

TRIPARTITE AGREEMENT

1. THIS AGREEMENT is entered on ____ day of **July, 2020** between **M/s Omnibus Industrial Development Corporation of Daman & Diu and Dadra & Nagar Haveli Limited (OIDC)**, having office at **Plot -35, Somnath, Nani Daman -396 210**, hereinafter called "**the Facilitator**" (which expression shall unless excluded by or repugnant to the context be deemed to include its successors and assigns) on the one part;

And

MSTC Limited (A Govt. of India Enterprise) incorporated under the Companies Act, 1956 and having its registered office at 225-C, Acharya Jagdish Chandra Bose Road, Calcutta-700020 and its **Vadodara Branch at 21, Kamlanjali Apartment, 2nd Floor, above HDFC Bank, Opp. Tube Company, Old Padra Road, Akota, Vadodara-390020** hereinafter called "**MSTC**" (which expression shall unless excluded by or repugnant to the context be deemed to include its successors and assigns) on the Other part ;

And

Industrial Unit/Factory/Plant/Company _____, registered under Factories Act 1948/ Companies Act 1956 or 2013/ or any other Relevant Act having office and operations at _____, for allowing sale of scrap through the e auction portal of MSTC Limited (A Govt of India Enterprise) hereinafter called "**Seller**" which expression shall unless excluded by or repugnant to the meaning or context thereof be deemed to include its successors and assigns) of the third Part.

2. WHEREAS Facilitator will act as the nodal agency to facilitate Companies /Industrial Units/ Factories/Plants coming under the jurisdiction of Districts of Daman & Diu and Dadra & Nagar Haveli. MSTC will coordinate with OIDC who will act as the Facilitator for industrial Units/Factories/Plants/Companies under the jurisdiction of Districts of Daman & Diu and Dadra & Nagar Haveli as far as scrap material disposal through MSTC is concerned.
3. Auctions may be conducted separately for each seller. Each seller will have their GST no. and bank details uploaded in their respective user IDs which will be required for the purpose of transfer of payment by MSTC. The specific Seller id will be used for e auction to be generated.
4. WHEREAS MSTC has approached the Facilitator with a request to engage MSTC as Selling Agents for sale of surplus, any condemned /scrap / obsolete materials and secondary arising (ferrous and non ferrous) and misc. articles etc (for the sake of brevity hereinafter referred as "materials") generated by or available with the Seller; through MSTC's e-Auction website www.mstcecommerce.com.

Now these presents witness and it is hereby agreed by and between the parties hereto as follows:

APPLICATION

5. This Agreement details the general terms and conditions for the provision of the Services to be rendered by FACILITATOR, MSTC and SELLER. Upon signing the scope, duration and other services to be so rendered under this Agreement the parties agree to accept and be bound by these terms and conditions.
6. AND WHEREAS through the Facilitator, Seller have agreed to engage MSTC as Selling Agent for the purpose on the terms and conditions mentioned hereinafter;
7. NOW it is hereby agreed and declared by the parties hereto as follows:
 - 8.1 This Agreement covers disposal of surplus, condemned /scrap / obsolete materials and secondary arising (ferrous and non ferrous) and misc. articles etc.; through MSTC's Auction web site www.mstcecommerce.com as mentioned in clause - 4 above;
 - 8.2 In addition to the above, add-ons to the category of disposals may be affected through this agreement on mutual consent, with issuing of an addendum for the same.

MSTC shall act as Selling Agent for disposal of items covered under Clauses -4, 8.1 & 8.2 hereof in the home/indigenous market by way of e-Auction over the Internet on its website www.mstcecommerce.com based on this agreement.

9.0 DURATION OF CONTRACT:

The Agreement will remain valid for 01 (One) year from the date of signing of this agreement which could be extended for such further period on such terms and conditions as mutually agreed upon by the parties hereto.

10.0 QUANTUM OF BUSINESS:

This contract by itself does not commit any specific quantum of business to MSTC by the Seller or Facilitator.

11.0 NATURE & SCOPE OF SERVICE & RESPONSIBILITY OF MSTC:

11.1 MSTC shall conduct e-auction sale directly and in no case the appointment of any dealer/trader/auctioneer for the purpose will be considered.

- 11.2 MSTC will offer guidance in regard to making of lots for the purpose of e-Auction and will act on the basis of the list of disposable materials received from the Facilitator after receiving the list from the seller.
- 11.3 MSTC will arrange publicity for disposal through E-Auction by way of advertisement through Websites and other internet Tools on all India basis. In addition, the system shall notify automatically to all the buyers who are registered with the auction website i.e. www.mstcecommerce.com. regarding all the forthcoming E-Auctions specifying therein all relevant details about the materials / lots/date & time of opening & closing of auctions etc. In case the Seller or Facilitator desires publicity through a particular publication or media, the same would be arranged on receipt of written request and the additional cost shall be borne by the Seller.
- 11.4 MSTC shall arrange disposal of the materials through e-auction via their website www.mstcecommerce.com.
- 11.5 The seller shall provide required information data and supporting documents as and when called by the facilitator immediately or within the time prescribed. On the close of any auction Seller will receive a system generated E-mail indicating the status of the Auction which will include Sold lots, Subject To Approval (STA) lots and also lots not sold with highest bid received for record. The Seller shall have the option to visit the website in order to obtain a full report of any particular auction, which will normally depict the replica of Bid Sheet of a particular auction and MIS Reports. The supervisory/monitoring ID will be made available by MSTC to Facilitator in respect of all Sellers under the jurisdiction of UT of Dadra and Nagar Haveli and Daman and Diu registered under MSTC.
- 11.6 Reserve Price (RP) must be fixed by Seller in consultation with the Facilitator and entered by seller (with its secret Password) in the website, which will be accessible by the designated/authorized officer only, and none else, for the disposable materials. In case the Reserve price is not entered prior to commencement of the e-Auction, the lots for which the reserve prices have not been entered shall stand automatically withdrawn by the system. For the purpose of RP fixation in case Facilitator so desires, MSTC will make available the rates of material being sold by other departments.
- 11.7 If, in respect of any item(s) covered under the *Tripartite Agreement*, it is desired by the Facilitator upon request of Seller to have a market survey, the costs for the same will have to be borne by the *Seller*. The market survey could be done by MSTC by engaging consultants.
- 11.8 MSTC shall enter into sale contracts with the successful bidders/ buyers/customers by issuing Sale Orders/ Acceptance Letters on behalf of Seller through the system for the approved sold lots . MSTC shall collect 25% Earnest

Money Deposit payment and balance payment through its payment gateway from each bidder and forward to Seller. Sale Order and Delivery Order will be sent by email and post to buyer and Seller both. Terms of payment would be as per the catalogue for e-auction.

11.9 The balance payment towards the material value plus taxes will be transferred by the bidder/buyer into the payment gateway of MSTC. MSTC shall then prepare and issue Delivery Order. MSTC will retain service charges of 5% (2.75% MSTC service charges and 2.25% OIDC service charges) at its end before forwarding the 95% payment to Seller alongwith GST and TCS. Delivery Order will be sent by email and post to buyer and Seller both. On production of the copy of Delivery Order along with the sale value (less MSTC's & Facilitator Service Charges as per clause 13 of this agreement), GST on material, if any, the Seller will deliver materials. The Seller shall ensure credit of the said material value in its accounts before effecting delivery of materials to buyers.

11.10 MSTC shall ensure follow-up of orders booked, on behalf of the *Seller & Facilitator*.

11.11 Seller/Facilitator will have access to the bid sheet after the close of the e-auction. MSTC shall send Sale Intimation Letter (SIL) for all approved lots to Buyers (alongwith a copy to Seller), for which the highest bid received, is equal to or more than the reserve price. For the remaining lots with status as Subject To Approval (STA), Seller in consultation with Facilitator shall take its own decisions for final approval or otherwise within 7 days of the e-Auction. MSTC will not have access to the Reserve price entered, hence the approval/rejection of the lots would be done by the Seller in consultation with the Facilitator. However the Seller and Facilitator has full power / rights to reject or cancel all or any approved bids received without assigning any reason or justification at any point of time.

MSTC shall provide market intelligence through its e-bulletin as and when published and may also make available the rates received for similar items in e-Auctions conducted for other sellers to Facilitator.

11.12 MSTC shall prepare and issue Delivery Orders after full payment from buyer and transfer 95% payment plus GST, TCS etc to Seller. Details of payment will be mentioned in Delivery Order which will be sent by email and post to Seller and buyer.

11.13 MSTC shall also be responsible for follow-up of orders booked.

11.14 The remuneration of MSTC pursuant to Clause 13 of this Agreement shall constitute its sole remuneration for the services rendered by it hereunder. MSTC shall not accept for its own benefit any commission, discount or other payments from any buyer or any party in the discharge of its obligations.

11.15 MSTC shall not engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to MSTC under or pursuant to this Agreement.

11.16 MSTC shall perform the services under this Agreement in strict conformity with applicable laws, bye-laws, rules, regulations, etc.

11.18 INVOICE AND PAYMENT

MSTC shall raise direct invoices to the Seller for its service charges. OI DC will raise their service charge invoice to the MSTC for the amount collected on their behalf.

12.0 NATURE & SCOPE OF RESPONSIBILITY OF THE FACILITATOR AND SELLER:

12.1 All the Sellers under the jurisdiction of UT of Dardar Nagar Haveli & Daman & Diu have to compulsorily register their Seller id(with GST no.) on www.mstcecommerce.com through approval and in consultation with the facilitator only. The Facilitator or Seller shall provide MSTC with the list of materials with detailed specifications and descriptions, locations, quantity, quality, GST rate and special remarks of any sort of restriction, if any, for disposal. Material will be sold on "As is where is" basis from the location of the material itself. Buyers buying through MSTC will collect the material from various locations as per delivery order.

12.2 DELETED (Seller would confirm all online payments received from the bidders to MSTC in a timely manner within 24 hours, so that Sale Order/Delivery Order can be issued by MSTC.)

12.3 The Facilitator shall coordinate with the Sellers to effect deliveries to the buyers/customers as per Delivery Orders issued by MSTC and as per directions given by MSTC from time to time. Any disputes arising while effecting deliveries to successful bidders/buyers, shall be dealt with by the Grievance Redressal Cell formed for the purpose.

12.4 The Seller shall raise GST invoices on buyers as per the terms and Sale Orders/Delivery Orders issued by MSTC in a timely manner.

- 12.5 The Seller may monitor the e-Auction and will be able to view the bid history etc., during the continuation of the e-Auction.
- 12.6 MSTC shall provide its standard terms and conditions of sale of materials to the Seller. The Seller will not insist on MSTC for any deviation from standard terms of sale of MSTC.

13.0 SERVICE CHARGE

13.1 Facilitator and MSTC shall be entitled to a service charge of **2.25% and 2.75% respectively making it a total service charge of 5 % (plus GST as applicable minus TDS)** on the value of materials disposed, arrived on the basis of the value of the Delivery Order (D.O.) issued through e-auction over the Internet. GST as applicable on Service Charges shall be payable extra by Seller.

Service Charge bills duly signed by MSTC shall be sent to Seller within one week after issuance of Delivery Order. Seller shall be responsible for depositing the TDS with the Govt. as per rules and TDS certificate will be provided by Seller to MSTC after filing of return.

13.2 Service Charge will be calculated on the amount realized on material value excluding GST or any other Govt. levies / taxes if any. Service charges of MSTC & Facilitator will be recovered from the material value while issuing the delivery order.

13.3 The service Charge as mentioned above will be applicable on forfeited EMD only.

13.4 OI DC will forward their service charges bill to MSTC to enable payment of service charges of 2.25% plus taxes, within a week of the issue of the Delivery Order.

14.0 STANDING COMMITTEE FOR IMPLEMENTATION OF THE AGREEMENT

The Facilitator or Seller and MSTC will nominate one official each for dealing with all matters relating to this Agreement. The working arrangements for implementing the provisions of this Agreement shall be mutually discussed and decided upon. MSTC will provide necessary support to train the manpower/officials for e -auction to OI DC for a period of as per requirement. The *Facilitator and MSTC* will nominate their official as mutually agreed towards Grievance Redressal Cell to resolve any disputes.

15.0 EXECUTION OF SALE CONTRACT:

Previous Agreements among any party existing at the time of execution of this Tripartite Agreement will continue to operate and will not come under the purview of this Tripartite Agreement. Similarly, at the expiry of this Tripartite Agreement, the orders booked by MSTC will continue to operate as if this Tripartite Agreement continues till the execution of those orders.

16.0 HANDLING OF SUITS:

Since MSTC /OIDC will only act as Selling Agent / Facilitator of the materials, all litigations including arbitration, if any invoked by the Bidders/Buyers the cost of such litigation or arbitration shall be exclusively borne and dealt by the Seller who is the owner of the material irrespective of whether MSTC/ OI DC is joined in such proceedings as a party or not. However, all litigations including arbitration related with its own Portal issues shall be exclusively dealt with by the MSTC. The connectivity issue at the buyer's end will not be MSTC responsibility. It shall be responsibility of the Seller to handle all suits/legal proceedings including arbitration that may initiated by or against any buyer/bidder and to defend itself in all such proceedings at its own costs and expenses. The competent officials of the Facilitator shall appoint Sole Arbitrator in case request for such appointment is made by Bidder/buyer in terms of the relevant Tender/Auction/e-Auction Clauses. If court case arises on the fault of M/s MSTC, then responsibility will be of M/s MSTC, Vadodara.

Seller shall take prior permission of the Facilitator for instituting legal case in any Court of the Law in the matters arising out of any sale/e-auction under this agreement.

17.0 JURISDICTION OF THE COURT:

All legal disputes between the parties shall be subject to the jurisdiction of Courts situated in Daman only.

18.0 AMENDMENT:

Any amendment to this Tripartite Agreement would be enforceable only if made in writing and duly signed by authorized representatives of the parties hereto.

19.0 FORCE MAJEURE CLAUSE:

If, any time during the continuance of this Agreement, the performance, in whole or in part by either party, of any obligation under this Agreement be

prevented or delayed by reason of any war, hostility, act of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lock-outs, Technical and/or connectivity failure which is entirely beyond the control of MSTC or Facilitator or seller etc., or acts of God (hereinafter referred to as 'events') provided notice of happening of any such eventuality is given by the affected party to the other within 21 days from the date of occurrence thereof, neither party shall by reason of such event have any claim for damages against the other in respect of such non-performance or delay in performance, provided further that if the performance in whole or part of any obligation under this Agreement is prevented or delayed by reasons of any such event for a period exceeding sixty days, the parties shall try to arrive at an amicable settlement, failing such settlement the Seller or Facilitator may terminate this Agreement at its sole discretion and at such event MSTC shall be bound to pay all the expenses and other moneys if recovered from the bidders to the Seller or Facilitator forthwith.

20.0 TERMINATION:

This Agreement shall be subject to termination by giving advance notice in writing of 1 (One) month to the other parties before the expiry of the contract.

21.0 ARBITRATION CLAUSE :

Any dispute, difference, controversy or claims ("Dispute") arising between the MSTC and Seller out of or in connection with this Agreement or the breach, termination, effect, validity, interpretation or application of this agreement or their rights, duties or liabilities hereunder, shall be settled by the parties by mutual consultation. If for the reason such Disputes cannot be resolved amicably by the parties, such disputes shall be referred for adjudication by way of Arbitration to the Arbitrator appointed by Facilitator as per the provisions of the Arbitration and Conciliation Act 1996 or any statutory re-enactment of the same and the rules framed thereunder. Arbitration Proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act 1996 or any statutory re-enactment of the same and the rules framed thereunder. The venue of the Arbitration shall be Daman and the language of the Arbitration shall be English. The Arbitral award shall be final and binding on both the parties. The cost of Arbitration shall be shared equally by the parties.

22.0 OTHER CONDITIONS:

22.1 MSTC/OIDC LTD shall act only as a Service Provider/Facilitator for conducting e-Auction and it shall not be party to any dispute arising between

the Seller and the buyer(s) for any matter other than the conduct of the e-auction process.

22.2 Since materials to be sold shall never come under the custody or possession of the MSTC/OIDC Ltd, no complaint from the bidders/buyers on account of quality and/or quantity of goods shall lie against MSTC/OIDC LTD

22.3 OIDC will provide /act as Aggregator of information to the parties. OIDC will be a mere Facilitator to the parties.

23.0 APPLICABILITY OF LAWS :

The Agreement shall be governed by the Indian Laws for the time being in force.

IN WITNESS WHEREOF the parties hereto have subscribed their respective hands on the day, month and year first above written.

Signed and delivered by M/s Omnibus Industrial Development Corporation of Daman & Diu and Dadra & Nagar Haveli Limited
By its.....

(Designation)

(Signature with seal)

In the presence of :

1.

2.

Signature with Address)

Signature with Address)

Signed and delivered

For and on behalf of M/s MSTC Limited, VADODARA

By its Branch Manager, Smt. Shalini Bhatti

(Designation)

(Signature with seal)

In the presence of :

1.

2.

Signature with Address)

Signature with Address)

For and on behalf of **Seller**

By its

(Designation)

(Signature with seal)

In the presence of :

1.

2.

Signature with Address)

Signature with Address)