

# **Terms and conditions for purchases under the public sector asset purchase programme ('PSPP') and pandemic emergency purchase programme ('PEPP') via reverse auctions by Nederlandsche Bank N.V. ('DNB')**

## **Article 1 Subject matter and scope**

1. These terms and conditions ('**Auction Terms**') shall apply to all purchases made by DNB for the PSPP and PEPP by way of Reverse Auctions. The General Terms and Conditions of DNB ('**General Terms and Conditions**') form an integral part of the Auction Terms. All terms written with a capital letter herein are used in the meaning stated in the General Terms and Conditions.
2. In case of a conflict between these PSPP Terms and the General Terms and Conditions, these Auction Terms shall prevail.
3. In the event of any difference of opinion between DNB and the Counterparty as regards the interpretation of the Auction Terms, DNB's interpretation will prevail.
4. The purchases via reverse-auctions are undertaken as part of the execution of the ECB Decision on a secondary market public sector asset purchase programme (ECB/2015/10 dated 4 March 2015) ('**Decision**') and pandemic emergency purchase programme (ECB/2020/17 dated 24 March 2020) and the purchases via the Reserve Auctions are therefore subject to the regulations set forth in the Decision.

## **Article 2 Definitions**

1. In addition to the definitions set out above and the definitions from the General Terms and Conditions the following terms have the following meanings:

**Agencies:** Dutch 'recognised agencies' as defined in article 2 paragraph 2 of the Decision;

**Award Decision:** the acceptance by DNB of a Quote pursuant to which DNB and the relevant Counterparty enter into an agreement for the purchase of a Public Sector Asset;

**Auction Tool:** the software application made available by Bloomberg by which Counterparties can participate in Reverse Auctions;

**Bloomberg:** Bloomberg Finance L.P.

**Counterparty:** a participant in a Reverse Auction that meets the Eligibility Criteria;

**Eligibility Criteria:** the following parties may..... : (i) parties that have been admitted to Monetary Policy Transactions or (ii) parties that have entered from time to time in transactions with DNB for the investment of euro-denominated investment portfolios of DNB;

**ISIN:** the International Securities Identification Number;

**Website Announcement:** Information on Reverse Auctions by DNB, as published on the DNB website;

**Monetary Policy Transactions:** Monetary Policy Transactions as defined in the General Terms and Conditions;

**Purchase Price:** the euro amount that DNB will pay for a certain Public Sector Asset pursuant to an Award Decision, which consists of the accepted Quote increased with the accrued interest i.e. the 'dirty' price;

**Public Sector Assets:** euro-denominated marketable debt securities issued by Agencies;

**Reverse Auctions:** a variable rate auction, with discriminatory prices where Counterparties submit Quotes for which they consent to sell Public Sector Assets to DNB. DNB shall compile offered Quotes and as a result this compilation of Quotes may result in an Award Decision where successful offers will be executed at the Purchase Price;

**Settlement:** the delivery of Public Sector Assets and payment of the Purchase Price;

**Transaction:** the purchase of Public Sector Assets by DNB from the Counterparty;

**Quote:** the 'clean price' (i.e. excluding accrued interest) of a Public Sector Asset;

### **Article 3 Reverse Auctions**

1. DNB may from time to time organize Reverse Auctions for the purchase of Public Sector Assets.
2. Reverse Auctions will be announced in advance through a notification via Bloomberg.
3. Counterparties can only participate in a Reverse Auction and submit Quotes via the Auction Tool. The Reverse Auctions shall take place in the manner as described in the Website Announcement and these Auction Terms. In the event of a discrepancy between the Website Announcement and these Auction Terms, these Auction Terms shall prevail.
4. The submission of a Quote shall be a legally binding offer to enter into a Transaction with DNB.
5. The number of Public Sector Assets and the amount per ISIN that DNB will purchase in each Reverse Auction will not be pre-determined. An Award Decision will be based on the attractiveness of the Quotes relative to a theoretical yield curve at the close of the auction. DNB shall in no circumstances be obliged to take an Award Decision.
6. Counterparties will be notified of the Award Decision and the amounts allocated through the Auction Tool.
7. Upon notification of the Award Decision an agreement between DNB and the Counterparty for the Transaction shall be concluded.
8. DNB has the explicit right of to cancel Reverse Auctions during its process at any time prior to an Award Decision.

#### **Article 4 Settlement, Payment and Delivery**

1. Settlement of a Transaction will take place on a T+2 basis after notification of the Award Decision i.e. Settlement of Transactions will take place two (2) Business Days after notification of the Award Decision.
2. Unless otherwise agreed in writing by the Counterparty and DNB, under each Transaction delivery of Public Sector Assets by the Counterparty and the payment for these Public Sector Assets shall be made simultaneously i.e. on a 'delivery versus payment' basis.
3. All Public Sector Assets to be delivered to DNB hereunder (i) shall be in suitable form for delivery and shall be accompanied by duly executed instruments of transfer or assignment in blank (where required for transfer) and such other documentation as DNB may reasonably request, or (ii) shall be delivered through the book entry system of Euroclear or Clearstream or (iii) shall be delivered by any other method mutually acceptable to the parties.
4. The Counterparty shall execute and deliver all necessary documents and take all necessary steps to procure that all right, title and interest in any Public Sector Assets shall pass to DNB i.e. a Transaction shall constitute the transfer of full legal ownership of the purchased Public Sector Assets to DNB, free from all liens, claims, charges and encumbrances.
5. Payment of the Purchase Price shall be made in euro on an account specified by the Counterparty.

#### **Article 5 Representations and warranties**

1. Upon submitting a Quote, the Counterparty represents and warrants to DNB that:
  - (a) it is a body corporate duly incorporated and validly existing under the laws of the jurisdiction in which it is incorporated;
  - (b) it has the power and is duly authorised to enter into, perform and deliver the Auction Terms and to enter into and perform all obligations thereunder and the Transactions contemplated by the Auction Terms;
  - (d) the person entering into these Auction Terms and entering into any Transaction on its behalf is or, in the case of any Transaction, will at the time such Transaction is entered into be duly authorised so to act;
  - (e) it has obtained all authorisations of any governmental authority or regulatory body required by it in connection with the Auction Terms and the Transactions to be effected under it and such authorisations remain in full force and effect;

(f) the execution, delivery and performance of the Auction Terms and the Transactions to be effected under the Auction Terms do not and will not conflict with or violate:

- (i) any law, regulation, by-law or rule applicable to the Counterparty;
- (ii) its constitutional documents; or
- (iii) any agreement or instrument binding upon it or any of its assets;

(g) the obligations expressed to be assumed by it in the Auction Terms are legal, valid, binding and enforceable obligations;

(h) it is entering into, and will duly perform its obligations under, the Auction Terms and all Transactions as principal;

(i) no transfer taxes, value added tax, registration charges or other similar taxes or charges have arisen or will arise in respect of any Public Sector Assets transferred by the Counterparty in connection with any Transaction;

(j) no withholding or deduction for or on account of tax will be required to be made by the issuing Agency from any interest, dividend or other distribution paid to DNB or any other person in respect of any Public Sector Assets delivered by the Counterparty to DNB in connection with any Transaction;

(k) at the time of delivery to DNB of any Public Sector Assets or payment or transfer to DNB of any cash, the Counterparty will have the full and unqualified right to make such sale, payment or delivery and that upon such sale, payment or delivery DNB will receive the same free and clear of any lien, claim, charge or encumbrance and;

(l) that the Counterparty is authorised to use the Auction Tool and has duly accepted and executed the contractual documentation of Bloomberg which gives the Counterparty the right to use the Auction Tool.

3. For the avoidance of doubt, any breach of a representation, a warranty or any other obligation of the Counterparty under these Auction Terms shall constitute an event of default as set out in article 15.1 (s) of the General Terms and Conditions.

#### **Article 6 Liability and Indemnity**

1. DNB, the members of its Governing Board and Supervisory Board and its employees shall not be liable for any losses caused by a failure to meet DNB's obligations or any other actions or omissions, unless the Counterparty demonstrates that said losses were substantially attributable to wilful intent or gross negligence on the part of DNB or the person in question. DNB shall not be liable for any consequential losses.

2. The use of the Auction Tool shall be for the account and risk of solely the Counterparty. DNB shall not be liable for any losses caused by failure and/or non-performance of the Auction Tool and or Bloomberg
3. The Counterparty shall indemnify and hold harmless DNB for any losses or damages caused by the failure or non-performance of the Auction Tool to any third party.
5. The Counterparty shall indemnify and hold harmless DNB for any transfer taxes, value added tax, registration charges or other similar taxes or charges that have arisen or will arise in respect of any Public Sector Asset delivered by the Counterparty in connection with any Transaction

#### **Article 7 Governing law and dispute settlement**

1. These Auction Terms and Transactions shall be governed by the law of the Netherlands.
2. Any disputes between the Counterparty and DNB shall be referred to the competent court at Amsterdam.
3. In the event that DNB is the plaintiff and the Counterparty is established outside of the Netherlands, DNB shall have the right, notwithstanding article 29 section 1 of the General Terms and Conditions, to bring a dispute before the court outside the Netherlands whose jurisdiction extends to the Counterparty instead of before the competent court at Amsterdam

#### **Article 8 Amendments and Severability**

1. DNB shall have the right to amend these Auction Terms and the Website Announcement at any time and also revise any other procedures, methods, timelines and operating rules.
2. Amendments shall have effect after publication on the website of DNB.
3. Any reference to the Auction Terms, the General Terms and Conditions, the Decision or any other contractual document or legislation that applies to the contractual relation between DNB and the Counterparty is a reference to it as it may have been, or may from time to time be amended, supplemented, modified, replaced, extended, consolidated or re-enacted.
4. These Auction Terms shall supersede any existing agreements between the parties containing general terms and conditions for Transactions by means of Reverse Auctions.
5. All Transactions by means of Reverse Auctions shall be governed by these Auction Terms.