

DME AUCTIONS

GENERAL PARTICIPANT TERMS AND CONDITIONS

VERSION 1.2

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THIS PARTICIPANT AGREEMENT (“Terms and Conditions”) sets out the terms and conditions under which

Dubai Mercantile Exchange Limited, a company limited by shares, incorporated in the Dubai International Financial Centre (“DIFC”) and having its address at DIFC Gate Village Building 10, Level 4, PO Box 66500, Dubai, United Arab Emirates (“DME”) offers its auction platform (the “Auction Platform”) to Participants (as defined in the rules published by DME, as they may be amended from time to time, which will govern participation in the Auction Platform (the “Rules”)).

Each of DME and the Participant are herein referred to as a **Party**, and together the **Parties**.

These Terms and Conditions, as they may be amended from time to time, are published on the DME website (www.dubaimerc.com) or any other website identified by DME, and are to be read in conjunction with the Rules, in the form published on the same DME website,

WHEREAS

- (A) DME is operating the Auction Platform in accordance with the Rules.
- (B) The Participant wishes to participate in the Auction Platform and agrees to be subject to these Terms and Conditions.

IT IS AGREED as follows:

1 Definitions and interpretation

- 1.1 In these Terms and Conditions, unless the context requires otherwise, capitalised words and phrases shall have the same meaning as set out in the Rules, as they may be amended from time to time.
- 1.2 In these Terms and Conditions, unless otherwise specified:
 - 1.2.1 the table of contents, the recitals and the headings are inserted for convenience only and do not affect the interpretation of these Terms and Conditions;
 - 1.2.2 references to clauses are to clauses of these Terms and Conditions; and
 - 1.2.3 references to these Terms and Conditions or any other document are to that document as from time to time amended, restated, novated or replaced, however fundamentally.
- 1.3 In the event of any conflict or inconsistency between these Terms and Conditions and the Rules, the Rules shall prevail.

2 Obligations of the Participant

- 2.1 With effect from the date on which the Participant is granted the right to participate in the Auction Platform, the Participant agrees to:
- 2.1.1 comply with and be bound by the Rules and all rights, obligations and liabilities pursuant to the Rules as if the Rules were set out in these Terms and Conditions;
 - 2.1.2 be subject to and bound by all Transactions that are created as a result of the process set out in the Rules;
 - 2.1.3 be subject to any requirement imposed as a result of a request, decision, direction, sanction, requirement or discretion that DME is entitled to make, exercise or impose pursuant to the Rules;
 - 2.1.4 be responsible for the acts and omissions of its Representatives as set out in the Rules; and
 - 2.1.5 submit to the jurisdiction and be bound by any decision, determination, direction, sanction, requirement or award of any arbitral tribunal, court or other body appointed or formed pursuant to the Rules or that has jurisdiction over any matter in accordance with the Rules.
- 2.2 The Participant understands that each Order submitted to the Auction Platform during any of the Auction Rounds may result in it being required to enter into one or more binding Transactions with one or more other participants of the Auction Platform. The Participant shall assume full financial and performance responsibility for all Transactions created as a result of the process set out in the Rules.
- 2.3 The Participant agrees to pay to DME, on demand, all sums due to DME in connection with the Auction Platform and these Terms and Conditions.

3 Term

- 3.1 These Terms and Conditions shall terminate in accordance with the Rules.
- 3.2 The obligations set out and referred to in Rule 2.6 (regarding severability) shall survive the termination of these Terms and Conditions.

4 Representations and warranties

- 4.1 The Participant represents and warrants that:
- 4.1.1 it is duly incorporated and validly existing under the laws of its country of incorporation;

4.1.2 it has the capacity, and has taken all necessary corporate action to authorise it, to comply with these Terms and Conditions, and to perform the obligations it is expressed to assume under it, the Rules and each Transaction to which it is required to become a party;

4.1.3 it has duly executed any documents provided to it in connection with its being approved as a Participant, and its execution thereof does not, and its performance of its obligations under these Terms and Conditions, the Rules and each Transaction to which it is required to become a party, will not contravene or violate its constitutional documents, any Applicable Law, or the rights of any third parties under agreements to which it is party;

4.1.4 subject to any general principles of law limiting obligations, the obligations assumed by it under these Terms and Conditions, the Rules and each Transaction are legal, valid, binding and enforceable obligations.

4.2 The Participant undertakes to notify DME immediately in the event of its ceasing to be able to make any of the representations, warranties and undertakings set out in clause 4.1.

4.3 Each representation and warranty set out in clause 4.1 shall be deemed to be repeated on each Business Day whilst it remains a Participant.

5 Miscellaneous

5.1 Notices

5.1.1 Unless otherwise specified in the Rules, a notice or other communication given to a Party under or in connection with these Terms and Conditions shall, unless otherwise specified, be in writing in English and sent by any of the methods set out below and shall be deemed to be given by the date set out below.

Permitted method	Date on which notice deemed given
Email (with the notice attached in PDF format)	If sent to the email address provided by the recipient before 5pm local time of the recipient, on that Business Day, and otherwise on the next Business Day

Personal delivery	When left at the relevant address provided by the recipient
Recorded or special delivery, or the nearest local equivalent in the jurisdiction of the sender	Two (2) Business Days after posting
Recorded or special delivery airmail, or the nearest local equivalent in the jurisdiction of the sender	Six (6) Business Days after posting

5.1.2 Unless otherwise specified in the Rules, a notice or other communication given to a Party under or in connection with these Terms and Conditions shall be sent to the address provided by that Party at the time of the Participant being accepted by DME.

5.1.3 DME may also give a notice or other communication to the Participant by posting it on the DME website, or any other a website which it has identified to the Participant.

5.1.4 Each Party shall promptly notify the other of any changes to its address or other contact details.

5.2 Amendments

5.2.1 Subject to clause 5.2.2, no purported variation of these Terms and Conditions shall be effective until it is posted by DME on its website and is identified by DME as the then current version of these Terms and Conditions.

5.2.2 DME shall be entitled to amend the Rules. DME shall be entitled to make such amendments to these Terms and Conditions as it reasonably considers necessary or desirable to reflect amendments made to the Rules, by providing not less than five (5) Business Days' notice of any such amendments. The Participant's continued use of the Auction Platform following an amendment to the Rules or these Terms and Conditions taking effect shall constitute its acceptance of such amendment.

5.3 Assignment

5.3.1 Subject to clause 5.3.2, neither Party may assign, delegate, sub-contract, transfer or create an encumbrance over any or all of its rights and obligations under these Terms and Conditions

without the prior written agreement of the other Party. Such agreement is not to be unreasonably withheld.

- 5.3.2 DME shall be entitled to assign any or all of its rights or benefits under these Terms and Conditions to any Affiliate on terms that if any such assignee shall cease to be an Affiliate of DME then (unless such rights shall previously have been assigned to a continuing Affiliate of DME or the parties have agreed otherwise) such rights shall terminate.

5.4 Waiver

- 5.4.1 Rule 2.7 (regarding waiver) shall apply to these Terms and Conditions, save that all references to the Rules shall be interpreted as references to these Terms and Conditions.

5.5 Severability

- 5.5.1 Rules 2.6 (regarding severability) shall apply to these Terms and Conditions, save that all references to the Rules shall be interpreted as references to these Terms and Conditions, or each part of it as the case may be.

5.6 Entire Agreement

- 5.6.1 These Terms and Conditions and the Rules constitute the entire agreement between the Parties and supersede any prior agreement, understanding, undertaking or arrangement between the Parties relating to the Auction Platform.
- 5.6.2 The Participant acknowledges and agrees that, in seeking acceptance as a Participant, it does not rely on any statement, representation, assurance or warranty of any person (whether a Participant in the Auction Platform or not and whether made in writing or not) other than as expressly set out in these Terms and Conditions or the Rules.
- 5.6.3 The Participant agrees that it shall have no right or remedy (other than for breach of contract) in respect of any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in these Terms and Conditions or the Rules.
- 5.6.4 Nothing in these Terms and Conditions shall exclude or limit the liability of either Party which cannot by law be excluded.

5.7 Relationship of Parties

- 5.7.1 Nothing in these Terms and Conditions is intended to create a partnership or legal relationship of any kind that would impose liability on one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other Party. Neither Party shall make representations, act in the name of or on behalf of, or otherwise bind, the other Party.

5.8 Contractual Agreement

- 5.8.1 These Terms and Conditions are binding upon DME and the Participant as they would be if set out in a written contract, executed on behalf of both parties.

5.9 Service of process

- 5.9.1 If the Participant does not have an office or place of business in England or Wales, it shall irrevocably authorise and appoint such other person having an office or place of business in England or Wales as the Participant may wish by giving notice in writing to DME (the **Process Agent**) to accept on its behalf service of all legal process arising out of or in connection with any arbitration proceedings or other related proceedings before the English courts commenced in connection with these Terms and Conditions. Further, the Participant agrees that failure by the Process Agent to notify the Participant of the process will not invalidate the proceedings concerned.

5.10 Contracting out of third party rights

- 5.10.1 No term of these Terms and Conditions is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to these Terms and Conditions.

6 Governing law and arbitration

- 6.1 These Terms and Conditions and the Rules and any non-contractual obligations connected with them shall be governed by and construed in accordance with the laws of England and Wales.
- 6.2 Rule 2.8 (regarding governing law and arbitration) shall apply to these Terms and Conditions save that any reference to the Rules shall be interpreted as a reference to these Terms and Conditions.

These Terms and Conditions have been entered into on the date on which the Participant is approved by DME to participate in the Auction Platform.