

LME INCENTIVE PROGRAMMES

GENERAL TERMS

PARTIES

- (1) **THE LONDON METAL EXCHANGE**, a private unlimited company incorporated in England and Wales (registered number 02128666) whose registered office is at 10 Finsbury Square, London EC2A 1AJ (“**the LME**”); and
- (2) The **LME MEMBER** identified in an Application Form (the “**Member**”),

(each individually, a “**Party**” and collectively, the “**Parties**”).

BACKGROUND

- (A) The LME provides a global venue for those who wish to manage the risk associated with future metals price movements. From time to time, it may operate various incentive programmes in respect of certain products.
- (B) The Participant (as defined below) wishes to participate in certain incentive programmes operated by the LME, on the terms of the Agreement.
- (C) For the avoidance of doubt, the Agreement is separate from the Market Making Agreement introduced in LME notice 17/386, which may be entered into by LME members in connection with Article 17(3) of MiFID II.
- (D) The LME may amend, suspend or remove any incentive programme from time to time and the Member and Participant should refer to www.lme.com/incentive-programmes for an up to date list of all current incentive programmes.
- (E) The Agreement should be read in conjunction with Regulation 22 of Part 2 of the LME Rulebook (as defined below) which sets out rules governing incentive programmes offered by the LME from time to time.

OPERATIVE PROVISIONS

1 DEFINITIONS

- 1.1 In the Agreement, terms defined in the Application Form shall have the same meaning in these General Terms.
- 1.2 In the Agreement:

“**Accepted Application Form**” means an Application Form that has been processed and accepted by the LME and where the LME has provided email confirmation to the relevant Member.



"Agreement" shall have the meaning set out in Clause 4.2.

"Applicable Law" means all applicable laws, regulations, regulatory requirements and codes of practice of any relevant jurisdiction, as amended and in force from time to time.

"Application Form" means the Incentive Programme application form in such format as the LME shall determine from time to time (i) published on LME.com and (ii) available on request by way of email to the LME sales team at sales@lme.com.

"Client" means a client as defined in the LME Rulebook.

"Confidential Information" means any and all information which is now or at any time hereafter in the possession of the disclosing Party and which relates to the general business affairs and Intellectual Property Rights of the disclosing Party including source codes, object codes, data, databases, know how, formulae, processes, designs, drawings, technical specifications, technical modifications, samples, applications, manuals, methods, finances, lists or details of customers, lists or details of employees, marketing or sales information of any past, present or future product or service, pricing lists and any other material bearing or incorporating any information relating to the general business affairs and Intellectual Property Rights of the disclosing Party whether written in any form or medium or oral and whether furnished by the disclosing Party to the receiving Party or indirectly learned by the receiving Party.

"Exchange Membership Agreement" means the form of exchange membership agreement entered into by LME members and the LME and as updated by the LME from time to time.

"Group" includes (i) any holding company or subsidiary of a company and (ii) any company which is a subsidiary company of any holding company of that company. The expressions holding company and subsidiary company shall have the meanings assigned to them by Section 1159 of the Companies Act 2006.

"Incentive Programme(s)" means an LME incentive programme as further described in a Specification set out on the LME's website www.lme.com/incentive-programmes from time to time.

"Indirect Client" means a client of a Client.

"Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and related rights, trade-marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.



"LME Rulebook" means The London Metal Exchange's Rules and Regulations, from time to time.

"Losses" means claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time, legal and other professional costs and expenses).

"Malpractice" shall have the meaning given to it in Clause 22.1.

"Overpayment" shall have the meaning given to it in Clause 7.7.

"Participant" means the Member, Client, Indirect Client that is the ultimate beneficiary of the Incentive Programme that is applicable to a particular trade.

"Process Agent" shall have the meaning given to it in Clause 19.1.

"Proprietary Trading Firm" shall have the meaning given to it in Clause 5.4.

"Regulator" means, in relation to a Party, any public authority or government agency responsible for exercising autonomous authority over the Party or any member of the Party's Group in a regulatory or supervisory capacity. It includes the Information Commissioner's Office. In relation to the LME and its Group, it includes the Financial Conduct Authority, the Bank of England, the European Securities and Markets Authority, the Securities & Futures Commission of Hong Kong, the Australian Securities and Investments Commission, the Monetary Authority of Singapore and the U.S. Commodities Futures Trading Commission.

"Specification" means a current incentive programme specification set out on the LME website www.lme.com/incentive-programmes from time to time.

"Trade Identifier" means the trade identifier provided by the LME to the Member from time to time.

"Trading Period Commencement Date" means the date from which eligible trades entered into by the Participant will be included in the Incentive Programme.

2 INTERPRETATION

2.1 In these General Terms:

- (a) a reference to a "Clause" is to a Clause of these General Terms;
- (b) unless the context requires otherwise, references to "days" means calendar days, "weeks" means calendar weeks and "months" means calendar months;
- (c) a reference to a "person" includes a legal or natural person, partnership, association, trust, company, corporation, joint venture, government, state or agency of the state or other body;



- (d) a reference to "in writing" or "written" does not include via email;
- (e) a reference to a governmental, local governmental, regulatory or administrative authority or agency (including a Regulator) includes its successors;
- (f) a reference to any agreement (including the Agreement) or other document or the provisions of them is a reference to that agreement, document or provision as amended, novated, supplemented, extended, restated or replaced from time to time;
- (g) a reference to a statute or statutory provision includes a reference to:
 - (i) any statutory amendment, consolidation or re-enactment of it to the extent in force from time to time;
 - (ii) all orders, regulations, instruments or other subordinate legislation made under it to the extent in force from time to time; and
 - (iii) any statute or statutory provision of which it is an amendment, consolidation or re-enactment;
- (h) the headings in these General Terms are for ease of reference only and are to be ignored when interpreting these General Terms; and
- (i) a reference to the singular includes the plural and vice versa.

2.2 In these General Terms:

- (a) Terms not otherwise defined in an Application Form, Specification or these General Terms shall have the meaning set out in the LME Rulebook.
- (b) the interpretation of general words shall not be restricted by words indicating a particular class or particular examples; and
- (c) "including", "for example", "e.g." and "in particular" (and any other word or phrase with a similar meaning) shall be construed to mean "including, without prejudice to the generality of the foregoing" and "in particular, but without prejudice to the generality of the foregoing" respectively and where any example is given it shall be construed so that the example is "without limitation".
- (d) In the event of any inconsistency between any of the documents that make up the Agreement, the inconsistency will be resolved by giving precedence to the documents in this order: (1) the LME Rulebook, (2) an Application Form, (3) a Specification, and (4) these General Terms.

3 NO CONTRACTUAL RELATIONSHIP WITH PARTICIPANT

- 3.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any contractual relationship between the LME and any Participant (other than the Member) nor confer on



any Participant (other than the Member) any entitlement to receive any benefits (including benefits arising from the Incentive Programmes) from the LME.

3.2 The Member shall, at its absolute discretion, determine whether to pass any benefits provided to it by the LME under the terms of the Agreement to the relevant Participant.

4 APPLICATION PROCESS

4.1 Subject to availability and the criteria specified in each Incentive Programme, the Parties may enter into an Incentive Programme, where:

(a) the Member has executed the relevant Application Form in respect of the Incentive Programme; and

(b) such Application Form has been accepted by the LME by way of email confirmation to the relevant Member.

4.2 The Member's participation in an Incentive Programme shall be governed by these General Terms, the relevant Specification and the Accepted Application Form (being the "**Agreement**"). The Parties may enter into any number of Agreements in respect of Incentive Programmes.

4.3 The Member shall complete the Application Form and provide all other relevant information which the LME may request from time to time.

4.4 It is the responsibility of the Member to ensure that all information included on the Application Form and / or provided to the LME is complete and accurate. The LME reserves the right to refuse an application and / or terminate the Agreement if at any time if the LME determines that the Application Form contains incorrect, misleading or inaccurate information.

4.5 The LME accepts no responsibility or liability arising from any incorrectly completed Application Form and the Member accepts that it may not receive the benefit of the Incentive Programme if the Application Form contains information that is incorrect, misleading and / or inaccurate.

4.6 Notwithstanding the LME's rights under the Agreement, the LME reserves the right to commence disciplinary proceedings against any Member under Part 2 of the LME Rulebook in the event that: (i) a Member provides incorrect, misleading or inaccurate information about a prospective Participant when applying for an Incentive Programme; and/or (ii) a Member fails to comply with any obligation under the LME Rulebook with respect to any Incentive Programme.

4.7 The LME reserves the right, in its absolute discretion, to approve or refuse any application for an Incentive Programme. The LME's decision as to whether or not an application meets the criteria for an Incentive Programme shall be final and binding.

5 ELIGIBILITY



- 5.1 The LME shall, at its absolute discretion, determine whether a Participant is eligible to participate in an Incentive Programme.
- 5.2 The LME reserves the right to decline to accept any Participant into an Incentive Programme where the LME determines the Participant does not satisfy the relevant eligibility criteria for such Incentive Programme.
- 5.3 The LME reserves the right, in its absolute discretion, to remove a Participant from an Incentive Programme in the event that the LME discovers that a Participant:
- (a) does not meet the eligibility criteria set out in the Specification; or
 - (b) later ceases to meet the eligibility criteria set out in the Specification.
- 5.4 Subject to Clause 5.5, for the purposes of the Specifications, an entity shall be considered a proprietary trading firm ("**Proprietary Trading Firm**") where it satisfies each of the following conditions:
- (a) its principal commercial business is to undertake trading activity on its own account in specified investments (where such specified investments have the definition given in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001);
 - (b) the entirety of its trading is done using capital beneficially owned by either the entity and / or its full time employees;
 - (c) all profits and losses arising or received as a result of trading activity are booked to accounts beneficially owned by either the entity or its full time employees;
 - (d) the entirety of its trading is undertaken by owners, employees, members or contractors of the entity, trading team or an individual trader on behalf of the entity;
 - (e) the entity does not combine trading its own capital (or its employees' own capital) with trading of capital held on behalf of third parties; and
 - (f) net profits and losses received as a result of the trading activity appear on the balance sheet and form part of the accounting of the entity whether or not such profits or losses are retained by the entity.
- 5.5 An entity will not be considered a Proprietary Trading Firm if it or any member of its Group:
- (a) is active in the movement of physical material in a commercial capacity; or
 - (b) takes LME metal on or off warrant; or
 - (c) undertakes any other activity which the LME deems to be merchant business;



during the period of the relevant Incentive Programme.

6 INCENTIVE PROGRAMMES

- 6.1 A description of each Incentive Programme and the terms and conditions applying to each Incentive Programme are set out in each relevant Specification and / or the Application Form.
- 6.2 The LME, in its absolute discretion, reserves the right with or without notice to restrict, suspend or terminate any Incentive Programme at any time. The withdrawal of any Incentive Programme shall not affect any Incentive Programme benefits that have accrued to a Member prior to the time of such withdrawal.
- 6.3 The LME reserves the right to unilaterally modify any Incentive Programme, such changes to be communicated by way of either a notice or LME notice and published in a revised Specification on the LME's website from time to time.

7 REBATE PROCESS

- 7.1 The LME shall apply rebates in accordance with the terms set out in the relevant Specification, these General Terms and the Application Form.
- 7.2 The LME shall issue the Member with a Trade Identifier for the purpose of tracking trading volume.
- 7.3 Traded volume transacted through a different Trade Identifier will not be included for the purpose of calculating the rebate payable to the Member under the Incentive Programme.
- 7.4 Where the LME grants an application on or before the 15th day of a month, the Trading Period Commencement Date will be deemed to have occurred on the first trading day of that month.
- 7.5 Where the LME grants an application on or after the 16th day of a month, the Trading Period Commencement Date shall be the first trading day of the following month.
- 7.6 The LME shall calculate the rebate amount due to the Member at the end of each month and such rebates will be credited to the Member's account with the LME on or around the third business day of the following month.
- 7.7 If the LME pays to the Member a fee rebate in excess of the amount due to the Member under the terms of the Incentive Programme ("**Overpayment**") and such Overpayment arises as a result of either:

- (a) an administrative error; or
- (b) the provision of inaccurate, false or misleading information from the Member,

the LME reserves the right to either (i) set off the Overpayment against any future rebate payments owing to the Member or (ii) request that the Member refunds to the LME the Overpayment with such amount being due and payable on demand.



- 7.8 The LME shall have no obligation to correct any underpayment of fee rebates resulting from the provision of inaccurate or misleading information from the Member to the LME.
- 7.9 The LME may, at its absolute discretion, exclude certain trading volume from being eligible for an Incentive Programme including in situations where the LME considers that there is no genuine economic rationale for the relevant trades(s) and where the relevant trade(s) are not in compliance with Applicable Law.
- 7.10 The LME will combine the trading volume of multiple Trade Identifiers when calculating Group order to trade ratio.
- 7.11 It is the responsibility of the Member to provide the LME with notification of any change to:
- (a) the Trade Identifier;
 - (b) any clearing arrangements detailed in the Application Form,

by providing a new Application Form at least two weeks prior to the date the change is intended to take effect. Changes made with less than two weeks' notice to the LME (starting the business day after the notice is given) may not be taken into consideration when calculating the rebate amount.

8 TERM AND TERMINATION OF THE AGREEMENT

- 8.1 The term of the Agreement shall be from the date that acceptance of the Application Form by the LME is communicated to the Member by email until the Agreement is terminated in accordance with this Clause 8. The Agreement shall terminate:
- (a) upon thirty (30) days' written notice given by either Party to the other Party;
 - (b) immediately, upon written notice being given by the LME to the Member, if the LME reasonably considers it necessary to terminate the Agreement under Applicable Law or to meet the expectations of its Regulators; or
 - (c) immediately, if the LME determines, at its absolute discretion, that a Member provided incorrect, misleading or inaccurate information about a prospective Participant when applying for an Incentive Programme.
- 8.2 The Agreement shall terminate immediately in respect of a particular Incentive Programme if the LME terminates the applicable Incentive Programme in accordance with Clause 6.3.
- 8.3 Upon termination of the Agreement, howsoever arising, all Incentive Programmes as between the Parties and governed by the terms of the Agreement shall automatically terminate and, for the avoidance of doubt, the Member shall not be entitled to receive any rebate pursuant to an Incentive Programme under the terms of the Agreement.

9 REPRESENTATIONS AND WARRANTIES



- 9.1 The Member warrants and represents, on an ongoing basis, that:
- (a) it has the power and authority to enter into and perform the Agreement, which constitutes valid and binding obligations on it in accordance with its terms;
 - (b) the Participant has the power and authority to apply for Incentive Programmes, and is not prohibited by Applicable Law from entering into any Incentive Programme; and
 - (c) the Member has undertaken and shall continue to undertake all checks and enquiries required by Applicable Law on the Participant.
- 9.2 The Member undertakes to notify the LME immediately in the event of any of the representations set out in Clause 9.1 ceasing to be true.

10 DATA PROTECTION

- 10.1 The LME shall treat all Personal Data (as defined in the General Data Protection Regulations (EU 2016/679) ("**GDPR**")) provided to it by the Member and the Participant in accordance with the LME Privacy Statement, the current version of which can be found on the LME's website at <https://www.lme.com/en-gb/about-us/legal-disclaimer/privacy-policy/>. The Member warrants that:
- (a) it has provided a privacy notice (which is compliant with the GDPR) to all individuals whose Personal Data is provided to the LME under the Agreement;
 - (b) such privacy notice includes sufficient information about: (i) the sharing of personal data with third party recipients so as to cover the disclosure of Personal Data to the LME; (ii) the recording of telephone calls between representatives of the Member or Participant and the LME in accordance with the LME Rulebook; and (iii) video recording or photography undertaken by the LME for any reason (including, but not limited to, educational and promotional purposes); and
 - (c) if an individual requests further information about the disclosure of their Personal Data to the LME, the Member will direct them to the LME Privacy Statement.

11 LIABILITY

- 11.1 For the avoidance of doubt, the provisions in this Clause 11 shall apply without limitation or prejudice to Trading Regulation 19 in the LME Rulebook.
- 11.2 The LME's liability to the Member under the Agreement shall be limited to the lesser of:
- (a) any amounts paid and payable to the Member pursuant to the Agreement in the twelve months prior to the date of the relevant claim; or
 - (b) \$100 (one hundred US dollars).
- 11.3 The LME shall not be liable to the Member for:



- (a) any indirect, special or consequential loss;
- (b) or for any loss of profits, loss of anticipated savings, loss of business opportunity, loss of goodwill, or loss or corruption of data or information (whether direct or indirect).

12 AMENDMENTS

- 12.1 The LME may unilaterally change these General Terms at any time upon giving at least fourteen (14) days' prior written notice to the Member. Where the LME unilaterally changes these General Terms pursuant to this Clause 12.1, the Member's sole remedy shall be to terminate the Agreement by giving notice to the LME.
- 12.2 The LME may amend a Specification and any additional terms within the Application Form at any time and with immediate effect. Such changes will be published on the LME's website from time to time.
- 12.3 The Agreement may be varied by the LME without the Member's consent and without notice to the Member, where such variation is necessary in order for the LME to comply with any Applicable Laws or any requirement imposed by a competent regulatory body (including any Regulator).

13 ASSIGNMENT

- 13.1 The Member may not, without the written consent of the LME (which may be withheld in its absolute discretion), assign, transfer (including by way of novation), grant any security interest over or hold on trust any of its rights or obligations under the Agreement or any interest in them.
- 13.2 The LME may, without the consent of the Member, assign or novate all or any of its rights and (in the case of novation) its obligations under the Agreement to any member entity of the LME's Group by giving notice to the Member. In the case of novation, the Member hereby irrevocably consents in advance to any such novation and acknowledges and agrees that any such novation shall be effective without any further consent from the Member. Following such notice, the Agreement (in whole and maintaining the same terms as are then in force) shall automatically novate to the nominated member entity of the LME's Group on the date specified in the relevant notice.

14 WAIVER

- 14.1 Except as specifically provided in the Agreement, no waiver of any of the provisions or any part thereof shall be effective unless the same shall be in writing, and then such waiver shall be effective only in the specific instance, for the purpose for which the same is given, and such waiver shall not operate as a waiver of any future application of such provision or part thereof.
- 14.2 The waiver of any right and the failure to exercise any right or to insist on the strict performance of any of these provisions, shall not operate as a waiver of, or preclude any further or other exercise or enforcement of that or any other right.



15 CUMULATIVE RIGHTS

- 15.1 The rights and remedies expressly conferred by the Agreement are cumulative and additional to any other rights or remedies a Party may have, subject to the terms of the Agreement.

16 SEVERABILITY

- 16.1 If any provision of the Agreement is found to be wholly or partly illegal, invalid or unenforceable in any respect then to the extent it is illegal, invalid or unenforceable, that provision will be given no effect and will be treated as though it were not included in the Agreement, but the validity or enforceability of the remaining provisions of the Agreement will not be affected.

17 ENTIRE AGREEMENT

- 17.1 The Agreement and the LME Rulebook constitute the entire agreement between the Parties and supersedes any prior agreement, understanding, undertaking or arrangement between the Parties relating to the subject matter of the Agreement.
- 17.2 The Member acknowledges and agrees that by entering into the Agreement, it does not rely on any statement, representation, assurance or warranty of any person (whether a Party to the Agreement or not and whether made in writing or not) other than as expressly set out in the Agreement and / or the LME Rulebook.
- 17.3 The Member 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 the Agreement and / or the LME Rulebook.

18 RELATIONSHIP OF PARTIES

- 18.1 Nothing in the Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties. No Party shall have the authority to bind the other Party or to contract in the name of, or create a liability against, the other Party in any way or for any purpose.

19 SERVICE OF PROCESS

- 19.1 If the Member does not have an office or place of business in England, it hereby irrevocably authorises and appoints the process agent nominated to the LME at the time such Member entered into an Exchange Membership Agreement with the LME (or such other person having an office or place of business in England as the Member may at any time in the future substitute, by giving prior notice in writing to the LME (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 or other courts commenced in connection with the Agreement. Further, the Member agrees that any failure by the Process Agent to notify the Member of the process will not invalidate the proceedings concerned.



20 FURTHER ASSURANCE

- 20.1 Each Party shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing as may be reasonably requested of it by the other Party by written notice to implement the terms of the Agreement.

21 CONTRACTING OUT OF THIRD PARTY RIGHTS

- 21.1 The Parties do not intend any third party to have the right to enforce any provision of the Agreement under the Contracts (Rights of Third parties) Act 1999 or otherwise, except where such third party is an assignee of rights under the Agreement and such assignment is in accordance with Clause 13.

22 FRAUD, BRIBERY AND CORRUPTION

- 22.1 For the purposes of this Clause 22, "**Malpractice**" includes giving or receiving any financial or other advantage that may be construed as a bribe, whether for the purpose of the Bribery Act 2010 or any other applicable laws of any jurisdiction.
- 22.2 Neither Party shall engage in any fraud or Malpractice relating to the subject matter of the Agreement.
- 22.3 Each Party shall notify the other in writing (notifying the LME's General Counsel & Head of Enforcement in the case of the LME) as soon as possible, if it becomes aware of, or has grounds for suspecting any fraud or Malpractice relating to the subject matter of the Agreement.

23 SURVIVAL

- 23.1 Termination of the Agreement shall not affect either of the Parties' accrued rights or liabilities, or affect the coming into force or the continuance in force of any provision of the Agreement or the LME Rulebook, which are expressly or by implication intended to come into or continue in force on or after such termination.

24 GOVERNING LAW AND JURISDICTION

- 24.1 The governing law and jurisdiction provisions of the Exchange Membership Agreement shall apply *mutatis mutandis* to this Agreement.