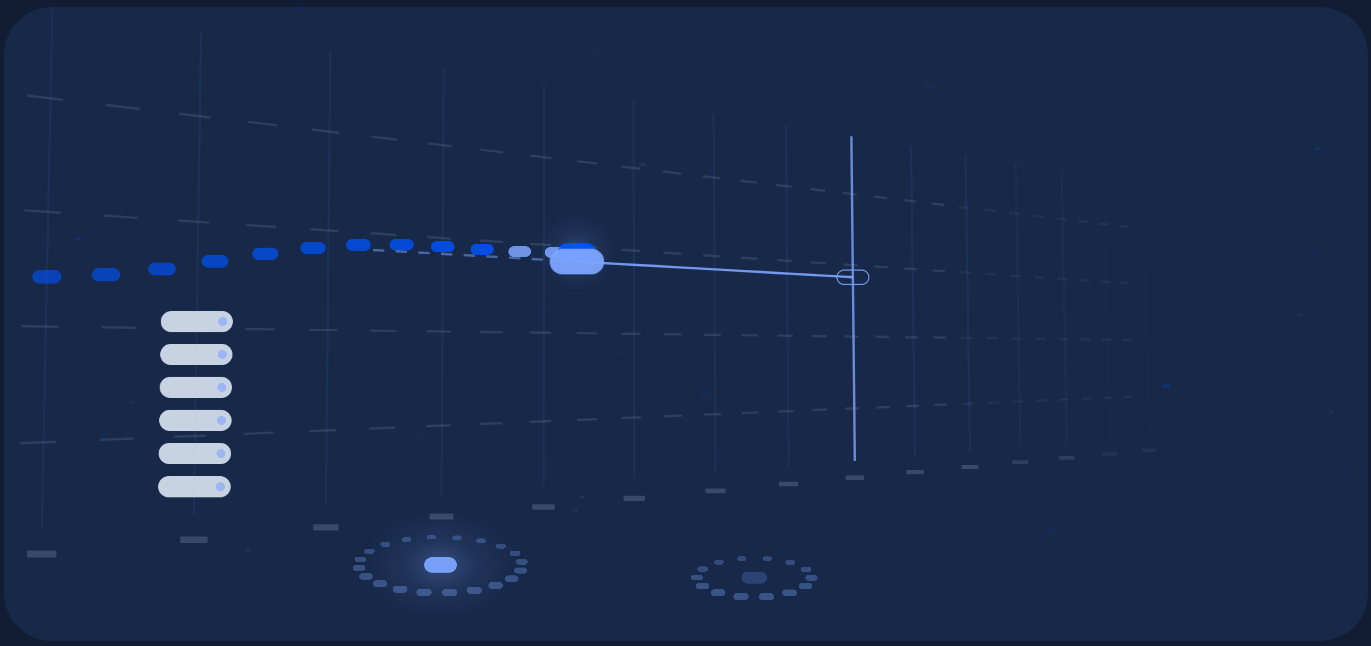
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EXPLAINER

Forward agreements for GPU systems: how they work

A forward purchase agreement fixes the grade, quantity, price and delivery month of GPU systems at signing, with physical delivery later and no exchange or clearinghouse involved.



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Summary

- A forward purchase agreement for GPU systems is a bilateral contract: a named buyer and seller agree at signing on the grade, quantity, price, delivery month and place, and the systems are physically delivered later. An exchange-traded futures contract standardizes those terms, routes credit risk through a clearing organization and can end by offset [3].
- U.S. law excludes sales of a commodity for deferred shipment or delivery from the definition of future delivery, and from the definition of a swap so long as a sale of a nonfinancial commodity is intended to be physically settled [1]. The CFTC treats such forwards as commercial merchandising transactions whose primary purpose is to transfer ownership, and it judges intent to deliver on the facts and circumstances of each transaction [2].
- The grade is the core of the contract. Futures use a basis grade with differentials [3]. A GPU forward can use a reference grade with listed differences in CPU, memory, networking and certification. Cooling and power input change what a site must provide, so air-cooled and liquid-cooled builds are separate grades [12, 13, 14].
- Assurance can run both ways: the buyer's deposit sits with an independent escrow agent [6], and the seller posts a performance bond, an instrument that brings in a surety [7]. In futures, "performance bond" is another name for margin, a different instrument with a different purpose [3].
- Public compute contracts show how delivery obligations are written: tranches on a schedule, a grace period, a right to terminate a late tranche when no alternative is provided, and liquidated damages for late delivery [10].
- Power has to be reserved on the same calendar. At NVIDIA's stated rack power of about 120 kW, a 1 MW block holds 8 GB200 NVL72 racks before any allowance for networking, storage or cooling equipment, while NVIDIA specifies 1.2 MW for a scalable unit of 8 such racks [15, 16].
- Upstream, the supply chain already runs on forward commitments. NVIDIA reports lead times of more than 12 months for certain supply and $95.2 billion of outstanding purchase, supply and capacity obligations at 25 January 2026 [9].

Background

GPU systems have long lead times, and the companies that make them commit to supply well in advance. NVIDIA's annual report for the fiscal year ended 25 January 2026 says the company builds finished products and holds inventory ahead of anticipated demand, has experienced lead times of more than 12 months for certain supply, and has paid premiums, provided deposits and entered long-term supply agreements and capacity commitments to secure future supply [9]. It reports $95.2 billion of outstanding inventory purchase and long-term supply and capacity obligations at that date [9]. It also notes that publicly announced intentions by governments or companies to buy its products are often non-binding and may not result in committed volumes [9].

Buyers face the same timing problem one step down the chain. A training cluster or a GPU cloud expansion needs systems of a known configuration in a known month, and it needs power and cooling ready when they arrive. Cloud providers sell short-dated versions of this certainty. AWS's EC2 Capacity Blocks reserve GPU instances for up to six months, can be booked up to eight weeks in advance, and are priced dynamically according to supply and demand [21]. Those reservations rent capacity. A forward purchase agreement transfers ownership of hardware and can cover a longer horizon.

Data-center capacity is the second constraint. CBRE reported a primary-market vacancy rate of 1.4% in North America at the end of 2025 and again in the first half of 2026 [19, 20]. In its report on the second half of 2025, CBRE wrote that grid-power capacity for existing projects is largely booked through 2030 in most markets, and that sites offering power access within 18 to 36 months for greenfield development are highly sought after [20].

In general terms, a forward purchase agreement, also called a forward contract, is a contract "in which a buyer agrees to purchase from a seller a specified product at a specified price for delivery at a specified future time" [22]. The CFTC glossary also lists it as a cash forward sale [3]. Its definition names a specified quality and quantity of goods and a specified future date, and lets the price be agreed in advance or determined at the time of delivery [3]. The contract obligates both parties [23]. Forwards are individually negotiated between counterparties and can be arranged for almost any product [22]. They are traded over the counter on terms that are not standardized, and they can be terminated, other than by receipt of the underlying asset, only by agreement of both buyer and seller [23]. Futures contracts, by contrast, are standardized forward contracts traded on organized exchanges [23].

Forward contracting is common in many industries, including commodity merchandising [3], and U.S. commodity law has a settled vocabulary for it. This explainer uses that vocabulary to describe how a forward purchase agreement for GPU systems works, and where it differs from an exchange-traded futures contract.

Method

This is a document review. We read:

- the definitions in the Commodity Exchange Act [1] and the CFTC and SEC rule that further defined "swap" in 2012, including its discussion of the forward contract exclusion [2];
- the CFTC's glossary entries for forwards, futures, margin, clearing and grades [3], and the definitions of forward contracts in the Federal Reserve Board's trading activities manual [22] and the FFIEC Call Report glossary [23];
- the Uniform Commercial Code sections on future goods and adequate assurance of performance [4, 5], a legal definition of escrow [6], and the federal statute and regulation on performance bonds in construction contracting, used here as a reference for how such bonds work [7, 8];
- company filings that disclose supply commitments and the delivery terms of compute agreements [9, 10, 11];
- vendor documentation for the power, cooling and rack layout of the GPU systems named in the reference grades [12, 13, 14, 15, 16, 17, 18];
- market reports on data-center capacity [19, 20].

We mapped each element of a forward purchase agreement (grade, quantity, price, delivery, deposit, bond and capacity) to the legal or technical source that defines it. Sizing figures are arithmetic on vendor power figures: block size divided by rack or system power, rounded down to whole units. No private agreements were used.

Findings

1. Where the legal line sits

The Commodity Exchange Act defines "commodity" broadly. Beyond the listed agricultural products, it includes "all other goods and articles," except onions and motion picture box office receipts, and "all services, rights, and interests" in which contracts for future delivery are dealt in [1]. Two exclusions matter for deferred-delivery sales:

- The term "future delivery" does not include any sale of any cash commodity for deferred shipment or delivery [1].
- The term "swap" does not include any sale of a nonfinancial commodity or security for deferred shipment or delivery, "so long as the transaction is intended to be physically settled" [1].

The 2012 rule explained how the CFTC reads these exclusions [2]. Its main points, as they bear on GPU systems:

Point in the 2012 rule [2]	What it says
Purpose of a forward	Forwards in nonfinancial commodities are commercial merchandising transactions. Their primary purpose is to transfer ownership of the commodity, and not to transfer solely its price risk.
Why the exclusion exists	The futures regulatory scheme should not apply to private commercial merchandising transactions that create enforceable obligations to deliver, where delivery is deferred for commercial convenience or necessity.
Intent to deliver	Intent to deliver is part of the analysis, and the CFTC applies a facts and circumstances test, assessing the transaction as a whole.
Nonfinancial commodity	A commodity that can be physically delivered and that is an exempt commodity or an agricultural commodity. An exempt commodity is one that is neither excluded nor agricultural [1].
Book-outs	Under the 1990 Brent Interpretation, commercial parties who later cancel delivery obligations through a subsequent, separately negotiated agreement stay within the safe harbor. Participants that regularly make or take delivery of the commodity in the ordinary course of business meet the commercial participant standard.
Index pricing	A transaction intended to be physically settled that otherwise meets the exclusion, and uses an index merely to determine the price paid for the commodity delivered, may qualify for the forward exclusion.

Point in the 2012 rule [2]	What it says
Consistency	The entire body of CFTC precedent on forwards applies to both the swap and the future delivery exclusions.

Physical GPU systems are goods that are delivered and used. Whether a given agreement falls inside the exclusion still depends on its facts: whether both parties intend delivery, whether the contract creates enforceable delivery obligations and whether its terms let a party walk away for a cash difference. Those are questions for the parties and their counsel.

2. Forward and futures compared

Feature	Bilateral forward purchase agreement	Exchange-traded futures contract
Definition	A cash transaction in which a commercial buyer and seller agree upon delivery of a specified quality and quantity of goods at a specified future date [3]	An agreement to buy or sell a commodity for future delivery at a price set at initiation, which obliges each party to perform, is used to assume or shift price risk, and may be satisfied by delivery or offset [3]
Terms	Personalized: delivery time and amount as agreed between seller and buyer; price agreed in advance or set at delivery [3]	Standardized by the exchange: contract grades approved as deliverable, contract size and delivery months [3]
Venue	A private contract	A designated contract market, a board of trade or exchange designated by the CFTC [3]
Credit risk	Each party bears the risk that the other defaults [3]	Contracts executed on a designated contract market are guaranteed against default by the clearing organization [3]
Collateral	As agreed: deposits, escrow and bonds	Margin, also called performance bond: initial and maintenance margin, with gains and losses marked to market each trading session [3]
Ending	Physical delivery of the goods	Delivery, offset, or cash settlement where the contract specifies it [3]
Transfer	As the agreement allows	Positions close by offset on the exchange [3]

A futures position can end by offset, with no delivery at all [3]. A forward purchase agreement is written for a buyer who needs the goods in a named month.

3. The grade model

Futures markets make different lots comparable with a basis grade, the standard grade of a futures contract, and differentials, the discounts or premiums allowed for grades or locations below or above it [3]. The contract grades are those the exchange has approved as deliverable [3].

GPU systems are configured products, so a forward agreement can start from a reference grade, such as an HGX B200 8-GPU system or a GB200 NVL72 rack, and list every difference from it. The fields a grade records:

Field	What it records
Reference grade	The base system, such as an HGX B200 8-GPU system
CPU	Platform and core count
Memory	System memory size
Networking	NIC count, speed and fabric
Certification	The certifications the build carries
Cooling	Air or liquid, a separate grade
Power input	AC power supplies or DC busbar, where the system offers both
Condition and warranty	New, surplus, refurbished or used, and who provides the warranty
Delivery	Month and place

Cooling and power input are listed because they change what the site must provide. Vendor documentation for systems with the same GPUs shows the gap:

System	Cooling	Size	Power	Per rack
NVIDIA DGX B200 [12]	Air	10 rack units	14.3 kW estimated maximum	2 in a typical deployment (28.6 kW); 4 at sites designed for extreme-density air cooling (57.2 kW)
NVIDIA DGX B300 [13]	Air	10 rack units	14.5 kW power consumption	AC power supply version, or a version that takes 54 V DC from a rack busbar
Supermicro HGX B200, air-cooled [14]	Air	10U	Not stated in the release	Up to 4 per rack
Supermicro HGX B200, liquid-cooled [14]	Liquid	4U	Not stated in the release	8 systems and 64 GPUs in a 42U or 48U rack; up to 12 systems and 96 GPUs in a 52U rack
NVIDIA DGX GB200 NVL72 rack [15]	Liquid for compute trays; networking and storage air-cooled	72 GPUs in one rack	Approximately 120 kW per rack	One rack

An eight-GPU B200 system can need 14.3 kW of air cooling in a rack it shares with one other system, or a coolant loop in a rack it shares with seven others. A buyer who agrees a price for "an HGX B200 system" without naming the cooling grade has agreed a price for two different deliveries.

4. Deposits, escrow and bonds

One structure for a forward purchase agreement assigns each party one instrument:

Party	Instrument	Held by	Purpose
Buyer	Deposit at signing; balance at delivery	An independent escrow agent, released as the agreement sets out	Commits the buyer while a neutral party holds the money until the release conditions are met
Seller	Performance bond	Posted by the seller, backed by a surety	Backs the obligation to deliver

An escrow agent is a neutral third party that holds money, property or documents until the conditions in an escrow agreement are satisfied, and releases them only on the parties' agreed instructions [6]. The arrangement is common in real estate closings and in mergers and acquisitions, where part of the price is

held to secure obligations after closing [6].

A performance bond brings in a third party, a surety, to back the bonded party's obligation. U.S. federal construction contracting uses the instrument as a matter of law: before a federal construction contract of more than $100,000 is awarded, the contractor must furnish a performance bond with a surety satisfactory to the contracting officer, in an amount the officer considers adequate [7]. The Federal Acquisition Regulation applies the requirement to construction contracts exceeding $150,000, and for contracts above $35,000 and up to $150,000 has the contracting officer choose among payment protections that include an irrevocable letter of credit and a tripartite escrow agreement [8]. These rules govern federal construction. They show bonds and escrow written into law to secure obligations that run over time.

In futures, the same words name a different thing. The CFTC glossary defines margin as money or collateral deposited with a broker, a clearing member or a clearing organization, notes that it is not partial payment on a purchase and adds that it is also called performance bond [3]. Futures margin is reset as prices move. A seller's performance bond in a forward agreement secures delivery of goods.

Two Uniform Commercial Code provisions frame the period between signing and delivery. Goods that are not both existing and identified are "future" goods, and a purported present sale of future goods operates as a contract to sell [4]. GPU systems still to be built or allocated fit that description, so title passes later. And when reasonable grounds for insecurity arise about either party's performance, the other may demand adequate assurance in writing and, if commercially reasonable, suspend its own performance; failure to provide assurance within a reasonable time not exceeding thirty days is a repudiation [5].

5. Delivery terms in public contracts

The terms of hardware forward agreements are negotiated privately. Public compute contracts show how delivery obligations are written in this market.

On 8 September 2025, Nebius disclosed a commercial agreement to provide Microsoft with access to dedicated GPU infrastructure capacity, in tranches, at a new data center in Vineland, New Jersey, over a five-year term [10]. The terms it disclosed:

Term	As disclosed [10]
Delivery	Several tranches during 2025 and 2026
Value	About $17.4 billion through 2031, subject to deployment and availability; about $19.4 billion if additional services or capacity are acquired
Late delivery	If an agreed delivery date is missed after a grace period and alternative capacity cannot be provided, the customer may terminate that tranche

Term	As disclosed [10]
Damages	Liquidated damages for late delivery, alongside service level commitments
Termination for cause	Material breach not remedied within 60 days, or insolvency events
Financing	Cash flow from the agreement to finance part of the capital expenditure

On 17 July 2026, Nebius reported that it had delivered the latest planned capacity tranche and remained on track to deliver the remaining tranches on the contracted schedule [11]. The same announcement described a $775 million senior secured facility, maturing on 31 October 2030 and priced at SOFR plus 2.50%, backed by deployed GPU infrastructure and contracted cash flows from an agreement with an investment-grade customer [11].

The contract sells capacity as a service. The delivery mechanics carry over to a hardware forward: a named date per tranche, a grace period, a remedy for lateness, a right to substitute and a termination right that applies to the late tranche alone.

6. Sizing capacity blocks

A data-center capacity agreement reserves power and space so that systems bought forward have somewhere to run. CBRE quotes wholesale colocation asking rates per kW per month, for requirements of 250 kW and above [20]. The examples here use blocks of 250 kW, 500 kW and 1 MW.

The number of systems a block holds depends on which power figure is used. Vendor documents give several:

- NVIDIA's DGX GB rack guide states rack power consumption of approximately 120 kW, supplied by eight power shelves of 33 kW each in an N+N arrangement [15].
- Supermicro's GB200 NVL72 datasheet lists total power of 132 kW and operating power of 125 kW to 135 kW [17].
- Schneider Electric's reference design for GB300 NVL72 clusters supports a maximum rack density of 142 kW [18].
- NVIDIA's DGX B200 guidance gives 14.3 kW per system [12], and its DGX B300 guide gives 14.5 kW [13].

Block	GB200 NVL72 at 120 kW	GB200 NVL72 at 132 kW	GB300 NVL72 at 142 kW	DGX B200 at 14.3 kW	DGX B300 at 14.5 kW
250 kW	2 racks (240 kW)	1 rack (132 kW)	1 rack (142 kW)	17 systems (243.1 kW)	17 systems (246.5 kW)
500 kW	4 racks (480 kW)	3 racks (396 kW)	3 racks (426 kW)	34 systems (486.2 kW)	34 systems (493.0 kW)
1 MW	8 racks (960 kW)	7 racks (924 kW)	7 racks (994 kW)	69 systems (986.7 kW)	68 systems (986.0 kW)

Derived from the vendor figures above. Counts are rounded down and include no allowance for networking, storage, management equipment, coolant distribution units or headroom.

Three points follow. First, sizing at 120 kW or at 132 kW changes the count by one rack in every block size. The power figure used for sizing belongs in the agreement. Second, NVIDIA specifies a DGX SuperPOD scalable unit of 8 DGX GB200 racks at a thermal design power of 1.2 MW [16], so a 1 MW block holds less than one scalable unit as NVIDIA specifies it, and a buyer planning NVIDIA's reference design should size to the scalable unit. Third, NVIDIA's DGX B200 guidance specifies a scalable unit of up to 32 systems at 458 kW [12], which fits in a 500 kW block.

7. The capacity market

CBRE's reports describe the market a capacity agreement is signed into:

Measure	Value	Period
Primary-market vacancy, North America	1.4%	Year-end 2025 [20] and first half of 2026 [19]
Capacity under construction	7,481 MW	First half of 2026 [19]
Share of capacity under construction already preleased	More than 80%, up from 74.3% a year earlier	First half of 2026 [19]
Net absorption	About 1,456 MW	First half of 2026 [19]
Average asking rate, 250 to 500 kW requirement, primary wholesale colocation markets	$196.25 per kW per month	Second half of 2025 [20]

CBRE quotes its rates as asking rates for requirements of 250 kW and above at N+1 or Tier III [20]. They are asking prices, and a signed agreement can price above or below them. CBRE also reported that operators with facilities designed for superintelligence (SI), including liquid cooling and high-power-density racks, captured rent premiums over standard colocation [20].

Implications

For buyers. Write the grade in full, including cooling and power input. Name the power figure used to size the capacity block and the cooling grade the site provides. Align the capacity agreement's start with the delivery month, so that systems do not wait for power and power does not wait for systems. Check who holds the deposit and on what instructions it is released, and who issued the seller's bond.

For sellers and integrators. A forward agreement fixes a price against supply that may itself be committed months ahead [9]. The performance bond and the delivery remedies set the cost of missing a month, so the delivery schedule in the agreement should match the seller's own supply commitments.

For lenders. A forward agreement paired with a capacity agreement gives a lender a contracted delivery month, a grade and a site. Public filings show debt secured on both deployed GPUs and contracted cash flows [11]. Before delivery, the collateral is a contract right, and the escrowed deposit and the seller's bond are part of the credit picture.

For researchers. A forward price is a contract term for a named grade, month and place. Comparing it with a spot listing or a reported sale requires matching all three.

Limits of this analysis

- This report explains contract structure. It is not legal advice. Whether a particular agreement falls within the forward exclusion depends on its facts and circumstances [2], and only U.S. federal law is discussed.
- The public examples of delivery terms come from a compute services agreement and from supply disclosures. Terms of private hardware forward agreements are rarely published, and none are described here.
- The construction bonding rules cited are a reference for how performance bonds work. They do not apply to GPU purchase agreements.
- Sizing tables use vendor power figures for reference configurations. Actual draw depends on the build, the workload and the site, and the tables exclude overhead equipment.
- CBRE figures are asking rates and market measures for primary North American markets in the periods stated.
- The deposit, escrow and bond structure in finding 4 illustrates one way to secure performance. The terms of any agreement are negotiated between its parties.
- Nothing in this report is investment advice or a recommendation to enter any agreement.

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