

**A Comparison of Terms Across
Master Trading Agreements**

Craig R. Enochs

Jim Pappenfus

Ali Burner

Reed Smith LLP

Craig R. Enochs
cenochs@reedsmith.com

Reed Smith LLP
811 Main Street, Suite 1700
Houston, Texas 77002
(713) 469-3884 phone

TABLE OF CONTENTS

I.	Automatic Early Termination	1
II.	Assignment and Transfer	3
III.	Adequate Assurances	4
IV.	Suspension Rights	5
V.	Communications with Counterparties	6
VI.	Netting	8
VII.	Setoff	8
VIII.	Credit and Collateral Triggers	10
IX.	Events of Default and Termination Events	12

Within the energy commodity industry, there are a number of standardized master agreements that serve to document different commodity transactions. These master agreements provide general terms and conditions that are used across various transactions and are modified and personalized for particular transactions through schedules, annexes, and confirmations. The standardized nature of these master agreements lowers transaction costs, increases efficiency, and mitigates gap risks.¹

The three master agreements that are the subject of this paper are the International Swaps and Derivatives Association Master Agreement (the “ISDA”),² the North American Energy Standards Board Base Contract for Sale and Purchase of Natural Gas (the “NAESB”),³ and the Edison Electric Institute Master Power Purchase and Sale Agreement (the “EEI”).⁴ Each of these master agreements is used by different industry participants for different commodity transactions. The ISDA is commonly used by banks, hedge funds, investment companies, energy trading companies, and other parties that transact in both physical and financial commodities. These industry participants generally turn to the ISDA to document derivative transactions. However, the ISDA can also document the wholesale purchase and sale of commodities through its Gas Annex, Power Annex, and oil annex. The NAESB is commonly used within the United States to document natural gas transactions, including firm and interruptible gas purchase and sale transactions and physical natural gas hedging transactions. The EEI documents wholesale power purchase and sale transactions, power plant tolling agreements, asset-based power purchase agreements, and other transactions related to power products, including capacity, ancillary services, and environmental attributes.

The following pages compare various provisions of the ISDA, the NAESB, and the EEI. This paper and the accompanying presentation are intended to be a resource for industry participants who are structuring and documenting commodity transactions.

¹ See Paul E. Vrana, Craig R. Enochs, and Fundi A. Mwamba, “How to Use the ISDA Master Agreement”, 28th Annual Ernest E. Smith Oil, Gas & Mineral Law Institute, at 6 (March 22, 2002); Craig R. Enochs and Kevin M. Page, “Managing ‘Gap Risk’ Between Standard Form Trading Agreements”, 7th Annual Gas & Power Institute, at 1-2 (September 4-5, 2008).

² For purposes herein, (i) all citations and references to the “ISDA Master Agreement” shall be to the 2002 Master Agreement (Multicurrency-Cross Border) published by ISDA; (ii) all citations and references to the “ISDA Schedule” shall be to the ISDA Schedule to the Master Agreement, which forms part of the ISDA Master Agreement; (iii) all citations and references to the “Gas Annex” shall be to the ISDA North American Gas Annex published by ISDA in 2004; (iv) all citations and references to the “Power Annex” shall be to the North American Power Annex published by ISDA in 2003; and (v) all citations and references to the “ISDA” shall be to the collective ISDA Agreement, including the ISDA Master Agreement, the ISDA Schedule, and any other Annexes or documents the parties may elect to incorporate thereunder.

³ For purposes herein, all citations and references to the “NAESB” shall be to the version published by the North American Energy Standards Board, Inc. on September 5, 2006.

⁴ For purposes herein, all citations and references to the “EEI” shall be to the version published by the Edison Electric Institute and National Energy Marketers Association, version 2.1 (modified March 3, 2000).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: A Comparison of Terms Across Master Trading Agreements

Also available as part of the eCourse
[2019 Gas and Power eConference](#)

First appeared as part of the conference materials for the
18th Annual Gas and Power Institute session
"Key Documents 101"