promote sustainable development; therefore, the inclusion of a Sustainable Development Plan as part of the MADD will help Parties clarify how the mitigation activity is promoting sustainable development.



### AUTHORIZATION PROCESS

The seller shall confirm to the satisfaction of the buyer that the seller's authorization process ensures MOs that:

- Are in line with sustainable development and any respective strategies and policies;
- Are in line with long-term low-emission development strategies and promote sustainable development;
- Prevent environmentally related negative impacts and respect relevant national and international environmental regulations; and
- Prevent social conflict and respect human rights.



### EVENT OF DEFAULT

If the seller fails to materially comply with the MADD, including the Sustainable Development Plan, the action could constitute an event of default if initially agreed on between Parties. Also, buyers will often negotiate a unilateral termination right in case of a breach. But host countries should reserve regulatory space to further develop and decide their own rules and criteria for ensuring sustainable development in line with national priorities.

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The Global Green Growth Institute

19F Jeongdong Building, 21-15, Jeongdong-gil,  
Jung-gu, Seoul, Korea 04518

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